Monks, Aristocrats, and Justice: Twelfth-Century Monastic Advocacy in a European Perspective

By Charles West

INTRODUCTION

Around the year 1250, the Bavarian monk Hermann of Niederaltaich composed a short treatise about the aristocrats who had served as advocates (advocati) for his monastery. As well as providing a potted history reaching back into the tenth century, Abbot Hermann earned future historians’ gratitude by explaining very clearly why monasteries like his needed these figures in the first place. There were, he wrote, many reasons, but he picked out two: churches needed advocates to protect their lands, and they needed advocates for the exercise of justice. “For,” explained Hermann, “it does not pertain to clerical dignity to exercise judgment of blood,” so dealing with theft, murder, rape, and other capital offences required a layman’s involvement.¹

Hermann was of course writing for a particular purpose, and his relatively short treatise, De advocatis Altahensibus, did not circulate widely. It is nevertheless an often-cited work, since it is one of the few medieval texts to provide an overview of a topic that historians have long recognized to be of great importance.² Advocates such as those of Niederaltaich were a familiar part of aristocratic society in central medieval Germany, and though they seldom received such focused treatment as that provided by Hermann, they make frequent appearances in monastic history writing, and indeed in other monastic textual productions, such as letters and, above all, charters, as we shall see. They loom large too in modern research, since the advocacy of monasteries such as Hermann’s is acknowledged to have

¹ Hermann of Niederaltaich, De advocatis Altahensibus, ed. Philip Jaffé, MGH SS 17 (Hannover, 1861), 373, “Item quia non est clericalis dignitatis, iudicium vel vindictam sangwinis [sic] exercere.”
been a key source of political and social power for elites in the *Reich*; and after a period of relative neglect, the topic is coming back into fashion.¹

Hermann would have found much of this research familiar in its outlines, for it has largely followed his lead in emphasizing political protection on the one hand and judicial functions on the other.⁴ And yet in another sense, Hermann’s text is wholly at odds with this analysis. What Hermann wanted to explain was why monasteries like his needed advocates; but most historians who have studied these advocates have tended to approach the matter quite differently. They have usually presumed an antagonistic relationship between monastic community and predatory advocate, tracking how the former, inspired by monastic or Gregorian reform, resisted claims opportunistically pressed by the latter.⁵ Much of the more recent work has been carried out in the course of studies of regional aristocracies, in the tradition of *Landesgeschichte*, and with the purpose of showing how noble families exploited advocacy in pursuit of their interests.

Thinking of monastic advocacy primarily as an instrument for the consolidation of aristocratic power (*Herrschaftsbildung*) is far from unreasonable, since it often demonstrably did perform this role. But this focus has led to the neglect of a crucial feature of monastic advocacy, namely its geography. Aristocrats were closely involved with monasteries at a number of levels everywhere in the central Middle Ages, but monastic advocacy of the kind that Hermann discussed was particular to the *Reich*, and was found seldom, or only in less developed form, elsewhere in the Latin West.⁶ The perspective that prioritizes how aristocrats harnessed advocacies has not however encouraged investigation of this issue, if only

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¹ The Konstanzer Arbeitskreis and the University of Namur have both recently held conferences on ecclesiastical advocacy in the Middle Ages, with publication anticipated. Meanwhile, Jonathan Lyon is currently working on the topic as well: see Jonathan Lyon, “Otto of Freising’s Tyrants,” in *Christianity and Culture in the Middle Ages: Essays to Honor John Van Engen*, ed. David C. Mengel and Lisa Wolverter (Notre Dame, 2013), 141–67, and “Noble Lineages,” with ample references to the “innumerable German and Austrian studies” of the nineteenth and twentieth centuries. For a recent German summary, see Martin Claus, *Die Untervogtei: Studien zur Stellvertretung in der Kirchenvogtei im Rahmen der deutschen Verfassungsgeschichte des 11. und 12. Jahrhunderts* (Siegburg, 2002). As an example of the older literature, see Hermann Aubin, *Die Entstehung der Landeshoheit nach niederrheinschen Quellen: Studien über Grafschaft, Immunität und Vogtei* (Berlin, 1920).


³ In the words of Lyon, “Otto of Freising’s Tyrants,” 155, seeing how advocates used their position “to advance their own interests and those of their families.” See also Benjamin Arnold, *Princes and Territories in Medieval Germany* (Cambridge, UK, 2003), 196, concentrating on “the ways in which the secular aristocracy used and abused this power in order to improve their own status and revenues.” This is also the case in more recent English scholarship on “violent lordship”: see Thomas N. Bisson, *The Crisis of the Twelfth Century: Power, Lordship and the Origins of European Government* (Princeton, 2009), which integrates advocates into a wider narrative about violence and accountability, e.g., 153–54: “This advocacy was a hereditary lordship”; see also 225 and 317, and s.v. “advocate” in index, 641. See below, 394–95.

⁴ The key article in setting out the importance of aristocratic relations with monasteries was John Howe, “The Nobility’s Reform of the Medieval Church,” *American Historical Review* 93 (1988): 317–39. For the association of advocacy with the *Reich*, see Claus, *Untervogtei*, 281–87; and Lyon, “Otto of Freising’s Tyrants.”

⁵ This content downloaded from 143.167.030.213 on May 23, 2017 06:59:03 AM
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because it is difficult to study an absence. To the extent that the geography of advocacy has been considered within this scholarship, it has been assumed to reflect some innate quality inhering in the Germanic aristocracy that predisposed it to this practice.7

This article takes a different view. With a focus on the decades around 1100, it pays particular attention to the judicial dimension of monastic advocacy, more clearly defined than the generic protection or political patronage universally sought by monastic communities everywhere in the Latin West; and it concentrates on old, wealthy, and well-established Benedictine communities, leaving to one side other forms of advocacy, notably those relating to bishops and to the emerging Cistercian group of monasteries.8 Above all, instead of concentrating on what aristocratic families did with their monastic advocacies, it looks at what monastic communities in the Reich did with their advocates, and how comparable communities elsewhere managed without them.

Examined in this way, it becomes clear that monastic advocacy was a product not simply of aristocratic power, as has usually been supposed, tacitly or otherwise, but also of the perceived needs of certain monastic communities. It was therefore religious as much as political, part of the debates as to how the monastic vocation of turning away from the world should best be fulfilled in ever-changing conditions. In this sense, the study of advocacy confirms the importance of taking a European-wide approach, or at least an approach transcending the boundaries of any one country, modern or medieval, if historians are to understand any particular aspect of the Middle Ages; and the urgency of integrating religion back into political and social history if we are to understand the interplay of these dimensions.9

### Monastic Advocates in the Twelfth-Century Reich

As already mentioned, Hermann of Niederaltaich’s De advocatis Altahensibus is an unusual text. This is partly a question of its clarity, and partly too a question of its date, for as an issue that commanded contemporaries’ attention, monastic advocacy in post-Carolingian Europe was a predominantly twelfth-century phenomenon (though in certain regions it survived late into the Middle Ages in

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7 The most important explicitly comparative study remains Theodor Mayer, Fürsten und Staat: Studien zur Verfassungsgeschichte des deutschen Mittelalters (Weimar, 1950), who points to a contrast between Roman and Germanic ways of thinking, or Denkweise (18); see also discussion of the “rein germanischen Ländern” (1) and of the importance of the “germanische Adel” (19).


9 On the importance of, and obstacles faced by, working towards a properly European historiography of the Middle Ages, see Bernhard Jussen, “Diskutieren über Könige im vormodernen Europa: Einleitung,” in Die Macht des Königs: Herrschaft in Europa vom Frühmittelalter bis in die Neuzeit, ed. Bernhard Jussen (Munich, 2005), esp. xi–xiv. On the religious perspective, see note 149 below.
Fig. 1. Monasteries in twelfth-century Europe discussed in this article. See the online issue for a color version of this image. Map drawn by author.
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residual form). Above all, though, De advocatis is unusual insofar as most of what we know about monastic advocacy comes not from narratives of this kind, nor from letters, hagiography, or liturgical sources—though all these genres do make significant contributions—but from charters. The archives of monasteries across the Reich, from the Rhineland to Swabia, Lotharingia to Bavaria (though unfortunately not Niederaltaich, whose pre-1200 records are fragmentary), preserve a stately body of documentation in the shape of scores of charters defining what monastic advocates could and could not do in the decades around 1100, often in significant detail.

It is these charters, noticeably filling out from the later eleventh century, that have served as the basis for a vast and impressive literature on monastic advocacy, and this study too will rely chiefly upon them. Most of these texts are well known to specialists and have been studied in their local context, as part of surveys of regions or of individual monasteries and their relations with aristocratic families. Recently, however, and remarkably, an entirely fresh set of texts that deal with advocacy in the twelfth century has emerged: and it is with these that we shall begin, since they offer a useful introduction for those unfamiliar with what monastic advocacy entailed.


