

the relationship between those in power and those who are not occupies not only the people concerned, but also scholars interested in the study and analysis of the mechanisms that condition processes of human society. This question is particularly interesting in medieval and in early modern times (1000-1600), when attempts were made to impose ecclesiastical, princely and municipal power-structures on the people. Implementation of power met with considerable difficulties: on the one hand those in power were confronted with the limits which their context imposed or with obstacles they could not ignore; on the other, those who found themselves in subservient positions could not negate the wishes of the mighty, although they often did their best to get round the rules they were supposed to respect. A conflict arose between a society in which theological and moral arguments were thought adequate to justify the *ordo naturalis*, and the increasingly powerful new administrative and legal systems that derived from Roman law.

This volume offers a selection of the papers presented at the conference on *The Propagation of Power in the Medieval West* sponsored by the Netherlands Research School for Medieval Studies (Groningen 20-23 november 1996). These papers bring into focus some of the effects of the changes which rulers wished to implement and the difficulties which they met in trying to do so. The (pseudo)motivations exploited by those in charge are also discussed, in order to assess the structures that guaranteed the position of the latter and the interests of the nations which they planned to build.

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EGBERT FORSTEN

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edited by Martin Gosman, Arjo Vanderjagt and Jan Veenstra



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The Propagation of Power
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especially in a case of public interest, or of the impregnability of the bastion of property, was overtaken by long-grown practice.¹⁸

But this development did impede the towns' interests in the transition from a regional to a national unity. The theory of property and the attitude of the subjects of the count of Holland prevented the towns from wholeheartedly playing the role of protectors of a public interest, which extended beyond the limits of the town's freedom.

In the Great Charter of 1477, the most illustrative clause (taken from the *Joyeuse Entrée* of Brabant in 1356) is this, that the subjects were not obliged to obey the prince if he infringed the towns' liberties: private interest first! Understandably, they did not really wish to accept public responsibility for the country as a whole, as is clearly illustrated by their tireless efforts to find a fitting sovereign in 1572.

¹⁸ This point was made neither by A. Black, *Political Thought in Europe 1250-1450* (Cambridge 1992), nor by J. Canning, *A History of Medieval Political Thought 300-1450* (London/New York, 1996).

The General Laws of Alfonso II and his Policy of 'Centralisation': a Reassessment*

Maria João Violante Branco

King Alfonso II of Portugal (1211-1223) is generally remembered as 'the Fat', but it was his full-blown leprosy (or some related disease) rather than his corpulence that determined the course of his reign.¹ For, since he was physically incapable of fighting, how could he rule at all?² Indeed, could anyone thus incapacitated function as the ruler of a land whose ethos and very title deeds were based on a record of military achievement and the expectation of military prowess?³ There were those who thought not.

* I wish to thank professors Armando Carvalho Homem and Peter Linehan for their advice. I am especially indebted to the latter for his help with my English.

¹ See T. de Sousa Soares, 'Algumas considerações sobre a crise da sucessão de Sancho I: a doença de Afonso II', *Boletim da Faculdade de Direito de Coimbra* — special number (1983), 3-15.

² See *Livros de Linhagem do Conde D. Pedro* (= *LL*), ed. J. Mattoso, 2 vols. (Lisbon, 1980), LL25G. The number of noblemen described in the *LL* as lepers is highly significant. Yet by contrast with the common people and the clergy, members of the nobility seem not to have suffered social ostracism in consequence. For cases of leprous kings functioning as rulers (e.g. Fruela II of León, Baudouin IV of Jerusalem) see F. Contreras Dueñas, R. Miguel y Suarez Inclan, *Historia de la Leprea en España* (Madrid, 1973), and P. Aubé, *Baudouin IV de Jerusalem. Le roi lépreux* (Paris, 1996²).

³ As Alexander III had proclaimed in the bull *Manifestis probatum est* (1179) which had declared Afonso Henriques's kingdom legitimate and was reaffirmed in its reissue by latter pontiffs during the reigns of Sancho I and Afonso II himself. See M^a João Branco Marques da Silva, 'Portugal no Reino de León. Etapas de uma relação (866-1179)', in *El Reino de León en la Alta Edad Media*, vol. 4, *La Monarquía (1109-1230)* (León, 1993).

Since, moreover, Afonso had to contend with opposition from his brothers and the support these enjoyed amongst those noble factions at court which had already been active during the reign of his father, Sancho I, as well as with the territorial nobility predominant in the northern part of the kingdom,⁴ it is altogether remarkable that Afonso did indeed prevail. He succeeded in restraining the nobility, and did so by adopting a policy of centralisation founded on the enforcement of the rule of law, a policy he pursued both at home and at the papal curia. Incapable of satisfying the military criteria of kingship, he chose to meet his opponents on the one field on which he enjoyed the advantage, the field of law.

