

José Manuel Cerda (*University of New South Wales*), ‘“Laws for the governance of subject and peaceful peoples”: Justice and legislation at Spanish courts and English councils (1154-1188)’, *E-Legal History Review*, no. 1, October 2005.

In identifying the royal assemblies of twelfth-century Europe as “pre-parliamentary” in nature, the historiography has tended to overlook the legislative and judicial activity of courts and councils, only two of the many aspects that testify to the institutional and political importance of territorial gatherings in this period. If not the most important, perhaps the most regular task of medieval kingship was the generation of laws and their enforcement, and whenever this undertaking somehow affected influential nobles or all the inhabitants of the kingdom, it was performed in the public context of general assemblies. While legislation was one of the royal prerogatives in this period, monarchs could not promulgate general laws without some form of baronial consultation and assent. Councils and courts then provided the most adequate setting for such a process, and the sources frequently associate the discussion of royal edicts, assizes, statutes, ordinances and constitutions with the meeting of general assemblies.

Perhaps the most revealing and well known episode concerning royal legislation in the twelfth century is incorporated in the narrative of *Chronicon Monasterii de Bello* or the *Chronicle of Battle Abbey*. In the 1140s, a boat loaded with goods out of Romney, a small port south of Canterbury, was destroyed by a storm. The crew barely escaped death and as the wreck found shore in Dengemarsh, within the lands of Battle Abbey. According to an ancient maritime custom, the abbot of Battle was entitled to claim possession over those goods after a certain time. In doing so, he enraged the archbishop and the clergy of Canterbury.

However, King Henry was averse to this custom and promulgated an ordinance for his own time and throughout his empire, that if even one person should escape alive out of the wrecked ship he should have everything. But, new king, new law. For after his death the magnates of the realm did away with the new ordinance and exercised the ancient custom themselves. So it was that the men of Dengemarsh, following the maritime custom and royal liberties, took this wreck by force for the church of Battle. When he heard this the archbishop went to court and brought before the king a complaint against the abbot of Battle, that he had used force and hostility in this matter. The king at once commanded the abbot to appear before him. The matter was aired at the royal court before a gathering of nobles. The king himself was inclined towards the archbishop and, through the zealous and skillful William of Ypres, who at that time held the county of

Kent, he accused the abbot of breaking the peace, since he had acted against a decree of King Henry. After much disputation, the abbot calmed the court with an argument planned ahead of time. For he pointed out that while King Henry could at will change the ancient rights of the country for his own time, that fact should not establish anything for posterity except with the common consent of the barons of the realm. So, if his equals in privilege, namely the barons who were present, would, with the royal assent, give up for themselves the point at issue, he would willingly give it up too. The magnates present unanimously refused to do this and it was finally decreed in common that this hearing be closed and that the abbot should, by royal privilege, convene his own court on the matter of Dengemarsh on a stated day, with the archbishop's men in attendance, and should have complete jurisdiction. Now at this assembly it happened that the abbot uttered with foresight a memorable phrase that much weakened the king's spirit. For when he was accused, he turned directly to the king and said, 'Not for long may you wear the crown of England, O King, so please it God, if you destroy even such a small liberty given our church by King William and respected by your other predecessors.'<sup>1</sup>

The abbot's warning prophecy was indeed fulfilled and this passage clearly shows how important was the assent of the barons for the modification of ancient customs and the assembly of the kingdom for the discussion of legislative matters. Moreover, in referring not only to the promulgation of an ordinance but also to its immediate enforcement, this passage also reveals the judicial importance of royal assemblies. After the debate, King Stephen summoned the abbot and the archbishop to be present at the following council, and the chronicle continues:

The abbot kept to the arranged day, but no one arrived for the archbishop until the next day. Thus losing their say in the settlement of the offence, they went away disappointed, and once more a plaint reached the king from the archbishop. Once more the abbot was summoned and came. The points of difficulty were explained and by general consent it was adjudged that the abbot had proved his case and that he ought not to be challenged further on this by the archbishop. The hearing dissolved, and each returned home. The abbot, disposing as he wished of all the goods that has caused the trouble, pacified the archbishop and his men with some of the shipwrecked goods, but the important things he kept for himself and for his church of Battle. And so the quarrel over this matter ended.<sup>2</sup>

The kingdom of England during the reign of Henry II witnessed an unprecedented promulgation of several assizes. According to W.L. Warren, the assize was 'an alternative to customary law enforced by royal authority, differing from an edict in that it had baronial assent.'<sup>3</sup> And where else could such an approval be obtained if not in the meeting of royal councils? The connection between the Assize of Clarendon and a royal council is far from clear, but the king spent some time at the hunting lodge in Clarendon that year. A church council assembled in the same place mainly to resolve measures

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<sup>1</sup> *Chronicon Monasterii de Bello. The Chronicle of Battle Abbey*, ed. and trans. Eleanor Searle (Oxford, 1980), pp.143-6. The ancient custom of wreckage was finally abolished by Henry II according to William of Newburgh. See William of Newburgh, *Historia Rerum Anglicarum, Chronicles of the Reigns of Stephen, Henry II, and Richard I*, ed. Howlett, *Roll Series*, 2 vols (London, 1876), ii.282: 'Antiquam atque inhumanam circa naufragos consuetudinem in ipsis regni sui initiis eximia pietate correxit...'

<sup>2</sup> *Chronicon Monasterii de Bello*, p.147.

<sup>3</sup> W.L. Warren, *The Governance of Norman and Angevin England, 1086-1272* (London, 1987), p.108.

concerning the Cathar heresy. According to Howlett's itinerary, Henry seems to have been present at a council in Clarendon before Lent.<sup>4</sup> Such meeting is omitted by C.H. Parry's conciliar list, and we are informed of the king's departure to Normandy in March of 1166.<sup>5</sup> Moreover, it is possible that a council met to deal with the feudal returns of the *Cartae Baronum* of 1166, which the king received from his tenants before the first Sunday of Lent.<sup>6</sup> By shifting judicial jurisdiction from baronial to the royal courts, and by establishing a set procedure and a grand jury, this legislation effectively laid some of the foundations of the common law system. During the reign of Stephen, magnates had gained a great deal of jurisdictional power by taking some control over local courts. The Assize of Clarendon reverted such trend by seeking to establish a more centralised system, and thus return some of that judicial power from the localities back to the crown.<sup>7</sup> The measures clearly affected the magnates, but according to Roger of Howden, the assize resulted from general consultation, thus implying the meeting of a general council: *'Haec est Assisa, quam dominus rex Henricus consilio archiepiscoporum, et episcoporum et abbatum caeterorumque baronum suorum statuit pro pace servanda et justitia tenenda.'*<sup>8</sup> This promulgation was subsequently renewed at the council of Westminster in May 1175, a meeting almost entirely devoted to the discussion of ecclesiastical matters.<sup>9</sup>

The council of Northampton assembled in January 1176 to pacify the kingdom and to deal with the rebels of 1173-4. The subjection of the Scottish church to the archbishop of York unleashed a heated discussion which led to the confrontations among the clergy and between the archbishops of York and Canterbury. Most importantly, however, Henry II divided his kingdom into six regions and appointed three itinerant justices to each one of them, thus furthering the centralisation of justice and tightening his control over local courts. After Henry had put down the rebellion of his sons in Normandy, the assize

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<sup>4</sup> *Gesta Regis Henrici Secundi Benedicti Abbati*, ed. W. Stubbs, 2 vols., *Rolls Series* (London, 1867), Appendix I, 'Outline Itinerary of Henry II,' p.cxxxv.