13 On the periodization of the charters, see Theo Kölzer, Studien zu den Ukurkenfalschungen des Klosters St. Maximin vor Trier (10.–12. Jahrhundert) (Sigmaringen, 1989), esp. 261–303. For a critique of the way in which charters have been unduly privileged as sources, see Lyon, “Noble Lineages” (though even this study makes good use of them, alongside other texts).
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Reichenau

In 2010, Rudolf Pokorny published a number of early modern transcriptions that had been discovered, and promptly set aside, in the course of a previous study of the scholar responsible for making them. The scholar in question, Konrad Peutinger, best known today for his celebrated copy of a Roman road map, had access in the early sixteenth century to now-lost texts from the island monastery of Reichenau in Swabia (southwestern Germany) that he collected for a planned book on imperial history. Some of the texts uncovered by the research into Peutinger were previously known to historians only in early modern German translation; a number were unknown in their entirety. Together, they shed light on the work of an unnamed forger who worked at the monastery under Abbot Udalric II in the early twelfth century and whose work focused on the monastery’s advocates.

The most exciting discovery among Peutinger’s transcriptions, however, is not a forgery but a genuine charter issued in the name of Abbot Udalric II around 1100. It begins with a lament about monastic advocates “who in no way behaved like subjects and faithful followers, but wished to be served upon like kings.” The abbot declared that he was taking the opportunity presented by the death of Reichenau’s advocate Hermann (recently assassinated by the monastery’s knights) to grant the advocatia of the monastery to an aristocrat named Arnold of Goldbach. The abbot’s grant came, however, with certain conditions, based on previous privileges but also on ancient custom (longevo usu), that the charter then set out. The advocate was not allowed to exercise any judicial authority on the island of Reichenau itself unless requested by the abbot; he was to hold annual judicial assemblies only at three specified locations off the island, or, by arrangement with the abbot, at a fourth location. Allowances in kind were determined for each assembly. Revenues from these placita were split unequally between abbot and advocate, and servants (servientes) of the monastery were exempted from the advocate’s authority unless requested by the abbot. The advocate was not to appoint a deputy (a subadvocate) without the abbot’s permission or to demand gifts as if they were owed. If any of these rules were broken, the penalty was loss of the advocacy.

These conditions are typical of hundreds of similar charters issued throughout the Reich: of common elements, only military service and fortification work were missed out. When looking at documents such as these, historians have focused on how they were intended as weapons against the advocate. That perspective can be justified in this case, as in others. Not long after this text was drawn up,

15 This forger was first identified by Johann Lechner, “Schwäbische Urkundenfälschungen des 10. und 12. Jahrhunderts,” Mitteilungen des Instituts für Österreichische Geschichtsforschung 21 (1900): 28–106. Earlier and later forgers had different targets: Pokorny, Augiensia, provides a concise discussion, 7–9. A general background is provided by Helmut Maurer, ed., Die Abtei Reichenau: Neue Beiträge zur Geschichte und Kultur des Inselklosters (Sigmaringen, 1974).
16 Pokorny, Augiensia, no. 32, 139–45, at 139.
the Reichenau forger used it as a template to create falsified documents for the monastery in the names of the emperors Charlemagne and Arnulf. The aim was not necessarily to concoct false legal “proof,” for the new charters could have been intended simply to convince the advocate of the rightness of the monastery’s cause, or even to stiffen the community’s nerves: an advocate claiming more than the 1100 charter permitted would have found himself facing a monastic community confident that their demands were genuinely rooted in an ancient past.

Yet we should note that the Reichenau charters, even the forgeries, did not actually deny the legitimacy of their advocate’s powers, if properly exercised. By projecting contemporary conditions back into the Carolingian age, a time when advocates had actually played a far less powerful role, the Reichenau forger constrained the advocate’s powers; but he also legitimated them, anchoring their exercise in a distant and authoritative past. The Reichenau monks were not simply opposed to advocates: after all, this was an institution where just a few decades previously, an advocate had taken laudably decisive action against a corrupt and simoniacal would-be abbot. Rather than merely monastic weapons aimed at avaricious aristocrats bent on taking advantage of royal or imperial weakness to impose themselves on neighboring monasteries, these texts were resources for negotiations, negotiations in which the monks played a leading, active role.

Saint-Mihiel

If they wanted to make changes to the relationship with their advocate, it was not always necessary for monks to resort to outright and wholesale forgery. A good illustration is furnished by a text roughly contemporary to that of Abbot Udalric II but produced some three hundred miles away, on the river Meuse. In 1135, the abbot of Saint-Mihiel issued a charter concerning the advocacy of lands at Condé-sur-Meuse. Surviving in its original form, this text sets out, in ways comparable to that of Reichenau, the dues, obligations, and rights of an advocate, though in this case concerning just one of the monastery’s estates. The advocate, Guido, was to play a role in judicial matters only on the invitation of the abbot and the provost, in which case he was entitled to a third of the judicial proceeds, and the fines were to be set by monastic officials, namely the villicus and the scabinus. Duels were to take place under the advocate’s supervision within the village itself, not at his residence, and they were only to be held after the abbot had attempted to resolve the dispute peacefully. The circumstances of the advocate’s military assistance were also carefully established, with details given of the...
support he could expect from the monastery’s estates. Finally, the advocate was declared to be entitled to no more than three expenses-paid visits to Condé a year. The text may seem perfectly clear, but to be understood properly it must be read in the context of two previous charters that also addressed the advocacy of Condé. In 1091, a charter had been put together on the death of the advocate (as at Reichenau) before the position was confirmed to the heir, Liethard. When on Liethard’s death the advocacy passed to Guido in 1116, the monks produced a revised document that made a number of small changes. The community now accepted the advocate’s rights to supervise the duel, the advocate’s rights to reside in the village were increased from “once or twice” to “twice or three times,” and the whole agreement was now guaranteed by the count of Bar and his court, charged with correcting any infractions of the agreement; the witnessing by inhabitants of Condé that had taken place in 1091 was apparently no longer necessary.21

The charter of 1135 was explicitly a revision of this 1116 agreement, for its preface states that Guido had “not rightly understood the meaning in some places” of the 1116 charter, having demanded more than was permitted, and that the opportunity was now being taken to clarify matters. Most historians have believed that the monks then proceeded simply to recopy out the 1116 text again. This is an entirely understandable conclusion to draw, not least because the 1135 charter was made to look physically very similar to its precursor.22 Nevertheless, on close inspection there are clear signs of tiny but meaningful changes to the text. For instance, in one phrase, a single word was moved:

1119 text: Sic tertiam partem summae et districtum suum, id est duos nummos, accipiet.
1135 text: Sic tertiam partem summae et districtum suum accipiet, id est duos nummos.23

We may suppose that Guido had understood the twopence (duos nummos), perhaps tendentiously, to cap only the districtum, and not the “third part” as well. Other minor changes clarified that payments were to the advocate alone, and that all military equipment lent to the advocate for military expeditions was to be returned after the expedition was completed.24 It is implausible that these changes, which together significantly alter the meaning of the text, are innocent slips of the pen, not least because the rest of the charter is identical to the letter, and moreover follows the explicit statement that the charter would be rewritten “in clearer words.”25 These changes presumably reflect the disputed points that the Condé advocate had “not rightly understood.”

21 Lesort, Chronique et chartes, no. 50 (181–85), and no. 64 (228–31).
22 For instance, Anja Gillen, St. Mihiel im hohen und späten Mittelalter: Studien zu Abtei, Stadt und Landesherrschaft im Westen des Reiches, Trierer historische Forschungen (Trier, 2003), 135–36, describing the 1135 charter as a “taktischen Pflichtübung.” All three charters are kept in Archives départementales de la Meuse, 4 H 33, and I am grateful to the archive staff for permitting me to consult the originals. The text of the 1091 and 1116 charters can now be accessed via the Artem database of original charters preserved in France as nos. 117 and 121, respectively, at http://www.cn-telma.fr/originaux/.
23 “Thus he will take the third part of the sum and his districtum, that is twopence.”
24 A further difference between the two texts as published in Lesort, Chronique et chartes, namely prefectio for perfectio (230 and 281), is merely a transcription error, and it should read perfectio in both. A small number of insignificant changes were made, such as ipsius for illius, idem for ipse.
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The advocacy at Condé then was shaped by texts, as the monks of Reichenau hoped their advocacy would be too. At around the same time, another advocate, Berthold, mockingly declared to the monks of Prüm in the Ardennes that anyone’s pen could write anything, but he was not going to lose his rights for that reason.\(^{26}\) The outcome of the case proved Berthold’s prediction wrong, yet he was surely right in his implication that monks were far from passive. Through texts, they negotiated the exercise of particular powers with certain families. The monks at Saint-Mihiel and Reichenau were clearly attempting to reduce these powers overall, and made the most of their mastery of record keeping to do so, in ways that may seem now to be deceitful. It is therefore all the more striking that they did not fundamentally reject the advocate’s claims but were satisfied with contesting certain details.

Advocacy across the Reich

As can already be seen from the two cases discussed above, advocacy agreements were always tailored to some degree to each monastery, so there is considerable variation from charter to charter, from institution to institution. But though generalization always brings inaccuracy, it is evident, and worth emphasizing, that monastic advocacy across the Reich had plenty of shared features, including, perhaps especially, the question of the exercise of justice, in almost every case delegated to some degree by the monks to the advocate. Contemporaries were evidently well aware that different advocacies had much in common with one another. The Reichenau forger produced charters about advocacy for other monasteries in the region, all based on the Reichenau template, and a forger at St. Maximin in Trier (on whom more below) similarly prepared advocacy regulation texts for several institutions around 1115.\(^{27}\) Clearly there was enough common ground for “best practice” about advocacy to be transferable between different communities, irrespective of local specificity.