In this quest he was assisted by a group of jurists amongst his councillors who shared his governmental aspirations. He himself (it has been said) had been trained by jurists of the school of Coimbra, notably by the ubiquitous Master Julião, to whose influence and instruction the king's precocious commitment to the principles of Roman law has been attributed.⁵ Now the assumption that the isolation of a sick king, provided men of this stamp with an ideal opportunity of realising their own schemes is indeed plausible. Whether, as well as plausible, the assumption is also correct remains to be tested, however. Consideration of his earliest attempt to impose his authority by legal means, his General Laws of the year 1211 provide an opportunity for testing the hypothesis.

On Sancho I's death, in March 1211, Afonso II refused to recognise his will, an action which Sancho had anticipated and had attempted to forestall.⁶ To his younger sons Sancho had bequeathed large sums of money and to his three daughters castles and land, *pro*

⁴ J. Mattoso, 'Dois séculos de Vicissitudes Políticas', in *História de Portugal* 2, *A Monarquia Feudal*, coord. J. Mattoso (Lisbon, 1993), pp. 102-110.

⁵ J. Mattoso, *Identificação de um País. Ensaio sobre as origens de Portugal* (Lisbon, 1995⁵), vol. 2, pp. 87, 106-107.

⁶ *Documentos de Sancho I (1174-1211)* (= *DSI*), ed. R. de Azevedo, A. J. da Costa, M. Pereira (Coimbra, 1979). The last will of Sancho I and its addenda (*DSI*, 194, 203) date from the two last months of 1210. Sancho's main preoccupation seems to have been to ensure its implementation and for that purpose he assigned several different important members of his court as his executors, and further had his son swear *hominium [...] in manibus meis* promising to uphold his will.

hereditate.⁷ It was to these latter provisions that Afonso took exception. In his determination to retain control of territories of such importance, the new king embarked upon a diplomatic campaign at Rome in order to counter the support which as early as May 1211 the *infantas* had secured from Pope Innocent III.⁸

The immediate outlook for him appeared bleak. On his accession his two brothers exiled themselves — Pedro Sanches to León where he would serve as Afonso IX's *mayordomo*,⁹ and Fernando Sanches to France, where as count of Flanders he would enjoy an important public career.¹⁰ Gonçalo Mendes de Sousa, one of Portugal's political heavyweights, also left for León, there to identify himself with the cause of the *infantas* Teresa and Sancha. The political community polarised as ancient enmities were revived by the question of the sisters' inheritance. While churchmen took sides at home, in neighbouring León Afonso IX received streams of malcontents and prepared to invade in the interests of D. Teresa, his former wife, and the children of their marriage.

So when the new king gathered the *cúria* of 1211¹¹ he knew what was awaiting him, and was probably intent on giving an early indication of his determination to assure his authority over the crown and his subjects. With the issue of Afonso's military incapa-

⁷ For details of these problems, see M. T. Nobre Veloso, 'A questão entre Afonso II e suas irmãs sobre a detenção dos direitos senhoriais', *Revista Portuguesa de História* 18 (1980), 197-229, and L. Gonzaga de Azevedo, *História de Portugal* vol. 5, (Lisbon, 1942), pp. 60-73.

⁸ *Bulário Português, Inocência III (1198-1216)*, ed. A. J. da Costa and M. A. Marques (Coimbra, 1989), n^os 157, 159 (= *Bul.*).

⁹ Details on the role he played serving Afonso IX and the Muslim rulers, may be found in J. Gonzalez, *Afonso IX* (Madrid, 1944), pp. 323-324, and A. Brasio, 'O infante D. Pedro, senhor de Majorca', *Anais da Academia Portuguesa de História* 9 (1959), 165-240.

¹⁰ See Azevedo, *Hist. Port.*, pp. 122-126. A. Herculano, *História de Portugal desde o começo da Monarquia até o fim do reinado de Afonso III* vol. 2, rev. e com. por J. Mattoso (Lisbon, 1980), pp. 198-200.

¹¹ D. Peres, 'As Cortes de 1211', *Revista Portuguesa de História* 4 (1947), 5-11.

city soon to be on the public agenda,¹² the situation of the kingdom was therefore ominous. Hence the importance and the interest of the laws issued on that occasion — which makes all the more strange the failure of scholars to allow for the fact that the text of those laws available to them is not the original legislation but a fourteenth-century Portuguese translation mediated in a miscellaneous compilation.¹³ The text as transmitted has been assumed authentic. But the assumption is a large one.¹⁴

Preceded by a prologue wherein certain general principles are enunciated, the individual laws, twenty-eight in number, treat of a variety of issues. It is customary to regard them as important for two reasons: (i) for the early example they provide of the promulgation of a set of general laws; (ii) for the influence they

¹² As indicated by the terms of *Manifestis probatum* when reissued in Afonso's favour in April 1212 (*Monumenta Henricina*, vol. 1, (Coimbra, 1960), docs. 9, 12).