<sup>5</sup> See *Radulfi de Diceto Ymagines Historiarum*, ed. W. Stubbs, 2 vols., *Rolls Series* (London, 1876), i.539. Cf. C.H. Parry, pp.13-4.

<sup>6</sup> *Cartae Baronum, English Historical Documents*, II, 1042-1189, ed. David Douglas and George Greenaway, Second Edition, (London, 1981), II, p. See also Warren, *Henry II*, pp. 275-81; I.J. Sanders, *English Baronies. A study of their origin and descent, 1086-1327*, (Oxford, 1960). A good explanation and analysis of baronial returns is in Keefe, *Feudal Assessments and community under Henry II and his sons* (California, Berkeley, 1983). Basically, the *Cartae Baronum* was an assessment of the king's feudal tenants carried out in 1166. Henry II wanted information on the enfeoffment of knights to determine the amount of knight's service owed to the crown. According to the returns, Henry was able to determine the *servitium debitum*, the number of knights to be produced for the king's service by each tenant. See J.H. Round, *Feudal England, historical studies on the eleventh and twelfth centuries* (London, 1964), pp.249-56.

<sup>7</sup> The Assize of Clarendon dealt with the heresy in some of its clauses like ns.20 and 21, in Stubbs, *Select Charters and other Illustrations of English Constitutional History* (Oxford, 1913), pp.170-3. The essential aspects of the judicial reforms are contained especially in clauses ns.1, 5 and 9.

<sup>8</sup> See Stubbs, *Select Charters*, pp.170-173. For an English translation see translation in *English Historical Documents*, ii.440-3.

<sup>9</sup> *The Letters and Charters of Gilbert of Foliot*, eds. Dom Adrian Morey and C.N.L. Brooke, (Cambridge: Cambridge University Press, 1967), ns.235, 306; *Gesta*, i.84; *The Letters of John of Salisbury*, (1153-1161) ed. W.J. Millor and H.E. Butler, Oxford Medieval Texts (Oxford, 1986), ii.800-1; Roger of Howden, *Chronica Rogeri de Hovedene*, ed. W. Stubbs, 4 vols, *Rolls Series* (London, 1868-71), ii.72-3; Diceto, i.399; Gervase of Canterbury, *Gervasii Monachi Cantuariensis Opera Historica*, ed. W. Stubbs, 2 vols, *Rolls Series* (London, 1879-80), i.251-2.

served to pacify the kingdom and sought to implement a settlement with the rebels. These reforms embody the fundamental aspects of the Assize of Northampton, which according to Roger of Howden, was simply a re-enactment of the Assize of Clarendon of 1166.<sup>10</sup> While this promulgation enhanced royal control over the judicial process and again encroached on the power of local magnates, the assize was also the result of baronial consultation. As the *Gesta Regis Henrici Secundi* reports, it was drafted and enforced ‘*per consilium regis Henrici filii sui, et per consilium comitum et baronum et militum et hominum suorum, hanc subscriptam assisam fecit.*’<sup>11</sup> If the Assize of Northampton was not the starting point of the English common law, it established at least one of its most important foundations embodied particularly in the seventh clause:

Let the justices determine all suits and rights pertaining to the lord king and to his crown through the writ of the lord king, or of those who shall be acting for him, of half a knight’s fee or under, unless the dispute is so great that it cannot be determine without the lord king, or is such as his justices shall refer to him or to those who are acting for him, by reason of their uncertainty in the case...<sup>12</sup>

The increasingly popular discontent with mercenary troops probably led Henry II and his advisers to proclaim the Assize of Arms at Le Mans in 1181, and establish a territorial army in the style of Anglo-Saxon *fyrð*.<sup>13</sup> It is difficult to associate this piece of legislation with any particular council because only the chronicle of Robert of Torigni lends detailed information on Henry’s Norman itineraries. But it is unlikely that such general matter

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<sup>10</sup> Roger of Howden, ii.89; *Gesta*, i.107-111; Gervase of Canterbury, i.254-5. See also W.L. Warren, *Henry II* (Berkeley: University of California Press, 1973), pp.93, 139-141.

<sup>11</sup> *Gesta*, i.107.

<sup>12</sup> *Gesta*, ii.89. The Assize of Northampton was incredibly popular, for it allowed all free subjects to bypass baronial justice and access the king’s court by obtaining a royal writ. The judicial reforms at the council of Northampton also enacted the assize of mort d’ancestor, which allowed a very broad access to royal courts by means of paying a fee for royal writ which initiated the judicial process. Three years later in 1179, the Grand Assize was promulgated to modify and improve the administration of justice, and thus facilitate the growing demands on royal courts and cope with the proliferation of judicial writs. The Grand Assize also provided the defendant with an alternative to the customary trial by battle, and culminated a series of judicial reforms.

<sup>13</sup> Mercenaries have become very unpopular among the English people due to their unruly behaviour. The Assize of Arms then aimed to create a militia of free peasants within the Angevin dominions. The king of France, who was reasonably weary of Henry’s military measures, quickly followed suit by enacting a similar edict. The text of the assize can be found in *Gesta*, i.261. Of particular importance is clause number 4: ‘Moreover, let each and every one of them swear that before the feast of St Hilary [Jan 13] he will possess these arms and will bear allegiance to the lord king, Henry, namely the son of the Empress Maud, and that he will bear these arms in his service according to his order in allegiance to the lord king and his realm...’ Ronald Butt has suggested that ‘Henry wished to build a kingship which was something more than the apex of feudalism.’ Unlike the Norman dynasty ‘Henry wanted instead a national monarchy which would have independent political strength not unlike the Anglo-Saxon kingship, and which free men of all conditions would have an interest in upholding. Symbolic of his purpose was the revival of the fyrð under the Assize of Arms (1181) which laid down that all knights, freemen and burgesses must provide themselves according to their statute and means) with arms as stipulated, and must be ready to answer the sheriff’s call to arms in the king’s service in time of need.’ But ‘he also had a growing preference for money in place of traditional military service.’ (Ronald Butt, *A History of Parliament: The Middle Ages*, (London, 1989), pp.39-40).

affecting all of Henry's dominions, and many of its inhabitants would possibly have escaped general consultation and some form of baronial approval.