This common ground also led to occasional efforts to regulate monastic advocacy at a wider level, beyond the case-by-case approach represented by most charters (and chronicles). For example, canons from a provincial council held at Salzburg in 1216, preserved in a single manuscript now in Munich (Bayerische Staatsbibliothek, MS Clm. 5822), record that the council issued two regulations about advocacy that implicitly applied across the whole archdiocese: that no advocate should take more from church property “than ancient custom reasonably permits,” and that if a church had charters defining the rights of its advocates, any breach of these rights should be met with excommunication.\(^{28}\)

\(^{26}\) Dietrich von Gladiss and Alfred Gawlik, eds., Die Urkunden Heinrichs IV, MGH DD H IV, 3 vols. (Berlin, Weimar, Hannover, 1941–78), vol. 2, no. 476 (647–50); “irridens testamenta dicensque penna cuiuslibet quelibet notare posset, non ideo suum ius amittere deberet,” 648–49. The charter is undated, but must be early twelfth century: see Kölzer, Urkundenfälschungen, 267–69.

\(^{27}\) Reichenau: Lechner, “Urkundenfälschungen.” St. Maximin: Kölzer, Urkundenfälschungen, 160–61. See below, 391, for a parallel example of the circulation of advocacy charters in Flanders around the same time.

At a still larger scale, kings and emperors too perceived monastic advocacy as something widely spread across the Reich as a whole and treated it as such. Whether decrees about it issued by Emperor Henry IV in 1099 and in 1104 were quite as wide reaching as nineteenth-century historians imagined is not clear, but by the mid-twelfth century there is less room for ambiguity.\(^{29}\) In 1152, Emperor Frederic Barbarossa’s Landfrieden allowed for advocates to lose their advocacies if they mistreated them.\(^{30}\) Just three years later, Frederic issued a charter for the monastery of Wessobrunn (Bavaria), and though this was a privilege for a specific institution, Frederic claimed in the document that his imperial predecessors Henry V, Lothar III, and Konrad III had all protected churches from advocates, and declared that the “judgment of our court” (iudicium curie nostri) was no different. In other words, Frederic asserted that there was a coherent position on the issue across generations of rulers, and across the empire.\(^{31}\) Given the frequency with which he encountered advocacy—over a quarter of his surviving charters deal with it in some way—this ought not to surprise us.\(^{32}\) Moreover, from the early twelfth century emperors began to emphasize the notion that all advocates owed their authority to the emperor himself, a concept known as the Bannleihe. The spread of this way of seeing things was perhaps as much due to monastic networks as imperial decree, but the effect was nevertheless to create a space of shared practice.\(^{33}\)

People outside the Reich also recognized that advocacy was an institution or set of practices that especially mattered there. Papal charters from the mid-eleventh century often included references to advocacy, but in general only for recipients within the empire.\(^{34}\) It is true that the Council of Reims in 1148 declared no ad-

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\(^{29}\) Frutolf of Michelsberg, *Chronicon*, ed. and trans. Franz-Josef Schmale and Irene Schmale-Ott, *Frutolfs und Ekkehards Chroniken und die anonyme Kaiserchronik*, Ausgewählte Quellen zur deutschen Geschichte des Mittelalters 15 (Darmstadt, 1972), 118; MGH Constitutiones et acta publica imperatorum et regum, 12 vols. (Hannover, 1893–2013), vol. 1, no. 75 (126), and also von Gladiss and Gawlik, *Die Urkunden Heinrichs IV*, vol. 2, no. 482 (657–58). Both texts may have been intended only for local application, but Hermann of Niederaltaich seems to have interpreted the *sententia* as a general rule and copied it into his collection.


\(^{31}\) Edited in MGH Const., vol. 1, no. 157 (219); see now, though, Appelt, *Die Urkunden Friedrichs I*, vol. 1, no. 125 (210–11).


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Vocate should dare to take or accept anything beyond what was permitted by ancient custom, without specifying that this applied to any particular geographical context. Nevertheless, it has been pointed out that on that same day the pope had issued two charters for two monasteries within the Reich about advocacy, and this may have influenced matters. Pope Hadrian IV seems to have been more direct in the 1150s, discussing advocacy with specific reference to circumstances “in the German kingdom” (in teotunico regno). And the Fourth Lateran Council of 1215, which demanded that advocati should take no more than was due to them by right, identified the problem as one that affected “certain ecclesiastical provinces.”

Monasteries and the Administration of Justice outside the Reich, 1: England and Northern Italy

It should by now be apparent that monastic advocacy was a phenomenon that took different forms in different settings within the Reich but that was nevertheless recognizably widespread. Precisely what was entailed varied from case to case, as the result of negotiations of which the charters that are our main record were themselves a part, but the general parameters were stable. In particular, there was an emphasis on limiting, but also legitimating, the rights of certain laymen to exercise judicial power over the inhabitants of monastic property. Yet as we have seen, there are also hints that monastic advocacy was quite specific to the Reich. How, then, did roughly comparable monasteries elsewhere deal at this time with the administration of justice that was the concern of advocates in the German empire?

England

Studying the ways in which communities of monks engaged with secular law in pre-Conquest England is difficult, because the evidence is scanty and, moreover, overwhelmingly skewed by the events of the Conquest itself, which provided both cause and opportunity for monasteries to rethink and redocument their position.


36 Clauss, Untervogtei, 126.

37 Ibid., 129, though it should be noted that the basis for the statement is Hermann of Niederaltaich, De advocatis: MGH SS 17:374, note *.

38 Antonio García García, ed., Constituciones Concilii Quarti una cum Commentariis glossatorum (Vatican, 1981), chap. 45 (84): “in quibusdam provinciis ecclesiarum.”

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Such evidence as there is, however, suggests that monks in late Anglo-Saxon England, even subsequent to the Benedictine movement of the tenth century, did not occupy any privileged judicial position and were directly subjected to public courts to the same degree as everyone else. Correspondingly, royal officials in pre-Conquest England were not impeded from access to monastic property, although on the Continent such a prohibition had been common since the seventh century.40

If that was the case, then for once the Norman Conquest really marked a significant shift. The monastery of Bury Saint Edmunds in the east of England, effectively founded in the early eleventh century but claiming a much older ancestry, provides a good example of how things worked, and how they changed.41 Before the Conquest, the monastery had obtained a whole series of royal writs from c. 1044 onwards confirming a jurisdictional exemption remarkable in Anglo-Saxon England but still very limited; these documents did not stop a royal officer from holding a court in the monastery’s very precincts, and only applied to the hundred court anyway.42 By around 1100, however, the monastery was capable of punishing petty thieves and of summoning knights to account and had produced some forged charters in the names of Kings Edmund and Cnut to beef up earlier concessions.43 More significantly, the monks had also acquired a document from King William II, c. 1087, prohibiting royal agents from entering the monastery; they soon added a charter from King Henry I, c. 1103, confirming this prohibition and

begun a new project on ecclesiastical jurisdiction in Anglo-Saxon England, which will shed much further light on the question.


43 Herman, Miracles of Saint Edmund, ed. Licence, 346–48 (thief), and 64–66 (knight); Sawyer, Anglo-Saxon Charters, nos. 507 and 980. A twelfth-century manuscript, New York, Pierpont Morgan Library, MS M 736, produced at the monastery, portrays thieves being hanged at fol. 19v to illustrate an earlier episode of the community’s history.
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also expressly commanding those who held land in the abbey’s sphere of jurisdiction, the Eight and a Half Hundreds, to attend the abbot’s court.44

These rights evidently meant a great deal to the Bury monks, who defended them energetically.45 Their main preoccupation may well have been freedom from the diocesan claims of successive bishops of East Anglia, but a famous dispute in 1148 shows secular justice mattered too.46 In that year, Abbot Ordring objected when a public court attempted to put some of his retinue on trial (for trying to assassinate the king, no less).47 The abbot received support from a pious elderly layman, Hervey of Glanville, who claimed that the abbot of Bury and his ministri had always dealt with all pleas that arose on the monastery’s land in its own court (curia), except those about treasure and murder. The monastery continued to defend its privileges into the late twelfth and thirteenth century, stoutly rejecting the idea that anyone outside the monastery and its familia should have any involvement in the routine administration of justice.48

Another example is provided by the monastery of Glastonbury in the southwest of England. By around 1130, this monastery too rejoiced in remarkable charters issued in the names of ancient pre-Conquest kings, such as Ine, Edmund, Edgar, and Cnut.49 The charter in King Ine’s name granted the abbot the powers to resolve cases of murder, theft, and rape, among others, and forbade royal officers to enter. The text supposedly issued by King Edmund confirmed that only the abbot could determine legal questions within its lands, whether large or small, while King Edgar’s diploma confirmed that the abbot’s court (curia) had the same power as his own. As at Bury, all these texts are flagrant post-Conquest inventions (Thorpe memorably described Ine’s charter as a “glaring monkish forgery”), but they nevertheless indicate what the monks thought their


45 Sharpe, “Use of Writs,” 277–79, suspects that some of the monastery’s numerous post-Conquest royal writs were acquired in response to incursions, probably by royal officials.

