logists, must invite speculation about general directions of legal development. But we see here, as in anthropological writings, how generalization is hampered by the diversity of the local institutions which lay in the path of government, the varied responses of government (suppression here, incorporation or regulation there), and the unpredictable approach of litigants to new and surviving institutions. Even so the amount and quality of the material available make such speculation a serious possibility, which it was not in Maine's day. Some will see John Bossy's introduction of 'the West' into his title as a direct challenge in this respect.

2. 'Beati pacifici': Bishops and the Law in Sixth-Century Gaul

EDWARD JAMES

In 585 a dispute arose in Touraine. The servant of a priest went to deliver an invitation, and was killed. Sichar, a friend of the priest, started a fight with Austregisel, a friend of the murderer. A pitched battle between their supporters was ended by a number of clerics, and Sichar fled to his country estate. Austregisel attacked the priest's house, where Sichar had left some servants and valuables; he killed the servants and made off with the property. A local court declared Austregisel guilty. But a few days later Sichar attacked those who were looking after his stolen property, and killed them and their servants. The count of Tours and the local bishop, Gregory, together ordered the principal participants to appear before them. Gregory begged them to make peace, so that they might be worthy of the Kingdom of Heaven: 'as He Himself has said, "*Beati pacifici, quoniam filii Dei vocabuntur* – Blessed are the peacemakers, for they shall be called the sons of God" (Matthew v. 9). And if he who is judged guilty does not have the money to pay the fine, then the fine shall be paid by the Church, in order to save his soul' (*LH* VII. 47).[1] Gregory did indeed offer money but the supporters of Chramnesind, whose father, uncle and brother had all been killed by Sichar, refused to accept compensation. Not long afterwards Sichar was attacked, his property pillaged and some of his slaves killed. The culprit, Chramnesind, was ordered to forfeit half the compensation awarded to him – 'and this was done against the law, so that peace might be reached' – and Sichar ordered to pay the other half, which he did with financial assistance from Bishop

[1] In what follows *LH* stands for the *Decem Libri Historiarum* by Gregory of Tours. His other works are *GM* (*Liber in Gloria Martyrum*), *VSJ* (*Liber de Virtutibus S. Iuliani*), *VSM* (*Libri de Virtutibus S. Martini*), *VP* (*Liber Vitae Patrum*) and *GC* (*Liber in Gloria Confessorum*). The edition used is that of B. Krusch, in *Monumenta Germaniae Historica, Scriptores Rerum Merovingicarum*, i: in my quotations from *LH* I have usually followed L. Thorpe's translation (Harmondsworth, 1974).

Gregory. The feud was settled, although only temporarily: two years later Chramnesind killed Sichar, who was then twenty years old, feeling that public opinion would despise him if he did not avenge his relatives.

The story is well known to those interested in the history of the blood feud (largely because such cases are so very rarely described in detail),[2] but is also of considerable relevance to the study of the role of the early medieval church in the settlement of disputes. The clergy intervened at an early stage to end the violence; the bishop was given a formal role in the legal proceedings; and he used his position to mediate between the law, in the person of the count, and the parties in the dispute, to produce what it was hoped would be an acceptable compromise. He even pledged money from the episcopal coffers: if a settlement was not reached, then a man's soul was in danger. Gregory's action, therefore, and his expenditure, were justified on theological grounds, a point which he emphasized by quoting from the Sermon on the Mount. Bishops took their role as agents of love and peace seriously in the sixth century, just as they took seriously the task of protecting and assisting the poor and the weak.[3] There are indeed texts written by clerics which proclaim, in terms which would have been familiar to the late medieval lawyers discussed by Michael Clanchy in this volume, the dominance of love over law: a letter from Theophilus of Alexandria to St Jerome opposes law and charity, and truth and mercy, while a Gallic text from the last quarter of the fifth century says that it is the duty of a bishop 'to exhort disputing brothers, whether clerics or lay people, to peace rather than to judgement'.[4]

It is the purpose of this chapter to inquire how bishops set about the business of peace-making in practice. Our major source, inevitably, will be the historical and hagiographical writings of Gregory of Tours himself. Informative as Gregory is, there are of course problems in relying upon the work of an active bishop who was eager to put across a very positive idea of the role of a bishop in the community. At times we may be getting a clearer picture of what Gregory would have liked to have happened than an accurate reflection of the political realities: but this in itself is important historical information. Taken together with the ecclesiastical and secular sources which provide us with the legislative framework, the writings of Gregory give us our best chance of understanding the actions of the Merovingian clergy as well as their aspirations.

Bishops had no doubt played an informal role in settling disputes within the early Christian communities; within a few years of the last persecution they were given a formal legal position. In 318 Constantine enacted that a judge should not object if a case was brought before an episcopal court, and that if 'any person should desire him to transfer his case to the jurisdiction of the Christian law and to observe that kind of court, he shall be heard, even though the action has been instituted before the judge, and whatever may be adjudged by them shall be held as sacred' (CT 1. 27. 1).[5] In intention this may have been more to protect Christians from pagan judges than to exalt bishops. It was certainly not always welcomed by the latter, and both Hilary of Poitiers and Augustine of Hippo complained that it involved them in much unpleasantness: apart from taking up their time it must also have involved them deeply in the internal feuds of their diocese and jeopardized their position as impartial leaders of the community.[6] And indeed in Augustine's day imperial legislation was already beginning to whittle down the powers of the bishop's court, the audientia episcopalis. In secular cases the bishop was to act as no more than an arbiter, as any citizen could 'since private persons can hear those persons who have given their consent, even without the knowledge of the judge' (AD 408: CT 1. 27. 2). The most important formal legal function left to the bishop was in relation to offences of a religious nature, and offences

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[2] In particular G. Monod, 'Les aventures de Sichaire', Revue Historique, xxxi (1886), pp. 259–90 and J. M. Wallace-Hadrill, 'The Bloodfeud of the Franks', in his The Long-Haired Kings (London, 1962), pp. 121–47.

[3] See above all W. Ullmann, 'Public Welfare and Social Legislation in the Early Medieval Councils', Studies in Church History, vii (1971), pp. 1–39. For more detail, see S. M. MacGonagle, The Poor in Gregory of Tours (New York, 1936); H. G. J. Beck, The Pastoral Care of Souls in South-East France during the Sixth Century (Rome, 1950), esp. pp. 317–44; and M. Rouche, 'La matricule des pauvres', in M. Mollat (ed.), Etudes sur l'histoire de la pauvreté (Paris, 1974), pp. 83–110.