Angevin kings were particularly protective of the royal forests and regulations were ruthlessly enforced. The king's absence during the general uprising of 1173-4 prompted frequent infringements of forest law that were subsequently rectified at the council of Nottingham in August 1175.<sup>14</sup> Henry's efforts to protect royal lordship over the forests was finally crystallized by a piece of legislation described as 'the assize of the lord king, Henry, son of Maud, concerning the forest, and concerning his deer in England; as it was made at Woodstock with the advice and assent of the archbishops, barons, earls, and magnates of England.'<sup>15</sup> It was then at the council of Woodstock in August 1184, when the king divided the royal forests and sent justices to enforce the newly approved assize. In the words of Roger of Howden, '*dominus rex divisit forestas suas Angliae in diversas partes, et unicuique partium praefecit quatuor justitios...et misit eos placitare placita forestae secundum suprascriptam assisam forestae.*'<sup>16</sup>

Territorial legislation not unlike these assizes must have also been part of the business of Spanish courts in this period, but the absence of narrative sources impedes a proper comparative analysis. Much mystery has surrounded the meeting of a royal court at Nájera towards the end of 1184, which is said to have promulgated what is traditionally known as the pseudo-ordinances of Nájera. Possibly an apocryphal text of the thirteenth century, this territorial decree prohibited *realengo* (royal lands) becoming *abadengo* (lands of the abbot).<sup>17</sup> Just as zealous as Henry II was of his royal forests in England, Alfonso VIII had earlier demanded the return of *realengo* from the hands of some Castilian nobles at the plenary court of Burgos in November 1169.<sup>18</sup> However, not only has it been difficult for historians to establish the veracity of the Ordinance of Nájera, but also its association with the meeting of a plenary court. According to a document published by Julio González, Alfonso VIII meet with his nobles at Nájera in 1184 or early in 1185, '*in anno illo in quo rex Aldefonsus in Nazarensi urbe curiam suam congregavit*'.<sup>19</sup> If it was ever promulgated, this ordinance stands out as probably the only

<sup>14</sup> *Gesta*, i.94: '*Et procedens inde venit usque Nottingham in festo Sancti Petri ad Vincula, et per aliquot dies ibi moram faciens, implacitavit omnes barones et milites illius patriae de forestis dvis; et posuit omnes in misericordia sua procapta venatione...*'

<sup>15</sup> An English translation can be found in *English Historical Documents*, ii.451-3.

<sup>16</sup> Roger of Howden, ii.289.

<sup>17</sup> Gonzalo Martínez Díez, *Alfonso VIII* (Burgos, 1995), p.280.

<sup>18</sup> Julio González, *El Reino de Castilla durante el reinado de Alfonso VIII*, 3 vols (Madrid, 1960), II, ns.124-6; *Crónica de Veinte Reyes*, eds. Gonzalo Martínez Díez et al. (Burgos, 1991), XIII, 7, p.273.

<sup>19</sup> Julio González, *Cuadernos de Historia de España*, 61-2 (1977), pp.357-361. See also MS 431 Biblioteca Nacional: *Libro que feso el muy noble rey don Alfonso en las Cortes de Nájera de los Fueros de Castiella* cited by Galo Sánchez, 'Para la historia de la redacción del antiguo derecho territorial castellano,' *Anuario de Historia del Derecho Español*, 6 (1929), p.290. The Ordinance of Nájera is also published by Alfonso García Gallo, 'Textos de derecho territorial castellano,' *AHDE*, 13 (1936-41), pp.332-369. Also called *Pseudo Ordenamiento*, perhaps they are not usually considered as Cortes. The apocryphal character of the *Pseudo Ordenamiento* is outlined in Gonzalo Martínez Díez, 'Curia y Cortes en el reino de Castilla,' *Las Cortes de Castilla y León en la Edad Media*, Actas de la primera etapa del Congreso Científico sobre la Historia de las Cortes de Castilla y León, Burgos, 30 de septiembre a 3 de Octubre de 1986, Cortes de Castilla y León (Valladolid, 1988), p.139. According to Martínez this needs no further proof. But Sánchez-Albornoz doubted this was the case. Making reference to a diploma from 1218, in which a curia in Nájera

general edict of Alfonso VIII's legislative program which concentrated on local or regional legislation. According to Martínez, this was not a period of legislative innovation in the kingdom of Castile, but typical of the *fueros* or special privileges conceded to particular communities.<sup>20</sup> Too often, however, the *fueros* have been identified as typically feudal or local, when in reality most of these concessions followed the same general template, and were not the result of feudalisation but of urbanisation.<sup>21</sup> In the light of these considerations, and in the context of a royalist strategy of reconquest and repopulation, these *fueros* can be associated with a general or territorial program of legislation. At the court of San Esteban de Gormaz in May 1187, royal *fueros* were granted to Monastery of Santo Domingo de la Calzada and the city of Haro.<sup>22</sup> These royal concessions are not comparable to the legal format of the English assizes, but they similarly resulted mostly from general consultation at assemblies and received some form of baronial consent.

A year after the Castilian court at San Esteban, Alfonso IX of León summoned his first curia to León in the month of July. Since the days of Martínez Marina, this assembly has continued to fascinate institutional historians, fuel constitutional mythology and nurture the political imagination, not only because the Leonese king is reported to have summoned the citizens for the first time, but also because he enacted important general legislation known to us as the Leonese *decreta* of 1188. Interestingly, much like the Castilian ordinances, the dating of this document has also been the subject of dedicated scrutiny, thus obscuring the connection between the promulgation and the royal *curia* assembled at León in July 1188.<sup>23</sup> It is similarly troublesome to associate the granting of

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is mentioned in reference to the legality of acquisitions of the Monastery of Oña, '*postquam fuerat curia facta in Nagara*', which prohibited the transfer of lands of *realengo* to *abadengo*, see Claudio Sánchez-Albornóz, 'Dudas sobre el Ordenamiento de Nájera,' *CHD*, 35-6 (1962), pp.315-36, and see also Claudio Sánchez-Albornóz, 'Menos dudas sobre el Ordenamiento de Nájera,' *AEM* 3 (1966), pp.465-7 and 'Dudas sobre el Ordenamiento de Nájera,' *CHE*, 35-6 (1962), pp.315-36. See also Agustín Altisent, 'Otra referencia a las Cortes de Nájera,' *Anuario de Estudios Medievales*, 5 (1968), pp.473-8. Altisent uses a document from 1217 which refers to the confiscation of some properties of the monastery of San Andrés de Valvení for having been acquired after the *Cortes* of Nájera: '*totam illam hereditatem quam comparastis et cambiastis et de mortuorum habuistis post de la corte de Nagera...totam istam hereditatem quam nos uobis intramus et per pesquisa de bonis hominibus uos perdidistis et nos ganamus eo quod post de la corte de Nagera comparastis.*'

<sup>20</sup> Martínez, *Alfonso VIII*, pp.280-281.

<sup>21</sup> Typically, the very same *fueros* granted to one city would be subsequently given to others.

<sup>22</sup> González, *El reino de Castilla*, II, ns. 467-471.