46 For the attempt of Bishop Herfast to bring the monastery under tight episcopal control, see the introduction by Licence, Miracles of Saint Edmund, xxxii–xxxiv, as well as Sarah Foot, “The Abbey’s Armoury of Charters,” in Bury St Edmunds and the Norman Conquest, ed. Thomas Licence (Woodbridge, UK, 2014), 31–52.


48 Van Caenegem, English Lawsuits, 2:627–28; for the full context, see Jocelin of Brakelond, The Chronicle of Jocelin of Brakelond, ed. and trans. by H. E. Butler (Edinburgh, 1949), 50–52; see also 134–37 for a similar case around 1200.

rights should be.\textsuperscript{50} And again, as at Bury, there is some indication of what this meant in practice. According to William of Malmesbury, writing in the 1120s, Abbot Thurstan in 1085 had vigorously defended Glastonbury’s privilege that all legal matters, secular or ecclesiastical, were at the abbot’s disposition.\textsuperscript{51} It may be significant that despite his name, Thurstan was not English, and he indeed had attempted to bring with him monastic customs and traditions from Normandy, to the dismay of the Glastonbury community.\textsuperscript{52}

Not all monasteries in England had such far-reaching rights as Bury and Glastonbury, and we should be wary of assuming that even these were always able to put into practice the full range of powers claimed in their archives. It is nevertheless quite clear that post-Conquest English monasteries did routinely claim some exemption from public systems of justice, at least to the same degree as other landlords.\textsuperscript{53} Naturally such a generalization hides a multitude of specificities. In many, perhaps most, cases, very serious crimes such as murder were reserved for royal justice, although even this was not always so.\textsuperscript{54} In no monastery, though, even those with the most ambitious claims, do we find any reference to advocates, let alone regulations of advocates’ powers such as were produced in the \textit{Reich}. Instead, virtually every English monastery of any size was expected to administer some justice on its lands through its own monastic officials, “almost, if not quite, as a matter of course.”\textsuperscript{55} Often monks had difficulties with these officials, for power was difficult to delegate—but there was no dispute that they were in principle under the abbot’s direct control and not external to the monastery in any meaningful sense.

In short, the administration of justice on monastic lands in post-Conquest England was a matter of negotiation between monasteries and their agents on the one hand, and the king and his agents on the other. This perhaps reflected the importance of justice for the Norman kings in ruling their unusually centralized kingdom, but it also says something about the nature and perception of these monastic communities—a point to which we shall return.\textsuperscript{56}


\textsuperscript{54} See Johnson and Cronne, \textit{Regesta}, xxxii (with examples).


\textsuperscript{56} See also the comments about English monasticism in Alain Boureau, \textit{La loi du royaume: Les moines, le droit et la construction de la nation anglaise (XIIe–XIIIe siècles)} (Paris, 2004), esp. 23–38.

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Northern Italy

In northern Italy, unlike England but similarly to the Reich, references to people termed advocates (advocati) are common in monastic documents. These figures are, however, simply legal representatives, akin to those documented across the Frankish kingdoms in the Carolingian period. That does not mean Italian monasteries had no responsibility for justice. Quite on the contrary, monasteries in Italy were taking responsibility for the administration of justice even from before 900 in a way foreign to the rest of the Carolingian world, to judge from the livelli contracts that conferred rights to adjudicate certain kinds of disputes for their tenants. It is not clear whether we can talk of a distinctive “signoria ecclesiastica,” but we can be sure that monasteries routinely exercised powers of justice from the eleventh century onwards.

Exactly how things worked in practice is a little uncertain, since much of the evidence is either rather late or thinner than sometimes assumed. But the key point is that, in Italy as in England, there was no sense that monastic communities needed external figures to validate or to undertake normal judicial business. For example, the nuns of San Giulia of Brescia received a string of papal charters confirming that no one could hold a court on their lands without permission. There is no record in their archives that this ever became the object of any serious tension. They did have a prominent advocate, Lanfranc of Cazzago, but when we see him performing his role, it is in dutifully attending a ducal court in 1050 to assert the nuns' control over the jurisdiction of their properties. Lanfranc continued to provide valuable judicial assistance to the nuns in later years, too, for example in 1070 helping them carry out the leasing of a castle at Pian Camuno with all the


58 Cinzio Violante, “La signoria rurale nel secolo X: Proposte tipologiche,” in Il secolo di ferro, Settimane di Studio del Centro Italiano di Studi sull’Alto Medioevo 38 (Spoleto, 1991), 329–85, doubted that a specifically ecclesiastical seigneurie existed, while Giancarlo Andenna, “La signoria ecclesiastica nell’Italia settentrionale,” in Chiesa e mondo feudale nei secoli X–XII, Miscellanea del Centro di Studi Medievali 14 (Milan, 1995), 111–49, noted that the “signoria territoriale di banno ecclesiastica” was essentially the same as that exercised by laymen. See Laurent Feller, Paysans et seigneurs au Moyen Âge: VIIIe–XVe siècles (Paris, 2007), 120–25, for contextualized discussion.


61 Ezio Barbieri, Irene Rapisarda, and Gianmarco Cossandi, eds., Le carte del monastero di S. Giulia di Brescia I (759–1170), Codice Diplomatico della Lombardia Medievale (CDLM) (online publication at http://cdlm.unipv.it/): for example, a charter of Pope Innocent II (1132), vol. 1, no. 117.
judicial rights held by the convent. Lanfranc’s role seems to have been very clearly perceived as using his expertise to mediate between the monastery and external authorities. When the nuns were obliged to negotiate disputes over the revenues from their holdings, these disputes were with the inhabitants, not their advocates.

The monastery of Sant’Ambrogio of Milan, an old Benedictine establishment, presents a similar picture. Here too the monastic archives preserve plenty of reference to advocates in the sense of legal representatives, who were often prominent citizens. We see one, for example, validating the oaths taken by the inhabitants of the village of Arogno when they pledged not to challenge the claims of Sant’Ambrogio’s cell, San Zeno, over nearby lands. Yet the abbot was nevertheless very much capable of representing himself as the sole source of legal authority for the monastery’s estates. For instance, in a charter supposedly issued by the monastery in 1015, the inhabitants of an apparently precociously self-conscious rural community at Inzago committed themselves to the jurisdiction of the abbot, “as if to the count.” This text may have been interpolated, but if so this must have been done before the extant copy was written in the middle of the twelfth century.

Like his counterparts at Bury Saint Edmunds and Glastonbury, the abbot of Sant’Ambrogio was intent on defending these rights. For instance, in the later twelfth century the monastic community vigorously contested the claims of the bishop of Como to exercise justice over estates in Valtellina and even produced a questionnaire for local inhabitants exploring how these rights had been exercised, which survives as a scruffy original in the Archivio di Stato of Milan. Had this bishop’s agent ever extorted *mendiantiae*; and if so, when, where, from whom, for how much, and what for—and what had he looked like? The text gives an excellent indication of what kind of rights the monastery was claiming, without a whisper of an advocate’s involvement.

Barbieri, Rapisarda, and Cossandi, *Le carte del monastero di S. Giulia*, no. 75 and no. 84; also Manaresi, *I placiti*, vol. 1, no. 384.

E.g., Barbieri, Rapisarda, and Cossandi, *Le carte del monastero di S. Giulia*, no. 149.


Cesare Manaresi and Giovanni Vitanni, eds., *Gli atti privati milanesi e comaschi del secolo XI*, 4 vols. (Milan, 1933–69), vol. 1, nos. 40, 97–98 (1010). For an example of a prominent family from Milan, the Grassi, who were hereditary advocates of Sant’Ambrogio, see Chris Wickham, *Sleepwalking into a New World: The Emergence of Italian City Communes in the Twelfth Century*, *Lawrence Stone Lectures* (Princeton, 2015), 219 n. 31.


Ada Grossi and Marta Mangini, eds., *Le carte del monastero di S. Ambrogio di Milano, III, 1101–1200*, 2 vols., Codice diplomatico della Lombardia medievale (online publication at http://cdlm.unipv.it/), vol. 2, no. 42 (1187). The original is preserved in Milan, Archivio di Stato, MS Pergamene Cartella 313, and I am grateful to the archives for allowing me access to this remarkable document.
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Naturally monasteries like Sant’Ambrogio could and did enter into agreements with powerful people to provide protection: for instance, the monks made an agreement in 1105 with Alberic the vicedominus of Como to protect their interests.\(^{68}\) That kind of protection was normal across the whole of the Latin West, as one would expect in circumstances where local powerbrokers were a more immediate presence than distant kings. But even with the extraordinarily rich Italian documentation to draw upon (there are over nine hundred charters extant from Milan alone in the eleventh century), there are no Italian texts comparable to the advocacy charters of the Reich. This may reflect in part the relative unprofitability of justice in northern Italy when compared with lands to the north, and perhaps in part too the alternative possibilities for power building afforded by rapidly growing urban communities.\(^{69}\) But it may also be simply that northern Italian monastic communities felt no need for advocates in this capacity. The only exception is to be found in Gorizia (or Gorg) in the far northwest, near Aquileia in Friuli. Here, monastic advocacy provided a, or perhaps the, basis of power for a family who became the counts of Gorizia, as can be traced in a series of charters that began in 1138 and culminated in 1202.\(^{70}\) These texts emphasized that the power of the advocate rested ultimately on his control of the placita of monasteries. Gorizia apart, there was in Italy no monastic advocacy of the German type—and Gorizia is so far to the north that in a sense it only confirms the general point.