[4] See Jerome, Epist. 96. 20 (J.-P. Migne (ed.), Patrologia Latina, xxii. 789), cited by J. Gaudemet, L'Eglise dans l'Empire romain IVe–Ve siècles (Histoire du droit et des institutions de l'Eglise en Occident, iii) (Paris, 1958), p. 237; and Statuta Ecclesiae Antiqua, 54, in C. Munier (ed.), Concilia Galliae, A.314–A.506 (Corpus Christianorum, Ser. Lat. cxlviii) (Turnholt, 1963), p. 175.

[5] In what follows CT and SC stands for Theodosian Code and Sirmondian Constitutions. I have followed the translation of Clyde Pharr, The Theodosian Code and Novels and the Sirmondian Constitutions (Princeton, 1952).

[6] See K. Baus et al., The Imperial Church from Constantine to the Early Middle Ages (History of the Church, ii) (London, 1980), p. 285; the whole question is discussed by Gaudemet, L'Eglise dans l'Empire romain, pp. 230ff.

committed by the clergy. Even this privilege was revoked in the case of ordinary crimes by Valentinian III, although the claims of the clergy to the *privilegium fori* seem often to have been accepted by the barbarian kings of the West.[7]

The formal judgements of bishops naturally occur most often in the pages of Gregory in cases involving bishops and priests. Perhaps the most notorious episcopal criminals were Bishop Salonius of Embrun and Bishop Sagittarius of Gap, brothers who apparently indulged in most secular and ecclesiastical crimes. The bishops of Guntram's kingdom met at Chalon in 579 to settle this long-standing problem, and interestingly the restrictions of ecclesiastical practice presented them with some difficulties. Adultery and murder were among the charges, but peccadilloes of that sort could be purged by penance, and in order to make sure of their deposition the bishops had to accuse them of being guilty of *lèse-majesté* and treason – *rei maestatis et patria proditores* (*LH* V. 27). Bishop Praetextatus of Rouen was also accused of treason, although falsely in Gregory's view. A sentence of exile in this case was only reached after Chilperic had put pressure on the bishops, tricked Praetextatus into a confession and forged some canons which declared that a bishop guilty of murder, adultery or perjury should be expelled from his diocese. Chilperic complained bitterly of the professional solidarity of the bishops, quoting an old Latin proverb, 'corvus oculum corvi non eruit', 'a crow does not peck out the eye of another crow' (*LH* V. 18). That solidarity certainly seems to have been at work in the case of the flagrantly political bishop of Rheims, Egidius. Even after he had confessed to treason, the bishops hoped that they could produce something by which to exculpate him; they did indeed save his life, but agreed to his removal from the priesthood and exile (*LH* X. 19). Gregory of Tours himself was tried by the bishops for a secular crime: that of an alleged slander against Chilperic and Queen Fredegund. The bishops agreed unanimously that 'the word of an inferior can not be believed above that of a bishop', and charged Gregory to clear himself by swearing an oath to his innocence – a procedure which was uncanonical, said Gregory, but with which he complied in order not to upset the king

[7] See Pharr, *The Theodosian Code*, pp. 545–9: Novel 35 of Valentinian III. A. H. M. Jones, *The Later Roman Empire* (Oxford, 1964), p. 491, suggests that 'some later emperor must have restored the privileges of the clergy'. On the *privilegium fori*, see Gaudemet, *L'Eglise dans l'Empire romain*, pp. 241ff.

(*LH* V. 49). The power of a bishop's oath is recognized as early as the time of Constantine: 'The testimony given by a bishop, even though he may be the only witness, shall be unhesitatingly accepted by every judge' (*SC* 1). Gregory's own brother Peter, a priest accused of killing a man by magic, also cleared himself by an oath at a court made up of both bishops and laymen, presided over by Bishop Nicetius of Lyons – his own great-uncle (*LH* V. 5). The privileges of the clergy were considerable: the right to settle their own disputes, the ability to use an unsupported oath as a defence, and the freedom from the death penalty – for ecclesiastics could not impose that on any convicted person. Those lay judges who dared lay hands on clerics are shown in Gregory's pages to have come to unfortunate ends. Count Palladius of Javols, who accused Bishop Parthenius unjustly at the king's court, was punished by the vengeance of God: he committed suicide and received a suicide's burial (*LH* IV. 39). Archdeacon Vigilius of Marseilles, whose men had stolen wine-jars from ships in the harbour, was arrested by Albinus, governor of Provence, while conducting Mass on Christmas Day: Albinus was eventually forced to pay the massive fine of sixteen thousand gold coins (*LH* IV. 43). When Guntram Boso arrested Bishop Theodore of Marseilles a great globe of light appeared in his prison-cell and remained above the bishop's head for two hours, in the sight of the terrified duke (*LH* VI. 24); when Duke Rathar was at a later date sent by King Childebert to arrest the same Theodore, he pillaged the goods of the church, and his servants and his own son died (*LH* VIII. 11). The only case of a cleric in Gregory's works tried by a secular court with Gregory's own apparent approval was the subdeacon Riculf – condemned to death for plotting the deposition of Gregory himself: even then Gregory used his influence to save Riculf from the death penalty (*LH* V. 49).

The legal role of the bishop was not however restricted to the settlement of disputes within the ranks of the clergy, or those created by the actions of clergy. There were certain types of case reserved for ecclesiastical courts: disputes involving marriage, sexual misdemeanours, religious belief and, above all, the property and other rights of the church, and also disputes involving certain categories of people – widows, orphans, freedmen and the *pauperes* (the poor and defenceless). There are a number of stories in Gregory confirming such episcopal involvement. A feud arose in

the church of St Denis between the family of a woman accused of adultery and the family of the husband: it was settled by the church at the request of King Chilperic (*LH* V. 32), involving as it did both sacrilege and adultery. When Pelagius, a well known criminal from Tours , stole from the church, it was Gregory who tried him, not the count. Initially Gregory excommunicated him, more as a cure than a punishment, he wrote. Then Pelagius found twelve men prepared to swear to his innocence, and after some argument Gregory agreed to readmit him to the sacrament. But he repeated his crime, and died soon afterwards (*LH* VIII. 40). The case of Tetradia and Count Eulalius of Clermont was settled by a council of bishops, perhaps because of the nature of the case, although also perhaps because of the eminence of the parties involved and the reluctance of the king to make any judgement. Eulalius, who had once been suspected of matricide, had married Tetradia. He neglected her, and then killed her lover. Tetradia then married Duke Desiderius. The bishops decreed that Tetradia should repay Eulalius fourfold for the property she had taken with her when she married the duke, and that her children by Desiderius were to be regarded as illegitimate (*LH* X. 8).