<sup>23</sup> See Prieto Prieto, Alfonso, 'La autenticidad de los Decretos de la Curia Leonesa de 1188,' *Las Cortes de Castilla* (1988), p.52; José María Fernández Catón, 'Supuestos para una edición crítica de las fuentes,' *Las Cortes de Castilla* (1988), p.116; Luis G. de Valdeavellano, *Curso de Historia de las Instituciones Españolas*, (Madrid, 1977), pp.574, 579-580; Carlos Estepa Díez, 'Curia y Cortes en el reino de León,' *Las Cortes de Castilla y León* (1986), pp.22-35, 70; Evelyn Procter, *Curia and Cortes in León and Castile 1072-1295*, (Cambridge: Cambridge University Press, 1980), pp.51-52; Joseph O'Callaghan, *The Cortes of Castile-León 1188-1350* (Philadelphia: University of Pennsylvania Press, 1989), p.1; Wladimir Piskorski (1898) *Cortes de Castilla en el período de tránsito de la Edad Media a la Moderna 1188-1520*, translated by Claudio Sánchez-Albornoz (Barcelona, 1977), p.13; Alfonso García Gallo, 'La historiografía sobre las Cortes de Castilla y León,' *Las Cortes de Castilla*, Actas de la Tercera Etapa del Congreso Científico sobre la Historia de las Cortes de Castilla y León, León, del 26 al 30 de Septiembre de 1988. Vol.1, pp.137, 145; Clavero (1988); Bartolomé Clavero, 'Cortes tradicionales e invención de la Historia de España,' *Las Cortes de Castilla*, p.195.

Leonese *fueros* to any particular assembly, for none of Fernando II's diplomas reveal general consultation and baronial assent in connection with such privileges. Alfonso II of Aragón, on the other hand, confirmed the privileges and *fueros* previously conceded to the city of Zaragoza and the cathedral of Huesca at the royal courts celebrated in Zaragoza, in August 1162, and Huesca in May 1170.<sup>24</sup> The absence of chronicle accounts in this period severely cripples any attempt to determine further legislative acts of significance and their connection to the discussion held at Spanish plenary courts.

G.O. Sayles has accused Roger of Howden of neglecting to report the business of English assemblies, but if this was indeed the case, his accounts are usefully complemented by several other descriptions.<sup>25</sup> Narrative descriptions of momentous legislation at councils are by no means confined to the promulgation of assizes. The chronicle of Battle Abbey reports that barely four months after Henry's coronation, the king and his nobles renewed the peace and restored the laws and customs of the kingdom at the council of London in March 1155, '*congregavit generale concilium apud Lundoniam, et renovavit pacem et leges et consuetudines per Angliam ab antiquis temporibus constitutas.*'<sup>26</sup> The much debated Constitutions of Clarendon, which led to Thomas Becket's exile and murder, were also approved at a general council in January 1164.<sup>27</sup> The clauses were primarily a response to the growing complaints over the impunity of convicted clergy to royal justice. Herbert of Bosham, who might have been present at the council of Westminster in October 1163, says that the king 'relying on the advice of certain individuals...incontinently demanded that such guilty clerks should speedily be deprived of their orders and handed over to the civil court...'<sup>28</sup> Although Bosham's testimony appears to suggest that the king's decision was thoughtless, and rushed by the advice of "certain individuals," it is likely that the grudges against criminous clerks had become more generalised by the 1160s.<sup>29</sup> Ralph of Diceto described the business of the council of Clarendon as '*immensos tractatus*',<sup>30</sup> and so it was for Henry and his nobles were determined to establish peace throughout the kingdom. The drafting of the royal constitutions, however, entailed an encroachment of the

<sup>24</sup> Ana Sánchez Casabón (ed.) *Alfonso II Rey de Aragón, Conde de Barcelona y Marqués de Provenza. Documentos (1162-1196)* (Zaragoza, 1995), n.1, pp. 33-4, AII, n.86.

<sup>25</sup> See G.O. Sayles, *The King's Parliament of England* (London, 1975), pp.22-3: '...even the twelfth-century chronicler, Roger of Howden, who was interested in politics and administration, rarely informs us of the business transacted at the great festivals...Howden has nothing definite to say of the council at Clarendon that met in the winter of 1165-66...where some momentous legislation was promulgated'. Apart from feasting occasions 'hardly any light at all is cast upon assemblies that met on other occasions.'

<sup>26</sup> *Chronicon Monasterii de Bello*, pp.155-6.

<sup>27</sup> The royal constitutions were previously discussed at the council of Westminster in October 1163. '*Convocatis episcopis apud Westmonasterium simul cum archiepiscopo de criminosis clericis contra canonum libertatem male tractandis usque in vesperam sermo pertinacior est protractus. Cui cum archiepiscopus ad vota non responderet, quae sivit ab episcopis an vellent suas avitas consuetudines observare*' (Gervase of Canterbury, i.174-5).

<sup>28</sup> Herbert of Bosham, *Materials for the History of Thomas Becket*, ed. J.C. Robertson and J.B. Sheppard, RS (London, 1875-85), iv.299-300.

<sup>29</sup> See Warren, *Henry II*, p.460.

<sup>30</sup> Ralph of Diceto, i.312.

jurisdictional power of ecclesiastical courts and would thus prompt an enduring dispute between the king and the primate of the English church.<sup>31</sup>

The legislative importance of councils and courts in this period requires no further evidence. As shown, practically all of Henry's reforms coincided with the meeting of a council, which became the ordinary channel for the discussion of general *leges*. If the absence of narrative sources precludes our study from reaching the same conclusions for the Spanish courts, the legislative activity of royal assemblies before the 1150s is no match for the intensity that was to follow, possibly with the exception of Alfonso VII's imperial court of 1135. Furthermore, why is practically none of the councils of Henry I and Stephen clearly linked to the promulgation of important royal assizes, statutes or constitutions?<sup>32</sup>

Enlightened by the doctrine of Christian kingship, medieval monarchs were not only legislators but were also judges. Therefore, kings and queens were not only expected to promulgate laws but also to preserve the peace by enforcing them. Accordingly, just as royal assemblies had become the most efficient means for obtaining general consultation and assent for territorial legislation, they also became the most appropriate occasion for the appeasement of the kingdom and the resolution of important judicial cases.

Royal assemblies which met *pro pace reformanda et pro stabilitate regni*, that is, to reconstitute the peace and stability of the kingdom, abound in the twelfth century. Such gatherings were symptomatic of widespread crisis during the reign of Urraca and Stephen, but from the 1150s, they were more indicative of effective monarchical governance, zealously guarding and monitoring the affairs of the realm. The measures taken at these councils and courts were, most obviously, to deal with the outbreak of violence and disorder, but during the second half of the twelfth century they represent a genuine and cooperative attempt between the nobles, the king and the church to observe peaceful regulations. Most typical examples of this type of gatherings were the Catalan assemblies of Peace and Truce, many of which gathered during the reign of Alfonso II to control the arbitrary and coercive exercise of aristocratic lordship and to protect the church and the peasants. Traditionally ignored by the list of Peace and Truce assemblies, the general court at Zaragoza in November 1164 asserted Alfonso's control over royal castles and established the king's '*treguas meas et paces christianorum*' over the lands of Aragón. The king proceeded with the counsel of the prelates and '*consilio*

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<sup>31</sup> It is difficult to know whether the constitutions were written during the council or before it. David Carpenter says that "by the time a council met at Clarendon in January 1164 these had been formulated in writing." *The Struggle for Mastery, Britain 1066-1284* (London, 2003), p.206. According to George Greenaway (ed. and trans.), *The life and death of Thomas Becket according to William FitzStephen* (London, 1953), they were prepared by Richard de Lucy and Jocelyn de Balliol, pp.66-7. See also *Councils and Synods with other documents relating to the English Church, I, part II, 1066-1204* eds. Whitelock et al. (Oxford, 1981), p.8 (London, 1961), pp.52-3 and Roger Mortimer, *Angevin England, 1154-1258*, (Oxford, 1994), p.116. Also useful is Gilbert of Foliot, *Multiplicem, Letters*, no.170, ed. C.N.L. Brooke, (London, 1967), pp.233-4. The text of the constitutions is reproduced in *English Historical Documents*, II, pp.766-7, which is translated from the version given in Gervase of Canterbury, i.178.