**Monasteries and the Administration of Justice outside the **reich**, 2: France**

In neither England nor Italy, then, is there much evidence for anything like the advocacy attested by the charters from Saint-Mihiel or Reichenau, with the exception of the far northwest of Italy on the linguistic and political border. It has long been recognized that the case of France is more complicated, despite occasional attempts to mold the evidence to fit a German historiographical framework.\(^{71}\) One of the earliest approaches to this complexity was that pioneered by the legal historian of Lorraine, Félix Senn, who in 1903 suggested that a line ran from Lyons, through Bourges, Orléans, and Chartres, into Normandy, a line to whose south and west monastic advocacy was not to be found.\(^{72}\) This “Senn line”  

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\(^{68}\) Grossi and Mangini, *Le carte del monastero di S. Ambrogio di Milano*, vol. 1, no. 7.

\(^{69}\) On profitability, see Feller, *Paysans*, 157–58. On towns, see now Wickham, *Sleepwalking*.


\(^{72}\) The absence of monastic advocacy in Normandy is the subject of a celebrated article by Jean Yves, “Autour de l’absence d’avouerie en Normandie: Notes sur le double thème du développement du pouvoir ducal et de l’application de la réforme grégorienne en Normandie,” *Bulletin de la Société Speculum* 92/2 (April 2017)
has subsequently proven influential, and rightly so, for it does indeed reflect the evidence.\(^73\)

**South and West**

To the west and south of Senn’s line, there is no more sign of monastic advocacy than there was in post-Conquest England (which is unlikely to be a coincidence, given the circumstances of the Conquest). This is not to say that there were not approximations. Take, for example, the case of Saint-Aubin in Angers. In the eleventh century, this relatively conservative monastery remained close to the count of Anjou and overtly hostile to some aspects of church reform, as the monks spectacularly demonstrated when they refused to allow Pope Urban II to consecrate their church in 1096.\(^74\) A little earlier, the monks had produced a record of the attempt by a local castellan of Montreuil-Bellay to assert his authority over the monks’ estate at Méron, some sixty kilometers away from Angers, in texts that recall some of the aspects of advocacy encountered in the pages above.

In a now famous pair of charters, the monks made it clear that the castellan Rainald and his representatives had overstepped the mark by beating and even killing monastic dependants.\(^75\) Still, the monks accepted that Rainald did have legitimate authority in six areas: rape, arson, bloodshed, and theft, as well as hare hunting and road tolls, though they maintained that even in these cases, the monks should have the chance to deal with the matter first (a clause noticeably absent from Rainald’s version of the text).\(^76\) What is more, we know from another charter that the monks had given Rainald land in exchange for his promise to protect monastic estates. Justice and protection: precisely the two themes that Hermann of Niederaltaich had emphasized in his account of advocacy.

Yet the monks at Saint-Aubin did not call Rainald an advocate (*advocatia* had quite a different meaning in Anjou)—and for good reason since, on closer inspec-
tion, the conditions at Méron turn out to be quite different from advocatial relations in the east. The six “cases” (forsfacta) reserved to Rainald were defined more by ideas of public justice than by monastic anxieties: these were rights that the Angevin counts attempted to monopolize as “high justice,” as is evident from earlier charters to the monastery. And the monks soon changed their position even on this, as the community belatedly embraced “reform” in the years around 1100. In a 1129 charter, they declared that their lands at Méron had originally been “in every respect extremely free” (omnino liberrime) before they had voluntarily (sua sponte) placed comital vicarii there, whose powers the count had subsequently delegated to Montreuil; the claim was echoed in a narrative from around 1151, in which the monks asserted that they had owned Méron long before the counts had imposed their authority in the area by building the castle at Montreuil. In other words, the Saint-Aubin monks in 1129 confirmed that the secular exercise of power at Méron was based on public, delegated authority, but simultaneously undermined that delegation by invoking an older, precomital past when the monks’ authority had been unfettered.

The monks of La Trinité at Vendôme seem to have had fewer hesitations in asserting their exemption from external secular jurisdiction. A charter dated to 1040 declared that the monastery should have its own court, the curia abbatis. In fact the text in question is probably a forgery from 1100, as are a few other similar ones. But whatever the document’s date, what is striking is that it made no reference at all to any external agent having legitimate claim over judicial business within the monastery. The monks considered this something that they could deal with themselves, and we can see that at least sometimes they put this idea into action, at least in the late eleventh century. Laymen certainly did try to extract revenues from La Trinité’s lands, sometimes on the basis of claims of justice. At no point, though, did the monks at Vendôme accept that such claims held any legitimacy: as one specialist has recently commented, their aim in the decades around 1100 was to be “free of all secular influence.” There was no monastic advocacy here.

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78 For example, Geoffrey Greymantle’s important charter of 966, which granted vicaria potestas but kept back theft, murder, and arson: Broussillon, *Cartulaire*, vol. 1, no. 2 (6).
79 On this, see Guillot, *Comte d’Anjou*; and Kohl, *Konflikt und Wandel*.
80 Broussillon, *Cartulaire*, vol. 2, no. 932 (408); the chronicle is in Paul Marchegay and Émile Maßonneau, eds., *Chroniques des églises d’Anjou* (Paris, 1869), 83–90, at 85 (for a discussion of the source, see Dutton, “Geoffrey,” e.g., appendix I, 4).
82 Meinert, “Fälschungen,” 241, referring to charter no. 319 from the 1080s.

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North and East

To the north and the east of Senn’s line, however, matters were less clear-cut. Flanders was part of the kingdom of West Francia, but it is well known that advocacy was important there, even if the topic still “awaits its historian,” as one recent article put it.85 Like some Picardy communities (such as Corbie or Saint-Riquier), Flemish monasteries produced charters regulating advocacy in ways that would have been absolutely familiar to monastic houses east of the Meuse or Scheldt.86 A particularly interesting case is provided by a charter in favor of Saint-Bertin, issued it seems in 1042 by Count Baldwin V of Flanders.87 In some respects this is a typical advocacy charter, though a little earlier than most, for which reason it has often been treated with caution. Authentic or not, what is especially interesting is how the text was “activated” in the decade that followed 1100, under Abbot Lambert. This activation took place in the monastery of Saint-Bertin itself, but, much as charters and expertise from St. Maximin of Trier and Reichenau were put at the service of neighboring monasteries at around this time, in this instance too there was also a “circulation d’actes,” as Jean-Francois Nieus and Steven Vanderputten have shown.88 The Saint-Bertin text was brought out to serve as a template first for the monastery of Saint-Amand, who used it to create a charter in 1116, and then for the recently refounded institution at Marchiennes, whose community relied on it to create a splendid forgery dated to 1038, backed up with a concentration on advocates in its miracle stories.89

Further south, however, things were more ambiguous. For example, the monastery of Saint-Denis in Paris began dealing with justice itself, directly, from an early date, as confirmed in a charter from King Robert the Pious from 1008, linked to forged charters produced by the monks in the name of King Dagobert...
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and King Charles the Bald. 90 True, in the course of the twelfth century the monastery had occasional brushes with people who claimed to be advocates. But it is striking that when these claims were made, the monastery either bought them off (as Abbot Suger did at Toury) or treated them as entirely illegitimate. 91 For the most part, the exactions levied by laymen on the monastery’s estates were treated as “exactions” and unjust “customs.” 92 At the nearby monastery of Saint-Maur-des-Fossés, the eleventh-century monks acknowledged the claims of men claiming to be advocates in their charters, but at the same time used hagiography—the Vita Burchardi—to erase any traces of advocacy from the community’s past. 93

Monasteries further to the east demonstrated a similar ambivalence about advocacy. For instance, the monks at Saint-Remi of Reims did sometimes talk of laymen as exercising the rights of advocacy, but only seldom issued full-blown charters of regulation. 94 But the monastery also had lands east of the Meuse, and for these there was no hesitation at all in talking about advocacy. In a fascinating document from 1149, Emperor Konrad III declared that only the advocate who had received the bannum from his own hands (the Bannleihe, as mentioned above) could hold placita or settle cases in Saint-Remi’s lands in the Reich at Kusel. 95 It may be significant that the monks of Saint-Remi had not themselves drafted the terms of this charter, which was instead the work of Wibald of Stavelot, an abbot

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92 For example, the actions of the count of Dammartin at Tremblay and the oppressor of the lord of Méreville at Monnerville: Suger, “De administratione,” 60–62 and 78–80.


94 For advocacy in the region, see Michel Bur, La formation du comté de Champagne, v. 977–v. 1150 (Nancy, 1977), 343–92. An example of a charter issued by Saint-Remi dealing with advocacy is one issued in 1126 concerning Alliancelles, preserved in Archives départementales de la Marne, Annexe Reims, 56 H 102. I am grateful to the archivists for permitting access to this charter.

