

## Introduction

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In a book review published in 2003, Holt lamented that ‘Magna Carta seems no longer to be an active field of study’.<sup>1</sup> The only exceptions he noticed were David Carpenter’s proposed revision of Holt’s dating of the document itself,<sup>2</sup> and Richard Helmholz’s attempt to demonstrate that contemporary Roman and canon law – the *ius commune* – had heavily influenced its drafting.<sup>3</sup> Great works of historical scholarship can indeed have the unintended consequence of closing down debate, because they seem so self-evidently right that there appears to be nothing more to be said. But Holt’s gloom was premature.

### Justice and jurisdiction

In truth, a major stimulus for activity was Holt’s Second Edition of his *Magna Carta*, which appeared in 1992.<sup>4</sup> He had once considered a clause-by-clause commentary, but rejected the idea because ‘it soon became apparent that this would require almost encyclopaedic bulk’. Instead the thematic structure remained. There was some limited rewriting of the main text and also changes in the appendices. Some appendices remained unmodified, but others were extended, and others still were new. Several included forceful reassertion of Holt’s earlier opinions, as criticisms were met not with solid defence but rather with characteristically pugnacious drives back past the bowler.<sup>5</sup>

<sup>1</sup> *E.H.R.* cxviii (2003), 988–9.    <sup>2</sup> Carpenter (1996*a*).    <sup>3</sup> Helmholz (1999).

<sup>4</sup> For changes from the First Edition, note Holt (1992), pp. xiii–xiv.

<sup>5</sup> See esp. appendices 1, 9, 10 (cf. Holt 1965, appendix 6). Appendix 2 prints a new document significant for the analysis of aids; appendix 7 discusses translations of the Charters, on which Holt had written since the First Edition – see Holt (1974*a*); no. 14 discusses grants in perpetuity. The discussion of the manuscripts of the Charter and their drafting is modified in appendix 6; for further discussion of these subjects, see below, pp. 25–31. The discussion of ‘the Twenty-Five’ in appendix 8 (Holt 1965, no. 5) is extended because of the discovery of a further relevant text by Christopher Cheney; see also the paragraph added at Holt (1992), pp. 345–6, below, pp. 289–90. For further examples of rewriting and

By far the most significant change, though, was the inclusion of a lengthy and very detailed new chapter entitled 'Justice and jurisdiction'. The chapter's first sentence presents it as supplementing those on 'Privilege and liberties' and 'Custom and law': 'These matters must now be set in a jurisdictional framework; for men wove their political theories from words first spun in legal contexts.'<sup>6</sup> The chapter therefore reinforces Holt's determination to explain Magna Carta and its contents through their context.<sup>7</sup> The First Edition had already shown great and necessary concern with the royal provision of justice, especially but not exclusively in Chapter 4 on 'Custom and law'.<sup>8</sup> However, the new chapter displayed a marked change in emphasis. In it Holt stated that

The crisis of jurisdiction which occurred in the years either side of 1215 has been explained traditionally in personal terms: King John undid the good work of his father . . . Such an explanation, in which the supposed psyche of the king is derived from the very facts it is supposed to explain, will not do. The king's personality mattered. The inadequacy of jurisdictional structure and legal procedure mattered much more.<sup>9</sup>

If the argument of Chapter 4 focusses on the personal role of John and the quality of the justice which he provided,<sup>10</sup> that of the new Chapter 5 concentrates on a structural problem: the weak position of the tenants-in-chief resulting from their lack of access to the new routine remedies that the Angevin legal reforms had provided for all other free landholders:

It has long been recognized that the cry for justice in 1215 exhibited some very peculiar, apparently contradictory features. On the one hand the Charter demanded that royal justice should be more accessible and better administered. On the other, it forbade unlawful arrests and disseisin, the sale or delay of justice, and it promised restitution for unjust fines and amercements. Apparently men wanted more but were not altogether pleased with

additions within the main text, see e.g. Holt (1992), pp. 10–12, below, pp. 40–1 cf. Holt (1965), pp. 9–10. The Second Edition also made some minor changes, for example to the spelling of names (e.g. Eustace de Vesci in the first edition, Eustace de Vescy in the second).