There are a number of occasions when bishops and lay judges might sit together in court, as when Gregory of Tours and the count arbitrated in the case of Sichar and Chramnesind. The Council of Mâcon in 585, which claimed for the church exclusive jurisdiction over freedmen, also required lay judges, under pain of excommunication, to hear cases involving widows and orphans only in the presence of a church official.[8] Gregory describes Count Leudast of Tours sitting in court together with senior laymen and clerics (*LH* V. 48); Badegisil, bishop of Le Mans, used to argue about legal cases with the judges every day (although Gregory certainly did not approve of this) (*LH* VIII. 39).[9] There is only one reference in Gregory to suggest that a bishop might have a court which could act as a rival to that of the count, a tantalizing and incidental reference in a story designed to show the forgiving nature of Nicetius, bishop of Lyons (*VP* 8. 3). Nicetius sent his priest Basil to tell Count

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[8] Mâcon, c. 12: C. de Clercq (ed.), *Concilia Galliae, A. 511–A. 695* (Corpus Christianorum, Ser. Lat. cxlviii A) (Turnholt, 1963), pp. 244–5.
[9] See Beck, *The Pastoral Care of Souls*, pp. 327–8: but we may doubt that these joint tribunals of clergy and laymen 'seem to have become the normal procedure by the last third of the century'.

Armentarius that the bishop had settled a particular legal case and did not want it reopened. Armentarius replied that there were higher courts than those of the bishop, and Nicetius refused to offer Basil his blessing for having passed on to him these words spoken in anger. Nicetius whispered to his great-nephew Gregory, then a deacon, who was sitting at the bishop's left hand, to stand up and speak on behalf of Basil: Gregory did so, and the priest was pardoned. Clearly this was a legal case which fell within the competence of both the bishop and the count; clearly too there were possibilities available to litigants to prolong proceedings by appealing to another court. The fact that bishops could only offer ecclesiastical penalties, and had no way of enforcing their judgements, might also have encouraged an appeal to the secular court.[10]

Armentarius had argued that there were higher courts than those of bishops. Presumably he meant that the count's court, held in the presence of a representative of the king and thus in effect a royal court, was a higher court. Bishops such as Nicetius might well have disagreed. The fount of justice was not the king, but God. Bishops as judges and arbitrators derived their authority and prestige from God and the saints; this is a message which Gregory of Tours constantly puts before his readers and hearers. When the Merovingian pretender Gundovald is betrayed by his own supporters he cries out to the only higher court to which he could appeal:

> Eternal judge and true avenger of the innocent, God, from Whom all justice proceeds, Whom no lie pleases, in Whom there is no trickery or cunning, I commend my case to you, and ask that You should bring quick vengeance on those who have betrayed me, an innocent person, into the hands of my enemies. (*LH* VII. 38)

Mummolus and Bishop Sagittarius, the principal betrayers, were killed not long after Gundovald's own death, in accordance with the pretender's wish. God will intervene to protect the innocent, as when He saved a woman falsely accused of adultery from being drowned in the Saône (*GM* 69). And He will act in support of the

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[10] The powerlessness of bishops to enforce their judgements is emphasized by I. N. Wood in his discussion of the position of Avitus of Vienne: 'The overwhelming impression is one of a bishop who was uncertain of his position and who was frequently on the defensive before the king, his congregation and the clergy': see I. N. Wood, 'Avitus of Vienne: Religion and Culture in the Auvergne and the Rhône Valley, 470–530' (unpublished D.Phil. thesis, Oxford, 1980), p. 135.

legal decisions of bishops and of the rights of the church. St Germanus of Paris excommunicated King Charibert and his new wife, who was the sister of his other wife; they paid no attention, and were both struck by the judgement of God, and died (*LH* IV. 26). A wicked merchant of Lyons lost all his wealth, by the judgement of God (*GC* 110). King Guntram told his nephew Childebert that his uncles had agreed not to enter Paris without the permission of the others, and had nominated St Polyeuctos, St Hilary and St Martin to judge the circumstances and punish the offender: both Sigibert and Chilperic had entered Paris without permission, and both were assassinated not long afterwards. 'They both suffered the judgement of God and the maledictions specified in the pact' (*LH* VII. 6). Nantinus, count of Angoulême, believed that the bishop was involved in the death of his predecessor, Bishop Marachar, Nantinus' uncle, and took the law into his own hands rather than putting the matter to the bishops. He attacked the property of the church, killed a priest, and died in agony. 'Everyone ought to be amazed at these things, and fear lest they offend the bishops, since the Lord will avenge those of his servants who put their trust in Him' (*LH* V. 36).[11]

The phrase *iudicium Dei*, 'judgement of God', had of course a very specific sense in later sources: it meant the ordeal. The origins of the ordeal are uncertain. It is mentioned in the earliest Burgundian and Frankish legislation, from the sixth century, but it is also mentioned, although in odd circumstances, by Gregory of Tours. The ordeal of the cauldron, picking out a ring from a cauldron of boiling water, solves a dispute between an Arian and a Catholic (*GM* 80); another such dispute was settled by an ordeal of fire (*GC* 14). The roots of the developed legal institution of the ordeal are already present in the sixth century; Gregory's belief in the active interest of God in the pursuit of justice and the settlement of disputes would by the Carolingian period have its own liturgy and its own position in the legal process, underlined by Charlemagne himself, in one of his capitularies, when he declared that 'all men should believe in the judgement of God without any doubts'.[12] But

[11] Gregory was not so much uttering an accepted opinion as trying to persuade his contemporaries of the necessity for *reverentia*: see P. Brown, *Relics and Social Status in the Age of Gregory of Tours* (Reading, 1977), now reprinted in Brown, *Society and the Holy in Late Antiquity* (London, 1982), pp. 222–50. See esp. pp. 233–5.

[12] *Monumenta Germaniae Historica, Capitularia*, i, p. 150. See my comments in E.

there was another way in which beliefs fostered by the church were already by Gregory's day having a significant influence upon the way in which the legal process was organized and disputes settled: the use of the oath taken upon an altar or upon relics. Those who perjured themselves or who went back on their word would suffer the judgement of God, or the indignation of the saint in whose church the oath was sworn. Solemn oaths were taken in more than one church, as when the pretender Gundovald made Guntram Boso swear in twelve churches that he would be safe when he returned to Gaul (*LH* VII. 36). Certain churches were known to Gregory for their particular efficacy in punishing perjury, such as St Pancras in Rome (*GM* 38) or St Julian at Joué in the diocese of Tours (*VSJ* 40). There, when the Devil persuades a man to perjure himself, divine vengeance immediately follows, bringing disasters such as the loss of relatives, or consumption. Even barbarians dare not perjure themselves there, claims Gregory. And scattered throughout his hagiographical works (the two stories at *LH* VIII. 16 are the only examples I can find in his *History*) are moral tales of the vengeance of God upon perjurors. Perjurors are paralysed, their right hand raised in the oath, in the church itself (*GM* 52, 57), they contract gangrene in the offending hand, leading to amputation of the arm and death (*GC* 67), they are struck dumb (*VSJ* 19), or they die almost on the spot (*VSM* I. 31). Such tales reinforced the message which Gregory of Tours and other early medieval churchmen were attempting to convey: that God and the saints were prepared to intervene to bring to earth some measure of the justice and peace which reigned in Heaven.