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of a monastery in the Reich with a great deal of personal interest in and experience of monastic advocates. 96

Other monastic communities in this part of the French kingdom had similarly fluid attitudes to advocacy. For example, the monastery of Saint-Urbain in the diocese of Châlons-sur-Marne, founded by the king and bishop in the ninth century, made in 1132 a charter that is, squarely, an advocacy regulation similar to those of Reichenau or Saint-Mihiel. 97 This charter of regulation, now preserved in Paris and still lacking a printed edition, did not however settle the matter. According to a series of unimposing (and unpublished) charters now preserved in the departmental archives in Chaumont, one aristocratic family maintained judicial rights at the monastery’s estate at Landéville until the 1190s, when the monastery finally won them back. 98 More broadly, the monastery continued to accept the claims of the Joinville family to act as its general advocate. 99 By the thirteenth century, these claims had been reconceived as merely political protection or patronage, labeled as garde; and in 1266 the monastery suggested to the king that even this really belonged to him, much to Jean of Joinville’s irritation. 100 Not until the fourteenth century, however, after a little judicious charter burning and a large payment in silver, was the issue finally resolved, and the garde formally transferred to the king.

The Geography of Monastic Advocacy, 1: Political Approaches

It should by now be evident that the judicial tasks allotted to monastic advocates within the Reich and along its western fringes in the decades around 1100 were performed outside it primarily by the monks themselves, together with their subordinated officials, in conjunction or in competition with public officials. As a result, monastic advocacy of the kind that was normal and so important in the Reich was essentially absent in England, northern Italy, and most of France. This

98 Archives départementales de la Haute-Marne, 9 H 19; Delaborde, Joinville, nos. 84, 90, and 140.
99 I am grateful to the Archives départementales for granting access to these documents.
100 Jean de Joinville, Vie de Saint Jean, ed. and trans. Jacques Monfrin (Paris, 2010), chap. 677 (338): according to Jean, the king suggested that “il peut bien estre que l’eritage est vostre, mez en la garde de vostre abbaïe n’avés vous riens,” but Jean was able to convince him otherwise. The edition has a useful summary of the affair at xxi–xxii. On garde, see Noël Didier, La garde des églises au XIIIe siècle (Paris, 1927).
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pattern is clear, and until we can account for it, we may doubt whether we have really understood monastic advocacy at all.

Most historians who have looked at monastic advocacy have, unsurprisingly in view of this evidence, done so from within a German-language perspective, shaped by the tradition of “regional history,” or Landesgeschichte, that consistently emphasized the specific. As a result, they have seldom considered why monasteries elsewhere in the Latin West managed without it. A comparative perspective does not seem urgent when every region, indeed every monastery, is considered a Sonderfall, or “special case,” and where the emphasis is on Mannigfaltigkeit (“multiplicity”); nor is it easy to carry out comparisons on the basis of research conducted in this vein.101

More profoundly, though, the way in which German-language research into advocacy has traditionally been framed has further hampered comparative work. Within this framework, advocacy has been treated as essentially a product of the Germanic nature of aristocrats’ power: Munt, the power to protect that was autogenous to the aristocracy (Adel); and Eigenkirchenwesen, the propensity to own churches, for which advocacy represented a compromise responding to reform.102 If advocacy was determined by the structure of the Germanic “state” or constitution in this way, then it is obvious why advocacy should have been restricted to the Reich, and the matter seems not to require further exploration.103 Yet to modern eyes, such an ethnicized approach, reliant on concepts that are increasingly drawing fire in the most recent scholarship, seems unlikely to offer an adequate explanation. After all, monastic advocacy was certainly prevalent in the empire, but, as we have seen, it could also be found in non-German-speaking areas and outside the borders of the Reich, shading off west of the Meuse in Flanders and Burgundy, while it was entirely absent in “Germanic” Anglo-Saxon England and post-Lombard Italy too.

Recent English-language work has taken what seems at first sight a very different approach. In a recent book by Thomas Bisson, the advocacy found in the Reich is merely a regional variant of the “bad lordship” that characterized the whole of the Latin West in the twelfth century. Yet although Bisson’s approach is located within the predominantly francophone literature about the “mutation féodale,” such an equating of the experiences at Méron and Condé-sur-Meuse can also be seen as the application of an originally German-language concept

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of medieval lordship to a wider canvas.\textsuperscript{104} Justified though this may be in broad terms, it is surely important that the claims made by Rainald and Guido met with different responses: inserted into a discourse about public power or otherwise rejected by the monks at Mérón, qualified but largely accepted by the monks at Condé. For the inhabitants of these villages, this might not have made a great deal of difference, but at a higher scale, as we have seen, monastic advocacy like that at Condé buttressed configurations of power in the east in ways that were not possible in the west, and this also mattered.\textsuperscript{105}

That historians working in French traditions have tended to pay more attention to regional diversity is natural in light of the evidence assessed above. Explanations for the presence and absence of advocacy have tended here to focus not on the nature of the aristocracy as such, but on politics: where political conditions were unstable, monasteries turned to advocates; as French kings began to assert themselves, advocacy melted away.\textsuperscript{106} In a stimulating and important recent analysis comparing Anjou and Swabia, Thomas Kohl has refined this approach, suggesting a connection with the survival or otherwise of the early medieval monastic immunity, whose importance in the earlier period is currently being revisited.\textsuperscript{107} Clearly monastic advocacy had some connection to monastic immunity, which was intended to insulate monasteries from secular pressures. Yet as Kohl himself notes, this merely transfers the problem: for why did immunity break down in one region and not in another?

In all these approaches, monastic advocacy tends to become a cipher for aristocratic power in one way or another, with the consequence that the monastic dimension is subordinated to the political and the legal. Given that the evidence, as we have seen, suggests advocacy in the Reich was shaped by the monks as much as by the aristocrats, it might be time to credit these socially and ideologically powerful communities with more capacity of action.\textsuperscript{108} If we use the charters dealing with advocates less as evidence for aristocratic practices of domination and territory building, and more as indications for how monasteries interacted with these aristocrats, then a new perspective opens up. Rather than considering monastic advocacy as merely reflecting the nature of the Germanic aristocracy or political circumstances, we might see it instead, or as well, as expressing something of the nature of monasticism in these regions: specifically, a profound anxi-
ety about monks carrying out, whether in person or through direct delegation, the full range of secular justice.

**THE GEOGRAPHY OF MONASTIC ADVOCACY, 2: A MONASTIC APPROACH**

That such anxiety existed would hardly in itself be surprising. Since late antiquity, judicial administration had been strongly associated with the kind of worldly business (*negotia saecularia*) that clerics were supposed to avoid, and from which monks were supposed to be fleeing. The notion that clerics and monks ought not to act as judges themselves was occasionally articulated in the ninth century.\(^{109}\)

In the eleventh and twelfth centuries, however, it seems to have become more strongly and consistently expressed by a range of writers in the *Reich*.

For instance, the prolific author Gerhoch of Reichersberg, working in the diocese of Salzburg in the mid-twelfth century, insisted over and over again in the course of a long career and across a number of different texts that those in the church ought to have no involvement in the shedding of blood. For Gerhoch, that meant that the enactment of violent punishment, the *Blutgericht*, was properly reserved to kings and those wielding powers delegated by them: as he wrote in 1156, “The judgement and affairs of blood are absolutely prohibited to priests and others who serve God.”\(^{110}\) If clerics were to have duties of this nature placed upon them, then they should carry them out “through laymen obligated in fidelity to their churches.” Gerhoch emphasized, however, that this power to judge ultimately came from the civil authorities, not from the church itself: not so much because these were public rights, but because they were at odds with the church’s mission and nature.\(^{111}\)

Gerhoch was of course a regular canon, but similar sentiments had already been expressed by Benedictine monks in literature produced a little earlier in the decades around 1100 in the course of debates over the so-called investiture controversy, for instance in the famous *Liber de unitate ecclesiae conservanda*, a text written at the Saxon monastery of Hersfeld in the 1090s.\(^{112}\) The Lotharingian author Sigebert of Gembloux also emphasized that clerics and monks should not wield the earthly sword in his famous letter to Pope Paschal II, written in 1103,

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\(^{109}\) For example, Theodor Schieffer, ed., *Die Urkunden Lothars I und Lothars II*, MGH DD Lo I/Lo II (Berlin, 1966), no. 92 (227): “pro criminalibus culpis, de quibus sacerdotibus et monachis non est licitum iudicare.” The charter is cited by Bougard, *Justice*, 238, who observes that “quelques soupçons ont été formulés sur son authenticité,” but the text is at least from the tenth century, judging by its transmission.


\(^{111}\) Gerhoch, *De Psalmis*, 465; *De investigatione Antichristi*, 345.

\(^{112}\) *Liber de unitate ecclesiae conservanda*, ed. Irene Schmale-Ott and Franz-Josef Schmale, *Quellen zum Investiturstreit*, 2 vols., Ausgewählte Quellen zur deutschen Geschichte des Mittelalters, Freiherr vom Stein-Gedächtnisausgabe 12b (Darmstadt, 1984), 280: “Sacerdotale enim iudicium non habet nisi gladium spiritus,” 280; also the emphasis on bloodshed in comparing the court (*curia*) to bloodshed (*cruor*), 328 and 518.

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a theme that also recurred in his other works. None of these authors directly linked his arguments about the exercise of violence to the importance of advocates. Yet it is surely significant that all came from institutions where ecclesiastical advocacy was well established, and indeed Gerhoch of Reichenberg himself wrote a charter determining advocates’ obligations and entitlements.