¹³ There are two medieval manuscripts containing the complete text of these laws: (i) the fourteenth-century compilation *Livro das Leis e Posturas*, (Arquivos Nacionais Torre do Tombo, *Núcleo Antigo*, nº 1); (ii) the fifteenth-century manuscript of the *Ordenações de D. Duarte* (Biblioteca Nacional de Lisboa, Manuscritos, Cod. 9164). Herculano prepared his 'critical' edition based on these manuscripts, but chose to follow the fourteenth-century version as base text. His edition is in *Portugaliae Monumenta Historica, Leges et Consuetudines*, vol. 1, Academia das Ciências de Lisboa (Lisbon, 1858), pp. 163-181 (= *Leges*). Both manuscripts have also been edited separately, in *Livro das Leis e Posturas*, ed. N. E. Gomes da Silva and M. T. Campos Rodrigues (Lisbon, 1971), pp. 9-20 (= *LLP*) and *Ordenações del-rei D. Duarte*, ed. M. de Albuquerque and E. Borges Nunes (Lisbon, 1988), pp. 43-53 (= *Ordenações de D. Duarte*). Because the text contained in the *Foros de Santarém* (of fourteenth-century provenance) comprises only the preamble to and a selection of the 1211 legislation, only rarely is it taken account of. Cf. Herculano, *Leges* 1, p. 163.

¹⁴ M. T. da Silva Morais, *Leis Gerais desde o início da monarquia até ao fim do reinado de Afonso III. levantamento comparativo entre os Portugaliae Monumenta Historica, o Livro das Leis e Posturas e as Ordenações de D. Duarte*, unpublished seminar paper, Fac. of Law (Lisbon, 1984/85), discusses the issue, analysing previous authority on the matter and concluding, with Mattoso, *Identificação* 2, p. 85, that, in this case contextual considerations constitute no objection to textual authenticity.

reveal of Roman law as taught in early thirteenth-century Bologna.¹⁵ Whether they should so be regarded, however, depends in part on the correctness of our understanding of both the meaning and the textual transmission of the compilation of laws. The difficulties arise from the variant readings of the different manuscripts, as it happens, for example, with the text of the famous prologue. The earlier text states that the royal curia was attended by the highest dignities of the kingdom — the archbishop-elect of Braga and the other bishops of the kingdom, its men of religion, its *Ricos-homens* and the latter vassals — so that the king would appoint judges by whom everyone was to be judged and then proceeds, immediately, to state what the relationship between royal and ecclesiastical law should be.¹⁶ The latter version states the same

¹⁵ See the important 'Memórias' of the eighteenth- and nineteenth-century authors, J. A. de Figueiredo, A. Caetano do Amaral and J. P. Ribeiro, published in the *Memórias da Literatura Portuguesa*, respectively in vol. 1 (Lisbon, 1792); vol. 7 (Lisbon, 1806) and vol. 6 (Lisbon, 1796). As to contemporaries, see, among others, H. da Gama Barros, *Historia da Administração Publica em Portugal nos seculos XII a XV*, vol. 1, dir. T. de Sousa Soares (Lisbon, 1945), pp. 111-123, especially pp. 111-114, where he retraces the *Justinianean* roots of some of Afonso II's laws (although allowing that they might possibly have entered the legislation by a *Visigothic* rather than a *Roman* way); M. Caetano, *História do Direito Português. Fontes-Direito público (1140-1495)* (Lisbon, 1985); M. J. de Almeida e Costa, *Para a História da Cultura Jurídica Medieval em Portugal*, separata do *Boletim da Faculdade de Direito* 35 (1959), bem como *Romanismo e Bartolismo no Direito Português* (Coimbra, 1960) (= Costa, *Romanismo*); G. Braga da Cruz, 'O direito subsidiário na história do Direito português' *Revista Portuguesa de História* 14 (1975), pp. 177-197; A. Herculano, *Historia de Portugal*, vol. 2, pp. 94-96; A. M. Hespanha, *História das Instituições. Épocas medieval e moderna* (Coimbra, 1982); A. L. G. Carvalho Homem, 'Dionisius et Alfonsus, Dei gratia reges et communis utilitatis gratia legiferi', *Revista da Faculdade de Letras. História* 2nd Series 11 (1994), 15-16, and especially N. E. Gomes da Silva, *História do Direito Português. Fontes do Direito* (Lisbon, 1991²).

¹⁶ 'No ano primeyro que reynou o muj noble Rey de Portugal Dom affonso o ssegundo [...] em Cojnbra fez cortes en as quaaes com Consello de Dom Pedro eleyto de bragaa e de todos os bispos do Reyno e dos homens de Relegiom e dos Ricos homens e dos seus uassalos Estabeleceo Jujzes conuem a ssaber que o Reyno e todos que en el morasen fosem per ele Regudos e senpre Julgados per ele e per todos seus suççesores e aguardam a sy E todos seus suççesores que sse alguua

things, but instead of the appointing of judges it refers to the making of laws (judgements) the two words being very similar in Portuguese. So was it really judges who were at issue here or was it judgements?

For my part, while agreeing with the theory of Damião Peres that somewhere along the line a copyist error has converted *juízos* into *juízes*,¹⁷ judgements into judges, I choose to accept the version of the latter text of the *Ordenações de D. Duarte* where the spelling *juízos* is beyond doubt.¹⁸ We would then have a preamble in which what was really at issue was the monarch's capacity *qua legislator* to legislate, to provide for the implementation of the laws he enacted, and beyond this, the thorny question of the relationship of his legislative competence and that of the Church.