<sup>32</sup> Exceptionally, the only assemblies which promulgated reforms to the scale of Henry's policies before the 1150s were the council of London in 1107 and the legatine council of Winchester in 1141.

*baronum meorum regni mei Aragonis, et consilio civitatum videlicet, Cesarauguste, et de Darocha, et de Calataiub, et de Oscha, et de Iacha.*'<sup>33</sup> Alfonso's unprecedented measures are strikingly similar to those adopted by Henry II and his nobles at the council of London in March 1155, when he ordered the demolition of castles occupied by insubordinate barons, deposed fiscal earls, resumed crown lands and established '*pacem stabilivit in regno.*'<sup>34</sup> This royal council mimicked the Christmas court at Bermondsey, gathered immediately after Henry's coronation at Westminster in December 1154, where the king and his princes treated the state of the realm and the restoration of peace, '*ubi cum principibus suis de statu regni et pace reformanda tractans.*'<sup>35</sup> In similar fashion, Alfonso of Castile recovered the royal lands held by some nobles during the years of his minority at the great curia of Burgos in November 1169. In the context of such an important assembly, which celebrated Alfonso's coming of age, we have every reason to believe that general peace was established, a piece of speculation that the Castilian diplomas refuse to corroborate.

The year 1173 was particularly important, with assemblies of Peace and Truce meeting in Perpignan and Fondarella. Unlike the peace established earlier in Zaragoza, the royal edicts at Perpignan and Fondarella appear to have affected all the lands of Alfonso II. For the love of God and his subjects, and for common good of his kingdom, the king '*cum predictorum episcoporum et aliorum baronum consilio, ecclesias omnes et earum cimiteria quia speciali hominum censura in bonis Dei intelliguntur, sub perpetua pace et securitate constituo...*'<sup>36</sup> It was also with the counsel of the nobles that Alfonso promulgated another territorial edict this time not in a Languedocian court but in the

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<sup>33</sup> Sánchez Casabón, *Alfonso II*, n.23, pp.58-9. Very important witness list bearing the approval of the archbishop, more than 2 bishops [*aliorum episcoporum*], 46 nobles, 15 citizens of Zaragoza, 9 from Daroca, 6 from Huesca, 19 from Uncastillo and 9 *adelantados* of the council of (unreadable). '*...ego Ildefonsus...ad devitandas pravorum hominess terre mee perversitates et ad devitanda multa malefacta que in terra mea cotidie [patrantur et multas] fractiones mee, pacis christianorum seu sarracenorum host per totum meum regnum Aragonie fieri mandavi et in civitate Cesarauguste festivitate Sancti Martini coadunare feci, et cum consilio dompni Ugonis, Terrachonensis archiepiscopi, et Guillelmi, Barchiononensis episcopi, et Petri, Cesaraugustani episcopi, et aliorum episcoporum, et magistri Milicie Templi, et consilio baronum meorum regni mei Aragonis, et consilio civitatum videlicet, Cesarauguste, et de Darocha, et de Calataiub, et de Oscha, et de Iacha.*'

*'Similiter si aliqua persona cuiuslibet dignitatis vel rodinis treguas meas et paces christianorum seu sarracenorum infregerit et caminos meos et stratas et ea que a me consilio nostre curie affidata fuerint depredaverit et meas iusticias meosque directos mihi vel meis auferre presumerit et in terra mea predam vel ropariam fecerit si infra XX.'* According to Thomas Bisson this was probable the first multi-comital assembly with 'the imposition of a territorial statute of security and order surely implied the recognition of customs distinguishing the Aragonese from the people of the county of Barcelona' (Thomas N. Bisson, 'The Origins of the Corts of Catalonia', *Parliaments, Estates and Representation*, 17, 1997, pp.31-45, p.35)

<sup>34</sup> Roger of Howden, i.215.

<sup>35</sup> Gervase of Canterbury, i.160.

<sup>36</sup> *Textos Jurídics Catalans, Lleis i costumes*, II/3 'Les Constitucions de Pau i Treva a Catalunya' (segles XI-XIII), p.69: '*Dei gratia rex Aragonum, comes Barchinone et Rossilionis, et marchio Provincie, publice utilitati totius terre nostre consulere et providere satagens et intuiti divini numinis tam ecclesias quam religiosas personas...habito apud Perpinianum super hoc tractatu et deliberacione cum venerabilibus viris Willelmo, Terrachonensi archiepiscopo, Apostolice Sedis legato, et B. Barchinonensi episcopo, et Guillelmo Iordani Elnensi episcopo, omnibus baronibus comitatus Rossilionis necnon et aliis quam pluribus magnatibus sive baronibus curie mee, quibus unanimiter omnibus iustum et equum visum est et comuni utilitati expedit...*'

Catalonian town of Fondarella. The purpose of the peace is so clearly established in the text that only requires citing: *'pacem stabilire et informare, et informatam subditis conservandam tardere, ut de eo non incongrue dici et predicari posit, quod a principe regum dictum est: "per me reges regnant et potentes scribunt iusticiam."*'<sup>37</sup>

Four years later, Henry II convened a council which met in Geddington, Ely and Windsor the first ten days of May *'de pace et stabilitate regni tractassent, per consilium episcoporum et comitum et baronum suorum'*<sup>38</sup> and they dealt with the peace and stability of the kingdom with the counsel of his earls and barons. Interestingly, such peace appears to be linked to the removal of insurgent castellans, a common feature of conciliar discussions that sought the pacification of the realm. The last of Alfonso II's Peace and Truce assemblies gathered in August 1188 at Villafranca, where the king obtained the assent of his nobles to impose a truce over his lands for the benefit of all the inhabitants of the kingdom.<sup>39</sup> General consultation and baronial assent were essential ingredients in the legitimisation of such royal proclamations because they constituted territorial legislation to be enforced across the entire realm. In Catalonia, a code known as the *Usatges* or uses of the court of Barcelona, protected local custom from royal intervention. Accordingly, the general measures adopted at courts required the consent of the nobles because, as Angus Mackay has explained, 'they were contrary to the spirit of the *Usatges* and constituted a derogation of the rights of vassals within feudal structure.'<sup>40</sup> Assemblies of Peace and Truce have traditionally been regarded as the most proximate institutional precedent to the Catalonian *corts* of the thirteenth century. But if the royal edicts proclaimed at such gatherings were extraordinary, contemporaries saw no substantial distinction between these meetings and any other plenary court. There is no reason to believe, for example, that the court at Villafranca in 1188 was in any way more important or sophisticated than the court which met seven months earlier in Huesca, nor do the sources indicate such a peculiarity.<sup>41</sup>

English councils and Spanish courts became, during this period, the most appropriate and effective occasion for territorial legislation and the proclamation of royal edicts of general enforcement. Only by convoking general assemblies could monarchs obtain the assent of their nobles and thus legitimise the enforcement of peace over entire kingdoms.