Even more salient to this discussion is the case of Abbot Berengoz, or Benzo, of St. Maximin. In the years around 1100, Benzo wrote a lengthy sermon in which he emphasized (like Sigebert) that the church was best served by cooperation with people outside the church’s hierarchy, so that “neither should the kingdom be separated from the priesthood, nor the priesthood from the kingdom.” And he ferociously attacked the “heretics” who were seeking like madmen to disrupt this natural partnership. The sermon was not aimed at winning over the laity—it seems to have been intended for delivery in the monastery, as an expression of monastic ideas, for a monastic audience.

Again, Benzo did not explicitly mention advocacy in his sermon. As it happens, however, we know that Benzo was the author of an entire series of forged advocacy charters for St. Maximin, briefly mentioned above. As already discussed, such charters are usually seen as attacks on aristocratic advocacy, which certainly formed an important part of St. Maximin’s relations with the outside world, as its twelfth-century estate survey demonstrates in recording some of the dues payable to them. Yet when considered alongside Benzo’s sermon, we would surely do better to consider his charters as documents setting out a partnership in line with his general concept of the church, divided between those


114 For Gerhoch’s personal experience in drawing up charters, see Appelt, Die Urkunden Friedrichs I, vol. 2, no. 355 (195–97), and Classen, Gerhoch, no. 103 (375–76). For positive views at Hersfeld of advocates, see Lampert, Annales, 171 (1071); cf. however the same author’s Libelli de institutione Herveldensis ecclesiae, ed. Holder-Egger, Lampert Operæ, for a less flattering account. On advocacy at Gembloux, see Alain Dierkens and Jean-Pierre Devroey, “L’avouerie dans l’Entre-Sambre-et-Meuse avant 1100,” in Parisse, L’avouerie en Lotharingie, 43–94.


117 As Krönert, “Helena, das Kreuz Christi und die Juden,” concludes, partly based on the frequent references to “fratres,” and partly on the sheer length of the text.

118 Benzo’s forged charters for St. Maximin are exhaustively discussed in Kölzer, Urkundenfälschungen. See above, 380.

119 Reiner Nolden, ed., Das Urbar der Abtei Sankt Maximin vor Trier, Rheinische Urbare 6 (Düsseldorf, 1999), for instance, 47, 56, 61, and 64.
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who are of the world and who act outside, and those who are of God and who act inside.\footnote{Benzo, \textit{Libellus}, PL 160:1006: “quoniam in Ecclesia Dei . . . sic est ordo distinctus, ut in his quae sunt saeculi, et in his quae Dei, unus operetur foris et alius intus” (comparing the division of labor to that between bakers and fishermen).}

This acceptance of lay collaboration with monastic life may seem entirely unproblematic when set out in this way. Nevertheless, it was rather less common in the west and south of the former Carolingian empire, as contemporaries themselves recognized. Gerhoch noted how things were “different in France,” where churchmen had no qualms about dealing with violent punishment.\footnote{Gerhoch, \textit{De investigatione Antichristi}, 345.} He made the point about bishops in particular, but in fact we can see evidence of a quite different attitude among monastic leaders too. A good illustration is provided by a writer active at around the same time as Sigebert and Benzo, Abbot Geoffrey of Vendôme (d. 1132). Abbot Geoffrey was far more alarmed by the idea of ecclesiastical matters coming before a secular court than by the involvement of office holders within the church in the exercise of justice, which never struck him as a problem.\footnote{Geoffrey of Vendôme, \textit{Oeuvres}, ed. Gérard Giordanengo, Sources d'Histoire Médiévale (Turnhout, 1996), letter no. 161 (356–59): “Ommino enim injustum est et sacris canonibus . . . penitus obviare videtur ut ecclesiastica causa seculari et peregrino judicio terminetur.”} For Geoffrey and others like him, the best solution was for the church, and by implication monasteries and their monks, to deal with these issues itself: as he wrote in 1119, liberty meant not being subjected to secular power.\footnote{Geoffrey of Vendôme, \textit{Oeuvres}, letter no. 176 (404): “Aecclesia semper catholica, libera et casta esse debet. . . . Libera quia seculari potestati non debet subici” (Geoffrey reused the formulation later, 454). See Foulon, \textit{Église}, 458–65 (though with a focus on bishops).}

Like Benzo, Geoffrey had no hesitation in making recourse to forgeries to buttress his point when it came to his own institution at Vendôme, and indeed he was almost certainly responsible for the texts that claimed justice for the abbot’s court, written around 1100, discussed above.\footnote{Exhaustively discussed in Meinert, “Fälschungen.”} But rather than devising texts that wrote the administration of justice by laymen into the monastery’s distant past, as Benzo had done, Geoffrey’s forgeries excluded those laymen altogether: matters were to be dealt with at the abbot’s court (\textit{curia abbatis}) alone. Little wonder, then, that Geoffrey fell out with many aristocratic patrons over their “unjust” actions.\footnote{Ibid., 302: “Unter Gottfrieds Leitung entbrennt ein heftiger Kampf von fast ununterbrochener Dauer gegen alle aussenstehenden Gewalten, weltliche sowohl wie geistliche.”}

Perhaps, however, the most intriguing piece of evidence in this context is provided by a letter sent by Peter the Venerable, the famous abbot of Cluny, to Bernard of Clairvaux around 1124. Described by one historian as “an aggressive defense of traditional Cluniac practices,” and well known for its candid comments about secular lordship, the letter also sheds important light on Peter’s attitudes to justice and, unusually, makes direct reference to advocates.\footnote{For the quotation, see Gillian K. Knight, \textit{The Correspondence between Peter the Venerable and Bernard of Clairvaux: A Semantic and Structural Analysis} (Aldershot, 2002), 25. On Peter’s attitudes to this lordship, see Gregory A. Smith, “‘Sine rege, sine principe’: Peter the Venerable on Violence in Twelfth-Century Burgundy,” \textit{Speculum} 77/1 (2002): 1–33.} In response
to the Cistercian criticism that Cluniac monks were too involved in judicial business, Peter declared that neither reason nor any law prohibited monks from being accusers or agents in their own affairs, and that if monks were to own property, they needed to be able to defend it. Peter agreed advocates might play a role—but only if they could be always available (“si tamen advocati semper adesse potuerint”). Otherwise it was better for monks to act than to lose the property. And Peter saw no reason at all why monks could not be judges in secular matters: would they not become the judges even of angels?\(^\text{127}\) It is this attitude that surely explains why there is so little trace of advocacy in the strongholds of Cluniac-style monasticism. And it is this attitude that explains why monks inspired by Cluny, such as Abbot Isarn of Saint-Victor of Marseille (or at least the representation of him in his late eleventh-century *Life*), seemed to blur the line between secular and ecclesiastical behaviors by acting in certain ways like aristocrats—a point that had long been made by critics of the Cluny monks.\(^\text{128}\)

In the light of this material, Senn’s famous line seems to reflect variation in monastic attitudes towards aristocrats and the exercise of violent power as much as different legal or political structures. This variation was certainly linked to positions regarding Gregorian reform, itself deeply engaged with questions of legitimate violence.\(^\text{129}\) Geoffrey of Vendôme, for instance, was undoubtedly close to post-Gregorian papal circles—as demonstrated not least by the famous cycle of frescos he installed at Vendôme to welcome Pope Urban II in 1096—while the proximity of Cluniac monasticism to the wider reform movement is well known (and much discussed).\(^\text{130}\) Equally, many of the writers cited above—Sigebert, Benzo, and the author of the *Liber de unitate*, all emphatic on the importance for

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clerics and monks to avoid too close an involvement in judicial affairs—were also all ambivalent or even hostile to claims made by popes such as Gregory VII. Yet we should not oversimplify. Communities like Saint-Aubin and Reichenau could change their position in these larger conflicts depending on the local situation, especially the attitude of their diocesan bishop; moreover, many of Gregory VII’s keenest lay supporters in Germany were themselves lay advocates.131

Rather than simply mapping advocacy onto the conflict swirling around the enhanced aspirations of the papacy, we should consider more closely the nature of the monastic traditions that held sway within these regions. This was precisely the topic of Kassius Hallinger’s celebrated work on the distinction between the reform movements led by Cluny and Gorze.132 Hallinger in fact drew special attention to monastic advocacy as a key element of the distinction he was attempting to uncover, arguing that Gorze and Cluny had “an entirely different position in the question of advocacy.”133 Admittedly, his book was very much of its time, and its heartfelt plea for recognition of the cultural achievements of medieval Germany is best understood as a product of the 1950s. Few historians today would defend the exaggerated distinction it drew between supposedly homogeneous reform groups, which are now increasingly seen instead as “informal associations of reformist agents.” Yet such associations might well have worked along the grain of preexisting networks of like-minded monastic communities—much as, as we have seen, charters about advocacy circulated among neighboring and linked communities.134

And that there were broad “families” of Benedictine monastic practice in the decades around 1100 is difficult to deny, even if the contours were blurred, monks traveled between communities, and the groupings were seldom in conflict with one another. In particular, a persistent distinction between “Frankish” and “Aquitainian” monastic zones has long been acknowledged.135 To some extent

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133 Hallinger, Gorze–Kluny, 1:573: “in der Vogteifrage wiederum eine gänzlich verschiedengearbeitete Haltung.”