This final clause of the preamble has spawned an enormous literature within which, because its meaning is not clear and because 'critical editions' of the texts are defective, repetition has been rampant.¹⁹ Some authors have read into it acknowledgement of the

cousa uissem de coReger ou dader ou de mjnguar en estes Jujzes que o coRegessem. Outrossy estabeceço que as sas leys sseiam guardadas e os dereytos da sancta Egreia de Roma Conuem a saber que se forem factas ou estabeceçudas contra eles ou contra a sancta Egreja que nom ualham nem tenham' (*LLP*, p. 9). In the latter version of the laws, apart from variations in phraseology, and the *juízes / juízos* crux, there are some differences in the final clause which deserves to be noticed for the bearing they have on the issue, as follows: 'E estabelleço com conselho dos sobreditos que as sas leis E dos seus socesores siguam os degredos dos apostolligos de rroma E os dereitos da santa Jgreia scilicet que se forem feitas ou estabellecidas contra elles ou contra a santa Jgreia que non ualham nem seiam theudas por leis' (*Ordenações de D. Duarte*, p. 43).

¹⁷ D. Peres, *op. cit.*, p. 9, proposes this new reading, based on the assumption that the preamble of the text of the *LLP* does not make any sense otherwise, which is true. He does not seem to have had access to the text of the *Ordenações de D. Duarte* we mention.

¹⁸ Cf. *Ordenações de D. Duarte*, p. 43. The whole sense of the preamble is much more intelligible, and the reading of this text (as well as the one contained in the above mentioned *Fors de Santarém*) is unmistakably *juízos*.

¹⁹ See note 13. Most of the authors cited there adhere to the theory of submission of the royal law to canon law. See also below, note 23, and Nuno Silva's argument.

submission of the king's jurisdiction to that of canon law, others have found there a statement of the equivalence of the two.²⁰ To sustain the latter hypothesis, however, it is necessary to supply the text with a word it does not contain. Thus Mattoso,²¹ who then proceeds to single out as its unique author Vincentius Hispanus, canonist of repute and collaborator of the kings of Portugal as their proctor at the papal curia, dean of Lisbon, bishop of Guarda and royal chancellor.²² According to Mattoso, Vincentius was ferocious in his championship of the royal cause *vis-à-vis* Rome.²³ However,

²⁰ Mainly Mattoso, *Identificação 2*, pp. 89, and Cruz, *Direito Subsidiário*, p. 188.

²¹ That is Mattoso's proposal (*Identificação 2*, pp. 89-90). In order to conjure an assertion of the equivalence of the two laws, from the text, it would be necessary to provide (*subentender*, in Mattoso's own words) a word which the manuscript does not show; according to the same author, if we assume the presence of the word *outras* before *forem feitas contra eles* (cf. n. 17 for the text of the preamble) we will recognise a parallel being drawn between the two laws. But the word does not exist in any of the manuscripts.

²² For Vincentius and his career see Sousa Costa, *Mestre Silvestre e Mestre Vicente, juristas da contenda entre D. Afonso II e suas irmãs* (Braga, 1963); J. Ochoa Sanz, *Vincentius Hispanus, canonista boloñes del siglo XIII* (Roma/Madrid, 1960) and A. M. B. de Lima Machado, *Vicente Hispano, Aspectos Biográficos e Doutrinários, separata do Boletim do Ministério da Justiça*, n.ºs 141-142 (Lisbon, 1965).

²³ Based on his glosses to Gregory IX Decretals published by Sousa Costa, *Mestre Vicente*, pp. 506, 508, 510, Mattoso assumes his commitment to the cause of royal independence from the papacy, and of centralisation of royal authority, which do not seem to me to match either the political theories of the first years of the thirteenth century, or Vincentius's work as a canonist. In fact, from what we know of Vincentius, he was indeed a ferocious advocate of the kings' independence, but from the empire, not from the papacy. The works of Gaines Post on his use of *pro ratione voluntas* ('Vincentius Hispanus *pro ratione voluntas* and medieval and early modern theories of sovereignty', *Traditio* 28 (1972) 159-184) emphasise the canonist's belief that any king's actions should be directed *and limited* by reason in the interest of the common good. Post's other works on his glosses, 'Some unpublished glosses (ca.1210-1214) on the *translatio imperii* and the two swords', *Archiv für katholisches Kirchenrecht* 117 (1937) 403-429 or his chapter on Vincentius's nationalism in *Studies in medieval legal thought. Public Law and the State (1110-1322)*, (Princeton/New Jersey, 1964), pp. 482-493 show us a canonist who does not question the supremacy of the papacy, or the Church, but who does question the supremacy of the emperor and the right of other nations to rule over Spain. Sometimes in very Isidorian terms.

recent writers have preferred to comment on what is actually stated, viz. that in cases of conflict of jurisdiction canon law should prevail. This, moreover, seems more faithfully to reflect the state of official opinion in 1211.²⁴

The laws promulgated in 1211 present various other problems of interpretation. Firstly, although it is clear both from their form and from the provisions for their implementation that the intention was for them to be 'universally' applied, various internal inconsistencies are detectable, a characteristic at least in part attributable to the vagaries of the textual tradition.²⁵ To this point we will return. Before doing so, however, we must consider a group of laws whose internal coherence strongly suggests that they are authentic products of the curia of 1211. As such, they deserve to be regarded as a precocious example of the sort of codifications which by mid-century was to flourish throughout Western Europe, and to invite comparison with the *Magna Carta* of 1215.