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<sup>37</sup> *Textos Jurídics*, pp.74-82.

<sup>38</sup> *Gesta*, i.160-1.

<sup>39</sup> *Textos Jurídics*, pp.92-98 and Sánchez Casabón, *Alfonso II*, n.472, pp.622-6. According to Caruana this meeting was clearly a *cortes*. Such is also the opinion of Ana Sánchez Casabón, editor of Alfonso's diplomatic collection. See Jaime Caruana, 'Itinerario de Alfonso II de Aragón,' *Estudios de Edad Media de la Corona de Aragón*, VII (1962), pp.73-298.

<sup>40</sup> Angus Mackay, *Spain in the Middle Ages* (London, 1977), p.113. We should not forget that the *Usatges* were also inspired by some new political principles which gave unprecedented legislative powers to the monarch. The code was by no means a legal text of feudal purity. Mackay further asserts that 'by 1202, the prince-count was forced to accept that he could not issue safe-conducts to the vassals of others without the permission of their lord, that in their relations with the peasantry of their lands the lords were not answerable to the ruler unless they were his feudatories, and that the "Peace and Truce" was not a princely institution and therefore had no general validity over the lands and people of Catalonia.'

<sup>41</sup> In fact while the assembly at Huesca is identified by the royal diplomas a solemn court [*solempnem curia*], the assembly of Peace and Truce at Villafranca is more modestly described. See Sánchez Casabón, *Alfonso II*, ns.455, 456, 472.

The administration of justice was often part of the business of courts and councils not only because it was a royal function but also because a general peace could only be enforced once disputes were settled. According to Sayles and Richardson, the parliaments of the thirteenth century 'are of one kind only and that, when we have stripped every non-essential away, the essence of them is the dispensation of justice by the king or by someone who in a very special sense represents the king.'<sup>42</sup> Court and councils in the twelfth century were not judicial courts *per se*, for the administration of justice was not as yet a constituted function, although the settlement of judicial disputes at the highest level was certainly among its important and regular business.

The association between the enforcement of peace and the resolution of particular litigation is perfectly illustrated in the proceedings of the court of León which gathered in March 1186, and settled differences between the monasteries of Sahagún and Mayorga:

*In presentia nostra sepius uentilatam, talem decreui dare sententiam. Statui siquidem, sicut regie conuenit censura, ut constitutis utriusque partis aduocatis iudicium curie mee subirent. Huius ergo cause iudices fuerunt...*

*Videns autem concilium de Maiorica quia iuditio conuincebatur petiuit ab abbate ut de hereditate sua illis aliquid donaret, et abbas pro pace reformanda, dedit illis quinque iugarias bonum in Siero, tali pacto, ut nunquam ibi popularent et hereditates sancti Facundi tam propinquas quam remotas que in suo termino sunt nunquam impeterent uel impedirent, statimque coram rege et eius curia cunctis hereditatibus sancti Facundi abrenunciarent, cognoscentes abbatem sua omnia libere possidere.<sup>43</sup>*

Similar instances where important judicial disputes were resolved took place at the courts of León in 1159, Burgos in 1177, Medina de Rioseco in 1182, Calahorra in 1184 and Buitrago in 1186.<sup>44</sup> Aragonese and English sources are rather more prolific in reporting the administration of justice at royal assemblies. Important cases were resolved at the courts of Zaragoza in 1169, Tarragona in 1171 and 1180, Graus in 1171, Lérida in 1181 and Huesca in 1182. The *plena curia* of Tarragona of 1180 brought an end to the dispute between Alfonso II and Pedro de Luzán concerning the castles of Marlés and Llusá. Some passages taken from the royal diploma are particularly illustrative of the judicial process:

*Consentaneum rationi est, ut negocia, que inter homines vertuntur, scripture comendentur, ne rubigine oblivionis a memoria elebantur...sententiam dederunt...*

<sup>42</sup> G.O. Sayles and H.G. Richardson, *Parliaments and Great Councils in Medieval England* (London, 1981), p.34.

<sup>43</sup> Julio Gonzalez (ed), *Regesta de Fernando II*, (Madrid, 1943), n.57, p.334.

<sup>44</sup> The Leonese assembly put an end to a dispute between the Colegiata of San Isidoro and the bishop of León. The *curia* of Burgos resolved the differences between the monasteries of La Vid and Gumiel while the court at Medina de Rioseco involved the litigation of a noble by the name of Pedro Gutiérrez. At Calahorra the city councils of Madrid and Villagonzalo reached a settlement while at Buitrago the settlement was between Sepulveda and the Monastery of Sacramenia. See González, *Regesta*, p.335, José María Fernández Catón (ed.), *Colección Documental del Archivo de la Catedral de León (775-1230)*, V (León, 1990), V, ns.1510, 1515; González, *El reino*, ns.290, 396-8, 429, 461; *Crónica de Veinte Reyes*, XIII, viii.274, *Primera Crónica General de España*, ed. Ramón Menéndez Pidal, 2 vols (Madrid, 1955), p.678. Some of these meetings may not have been plenary courts but it is their witness lists and business that has persuaded us to list them as general assemblies.

*Auditis ergo rationibus utriusque partis et omnibus diligenter inquisitis ac visis instrumentis et sacramentalibus dietis ac perlectis, communicato consilio et omnium dictorum iudicium assensu, magister Opizo talem sententiam protulit...*

*Data est hec sententia in plena curia in Terracona scilicet, quando ibi venerabili Berengario, Terraconensi archiepiscopo, concilium celebrabatur VIII. Kalendas novembris, anno Dominice Incarnationis M C LXXX.*<sup>45</sup>

The abundance of chronicle sources for England provides uniquely ample detail of litigation at royal assemblies. In 1155, Hugh de Mortimer led a rebellion against Henry II that was quickly terminated by the king's victory. The king then used the council of Bridgnorth which assembled in July to heal the rift and reach a settlement, to use the words of the scribe of Battle Abbey, '*quibus congregatis, pax inter regem et Hugonem facta est.*'<sup>46</sup> Expectedly, the settlement of judicial disputes concerning Battle Abbey recur frequently in this monastic account, but one that is clearly attributed to the meeting of a royal assembly was resolved at the council of Colchester in May 1157. The confrontation between the bishop of Chichester and the abbot of Battle had been brought to the king's attention earlier at the council of St Edmund's, but Henry was so preoccupied by the rebellion of Hugh Bigod and William of Blois that he postponed litigation for the following council to meet at Colchester. Thus the bishop and the abbot

were assigned a day by that splendid prince's peremptory summons for the settlement of their old controversy over the privileges and dignities of their churches. Because he was occupied with other affairs, it was impossible for him to settle their case then, but he arranged for their appearance at Colchester, to which he would be going when he left St. Edmund's. The following Thursday, all and even a larger number, arrived there.<sup>47</sup>