134 For an up-to-date reevaluation of reform (stressing the traditions of individual houses), see Steven Vanderputten, Monastic Reform as Process: Realities and Representations in Medieval Flanders, 900–1150 (Ithaca, 2013), and his Reform, Conflict, and the Shaping of Corporate Identities: Collected Studies on Benedictine Monasticism in Medieval Flanders, c. 1050–c. 1150, Vita Regularis (Berlin, 2013), with the quotation taken from xxv.


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this was expressed in divergent liturgical preferences—whether monks went back to bed before Lauds, where palms were blessed on Palm Sunday—that may seem trivial to the modern observer. But Hallinger argued that, when taken together, they represented a distinctive kind of monastic “constitution”; and in any case, they also included differences in the monastery’s relations with the outside world, mediated through the provost or deacon, that might have more of a direct bearing on the issue explored here. Senn’s line corresponds to a striking degree with these variations in monastic custom; to that extent, it makes sense to see attitudes to advocacy as simply another element of a varying monastic world view.

What underpinned this variation is not easy to perceive. Language may have played a role here, yet it should be noted that Fleury was a key center for “Frankish” customs (and also, it may be added, had dealings with monastic advocates). That “Frankish” practices were generally more traditional suggests there may be a link to a relatively greater continuity of monastic experience in the east than in the west; alternatively, we may be dealing with underlying nuances in monastic practice that reached back into the early Middle Ages. After all, disagreements about the relation between monastic communities and secular authorities were already present in the Carolingian empire, with differences in opinions between (“Aquitainian,” or rather Languedocian) Aniane and (Frankish) Corbie, notwithstanding imperial efforts to bring about greater uniformity.

Yet in any case, the eleventh and twelfth centuries were periods of great change in how authority was exercised at the local, regional and supraregional level right across Europe, meaning that it cannot have been a simple question of tradition versus innovation. Everywhere across the Latin West, formal processes of justice were becoming more clearly identified and sought after as the source of profit and power; and there are signs, too, of a gradual shift away from punishments mediated through compensation to punishments violently inflicted upon the body.


137 On Fleury’s dealings with advocates, see forthcoming work by Philippe Depreux. Scott G. Bruce, Silence and Sign Language in Medieval Monasticism: The Cluniac Tradition, c. 900–1200 (Cambridge, UK, 2007), 93–96, has a helpful discussion of language barriers in monastic contexts.


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These general developments interacted with what appear to be deep-rooted variations in the self-conception of monastic communities; and the way that these communities chose to address these changes in turn had significant implications for wider society.

**Conclusion**

In many ways, Abbot Hermann of Niederaltaich was rather old-fashioned when, in the middle of the thirteenth century, he justified the position of the monastic advocate. From the middle of the twelfth century, and with growing determination, German monastic communities began to take their justice back “in house” and to administer it through their own agents. For instance, in 1153 Abbot Vibald of Stavelot, who just a few years earlier had drafted a charter legitimating advocacy on the lands of Saint-Remi, persuaded Emperor Frederic I to cede the *advocatia* of Stavelot to himself as abbot, though with markedly limited long-term success. At Saint-Mihiel and at Reichenau, attention was increasingly shifting to the subordinated officers of the monastery: the lay provosts, the *villici*, and the *ministeriales*.

In German historiography, this process is often referred to as the emergence of the *Schirmvogt* (“protective advocate”), or indeed as “de-advocatization” (*Entvogtung*), and explained as part of the process of territorialization, itself part of the constitutional history of the *Reich*. Looked at comparatively, however, it could also be described as a shift in attitude on the part of monastic communities within the *Reich*, as they came into line with what had long been the normal arrangements elsewhere for the administration of justice and what was taken for granted by newer ascetic groups like the Cistercians. This was in part a monastic response to the growing emphasis on accountability, whose profile was rising almost everywhere in thirteenth-century Europe, reflected in the rise of a managerial class of bailiffs, provosts, and *villici*. Partly too, though, it was a reflection of the gradual embedding within German monastic cultures of ideas associated with Gregorian reform that emphasized institutional autonomy, making monastic advocacy increasingly anomalous.

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140 Appelt, *Die Urkunden Friederichs I*, 1:74–75. For the lack of long-term success, see Schroeder, Les hommes.

141 For example, Aubin, *Entstehung*, 435–38, for an appendix listing the acquisition of rights of advocacy by monasteries in the lower Rhine region (mostly in the thirteenth century).

142 Though even Cistercian communities in the empire could sometimes have advocates: see Sven Wicherts, *Das Zisterzienserkloster Doberan im Mittelalter* (Berlin, 2000), 134–43; see also Penth, “Kloster- und Ordenspolitik.”

We might therefore consider this Entvogtung as a kind of Europeanization in Robert Bartlett’s sense, a process of gradual alignment in monastic values.¹⁴⁴ This process of rolling back advocacy was, however, slow and seldom complete anywhere in the Reich before the thirteenth century. And it certainly did not mean that monastic advocacy had not left long-term political and social consequences. All the monasteries considered in this article—Reichenau, Saint-Mihiel, Glastonbury, Sant’Ambrogio, Saint-Aubin, and so on—were wealthy; and how, in what way, and by whom that wealth was harnessed had major consequences for the “architecture of power.” It is unquestionable that the common acceptance by monasteries throughout the Reich before the middle of the twelfth century that an external figure was in some way desirable or at the very least appropriate for the legitimate performance of justice left an enduring mark on the political landscape, even after the assumption had faded away. For a crucial period, it had made monasteries into platforms for ambitious and well-connected laymen, stabilizing the political frameworks of these princes at a time when elsewhere in the Latin West north of the Alps centralizing authorities were gaining ground.¹⁴⁵

The question of the relationship of principalities to monastic advocacy, still the main theme of research in the field, is therefore by no means itself illegitimate, and in no way has this article attempted to play down its importance. Its point is simply that we may be making it harder to understand this connection if we assume that the answer is to be found in one side of the relationship of monastic advocacy alone and assume a fundamental antagonism between the parties. Advocacy in the Reich was not simply a “legal” institution and cannot therefore be fully explained in these terms: it was a particular way of resolving a perennial problem of the intersection of law and religion, in both parties’ interests.¹⁴⁶ Evidence like Hermann of Niederaltaich’s narrative, or indeed the scores of surviving charters of advocacy regulation from the eleventh to the thirteenth centuries, do not simply inform us about what aristocrats did: they reflect the monastic attitudes that effectively called this advocacy into existence while simultaneously calling its details into question.

This is not to replace one monocausal explanation with another: how the problem of monastic independence was resolved depended in part on the legal and social conditions of the wider society, and it might be fruitful to consider connections between the monastic concepts of justice that prevailed in the Reich around 1100 and other characteristics of the same region, such as the emergence of a high-status group that was technically unfree, the ministerials, though the con-

¹⁴⁵ E.g., Kohl, Konflikt und Wandel, 303: “Alle erfolgreichen Adelsfamilien im Südwesten des Reichs, fast alle bedeutenden Familien, die wir fassen können, hielten auf die eine oder andere Art Vogteien.” See also Mayer, Fürsten, characterizing advocacy as “eine Möglichkeit, das politische Potential der materiellen Macht der Kirche für den Staat auszuwerten und nutzbar zu machen” (2).
¹⁴⁶ For further discussion, though from a different perspective, see Charles West, Reframing the Feudal Revolution: Social and Political Transformation between Marne and Moselle, c. 800–1100 (Cambridge, UK, 2013), 242–53.
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Connections here may well be indirect. Yet instead of starting with the assumption that influence worked in just one direction, from the world to the monastery, we might at least entertain the possibility of two-way traffic. It may not be a coincidence that when Duke Godfrey of Lotharingia, a man brought up in a region where monastic advocacy was common, became the leader of the new Latin polity of Jerusalem, the title for which he apparently first reached was that of advocate.

In short, the answer to the conundrum with which we began—why only monasteries in the Reich and the surrounding regions had advocates who, though outsiders, played a role in the internal administration of the monastic communities’ judicial affairs—could be that only there did monks accept that such figures and such involvement might be necessary for the fulfillment of the monastic vocation in changing social and political conditions. That monastic attitudes could have had such important and enduring political implications reminds us of the urgency of bringing the historiography of religion and its development into much closer contact with the historiography of how power was exercised in Western Europe, in the twelfth century as at other times. To understand a society as dominated by the church and the aristocracy as medieval Europe was, and to understand the regional differences within it, we need to bring the study of monks and of their lay cousins together, for the dialectical relation between them was a major motor of change. And to appreciate how this motor worked, we may need, on occasion, to shift the scale of analysis. For what seems to be normal or even mundane in a local, regional, or national context can, if compared carefully and appropriately with circumstances elsewhere, turn out to offer important insights into medieval European society as a whole.

147 The best treatment of ministerials in English is Benjamin Arnold, German Knighthood 1050–1300 (Oxford, 1985); a recent German summary is provided by Werner Hechberger, Adel, Ministerialität und Rittertum im Mittelalter (Munich, 2004), 91–99. Ministerials could act as judges despite their status and were usually exempted from the jurisdiction of the advocate, so it is difficult to see an immediate connection. For French parallels, see Barthélemy, Nouvelle histoire, 212–23.


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