<sup>6</sup> Holt (1992), p. 123, below, p. 124. <sup>7</sup> See e.g. *ibid.* p. 21, below, pp. 47–8 (Holt 1965, p. 18).

<sup>8</sup> Outside chapter 4, see e.g. *ibid.* pp. 28–30, 32, 201–2, 323–32, below, pp. 52–3, 56, 183–4, 273–9 (Holt 1965, pp. 23–5, 27, 116–17, 223–30).

<sup>9</sup> *Ibid.*, pp. 179–80, below, pp. 166–7.

<sup>10</sup> There are places in other chapters where the structural argument might have been made but was not; see e.g. *ibid.*, pp. 83–4, 112–13, 121, 303, 323–4, below, pp. 94–5, 116, 122–3, 258, 273–4 (Holt 1965, pp. 70–1, 95–6, 103, 206, 223–4). At *ibid.*, p. 117, below, p. 119 (Holt 1965, p. 100) the distinction made is chronological rather than tenurial: John 'might be condemned as an innovator, but not his father . . . Magna Carta left much of Henry II's work untouched'. In the second edition chapter 4's emphasis on the judgement of the king's court has, of course, to be read in the light of the new chapter's emphasis that the king's court is one with no superior, removing the opportunity for the disappointed party to look to another court with a claim of default of justice.

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what they had. This contrast is striking and is to be explained by another. The common law of the Angevins gave the undertenant the opportunities and protection of varied routine procedures. But it left the tenant-in-chief still exposed to the vagaries of the king's will. This is the clue to the judicial provisions of the Charter.<sup>11</sup>

John's interest in judicial matters remains relevant, as does the quality of justice that he provided, but the focus on structure reveals the particular jurisdictional framework within which John treated the tenants-in-chief: structural asymmetry allowed, perhaps required, personal involvement.<sup>12</sup>

The germ of the new chapter's central argument can be found in the First Edition, with reference to

the ultimate unwillingness of the Crown to submit itself to conventional or enacted rules similar to those it was imposing on others . . . 1215 marked the decision to demand from the Crown that regularity of procedure and treatment which barons, knights and townsfolk had come to expect and had been led to accept in their dealings with each other.<sup>13</sup>

Yet, unlike the preceding quotation from the new Chapter 5, the paragraph in which these statements appear is not permeated with the language of lordship or of tenure. This may be a clue as to the origin of the emphatic argument of the new chapter, the need that Holt felt for its inclusion. If the anomalous position of the king as lordless lord was present in J. E. A. Jolliffe's *Angevin Kingship*, the process whereby it emerged was revealed in S. F. C. Milsom's *Legal Framework of English Feudalism*, published in 1976.<sup>14</sup> The *Legal Framework* argued that the Angevin reforms destroyed the sovereignty of the honorial lordship, through the routine provision of royal actions available to all free tenants. Only one lordship remained sovereign, that of the king. Now the text of the second edition of *Magna Carta* does not provide any clear proof of the influence of Milsom on Holt. There is one footnote reference to the *Legal Framework* added in Chapter 4, two in Chapter 11,

<sup>11</sup> *Ibid.* p. 123, below, p. 124.

<sup>12</sup> See e.g. *ibid.* pp. 180–1, below, pp. 167–8 (the passage quoted above – ‘The crisis . . . much more’ – is followed by the statement that ‘Yet in one matter the traditional account comes close to the facts. Whatever his influence, malign or not, King John took a close personal interest in the supervision of justice. Whatever the inadequacies of the system, he certainly jolted it’); also pp. 186–7, below, pp. 172–3.

<sup>13</sup> *Ibid.* p. 35, below, p. 58 (Holt 1965, pp. 29–30).