Most often, however, the administration of justice at royal assemblies concerned the archbishops. A dispute between the archbishop of Canterbury and the monks of St Augustine was resolved at the council of Northampton in July 1157, and five months later, the nobles assembled at the council of Lincoln appear to have witnessed the settlement between the archbishop of York and Gloucester Abbey. At the council of London in June 1170 a conflict between the archbishop of Rouen and the bishop of Nevers was brought to an end, and the council of Winchester in August 1176 was described by the *Gesta Henrici Regis Secundi* as '*concilium de pace facienda inter Ricardum Cantuariensem archiepiscopum et Rogerum Eboracensem archiepiscopum.*'<sup>48</sup>

<sup>45</sup> Sánchez Casabón, *Alfonso II*, n.315, pp.423-2. See also Thomas Bisson, *The Medieval Crown of Aragon: a Short History* (Oxford: Clarendon Press, 1986), p.37 and Caruana, 'Itinerario', p.201. At the *curia* of Zaragoza in 1169, the king and his court gave a verdict in favour of the church of Zamora. At Tarragona in 1171 an agreement was reached between the king and the archbishop of Tarragona concerning the murder of his predecessor, and the same year at Graus a legal suit involved the church of Santa Fé while at the courts of Lérida in 1181 and Huesca in 1182, several cases were resolved. See Sánchez Casabón, *Alfonso II*, ns.107, 112, 115, 315, Jerónimo Zurita, *Anales de la Corona de Aragón*, 4 vols, (Zaragoza, 1967), I, II, xxxi.265-6; A. Durán Gudiol (ed.), *Colección diplomática de la Catedral de Huesca*, 2 vols (Zaragoza, 1965-69), n.372. Some of these meetings may not have been plenary courts, but their witness lists and business were certainly important.

<sup>46</sup> *Chronicon Monasterii de Bello*, pp.160-1.

<sup>47</sup> *Chronicon Monasterii de Bello*, pp.176-7.

<sup>48</sup> *Gesta*, i.118-9, ii.33. The sources for the other meetings are: Gervase of Canterbury, i.163, 409, *Letters of Gilbert of Foliot*, n.293, *English Episcopal Acta*, ed. David Smith (Oxford: Oxford University Press, 1980),

Other disputes at royal councils affected the bishops, like the settlement reached at the council of Westminster/Windsor in March 1163 between the bishop of Lincoln and the abbot of St Albans, and the resolution of the council of Nottingham in September 1181, which put an end to the conflict over the see of St Andrews.<sup>49</sup> Other assemblies staged several baronial *concordiae* or *placitae* [settlements or lawsuits] at Woodstock in 1163 and 1175, and Northampton in 1177.<sup>50</sup>

Furthermore, English councils often hosted important *iudicium* or trials with the king representing the realm as the main prosecutor. The most celebrated case during Henry's reign was, of course, the trial of Becket, but its importance has often been exaggerated in light of the quantity and quality of the sources available. The conflict arose at the council of Woodstock in July 1163, when Becket confronted the king concerning the issue of the sheriffs' aid. Three months later, Henry retorted at the council of Westminster by demanding the submission of convicted clergy to secular courts. Early in 1164, another council assembled at Clarendon to promulgate a set of constitutions curbing the judicial jurisdiction of the church and to scrutinise Becket's financial management while chancellor. The archbishop was finally condemned at the following council which gathered in Northampton in October 1164, 'the barons of the king's court thereupon sentenced him to be amerced by the king...in the sum of five hundred pounds, and found security for that sum,' reports Roger of Howden.<sup>51</sup> Intense litigation had stretched throughout four general councils of the realm, prompting the king's fury, the archbishop's flight to France, and turmoil in England. The trial of the archbishop had left no one satisfied, but it is illustrative of the sophistication of the judicial process and the importance of royal councils as the public forum of judicial administration. No other occasion would have befitted the judgment of an archbishop.

Henry earl of Essex was trialed at the council of Westminster/Windsor in March 1163, and the rebels of 1173-4 were forbidden from attending the king's court without special summons at the council of Woodstock in July 1175. The *Gesta Regis Henrici Secundi*

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I, n.90; Roger of Howden, i.216, ii.335-8, William of Newburgh, ii.117, *The Great Rolls of the Pipe of the reign of Henry the Second*, vol. 4 (London, 1884-1925), Pipe Roll Society (London, 1884-1925) p.136; *Materials*, vii. n.669, p.300; Ralph of Diceto, ii.51.

<sup>49</sup> *English Episcopal Acta*, I, n.234, pp.146-8; Roger of Howden, ii.259, 27 *Pipe Rolls*, 11, p.12.

<sup>50</sup> *Materials*, ii.373; *Calendar Patent Rolls*, 1324-7, p.157; *Curia Regis Rolls*, 1221-2, n.81, Vol. X, (London, 1949), pp.333-4.

<sup>51</sup> Roger of Howden, i.224. The Becket councils have received too adequate a treatment to be revisited here. A small sample of primary accounts are Gervase of Canterbury, i.174, *Letters of Gilbert of Foliot*, n.151, Roger of Howden, i.219-220, *Pipe Rolls*, 9, p.48, Ralph of Diceto, i.311, *Materials*, ii.373, for the council of Woodstock (1.7.1163). For the council of Westminster (1.10.1163) see Gervase of Canterbury, i.174-5; *Letters of Gilbert of Foliot*, no.146; *Pipe Rolls*, 9, p.74. Information on the council of Clarendon (25.1.1164) is included in *Letters of Gilbert of Foliot*, no.170, Ralph of Diceto, i.312; *English Episcopal Acta*, I, no.260; *Pipe Rolls*, 10, pp.10,14; Roger of Howden, i.221; Gervase of Canterbury, i.176-180, William of Newburgh, ii.141-2; *Materials*, iii.46,278-9; iv.305; v.218. Finally, the council of Northampton (6.10.1164) is treated in the following primary accounts: *Letters of Gilbert of Foliot*, no.153, *Pipe Rolls*, 10, pp.45-6; *Materials*, ii.49-58; Ralph of Diceto, i.313-4; Roger of Howden, i.224, Gervase of Canterbury, i.182-3. The trial of Thomas Becket was a most extraordinary event but also important was the investiture conflict between Henry I and Archbishop Anselm at the beginning of the twelfth century. Undoubtedly, however, the treatment given by primary and secondary sources to the councils that witnessed the trial of Becket have no rival in this period.

reports that in that council *'praecepit rex publico edicto, ne aliquis de terra sua, qui contra eum fuerat tempore werrae, veniret ad curiam suam nisi per mandatum ipsius.'*<sup>52</sup> A month later, Henry penalised those who had breached forest regulations during his absence, *'implacitavit omnes barones et milites illius patriae de forestis duis'* at a council assembled at Nottingham.<sup>53</sup>