Of course, in view of the different contexts from which they emerged notable differences are to be expected between the laws of 1211 and those enshrined in the English 'charter of liberties'. Nevertheless, both enactments were the product of the same unsettled age, and, as in the case of *Magna Carta*, the intention of

²⁴ Apart from Silva, *História do Direito*, p. 162, see N. G. Silva, 'Sobre a lei da Cúria de 1211 respeitante às relações entre as leis do Reino e o Direito Canónico', *Revista Jurídica* 1 (1979) 13-19, and 'Ainda sobre a lei da Cúria de 1211 respeitante às relações entre as leis do Reino e o direito canónico', *Clio* 6 (1987-88), 29-39. The latter's thesis is also supported by Hespanha, *op. cit.*, p. 182, who further adds arguments drawn from the *Decretum* and papal decretals, to show how widespread the theory of the supremacy of canon law was. N. Silva produces important arguments in the same sense, mainly based on analysis of the texts as they come to us. Yet he does not consider that the canonist Vincentius might have favoured such views.

²⁵ Early authors had noted this incoherence, like Gama Barros, *loc. cit.*, vol 4, pp. 280-281, and C. Sánchez-Albornoz, 'La Curia Regia Portuguesa. Siglos XII y XIII', in *Investigaciones y documentos sobre las instituciones hispanas* (Santiago de Chile, 1970), who posed serious doubts regarding the thesis that the whole group of twenty-eight laws all derived from this specific meeting of 1211.

the Portuguese king was not only to confirm the privileges enjoyed by society's highest ranks but also to seek to limit them.²⁶

Undeniably, Afonso's purpose (or that of his counsellors) was to restore order to the realm, and to do so in unchallengeable manner, not only by defining the rights and duties of the privileged but also by exercising control over the economic development of the kingdom. Hence the laws protecting the property of freemen, prohibiting entry into the houses of noblemen,²⁷ confirming Church liberties and exempting ecclesiastics from the payment of rents and services,²⁸ outlawing forced marriages,²⁹ and guaranteeing individual freedom even to the non-noble,³⁰ as well as those which defined testamentary procedures, prevented churchmen from receiving gifts of money, restrained the excesses of the nobility against their dependants, and determined the punishments to be suffered by royal officials of whatever social standing who deceived the king.

Even so, I cannot discern in these laws either a systematic attempt to diminish the rights of the privileged or the affirmation of the king's absolute authority. Needless to say, at least by implication the king is considered as the source of law — although with at least the theoretical provision that law-making was the function of a meeting of the curia, legitimated by the presence and participation of churchmen and nobility. Yet, except as regards third parties, in

²⁶ Cf. J. C. Holt, *Magna Carta* (Cambridge, 1992²), in particular the author's analysis of the state of social disorder which necessitated *Magna Carta*, and his treatment of the crucial distinction between statute law and a charter of privileges. In that sense, the social background of the 1211 laws is similar, as the dispositions in the laws may converge. But comparing the 1211 legislation with the other examples of similar codifications of late twelfth- and early thirteenth-century western realms as enunciated by Holt (pp. 25-26), it is very evident that these laws do resemble much more the peninsular tradition of laws from curial gatherings. Nevertheless, we should not forget that similar codifications, such as the Hungarian Golden Bull or the *Liber Augustalis* appear only one or two decades after Afonso II's legislation.

²⁷ Law VI (*Leges*, p. 167).

²⁸ Law XIV (*Leges*, p. 172).

²⁹ Law XXII (*Leges*, p. 175).

³⁰ Law XIX (*Leges*, p. 174).

no case does any of these laws seek to impose real restrictions on the actions of the privileged. The impression conveyed is rather of the monarch seeking to carry the nobility along with him in his schemes by means of confirming some exemptions and defining others.³¹ Of course, this is not to deny the potential importance of certain of the measures of 1211 in the future service of a centralising regime: notably the law of desamortisation, fundamental for the control of property acquisition by ecclesiastics; the law of inheritance, from which the *direitos de avoenga* would develop; and the law concerned with restoration of rights and property to the royal fisc, which would provide the basis for the *Inquirições* of 1220, the first nation-wide investigation of its sort.³² But in 1211 these developments still lay in the future.