<sup>14</sup> There is no reference to Jolliffe in the new chapter; for references to Jolliffe's *Angevin Kingship* elsewhere in the book, see *ibid.* pp. 81 n. 27, 95 n. 94, below, pp. 93 n. 27, 103 n. 94 (Holt 1965, pp. 68 n. 2, 80 n. 4). The extent of Jolliffe's influence on Milsom is uncertain, although *Angevin Kingship* is one of the small number of secondary works that appear in the footnotes of *The Legal Framework of English Feudalism*, at p. 25 n. 1.

and six in the new Chapter 5.<sup>15</sup> Almost all refer to specific points rather than to Milsom's broader arguments. Instead, proof of influence must come from remembered conversations, as when Holt firmly told a first-year DPhil doctoral supervisee early in 1985 that *Legal Framework* was 'the most important book since Stenton's *First Century*', and from letters: 'I am now hard at work on a new chapter on "Justice" for a second edition of *Magna Carta*. I am starting from the Milsom premise that Henry II's civil procedures subsume jurisdiction in private courts – or feudal courts – or whatever we may care to call them.'<sup>16</sup> The influence is confirmed by comparison between his article on 'Politics and Property' published in 1972 and his Royal Historical Society Presidential Addresses published in 1982–5, together with a brief discussion in a note added to the 1997 reprint of 'Politics and Property' in his *Colonial England*.<sup>17</sup> And it is revealed by the very language of Chapter 5. Within the common law 'there still remained the king's jurisdiction over his immediate vassals ... It was primitive, and its essence was lordship'.<sup>18</sup> The resemblance to Milsom is obvious, and there is a further echo in the following statement: 'To call this [jurisdiction] feudal is to use a word to which there are now fashionable if misdirected objections.'<sup>19</sup>

Magna Carta, Holt argued, was a major step in correcting the structural anomaly that had arisen because of the Angevin reforms:

<sup>15</sup> Chapter 4: p. III n. 146 (descent and tenure); chapter 5: p. 128 nn. 22, 24, p. 131 n. 43 (Milsom on the disciplinary origins of novel disseisin), p. 138 n. 78, p. 144 n. III, p. 153 n. 166; chapter II: p. 318 nn. 15–16. White (1974) may have prompted some initial thoughts, and was taken very seriously in the rejoinder by Holt (1974*b*); the choice of extract to reprint in Holt (1997) is significant of the weight Holt attached to White's piece. Note further Holt, p. 124, on legal developments under the Angevins and the minority of Henry III: 'the protection of the law moved up, not down, the social scale'; cf. Holt (1974*b*), 133, primarily on the preceding period and defending the position in Holt (1972*b*): 'it would be hazardous to assume that the apparent logic of the terms of enfeoffment at a particular feudal and social level may be used to define rights of inheritance in general. To be sure, one level infected another; the provisions about relief, marriage, widowhood and wardship in the charter of liberties of Henry I were extended beyond the king to the conduct of his barons; but the infection moved down rather than up the feudal hierarchy and tended towards inheritance rather than against it.'

<sup>16</sup> Letter of 4 May 1982 to 'Ralph', the subject matter of the fragmentary letter suggesting that this is Ralph Turner or R. H. C. Davis; the letter also states that 'it seems to me that Milsom changes a lot'.

<sup>17</sup> Holt (1972*b*); Holt (1974*b*); Holt (1982*b*, 1983, 1984*b*, 1985*b*); Holt (1997), p. 157, where the phrase 'It was written P.M. (pre-Milsom)' indicates the pivotal significance that Holt then attached to *Legal Framework*. The influence of Milsom on Holt may have subsequently declined somewhat, although again evidence is primarily anecdotal.

<sup>18</sup> Holt (1992), p. 127, below, p. 127. <sup>19</sup> Holt (1992), p. 127, below, p. 127.

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By and large it approved of what the undertenant had enjoyed and condemned what the tenant-in-chief had suffered. Hence it sought to give the magnate a legal security like that enjoyed by the freeman. During the minority of Henry III this was largely achieved.<sup>20</sup>

Immediately after the settlement at Runnymede John made restorations to some of those tenants-in-chief who had suffered from his arbitrary actions, and cases went to the king's court.<sup>21</sup>

The Twenty-Five [barons responsible for ensuring royal enforcement of the Charter's terms] probably played a large part in these cases. They were not conducting a revolution. The procedures followed were not new. All that happened is that routine processes governing seisin and right were introduced into the operations of the king's court.<sup>22</sup>