The intervention of God not only saved the innocent and punished the wicked: it also helped to soften the rigours of the law and to protect the criminal from death by execution. Sometimes this intervention took a miraculous form. A slave was arrested and condemned to death for theft; he prayed to St Martin and fell free and alive from the gallows (*VSM* III. 53). A hardened criminal who had done penance for his crimes was nevertheless arrested and condemned by the judge; he prayed to Martin, the ropes broke and he too fell to the ground alive. The judge tried to hang him again, but the abbot of a neighbouring monastery pleaded for the man and

James, *The Origins of France* (London, 1982), pp. 88–90, which was written in ignorance of P. Brown, 'Society and the Supernatural: a Medieval Change', *Daedalus*, civ (1975), pp. 133–51, now in Brown, *Society and the Holy*, pp. 302–32.

the count freed him (also *VSM* III. 53). We can clearly see here an opposition of views; in the eyes of Gregory a man who had gone through penance, or even someone who was repentant, should not be punished by death, and perhaps should not be punished at all. It was not necessarily a popular view. In another story Gregory tells of a habitual criminal, a robber and a murderer, who was led off to be hanged. Eparchius, a recluse of Angoulême, sent a monk to beg the count to spare the man's life. But there appears to have been a demonstration by a furious mob, who demanded that no pardon should be given. The criminal was therefore tortured and hanged; but Eparchius prayed, the gallows collapsed, and the man was saved (*LH* VI. 8). Afterwards the count (who told the story to Gregory of Tours) excused himself to Eparchius claiming that had he not been afraid of the mob he would indeed have let the man go: it was only then that Eparchius revealed, to the count's stupefaction, that the criminal was still alive. According to Gregory, Eparchius performed a similar miracle even after his death (*GC* 99).

F. X. Graus, in his important study of the hagiographical topos of the freed prisoner,[13] relates such stories of freeing from the gallows[14] – his Type III, of which he lists nineteen examples from Merovingian sources – to the literary traditions of Gallic hagiography. But they clearly ought also to be seen in the light both of legislation and of examples of clerical intervention in Gregory's *History* which have no miraculous content. Churchmen in the fourth and fifth centuries regarded it as the duty of clerics to intercede for condemned prisoners: it did not even matter, explained Augustine to a puzzled Macedonius, whether the prisoner was guilty or not, for time would at least be given to the guilty to make peace with God.[15] Some of the abuses were attacked

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[13] 'Die Gewalt bei den Anfängen des Feudalismus und die "Gefangenenbefreiungen" der merowingischen Hagiographie', *Jahrbuch für Wirtschaftsgeschichte* (1961), pp. 61–156. This topos is placed in a much broader context in the same author's *Volk, Herrscher und Heilige im Reich der Merowinger* (Prague 1965).

[14] On these *Galgenwunder*, see also H. Brunner, *Deutsche Rechtsgeschichte*, ii, ed. C. von Schwerin (Berlin, 1928), p. 602, and two articles by B. de Gaiffier, 'Un thème hagiographique: le pendu miraculeusement sauvé', *Rev. Belge d'Archéologie et d'Histoire de l'Art*, xiii (1943), pp. 123–48 and 'Liberatus a suspendio: à propos d'un thème hagiographique', in *Mélanges de linguistique et de littérature romanes offerts à Mario Roques*, ii (Paris, 1953), pp. 93–7.

[15] Epist. 152 and 153: trans. by Sr W. Parsons, *St Augustine: Letters*, iii (New York, 1953), pp. 279–303 – a fascinating statement of the Christian position on crime.

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in 398, when clerics were allowed their right of *intercessio*, but only for recent cases and only in order to find out whether any injustice had been done, through error or corruption. In particular clerics and monks were forbidden to take and hold by force those who had been convicted (*CT* 9. 40. 16). Is the hagiographical topos a way of justifying the right of *intercessio* in all cases, contrary to the wishes of the secular authorities? It is perhaps relevant that in a number of tales the cleric alone was the witness to the miraculous loosing of the bonds or collapse of the gallows. But it is also clear from Gregory that it could be perfectly acceptable for clerics to intervene to secure a pardon. Thus Leudovald, bishop of Bayeux, interceded for Baddo, accused of high treason, and the man was released (*LH* IX. 13); a bishop, perhaps Gregory himself, saved Berulf and Arnegisel from execution at the orders of King Childebert (*LH* VIII. 26). Gregory of Tours brought Garachar and Bladast, two important Frankish aristocrats implicated in the revolt of Gundovald, before King Guntram to beg for their pardon. At first Gregory had no success. But then he told the king that he had been sent by his master to ask for the pardon – his master being St Martin (*LH* VIII. 6). Guntram relented and restored the two to his favour and to their property. When King Chilperic ordered men who had stolen from St Martin's church to be brought to him, Gregory 'was afraid that these men might be put to death because of the very saint who, while he was on earth, had so often begged for the life of condemned criminals'; and so he sent a letter to the king, 'beseeching him not to have them executed, and saying that he who must make the charge proposed not to do so' (*LH* VI. 10). The first instinct of some criminals and others who feared for their lives was indeed to flee to the nearest bishop. When Parthenius, an over-efficient tax-collector, feared a lynching by the mob, he asked two bishops to protect him and to quell the mob by their sermons; in the end they hid him in a chest of vestments, but to no avail (*LH* III. 36). Guntram Boso sought sanctuary in Verdun cathedral, confident that he could obtain pardon through his godfather Bishop Ageric, who had also sponsored King Childebert at his baptism. And indeed the king allowed Guntram Boso to stay under Ageric's protection until his trial. When the trial came, Ageric was not there: 'it had been decided that Guntram Boso should not have anyone to defend him, so that if the king were to decree that he should be executed, no plea for pardon could be advanced' (*LH* IX. 10): the

implication is that it would have been very difficult to refuse a bishop's plea, or at least that that was the message which Gregory intended to imply. In Ageric's absence it was agreed that Guntram Boso should die. But he fled to Magneric, bishop of Trier, and tried to force him to intercede. The bishop's house was broken into, and Guntram Boso seized and killed. A fellow Austrasian plotter, Berthefried, was sought at the same time, and he too took refuge with Bishop Ageric. Soldiers tore off the roof-tiles from the bishop's house, and succeeded in killing Berthefried and three of his men; Bishop Ageric was so depressed by his failure to save the lives of these two aristocrats that he gave up eating, and died (*LH* IX. 12).