Be that as it may, a preliminary inspection of the laws of 1211 indicates that they derive from more than one tradition. Mattoso has also been struck by this lack of homogeneity. Without going so far as to deny that they all derive from the curia of that year, he is at pains to stress their various ambiguities and dissimilarities.³³ If we seek to discover any regular pattern underlying the laws of 1211, until the eighth law we will look in vain. Measures revoking bad *costumes* jostle with fiscal and procedural enactments, followed by (IX) an assertion of the royal prerogative to provide for the churches of the kingdom,³⁴ with three of them containing definitions of the king's relationship with his subjects, not in the form of a preamble but embedded in the text of the law itself. Beginning with law X, however, we encounter a cluster of eighteen laws which appear to

³¹ Thus Law VI (*Leges*, p. 167) on the inviolability of property, or law XII (*Leges*, p. 170-171) defining the exemptions and courts of ecclesiastics, or the law XVIII (*Leges*, pp. 173-174) on how to dispose of inheritances, constitute clear examples of reassurance to the privileged groups. In fact these laws (considered more recently as a threat to noble and ecclesiastical powers by the king) make such concessions to exemption that Herculano considered them as hugely favourable to the Church (*História de Portugal* 2, pp. 192-196).

³² Laws X, XI, XVIII (*Leges*, pp. 169, 170, 173-174).

³³ Mattoso, *Identificação* 2, p. 87-88.

³⁴ Law IX (*Leges*, pp. 168-169).

constitute a significant formal unit. Each begins with the word 'Because' and a moralistic preamble on the ordering of society or the duties and attributes of the king,³⁵ then proceeds with Afonso expressing his legislative intent with the words 'We establish' — except in four cases where 'We order' or 'We forbid' (or both) is used — followed by the substance of the enactment and the appropriate sanctions. So do these eighteen laws represent the only authentic legislation of the curia of 1211? Possibly. Or possibly not. The imperfect state of the manuscript tradition of the compilation *qua* compilation admits no certain reply. It is necessary to consider the case of each law individually.

The heterogeneity of the whole faithfully reflects the diversity and complexity of a legal tradition in which customary law, the Visigothic tradition, Leonese norms, canon law and the revived Roman law were all represented. As to the Visigothic Code and the *Liber iudicum*, their use and influence is amply attested in Portugal throughout the twelfth century,³⁶ while conciliar and curial decisions from León were regularly copied entire into Portuguese codices.³⁷ As Gaines Post observed, it was surely to this legal tradition that Vincentius Hispanus was referring when he asserted that Spa-

³⁵ It is as if the concepts present in the 'preambles' of these laws express a whole theory of the role and functions of a king as a source of order and balance of society. I have not found such characteristics (in the formal sense) in similar legislation as early as this, functioning almost like a parallel text to the law, and giving it a moralistic justification as when they state that the king must protect the humble from the wealthy, or that the king must rule his reign rightly, or that the king must purge his kingdom of bad men and evil in general. As a rule, sentiments as these occur in the preamble to such codifications, not dispersed as in this case. During the Groningen meeting, professor Marc Boone drew my attention to the similar *formula* in the text of a 1191 charter of privilege to Gent, issued by queen Mathilde, the sister of Sancho I, who married in Flanders. He has since very kindly sent me the text of the law, and there seems to be some reason to believe that the specific formula used in this text might derive from the influence of the 'Portuguese' entourage of queen Mathilde, since it is allegedly the only case where such an *arenga* is used, as professor Boone suggests.

³⁶ Silva, *História do Direito*, pp. 145-148; Cruz, *Direito Subsidiário*, pp. 179-182.

³⁷ For references to the traditional use of peninsular sources of law, see Silva, *História do Direito*, pp. 155-156.

nish kings were exempt from obedience to the Roman emperor not only because they had earned their right to rule directly from God as warriors but also because even before the Roman law had been created, they were already ruled by a law of their own making.³⁸

Though the influence of the canonists in the king's entourage was doubtlessly important, we must not fall into the error of underestimating the continuing strength of indigenous forces. Certainly the canonists themselves made no such mistake, and the fact deserves to be stressed since many of Afonso's legal advisors had been trained at the schools of Coimbra, a center notable for its important Mozarabic community and therefore for the survival of Visigothic forms and norms. The training which these men received at Bologna did not obliterate their earlier education. This being said, the laws of 1211 require genetic analysis, as it were, for though some of them assuredly betray canonistic and civilian traits,³⁹ others are presented in almost Isidorean terms, and may well have been derived from a multiple *palette* of traditional sources.

Despite the hybrid nature of the Afonsine legislation, there can be no denying the critical role played by the group of jurists surrounding the king. Thus we return to the question of the intellectual inspiration of the laws of 1211 and in particular to that of the supposed authorship of Vincentius, confidently asserted though on questionable grounds. For although Vincent had certainly been in Coimbra in 1206,⁴⁰ he seems to have been at Bologna by 1211, engaged in teaching and preparing his *apparatus* to *Compilationes I*

³⁸ See Post, *Studies* pp. 489-491, for the prescription on recourse to Roman law in the *Liber iudiciorum* and Vincentius's glosses on the independence of the laws of Spain. It may also be relevant to stress that in another law, of 1220, it is said that the *filiis de algo Port.* should be judged by the 'old book of law', and not accept the new ones. This has also been seen as a reference to the traditional and widespread use of the *Liber iudicum* as a regular source (Silva, *História do Direito*, p. 175, with still other examples).