The minority of Henry III ensured that 'for ten years after John's death actions of right, disseisin, *mort d'ancestor*, the final concord became the standard currency of the court'.<sup>23</sup> 'The mechanism at the heart of these changes was the writ *praecipe*', in the form of the writ *praecipe in capite*. In this, 'the baron finally achieved a general writ of right, the first and the only one he ever had . . . Its appearance in the eyre begun in 1218 set the seal on the victory of 1215'.<sup>24</sup> There are early signs of such a development in John's reign. Most significant is the appearance of a writ *praecipe* for lands of half a knight's fee or less in the Irish Register of Writs, which may be dated as early as 1210:

The king to the sheriff, greeting. Command B. that, justly and without delay, he render to A. half a knight's fee . . . in N. which he claims to hold of the lord king for so much service . . . and whereof he complains that this B. has deforced him.<sup>25</sup>

However, Holt 'found no action between barons concerning a tenancy-in-chief defined in such terms' and concluded therefore that 'the *praecipe in capite* . . . was a great unrecorded baronial victory that gave backbone to cap. 40 of the Charter', which specified that 'to no one will we sell, to no one will we deny or delay right or justice'.<sup>26</sup>

<sup>20</sup> Holt (1992), p. 123, below, p. 124. <sup>21</sup> *Ibid.* pp. 165–7, below, pp. 156–7.

<sup>22</sup> *Ibid.* p. 167, below, p. 157. <sup>23</sup> *Ibid.* <sup>24</sup> *Ibid.* p. 173, below, p. 162.

<sup>25</sup> *Early Registers of Writs*, p. 2. Cf. such cases with ones where a plaintiff was claiming that he should hold in chief of the king but the king was retaining the land in demesne (the simplest form of 'vertical' case in Milsom's terms); this form of *praecipe quod reddat* was no help to the aspiring tenant-in-chief in the latter type of case.

<sup>26</sup> Below, p. 162 n. 218. As Holt admitted in a different context, it is possible that some writs *praecipe* were not described by that word in the plea rolls; Holt (1992), p. 142, below, pp. 138–9; Hudson (2012), p. 559.

Holt's arguments in the new chapter received considerable criticism from David Carpenter in an article published in 1996 and entitled 'Justice and Jurisdiction under King John and King Henry III'.<sup>27</sup> The majority of the article and the most telling criticisms concern the reign of Henry III, where Carpenter convincingly shows that Magna Carta had less effect on controlling royal conduct of cases involving tenants-in-chief than Holt may have suggested. Regarding the writ *praecipe in capite*, Carpenter lays much greater emphasis than Holt on its presence in the Irish Register of Writs under John. Yet Carpenter admits that that writ in the Register was only routinely and cheaply available '*de cursu*' for cases involving half a knight's fee or less. He comments that 'such restrictions were attached to other writs in Ireland. Whether they also applied to *praecipe in capite* in England seems impossible to say'. Such is a major qualification, especially given the lack of plea roll evidence for cases described in such terms.<sup>28</sup> Nor does Carpenter examine the issue of lack of access to writs concerned only with seisin rather than right, writs such as novel disseisin and mort d'ancestor; these were at the heart of the Angevin reforms and of Holt's view of the structural problem of justice revealed by Magna Carta. Such writs do appear in cases that Carpenter cites from Henry III's reign, although again not leading automatically to routine procedure.<sup>29</sup> Carpenter's article therefore modifies our view of the context that produced Magna Carta rather less than our view of the Charter's impact. Despite the Charter, despite the minority of Henry III, the problem remained of what to do in cases of default of justice when the person defaulting was the king, the still lordless-lord.

In 1215 the solution had been the security clause and the appointment of the Twenty-Five.<sup>30</sup> Unfortunately the Second Edition's new chapter did not add an extended new discussion of the clause, and the Twenty-Five are mentioned only with regard to specific cases.<sup>31</sup> Elsewhere in the book Holt stated that execution of the provisions of the Charter 'was to be enforced by

<sup>27</sup> Carpenter (1996*b*). Carpenter does not interpret the new chapter as reflecting the influence of Milsom.