Appeal to bishops was clearly a recognized means of obtaining a pardon, or at least of preserving one's life. And it was normally done, not by going directly to the bishop, but by seeking sanctuary in a church. The rebel Mummolus was persuaded to leave the safety of St-Bertrand-de-Comminges; if he did not immediately obtain a pardon from the king he could take sanctuary in some church, 'so that he might escape the punishment of death' (*LH* VII. 38). Sanctuary thus fulfilled a double function: it could delay arrest, in order to allow matters to calm down and allow the arbitration of kin and the pleas of the clergy, and it could also allow the criminal, or the accused person, to repent and, possibly, to escape the death penalty.

Sanctuary has a long history in the Mediterranean world, predating the Christian period;[16] an echo of pre-Christian practice is preserved in the Theodosian Code, in a mandate which allowed people to take refuge by the statues of Emperors (*CT* 9. 44). Sanctuary seems to have caught on rapidly in the new Christian Empire, and imperial legislation was more concerned to detail restrictions on the right to sanctuary than to spread the custom: those categories of people not allowed to avail themselves of the privilege included debtors, Jews, slaves, procurators, collectors of

[16] See A. Wenger, 'Asylrecht', in *Reallexicon für Antike und Christentum*, i (Stuttgart, 1950) pp. 836–44; Brunner, *Deutsche Rechtsgeschichte*, pp. 792–3; Gaudemet, *L'Eglise dans l'Empire romain*, pp. 282–7; etc. There are parallels in many other cultures: e.g. the Leopard Skin Chief among the Nuer (E. E. Evans-Pritchard, *The Nuer* (Oxford, 1940), pp. 163ff.), the Giver-of-Life councillor among the Barotse (M. Gluckman, *The Ideas in Barotse Jurisprudence* (Manchester, 1972), pp. 39–41), and among the Cheyenne, the Lozi and others (M. Gluckman, *Politics, Law and Ritual in Tribal Society* (Oxford, 1965), p. 216).

public dye-fish and anyone involved in public or private accounts (*CT* 9. 45. 1, 2, 3). A later decree permitted slaves to take sanctuary, for one day only, and significantly required the slave-owner then to grant pardon to the slave for his wrongs (*CT* 9. 45. 5). Those who entered sanctuary could not carry arms of any kind, and could not eat or sleep actually within the church; the space around the church (for fifty paces beyond the church doors) was to be counted as part of the sanctuary area (*SC* 13). Those who carried arms could be taken from the church forcibly without consulting the bishop or the judges (*CT* 9. 45. 4). Not long after the publication of the Theodosian Code, we have the first mentions of sanctuary in Gallic church councils, and it is obvious that the church is claiming much more general rights of sanctuary. The Council of Orange (441) demands that the sanctity of the church be recognized by all, and forbids anyone to recover someone who has sought sanctuary: there was no time limit, no distinction between armed and unarmed and no mention of excluded categories. The bishops at Orange did not allow for the restitution of a slave in sanctuary to his master, and offered excommunication to those who seized the slaves of the church as restitution for slaves in sanctuary.[17] The conflict of opinion apparent here was still present in the sixth century, as can be seen from the writings of Gregory of Tours. Gregory constitutes the first and best glimpse of how the late Roman institution of sanctuary worked in practice; there are over thirty references to sanctuary in his works, and considerable detail in the case of some of those who took sanctuary in St Martin's church at Tours.

Gregory supports the institution of sanctuary by telling stories of the fate which awaited those who violated its laws, above all in his books of miracles, which teach such lessons rather more conveniently than history. Sanctuary is not so much seeking the protection of the church as putting oneself under the protection of a saint, who was perfectly prepared to defend those who sought his help (as Duke Rauching's wife knew when she fled to St Medard's: *LH* IX. 9). When Duke Austrapius wanted to escape Chramn, King Chlothar's son, he came to St Martin's, and Chramn ordered him so

[17] Orange (441), c. 5 and 6: Munier, *Concilia Galliae*, p. 79. There are a number of canons relating to sanctuary in sixth-century councils: Orleans (511) c. 1, 2, 3; Epaon (517), c. 39; Orleans (538), c. 14; Orleans (541), c. 21, 24, 30; Orleans (549), c. 22 and Mâcon (585), c. 8.

closely watched that no one could even offer him food or drink. When someone did get through with some water the judge poured the water on the ground. God and St Martin acted, and the judge was dead before midnight that same day (*LH* IV. 18). A man who tried to break down the doors of St Julian's in Brioude to get at his enemy was struck down with a great pain (*VSJ* 5). A man who had lost an eye in a fight tried to take his enemy from the basilica, and lost the sight of his other eye. 'I deserve to be judged without mercy, for I did not know how to pardon my enemy' (*VSJ* 10): again sanctuary is portrayed as a means of obtaining pardon. The slave of a certain Maurus took refuge in the church of St Lupus at Troyes. Maurus came to take him away (as he was entitled to do, by Roman law), and as he did so he cursed the saint. His tongue ceased to work, and he wandered around the church making animal-like noises. Despite the gifts his wife made to the church he died on the third day; the wife immediately took back what she had given, but the slave stayed free (*GC* 66). Another slave, belonging to Faretrus, took refuge in the oratory of Abbot Venantius; Faretrus took away the slave while the abbot was absent, and killed him. He himself caught a fever and died almost immediately (*VP* 16. 3).

Such stories can of course be taken together with all those which portray the vengeance of God or the saint being taken on those who violate the property or other rights of the Church. King Charibert died shortly after seizing property belonging to St Martin (*VSM* I. 29); the troop of men who massacred the monks of Latte all died, except for the man who had rebuked them for their action (*LH* IV. 48); the man who stole the metal from the windows of a church was struck down by an awful disease each year on the anniversary of his theft (*GM* 58); the troops of King Guntram who broke into the church of St Vincent at Agen in order to steal the treasure left there for safe keeping were subsequently struck down by fatal quarrels, demoniac possession and spontaneous combustion (*LH* VII. 35; cf. *VSJ* 13 and *GM* 104); the soldier who came to St Denis and stood on the tomb in order to detach the holy dove suspended above it, his feet one on each side of the sharply sloping roof of the tomb, slipped, crushed his testicles and pierced his side with a javelin – no one could doubt, said Gregory, that it was no accident, but the judgement of God (*GM* 71).