³⁹ Gama Barros, *História da Administração Pública* 1, pp. 113-115, and Silva, *História do Direito*, pp. 201-202.

⁴⁰ *Bul.*, 121.

and III⁴¹ and by 1212 he was certainly at Rome assisting bishop Soeiro of Lisbon with the king's business.⁴²

In fact, as the diplomatic exchanges regarding his contest with his sisters prove, Afonso had many other jurists on his staff. For example, when in April 1212 (just a week after the reissue of *Manifestis probatum*, mentioned above)⁴³ Innocent III urged the king to attend to the payment of the *census* he owed the Roman Church, the same Soeiro is mentioned alongside Vincentius.⁴⁴ And just three month later, on July 23, it is Silvestor Godinho, the noted canonist and future archbishop of Braga, who acts as the king's proctor at Rome in connection with his dispute with the infanta Mafalda.⁴⁵ He was there to argue that Sancho I's grant to Mafalda had been invalid because the king had been insane at the time of making it (*non fuerat mentis sue*),⁴⁶ while in pursuit of the campaign to have Sancho's will annulled, the same argument was again advanced in the August of that same year, together with the objection that it was illicit for a king to diminish his kingdom:

*regis et regni prejudicium et gra[vamen...] concessionem, rex idem asserit invalidam extitisse tum quia dictus pater tunc temporis positus extra mentem nequaquam intelliget tum quia contra indulgentiam felicitis memorie Alexandri pape predecessoris nostri extitit attentata qua cavetur ut nullus rex Portugalie regnum ipsum in prejudicium possit minuere successoris.*⁴⁷

⁴¹ A. Garcia y Garcia, *Estudios sobre la canonística portuguesa medieval* (Madrid, 1976), p. 109-110; S. Kuttner, 'Wo war Vincentius Hispanus Bisho', *Traditio* 22 (1966), 473, and Post, *Studies*, p. 484, all agree that between 1210 and 1215 Vincentius was teaching in Bologna and working on his apparatus.

⁴² *Bul.*, 179.

⁴³ See note 12.

⁴⁴ *Bul.*, 179.

⁴⁵ On Silvester Godinho, see Sousa Costa, *Mestre Vicente*, pp. 15-54, and the elements added by Garcia y Garcia, *op. cit.*, pp. 106-108.

⁴⁶ *Bul.*, 182.

⁴⁷ *Bul.*, 183.

Such arguments were based not only on good sense but also on sound law. Their deployment testifies to the availability of first-rate juridical competence, as Afonso II acknowledged in the grant he made to Vincentius in recognition of the part which he, Silvester and Lanfranc of Milan had played in arguing his case successfully at Rome.⁴⁸

As to where these men came from, all indications seem to point in one direction. Two of the earliest royal chancellors, master Alberto (1142-69) and master Julião (1183-1215) both had connexions with the See of Coimbra and the monastery of Santa Cruz of that same city. Santa Cruz enjoyed a well-deserved reputation as the kingdom's intellectual powerhouse.⁴⁹ Sancho I had granted its canons leave to study law *in partibus Galliae*.⁵⁰ Investigating the family relationships of those individuals connected with the law, again our attention is drawn to the Coimbra area. The principal protagonists often seem to have belonged to a fairly restricted network. Master Julião (concerning whose juridical education nothing is known) was a royal *criado* and probably the son of Paio Delgado de Albergaria, a nobleman who had been at the conquest of Lisbon, and his wife Yoni.⁵¹ Julião's nephew, Fernando Peres,

⁴⁸ *et uos iuuastis me [...] in sententia que per uos et per magistrum Silvestrem et per magistrum Lanfrancum super eis castris a papa Innocentio iii est obtenta* publ. in Sousa Costa, *Mestre Vicente*, pp. 27-28, nota 65. For the possibility of identifying this Lanfranc with the brother of bishop Ardericus of Palencia, see the identification made by D. Maffei, 'Fra Cremona, Montpellier e Palencia nel secolo XII. Ricerche su Ugolino da Sesso', *Rivista Internazionale di Diritto Comune* 1 (1990), 9-30, especially pp. 18-19, n. 30.

⁴⁹ For a first approach to Santa Cruz and its cultural relevance see J. Mattoso, 'Cluny Cruzios e Cistercienses na formação de Portugal', in *Portugal Medieval, novas interpretações* (Lisbon, 1985), pp. 101-121, A. Cruz, *Santa Cruz de Coimbra na cultura Portuguesa da Idade Média* 1 (Oporto, 1964); F. Gama Caeiro, 'Fontes portuguesas na formação cultural de S. António', *Itinerarium* 110-111 (1981), 136-164.

⁵⁰ DSI 47. The *Liber Fidei*, doc. 819 contains a letter of 1173 in which João Peculiar, at the request of Afonso Henriques and his son Sancho I, guarantees the income of those canons who wish to study.