<sup>28</sup> *Ibid.*, pp. 21–3. It is notable that at p. 22 Carpenter goes on to argue that the point of real significance is that *praecipe in capite* did not produce routine procedure in litigation under Henry III; it is Holt's position on the contrast with Henry III's reign rather than the situation under John that is most forcefully under attack.

<sup>29</sup> *Ibid.*, pp. 26, 28, 31, 34.

<sup>30</sup> Holt (1992), pp. 468–73, below, pp. 394–7 (Holt 1965, pp. 332–7). For an alternative version of the clause, note pp. 345, below, p. 289 (Holt 1965, p. 241), 445, below, p. 376.

<sup>31</sup> *Ibid.* pp. 166–7, below, pp. 156–7.

distrain, the customary method which all understood and used'.<sup>32</sup> Had he returned to the subject in the new chapter on 'Justice and jurisdiction' he might have pointed out that distraint lies at the very heart of what Milsom calls 'disciplinary jurisdiction', the means by which a lord enforced his lordship in relation to his men, by taking goods and lands. The security clause of *Magna Carta* in 1215 provided that if the king or his servants offended 'against anyone in any way, or transgress any of the articles of peace and security', should the offence not be redressed within forty days after due complaint and procedure, the case was to be referred to the Twenty-Five:

and those twenty-five barons with the commune of all the land shall distrain and distress us in every way they can, namely by seizing castles, lands and possessions, and in such other ways as they can, saving our person and those of our queen and our children, until, in their judgement, amends have been made; and when it has been redressed they are to obey us as they did before.

*Magna Carta* thus provided the wrongdoing king with at least a temporary lord.<sup>33</sup> But the security clause was dropped from the re-issues of the Charter and therefore, as Carpenter has shown, the problem of the lordless lord failing to provide justice remained.

### Continental context: politics

If the new chapter introduced in the Second Edition focussed very much on England, one of the distinctive features of Holt's *Magna Carta* more generally is its examination of continental Europe to provide context and comparison for twelfth-century governmental developments, for early thirteenth-century English political events, and for the Charter itself.<sup>34</sup>

<sup>32</sup> *Ibid.*, p. 272, below, p. 236 (Holt 1965, pp. 179–80); see also pp. 99, 343–5, below, pp. 106, 288–90 (Holt 1965, pp. 84, 239–41).

<sup>33</sup> Hudson (2012), p. 852. Paradoxically, the 'commune of the land' was not only the quasi-lord created here but also the beneficiary of the Charter. It is conceivable that the barons and others had been encouraged in thinking about the issue of lordship over the king by John's surrender of the realm to the pope in 1213, his receipt of it back as a 'feodarius', and his swearing of homage to the pope for it. Some must also have been aware that the French king's seizure of many of John's continental lands had received legal justification from John's failure to attend the court of the king of France, his lord, to answer complaints brought against him; see e.g. *Selected Letters of Innocent III*, pp. 60–2. Cf. the means of enforcement indicated in continental grants of liberties, which take different forms, for example renunciation of fealty, resistance without accusation of treachery, and excommunication; see Holt (1992), pp. 78–9, below, p. 91 (Holt 1965, pp. 66–7).

<sup>34</sup> See esp. Holt (1992), pp. 25–6, below, pp. 50–1 (the effect of war on other European grants of liberties), 75–80, below pp. 88–93 (on liberties), 114–15, below, pp. 117–18 (on appeal to the situation under good old kings), 188–9, below, pp. 174–5 (on the impact of defeat at Bouvines), 272–8, below,

Comparative exploration has not been taken much further,<sup>35</sup> but some recent work has considered the relationship between political events in southern France and Iberia and the crisis that John faced in England particularly from 1212.<sup>36</sup>