In the miracle stories Gregory stresses the punishments of those who infringe the rights of the church and of sanctuary; in his *History*

he shows us that in most cases the law and custom of sanctuary were respected. When Roccolen is sent by King Chilperic to force Gregory of Tours to expel Guntram Boso from sanctuary, he does not dare to violate the sanctuary itself: when he is struck by God with a fatal bout of jaundice it is not for breaking sanctuary, but for destroying a house belonging to the church in his frustration at being thwarted, and for the sin of eating rabbits during Lent (*LH* V. 4). Most of those who reach sanctuary and whose fates are described by Gregory in fact emerge to resume their normal lives, a crisis having been weathered or a pardon obtained. When Childeric the Saxon came to St Martin's, Gregory of Tours not only persuaded King Guntram to let his wife join him, but also persuaded him to allow both of them to leave sanctuary in peace (*LH* VIII. 18). The commanders of the disastrous expedition to Septimania in 585 sought sanctuary in the church of St Symphorian in Autun on their return; Guntram visited the church on the saint's feast day, spoke to them, and later allowed them to go free (*LH* VIII. 30). Several of those implicated in the palace conspiracy against Childebert in 589 fled to various churches. The king went to them and said (according to Gregory):

> Come out and stand trial! It seems to me that you would never have sought sanctuary in church unless your conscience had been pricking you. All the same, you have my promise that your lives will be saved, even if you are proved guilty. I am a Christian, and I deem it wrong to punish people convicted of a crime if I have to drag them out of a church to do so. (*LH* IX. 38)

Even so, Childebert was not pleased when they pleaded not guilty; it took another flight into sanctuary and pleading by bishops before they were allowed to go free. Their only punishment seems to have been the removal of the property bestowed on them by the king; they were allowed to keep the rest of their property.

One recourse of the forces of law and order was to try to prevent persons reaching sanctuary. Guntram's chamberlain Chundo made a dash for a church after his champion in a trial by battle had been killed; the king had him chased, and he was stoned to death before he reached the church (*LH* X. 10). When King Chilperic heard a rumour that his rebellious son Merovech was trying to reach St Martin's, he had the church closely guarded and all approaches blocked, leaving just one door free for the clergy to go in and out (*LH* V. 18). Otherwise all that could be done was to hope that some

transgression might take place which would make the breaking of sanctuary possible. Gregory did not shed too many tears over the forcible removal of Eberulf from St Martin's, particularly as the man actually sent by Guntram to remove Eberulf died in the attempt (*LH* VII. 21–2). Eberulf had committed manslaughter in the church, got drunk, attacked a priest, forced Gregory to leave the church, and threatened to kill the bishop if any attempt was made to remove him. Moreover, and this is perhaps still more important, Eberulf was not under St Martin's protection, since he had not prayed to the saint with contrite heart (*LH* VII. 29). Some years earlier Count Leudast of Tours had similarly abused the privilege of sanctuary in St Hilary's at Poitiers, occasionally emerging from the church to plunder the homes of Poitevins and committing adultery in the porticus of the church itself: Queen Fredegund ordered him to be expelled and he was driven into hiding in Berry (*LH* V. 49). Fredegund herself, after her husband Chilperic's assassination, sought sanctuary in the cathedral at Paris, and proved to be no more contrite than Leudast: 'she had no fear of God, in whose house she had sought sanctuary, and was the prime mover in many outrages' (*LH* VII. 15). It must have been very difficult for bishops like Ragnemod of Paris and Gregory of Tours to cope with distinguished refugees, for whom the privilege of sanctuary had hardly been designed. For the great aristocrats it was often no more than a temporary haven during a time of political crisis; some, like Guntram Boso, even used sanctuary as a means of keeping their womenfolk safe while they were active elsewhere in Gaul (*LH* V. 24). Such people came with their family, servants and dependants, and do not seem to have been scrupulous observers of the ban on weapons in sanctuary; they must have been a most unwelcome addition to a bishop's problems.[18]

Claiming sanctuary, therefore, was a way of calling in the bishop or another cleric to act as peace-maker; by doing this the malefactor increased his chances of a pardon, but also did much to ensure the preservation of his life. Churchmen could not be responsible for the shedding of blood, or even have anything to do with it: a Merovingian council forbade clerics from being present at the examination (that is, torture) of accused people, or at an

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[18] Particularly annoying in the case of the priest Willichar who, with his wife, took refuge in St Martin's: through their *ludibria* (wantonness) the church was set on fire (*LH* IV. 20).

execution.[19] Moreover there was a strong current of opinion within the church which was hostile to the shedding of blood by the state; this is part of the explanation for the zeal of churchmen in protecting criminals. This zeal extended to the assistance of those already arrested and imprisoned. We have already seen how bishops, dead or alive, could effect miraculous release from prison, and F. X. Graus has skilfully related these stories to a literary tradition which looked back to the Acts of the Apostles.[20] But the stories also need to be related to the legislative texts and to actual historical conditions. Fourth-century Roman legislation gave priests the right to enter prisons on missions of compassion, 'to heal the sick, to feed the poor and to console the innocent; when he has investigated thoroughly and has learned the case of each person, according to law he shall direct his intervention before the competent judge' (*SC* 13). Later imperial edicts formalized the system. In 409 bishops were given authority to make sure that judges were looking after their prisoners in a proper manner: judges were to examine prisoners as to their treatment and ensure proper nourishment (*CT* 9. 3. 7). Later still the duty of inspecting prisons was given to the bishops themselves: each Wednesday or Friday they should visit the prisoners, find out whether they were slaves or freemen, and whether they had been detained for debt, for murder or for some other cause.[21] In Gaul the task of visiting prisons, each Sunday, was assigned to the archdeacon or praepositus.[22] One must assume that their duty was to watch for any injustices and, if they felt it appropriate, to sue for pardon for a particular prisoner. There is no doubt that obtaining the release of a prisoner was regarded as a pious deed, like the ransoming of prisoners-of-war or the manumission of slaves.[23] Even in the Roman period the mass

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[19] Mâcon (585), c. 19: de Clercq, *Concilia Galliae*, p. 247.

[20] See above, note 13.

[21] Codex Justinianus 1. 4. 22: text translated and commented on by P. R. Coleman-Norton, *Roman State and Christian Church* (London, 1966), pp. 1029–31.

[22] Orleans (549), c. 20: de Clercq, *Concilia Galliae*, p. 155.