⁵¹ Mattoso, *Identificação* 2, pp. 106-107, citing an unpublished work on Julian by Luis Ribeiro Soares.

before joining the Dominican order, would also serve as one of the king's jurists at Rome.⁵²

Vincentius's family also had deep roots in Coimbra. His mother, Sancha Martins Anaia,⁵³ first abbess of Semide,⁵⁴ came from the family of the Anaia's, notable in Coimbra,⁵⁵ not only for its foundation of the important lordship of Góis but also on account of Bishop João Anaia, and his sister, Maria Anaia, wife of the *alcaide* of that city and one of its leading nobles, Gonçalo Dias do Marnel.⁵⁶ The bishop's brother, Martim Anaia, who was Vincentius's grandfather, was *alcaide* of Coimbra too. Thus Vincentius came from a very important family, with strong links with the royal family, the court and the ecclesiastical establishment. His own nephews would make careers for themselves in the church of Évora.⁵⁷

Silvester's connections seem to have been with Braga and Lisbon rather than Coimbra.⁵⁸ None the less, he is regularly mentioned along with the others in royal and papal correspondences as a member of the group of jurists who became increasingly prominent throughout the reign, both at Rome and at home, as proctors, emissaries, chancellors, deans and bishops. Though they were highly influential in Portugal, the papal curia considered them to be malign influences. In 1220 the chancellor Gonçalo Mendes was identified as

⁵² M. J. Azevedo Santos, 'Fernando Peres ex-chantre da Sé de Lisboa', in *Actas do II Encontro sobre História Dominicana* (Santarém, 1984), pp. 243-158.

⁵³ Sousa Costa, *Mestre Vicente*, p. 55.

⁵⁴ R. Martins, *Património, Parentesco e Poder, O mosteiro de Semide, do século XII ao XV* (Lisbon, 1992), pp. 46-47.

⁵⁵ *Livro Santo de Santa Cruz*, ed. L. Ventura and A. Santiago Faria (Lisbon, 1990), pp. 45-62, recording the role played by the Anaia family.

⁵⁶ LL 42E7, 56B4, 59 A 1-2

⁵⁷ Sousa Costa, *Mestre Vicente*, pp. 55-56, traces Vincentius's family links, and provides conclusive proof that the abbess of Semide was his mother, but does not pursue the matter into the Coimbra region. His assumption of an Évora connection on account of the nephews' association with that place, and the denial that Vincentius was once a canon of Santa Cruz are both unjustified.

⁵⁸ Sousa Costa, *Mestre Vicente*, pp. 31-51.

such in the case of the archbishop of Braga, together with the *alferes*,⁵⁹ just as two years later Vincentius dean of Lisbon, Julião dean of Coimbra and Paio cantor of Oporto were singled out by Honorius III and ordered to avoid all further contact with the king.⁶⁰ The pontiff's information was correct. It had been partly 'for love' of these men that, at Easter 1218, Afonso had granted the prelates of his kingdom the thithes of royal rents and incomes in their dioceses.⁶¹ Since something like a college of jurists was in existence by that date, there is no need to try and identify a single author of the 1211 legislation.

As to the laws themselves, it seems that no attention has been paid to the question of their enforcement. Nor is there any contemporary evidence of violent opposition — or indeed of any reaction at all. So perhaps their impact was not as revolutionary as later historians have represented it. Perhaps they were not seen as striking at privilege to anything like the extent generally assumed. Certainly, the concatenation of events which attended their promulgation — the civil war, the Leonese invasion, the affair of the *infantas* and its ramifications, the contest with the archbishop of Braga, economic crisis — conspired to dull their effect. Like other measures adopted by Afonso II and his advisors in order to overhaul and restructure the kingdom, the initiative of 1211 was stillborn. True, once the king's problems with his sisters had been resolved, the royal chancellery was organised along modern lines; witness the innovation of the chancellery register in the years 1217 to 1223, during the chancellorship of Gonçalo Mendes.⁶² But after Afonso's death registration ceased. Similarly with the case of the *Inquirições* of 1220 the nation-wide investigation of noble and ecclesiastical titles to land, which the turmoil of the recent past so urgently necessitated. In only a restricted area of the country were

⁵⁹ Publ. Sousa Costa, *Mestre Vicente*, pp. 94-99 and 104-105, cit. by Mattoso, *Identificação 2*, p. 106.

⁶⁰ Publ. Sousa Costa, *Mestre Vicente*, pp. 107-108.

⁶¹ Sousa Costa, *Mestre Vicente*, pp. 67-73.

⁶² ANNT, *Forais Antigos*, maço 3-4.

the investigations actually carried out. And, as with all his other initiatives, on the king's death they also expired.

The reign of Afonso II witnessed a brilliant experiment in centralisation. But the experiment was short-lived. What the king and his men had attempted over a period of just twelve years was frustrated when the nobility reverted to its traditional habits and chaos was reinstalled. The royal jurists would have to wait until mid-century for the kingdom's refoundation, this time by papal decree, and by *law* not *war*, before seeing the measures they had pioneered re-implemented. Not until the reign of his second son, Afonso III (1248-79), would the establishment of the reforms to which Afonso II's jurists had aspired in the years after 1211 be achieved. But some of them survived long enough to see it happen.