Prominent amongst these was the Albigensian Crusade. Holt's view was that there were significant parallels between the Statute of Pamiers of 1212 and the Charter of 1215 but no influence.<sup>37</sup> However, a picture of closer ties between the Crusade and developments in England can be sketched, one that might suggest possible direct links between the making of grants at Pamiers and Runnymede, if not between the precise contents, vocabulary or structure of those grants. The leader of the Albigensian Crusade was Simon de Montfort, and the Dunstable Annals mention a rumour that baronial conspirators had chosen [*elegerant*] him as king of England.<sup>38</sup> The accuracy of this statement is uncertain, and the annalist puts it under 1210 whereas 1212 would be the correct year. Even if the statement is trustworthy and the rumour was true, there is no evidence that Simon knew of the choice, although his enmity with John is clear<sup>39</sup> as also is John's lack of support for the Crusade, particularly in its first years.<sup>40</sup> However, connections between the Crusade and English opponents of John are certain. Hugh de Lacy rebelled against John and was expelled from his lands in England and Ireland in 1210. He was thereafter close to Simon de Montfort on the Crusade.<sup>41</sup> Perhaps still more significant is the presence on the Crusade of the Lincolnshire knight Walter Langton, brother of Stephen Langton, the archbishop of Canterbury whose importance to the Charter has been a matter of considerable and continuing debate.<sup>42</sup>

Such connections may persuade us to attach more weight to the Dunstable annalist's story, and even to consider the possibility of the

pp. 236–40 (on the extent of grants of liberties), 284–6, below, pp. 245–6 (on churchmen's influence on grants of liberties) (Holt 1965, pp. 20–1, 63–8, 97–8, 105–6, 180–5, 190–2).

<sup>35</sup> Note Vincent (2012), pp. 245–6.

<sup>36</sup> See *ibid.*; Taylor (1999), on the relations between John and Innocent III in the context of the Albigensian Crusade; also Vincent (2002*b*), p. 75, on the significance of the battle of Muret.

<sup>37</sup> Holt (1992), p. 80, below, p. 92 (Holt (1965), pp. 67–8); Vincent (2012), pp. 245–8, is cautious on the likelihood of influence.

<sup>38</sup> *Annales monastici*, III, 33.

<sup>39</sup> See Taylor (1999), pp. 216–17, in particular on Simon's claim to the earldom of Leicester.

<sup>40</sup> *Ibid.*; Vincent (2002*b*).

<sup>41</sup> Taylor (1999), pp. 217–18; Vincent (2002*b*), p. 73; see also Power (2013), 1069.

<sup>42</sup> Taylor (1999), p. 218; Vincent (2002*b*), p. 73. For a third brother, Simon Langton, see below, p. 20; the Langton family's connection to the events of 1215 may have been underestimated by debate focussing on the role of Archbishop Stephen.



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king's opponents having knowledge that a written grant of customs had been made at Pamiers. The baronial leader Robert fitz Walter, too, must have known of the Crusade, as he fled to France in 1212.<sup>43</sup> Unfortunately we know little of his activities during his exile, although he was in touch with the king of France.<sup>44</sup> Nevertheless, one may speculate that the ideology of the Albigensian Crusade may underlie the title that fitz Walter was given in 1215, 'Marshal of the Army of God and of the Holy Church in England'.<sup>45</sup> It was a title with which Holt had little sympathy: he first called it 'imposing', then referred to it dismissively as 'the best title they could manage', and finally described it – in an addition to the second edition – as 'vainglorious and seditious'.<sup>46</sup>

Such condemnation may reflect Holt's generally secular assessment of 1215. Even if influence from the Albigensian Crusade, or crusading ideology more generally,<sup>47</sup> is rejected, Robert fitz Walter and his title do indicate the close links between some lay rebels, ecclesiastics, and the religious terms in which reform was conceived and presented. When Robert went into exile in 1212 it was with Gervase of Howbridge, a canon of St Paul's who was probably closely associated with criticisms of John's kingship.<sup>48</sup> Robert's restoration in 1213 was included as part of the settlement between king and church.<sup>49</sup> And the title 'Marshal of the Army of God and the Holy Church in England' is mirrored in the opening of the Charter and in the beneficiaries mentioned in its first clause, passages that had not appeared in the Articles of the Barons:

Know that we, from reverence of God and for the salvation of our soul and those of all our ancestors and heirs, *for the honour of God and the exaltation of the Holy Church* and the reform of our realm . . . in the first place have granted *to God* and by this our present charter have confirmed, for us and our heirs in perpetuity, that *the English Church* shall be free.