[23] On the former, see Beck, *The Pastoral Care of Souls*, pp. 338–41 and K. Weber, 'Kulturgeschichtliche Probleme der Merowingerzeit im Spiegel frühmittelalterlicher Heiligenleben', *Studien und Mitteilungen zur Geschichte des Benediktinerordens und seiner Zweige*, xlviii (1930), pp. 347–403, esp. pp. 395ff. Her comments on the possible future of released captives, as dependants of the saint or monks in his monastery, are interesting. Sometimes slaves cured by a saint seem to have obtained their freedom by that act: e.g. *GM* 77. Miraculous cures and

release of prisoners could be proclaimed as a religious gesture. There are a number of texts in the Theodosian Code which refer to such mass pardons: 'On account of the Day of Easter, which we celebrate in the depths of our hearts, We release from confinement all those persons who are bound by criminal charges or who are confined in prison' (*CT* 9. 38. 3: cf. 9. 38. 4, 6, 7 and 8, and *SC* 7), or, in the more colourful language of the Sirmondian Constitutions, 'We lay aside the chains and properly abolish the occasion for uncombed hair in the prison that is dark with filth. We snatch all persons from the death penalty except those who cannot properly be assisted because of the magnitude of their crimes' – that is, those convicted of treason, sacrilege, sorcery, adultery, rape or homicide (*SC* 8). The tradition survived into the Merovingian period: Chilperic ordered all prisoners freed and all fines owing to the treasury cancelled in order to celebrate the birth of a son and heir in 582/3 (*LH* VI. 23). The symbolism of the release of prisoners on the anniversary of Christ's resurrection is an obvious and intentional one; equally obvious is the symbolism in the stories of prisoners being miraculously released at Easter (*VSM* II. 16), on the feast day of a saint (*VSM* III. 41, IV. 26 and IV. 41) or on the passing of the relics of a saint on the occasion of a funeral or a translation (*VP* 8. 3 and 4; *LH* IV. 19 and V. 8).[24] Miracle stories should not be dismissed from the purview of all but the literary historian, as Graus tends to do; such stories not only reflect the moral principles and concerns of their author, or their age, but may also be an embellishment or echo of non-miraculous events. Did bishops prevail upon counts to release prisoners at Easter, as emperors had done, or on saints' days? Do some miracle-stories relate to the inquiry of bishops into the conditions and circumstances of prisoners, as required by Roman law, as in the case of the 'miraculous' release of men refused food and drink by their guards (*VSM* II. 35 and III. 47), or of those imprisoned unjustly (*VSM* II. 41 and IV. 35)? Are they stories intended to show to the authorities that requests for release in such cases have the sanction of God and His saints?

In the last book of the *History*, Gregory told how Avitus of

releases may both be seen as symbolic of the restoration of the individual into the full Christian community.

[24] For the symbolism of the chains themselves, see Graus, 'Die Gewalt bei den Anfängen des Feudalismus' pp. 135–6.

Clermont successfully pleaded for the release of prisoners; but he placed the plea after the chains had snapped miraculously, as if made of glass (*LH* X. 6); is this merely a literary device to underline the authority of the bishop? The frequency of miracle-stories of this type testifies to the accepted role of the bishop as a freer of prisoners; the supernatural element could only be heightened for the faithful when they witnessed the piles of chains and fetters left at the tombs of saints by grateful ex-prisoners.

At Medard's holy tomb [in Soissons] I myself have seen the chains and shackles of prisoners burst asunder and lie broken on the ground; and to this day they are preserved there as a proof of his miraculous power. (*LH* IV. 19) The town of Châlons has for its special patron the holy Memmius, who, when he was still in his mortal body, it is said, raised a dead man. We have often seen at his tomb the broken chains and fetters of the wretched, and we have moreover made ourselves the proof of his power. (*GC* 65)

When Gregory's deacon Aigulf visited the shrine of Nicetius of Lyons he examined the register of miraculous cures which was placed in the church, and saw the broken chains and shattered leg- and neck-irons of criminals and captives:

if one wants to know how many prisoners the saint has freed, how many chains he has broken, one has only to look at that mass of irons which is lying in his church. Recently in the presence of King Guntram, I heard Syagrius, bishop of Autun, tell how in one night the holy man appeared in seven towns to prisoners, whom he delivered from their prisons and to whom the judge had after that not dared to do anything. (*VP* 8. 6)

The acquiescence of the king or the judge in the saint's action, made public by the issuing of a pardon, is several times mentioned by Gregory.[25]

A number of years ago, Katherine Weber remarked on the link between reality and miracle:

Ordinary people simply transferred the sanctuary rights of the church on to the saint. In the proximity of the saint, everything was free; when he approached, locks sprang open, chains fell off and prisons opened themselves. Whether the freed man deserved freedom was never discussed: one spoke always of

[25] *VSM* IV. 26 and IV. 37; *GC* 88: see Weber, 'Kulturgeschichtliche Probleme', p. 399.

Barmherzigkeit (charity, compassion), never of *Recht* (justice, law).[26]

The opposition of 'law and love' appears indeed as one of the main ideas underlying the passages of Gregory of Tours cited above, and the legislation of the bishops of sixth-century Gaul. Early Merovingian bishops were heirs to the values of an earlier age, in which a persecuted Christian minority had created the image of an inimical secular state, against which they strove to set their own ethical system, by example and by preaching. The incompatibility between 'church' and 'state' was still a lively theme of Merovingian hagiography, thanks very largely to the success of Sulpicius Severus' *Life of St Martin*. But someone like Gregory of Tours would have been well aware that this dramatic confrontation was not just a useful literary topos: there were very real differences of opinion on moral and legal issues between churchmen and laymen. Sometimes the Merovingian church was in opposition to the Germanic Franks. The ideas of the church on the permanence of marriage and the impossibility of marrying within certain relationships came into conflict with some very basic Germanic customs. Their propagation of the idea of the inalienability of church land and the desirability of the donation of land to churches and monasteries struck at the core of Germanic society, at their notions of family property rights and inheritance.[27] Canon 1 of the first Merovingian church council, held at Orleans in 511, which said that a fugitive could only be taken from sanctuary if the injured party and his kin swore not to take revenge on him, was itself an attack on 'ancient and very entrenched Teutonic principles' concerning the duty of blood feud.[28]

The conflict between ecclesiastical and secular notions of morality was not a conflict between a largely Gallo-Roman church and a Germanic monarchy and aristocracy; the attitude of Merovingian churchmen towards law and justice was at variance with Roman ways too. The most obvious divergence was in the attitude towards the poor. It was a principle of Roman law that the rich and powerful, the *honestiores*, were punished more leniently

than the poor and weak, the *humiliores*; the church proclaimed that mercy should be reserved above all for the humble.[29] The poor, for whom scarcely a single Roman law pays any regard save in terms of the preservation of law and order, were a particular concern for the Merovingian episcopate. The very first Merovingian council decreed that the poor who were unable to work should be provided with food and clothing; every episcopal town had its scores or hundreds of poor, registered on the *matricula*, whose daily sustenance was provided by the church.[30] In particular the church felt that it was its duty to protect the poor at law; the Council of Tours threatened any judges or *potentes* with excommunication if they oppressed the poor.[31] It is interesting to compare the Merovingian record on legislation for the poor with that of the Visigoths, who were on the whole faithful heirs of the Romans. It is perhaps relevant that the ordeal, that instrument by which, so the Merovingian clergy taught, God could manifest his will as the protector of the innocent and the fount of justice, only appeared in one late Visigothic law: rather than showing 'the declining standards of the kingdom as it neared the end',[32] it could be seen as a demonstration of the lack of impact that the new and socially radical Christian ideas had upon the privilege-obsessed and hidebound descendants of Roman lawyers in Spain.

In the end, of course, with the decline of conciliar legislation in the seventh century, the secularization of the episcopate and then the reform of the church in the eighth and ninth centuries under the firm hand of the Carolingians, the particular concept of peace and justice that the early Merovingian clergy had maintained was almost forgotten, although elements of it reappeared at the time of the early Capetians with the Peace of God movement.[33] That movement too was concerned with peace at various levels. It campaigned for the limitation of warfare, just as Gregory's bishops had done: Gregory himself wrote emotionally about the evils of civil war in the preface to Book V of his *History*, and he told moral stories of how God and the saints encouraged kings to make peace

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26 See Weber, 'Kulturgeschichtliche Probleme', p. 398.
27 Some of these ideas have been discussed by James, *The Origins of France*, pp. 78ff; see also M. Rouche, *L'Aquitaine des Wisigoths aux Arabes* (Paris, 1978), pp. 169–74.
28 Ullmann, 'Public Welfare and Social Legislation', p. 15.

29 See, for example, Jerome in Migne, *Patrologia Latina*, XXV. 157 and 732.
30 Orleans (511), c. 16: de Clercq, *Concilia Galliae*, p. 9. On the *matricula*, see Rouche, 'La matricule des pauvres' in note 3.
31 Tours (567), c. 7: de Clercq, *Concilia Galliae*, p. 194.
32 P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972), p. 121.
33 For some comments on the weakening of sanctuary laws, see Ullmann, 'Public Welfare and Social Legislation', pp. 15–16.

(*LH* IV. 49), or punished those who refused to do so (*LH* IV. 51).[34] But *pax* had other meanings: it meant the security of sanctuary, the settlement of a dispute by compromise, the absence of violence of any kind. Violence, whether offered by criminals or by the political system, endangered the soul of the unrepentant criminal or judge. The concern of the bishop with the well-being, both spiritual and physical, of his flock, led him to think of justice in terms of repentance and reconciliation rather than punishment and retribution. Bishops, the spiritual leaders of their *civitates*, were the natural peace-makers, guiding their flock away from evil and violence towards peace and love. *Arbiter* and *compositor*, meaning mediator or peace-maker, were words used in their praise in contemporary epitaphs;[35] they achieved peace not by imposing rules but by bringing both parties to an agreed settlement. The ideal, though no one stated it, was to replace the rule-based justice of kings with the ultimate justice of God. Such an ideal, of course, took no account of the realities of power and authority; the ideal as stated by bishops in councils or in the calm of their studies was not necessarily what they put into practice, in the daily intrigues of the *civitas* and faced by rival obligations to class and kin. But it was sustained by two factors: the pressure upon the bishop to assert his position and the need for a consensus within society which avoided loss of face because it depended upon supernatural sanctions.[36] And, if we are to believe Gregory of Tours, it had not an insignificant part to play in the history of social relations in sixth-century Gaul.[37]

[34] For general comments on peace, see F.-L. Ganshof, 'La paix au très haut Moyen Age', *Recueil de la Société Jean Bodin*, xiv (1962), pp. 397–413; G. Fasoli, 'Pace e Guerra nell'alto medioevo', *Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo*, xv (Spoleto, 1968), pp. 15–47; and J. M. Wallace-Hadrill, 'War and Peace in the Early Middle Ages', in his *Early Medieval History* (Oxford, 1975), pp. 19–38. The ambiguities and difficulties inherent in the church's attitude to war are dealt with in intriguing fashion in F. Prinz, *Klerus und Krieg im frühen Mittelalter* (Stuttgart, 1971).

[35] See M. Heinzelmann, *Bischofsherrschaft in Gallien* (*Beihefte der Francia*, v) (Munich, 1976), p. 180; pp. 179–83 form a useful excursus on the *episcopalis audientia*.

[36] I echo P. Brown, *Society and the Holy in Late Antiquity* (London, 1982), p. 323, although I think he is mistaken in suggesting a dramatic shift from consensus to authority in the twelfth century.

[37] I am most grateful for the comments of Ian Wood upon this chapter.

3. *Law and Love in the Middle Ages*

MICHAEL CLANCHY

Pactum legem vincit et amor iudicium (Agreement prevails over law and love over judgement)

I want to use this proposition from the *Leges Henrici Primi* as a standpoint from which to view the place of law in medieval human relations.[1] The *Leges* is the compilation of a Frenchman writing in England early in the twelfth century. It is a long and muddling work, but it has the merit of including wide-ranging general principles like the one above. Other statements in the *Leges* confirm the contrast it makes between ways of resolving disputes: either by agreement and love or by law and judgement. Disputants are 'brought together by love or separated by judgement'.[2] An accused person chooses either to proceed by formal pleading (*de placito*) or to make peace; wise men avoid 'the utterly uncertain dice of pleas'.[3] Agreement (*pactum*) or peace (*pax*) is good and even better is 'to proceed by love (*per amorem*), if the parties wish to have the perfect freedom of friends to come and go'.[4] Love in such a context does not mean something gratuitous or sentimental. Rather it is a bond of affection, established by public undertakings before witnesses and upheld by social pressure. A modern example

[1] L. J. Downer (ed.) (Oxford, 1972), p. 164, ch. 49, 5a. I sometimes differ from Downer in my translation, but I am much indebted to his work. I have mentioned this proposition from the *Leges* before, with reference to the court rolls of Highworth hundred, Wilts., in an unpublished talk given at the Cambridge Legal History Conference in 1975. S. D. White, 'The Settlement of Disputes by Compromise in 11th Century France', *American Journal of Legal History*, xxii (1978), p. 308, also refers to it, as does R. C. Van Caenegem (ed.), *Royal Writs in England from the Conquest to Glanvill* (Selden Soc., lxxvii, 1959), p. 45, n. 4.

[2] 'Vel amore congreget vel sequestret iudicio', *Leges Henrici Primi*, p. 100, ch. 7, 3a. Downer translates 'sequestret iudicio' as 'let a judgment stand in settlement between them'. But 'sequestrare' in English medieval usage means to 'cut off' or 'excommunicate' and not to 'mediate' as in classical Latin. 'Congreget' and 'sequestret' are used as antitheses here and at *ibid.*, p. 176, ch. 57, 1a.

[3] 'De placito vel de pace', *ibid.*, p. 156, ch. 46, 4; 'incerta penitus alea placitorum', *ibid.*, p. 98, ch. 6, 6.

[4] *Ibid.*, p. 240, ch. 76, 5b.