<sup>43</sup> *Walt. Cov.* II, 207; *Chron. Maj.* II, 534; Holt (1961), pp. 82–3. <sup>44</sup> Holt (1961), p. 88.

<sup>45</sup> See Holt (1992), p. 490, below, p. 412 (agreement concerning London) (Holt 1965, p. 342); also *Chron. Maj.* II, 586 (where Wendover omits the words 'in England'); and Powicke, (1929), 92, for letters of papal commissioners excommunicating Robert 'qui exercitus Dei se nominat marescalum'. Note also Cheney (1976), pp. 373–4.

<sup>46</sup> Holt (1992), pp. 226, 295–6, 346, below, pp. 202, 253, 290 (Holt 1965, pp. 139, 200).

<sup>47</sup> For Wendover later projecting crusading ideas on to a proposed invasion of England by Philip Augustus in 1212, see *Chron. Maj.* II, 536–7; Cheney (1948a) demonstrates that Wendover's account of these events is not to be trusted.

<sup>48</sup> *Rot. Litt. Claus.* I, 165. See below, p. 20.

<sup>49</sup> *Selected Letters of Innocent III*, pp. 133, 161; *Rot. Litt. Pat.* p. 101; F. M. Powicke & C. R. Cheney, *Councils and Synods* (Oxford, 1964), I, 34.

### Stephen Langton and theology

The continental context within which Magna Carta has been discussed was not just political, and the book that Holt was reviewing in 2003 – Natalie M. Fryde’s *Why Magna Carta? Angevin England Revisited* (Münster, 2001) – has turned out, at least in one respect, to be prophetic. Fryde sought to resurrect Powicke’s case, refuted by Holt, that Stephen Langton was the principal ideologue on the baronial side, that the archbishop applied the formidable book-learning of a Parisian university theologian to developing the case against John.<sup>50</sup> She argued that the most important theoretical influence on Langton was John of Salisbury, a view which has failed to find general favour. Yet although she did not know it, her renewed attribution of influence to Langton chimed with a recent attempt, by Philippe Buc, to tease political lessons out of the scriptural commentaries and *quaestiones* of twelfth- and thirteenth-century theologians, including the colossal corpus of (largely) unedited manuscripts of Langton’s scriptural and other commentaries.<sup>51</sup> That Langton was only one amongst many theologians considered in Buc’s book, that it concentrated on his writings prior to his election as archbishop of Canterbury, that it failed even to mention Magna Carta, and that it was published in French, might all help to account for the tardiness of its impact on anglophone scholarship relating to 1215. The honourable exception was David d’Avray, who quickly sketched the possible implications for Magna Carta, although he largely confined his observations to Langton’s role in the reissue of 1225. He did so because he considered only the views on royal taxation which Langton had expressed in his academic writings, and the reissue of 1225 was granted in return for the grant of a fifteenth of moveable wealth, whereas the original of 1215 had not been issued in return for any sort of levy.<sup>52</sup> Nevertheless, d’Avray clearly signalled that this approach to Langton’s role as an intellectual in English politics had potentially wider implications. For instance, he followed Buc in emphasising the importance to Langton of I Samuel 10: 24, 25, where Samuel proclaimed the ‘law of the

<sup>50</sup> Fryde (1998) was a trial run for chapter 8 of her book.

<sup>51</sup> Buc (1994), pp. 43, 62, 66, 79, 99–101, 138–9, 143–5, 157, 168, 182, 187–93, 198, 251–2, 282–3, 294, 321, 329, 348–50, 361, 390–2; his ‘*Principes gentium dominantur eorum*: Princely Power between Legitimacy and Illegitimacy in Twelfth-Century Exegesis’ in T. N. Bisson, ed. *Cultures of Power. Lordship, Status, and Process in Twelfth-Century Europe* (Philadelphia, Penn. 1995), pp. 310–28, summarised part of the book, but made only passing reference to Langton. For Langton’s works, see R. Sharpe, *A Handlist of Latin Writers of Great Britain and Ireland before 1540, with additions and corrections* (Turnhout, 2001), pp. 624–33.

<sup>52</sup> D’Avray (1997); cf. Buc (1994), pp. 260–72.