The relevance of all these cases would have overwhelmed the competence and simplicity of local courts and the king's ordinary *curia*,<sup>54</sup> and thus merited instead the audience of general councils, but there are two legal cases during the reign of Henry II which are peculiarly illustrative of the judicial sophistication of the king's court and the institutional importance of councils. One is the trial of Philip de Brois in July 1163, and the other is the resolution of the territorial dispute between Castile and Navarre in March 1177. Philip de Brois was a clerk who had abused the local sheriff after being accused of homicide. Philip was protected by the church after clearing himself at the bishop's court, but he was nevertheless summoned to face the charges before the king, for according to Guernes' version of the trial, abusing one of the king's officials was just as criminal as offending the king himself.<sup>55</sup> Edward Grim continues the narration by writing as follows:

The judges after hearing his confession denying homicide but not the offence against the sheriff said "we, they said, decree that your prebend shall remain in the king's hands for two years, and your possessions and all your income shall be distributed at his will and pleasure to the poor." The judges added that he was to stand naked before the sheriff, just as a laymen might, and to offer him his arms for the injury he had done him and live in subjection to him.<sup>56</sup>

Brois was lucky to escape death, a sentence that would have certainly pleased the king, who, in being informed of the judges' decision, 'said they had acted very wrongly towards him, in that they had been lenient because the man was a clerk. They had given, they answered, an entirely just decision.'<sup>57</sup> The trial had taken place at the very same council that witnessed the initial steps of the dispute between Becket and Henry. The king's desires to penalise the crimes committed by the clergy had coincided at the council

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<sup>52</sup> *Gesta*, i.93. The trial of Henry of Essex is documented in Richard de Anesty, xxiii. In F. Palgrave, *The Rise and Progress of the English Commonwealth* (London, 1832), ii, p.xxiii.

<sup>53</sup> *Gesta*, i.94.

<sup>54</sup> According to Desiré Pasquet, 'between the powers of this little curia and those of the great one there was no difference. Both the one and the other were the king's council. But when some particularly difficult question arose -such as the trial of some great lord accused of treason or the modification of ancient custom on an important point- the king usually reinforced, so to speak, his ordinary council by summoning a more or less considerable number of barons, who could not be always with him' (Desiré Pasquet, *Essays on the Origins of the House of Commons* (Cambridge: Cambridge University Press, 1925, p.6) But conversely, Wilkinson has warned that 'we must cease to regard it as a mere expansion of the council; and its functions are not to be confused with those of the king' (Bertie Wilkinson, *Studies in the Constitutional History of the 13<sup>th</sup> and 14<sup>th</sup> centuries* (Manchester: Manchester University Press, 1952), p.41) Our study of the composition of assemblies will attempt to prove this distinction beyond question.

<sup>55</sup> Guernes de Pont-Sainte-Maxence, *La Vie de Saint Thomas de Canterbury, I*, ed. and trans. Jacques T.E. Thomas (Louvain, 2002), 771-826, p.22: Philip 'lost his temper and insulted him [the royal judge] grossly; the king said that in offending him, it was just the same as if he had insulted the king himself.'

<sup>56</sup> *Materials*, ii.373 English translation in *English Historical Documents*, pp.761-2.

<sup>57</sup> Guernes de Pont-Sainte-Maxence, 771-826, p.23.

of Woodstock in July 1163, with Philip de Brois's lawsuit and Becket's questioning over the sheriffs' aid. Such combination of events was to trouble the king greatly and prove fatal for the archbishop. Again, it was at a momentous council that England's political path was to be outlined.

When Alfonso VIII of Castile married Eleanor at Tarazona in September 1170, the *Anales* of Jerónimo Zurita describe that the wedding party was very well attended by many princes, and that the king of Castile was very well aware that Henry II, his father-in-law, 'was the most esteemed king in all Christendom and that he was lord of great estates in France.'<sup>58</sup> Zurita was writing in the sixteenth century but his account is hardly the work of imagination, for in May 1176 the kings of Castile and Navarre sent envoys to an English council seeking Henry's arbitration on a territorial dispute. The bishops and nobles of England were then summoned by Henry and assembled with a handful of their Navarrese and Castilian counterparts in London on March 1177. Roger of Howden informs that a royal pronouncement was voiced after carefully study and judicious consideration:

These having met together at Westminster, the king ordered the aforesaid envoys from the kingdom of Spain to reduce into writing their claims and charges, and afterwards give them to him; in order that, by means of a translation thereof, he himself and his barons might be able to understand their respective claims and charges; for neither the kings nor the barons of his court understood their language. For the purpose of reducing this to writing, there was a space of three days allowed.<sup>59</sup>

Not only was Henry II an esteemed ruler, known for his love of justice and peace, but equally respected were the judgements of his nobles assembled at council. Thus much of the tyrannical features attributed by some modern historians to his governance were not shared by most contemporaries. If the chronicler William of Newburgh is fair, Henry II '*fuit enim in illo regni fastigio tuendae et fovendae pacis publicae studiosissimus: in portando gladio ad vindictam malefactorum, quitem vero bonorum, minister Dei multum idoneus: rerum et libertatum ecclesiasticarum, sicut post mortem ejus claruit, defensor et conservator praecipuus.*'<sup>60</sup> A minister of God, he was most studious in safeguarding the public peace.

Symptomatic of this age is the *Tractatus de Legibus et Consuetudinibus Regni Angliae*, a lawbook written during Henry's reign, attributed to Ranulf de Glanvill, one of the king's most successful officials. An unprecedented display of legal and judicial rationality, Glanvill's manual gathers the fundamental courtly practices of the newly-established common law system. The *Usatges of Barcelona* are similarly the product of an age concerned with the development of legal rationality and the improvement of judicial practice. Probably compiled and written during the reign of Ramón Berenguer IV, the *Usatges* or "uses" were 'the customary legal rules of court usages which Lord Ramon the Old, Count of Barcelona, and his wife Almodis decreed binding on their land

<sup>58</sup> Zurita, *Anales*, I, II, xxviii.258. A translation from the Spanish: '*era el más estimado rey que había en la cristiandad; y fue señor de muy grandes estados de Francia.*'

<sup>59</sup> Roger of Howden, ii.120-1. The English translation is in Riley, *The Annals*, p.440.

<sup>60</sup> William of Newburgh, ii.282.

forever with the assent and acclamation of the magnates of their land.’<sup>61</sup> According to Donald Kagay, ‘the transformation of local usage into a set of statutes binding on an entire territory constituted the most significant form of legislation by European rulers before the thirteenth century.’<sup>62</sup> These legal manuals are thus symbiotically associated with the promulgation of territorial legislation and the establishment of a common legal system at the meeting of English councils and Spanish courts in the second half of the twelfth century.

These important legal and judicial reforms could have only resulted from conciliar consultation and approved by the general assent of the nobles assembled. But from the 1150s royal assemblies not only became the most fitting occasions for the reform of the judicial system and the promulgation of general legislation, but they also came to be the only forum for the administration of justice at the highest level and the enforcement of the new territorial statutes and constitutions. After territorial consolidation, peace, stability and order became monarchical priorities in the Spanish kingdoms and England, and just as assemblies were catalysts for dispute and confrontations, they were more often an occasion for settlement and reconciliation. The proclamation and enforcement of general edicts came to meet such priorities, for in the words of Glanvill ‘not only must royal power be furnished with arms against rebels and nations which rise up against the king and the realm, but it is also fitting that it should be adorned with laws for the governance of subject and peaceful peoples’.<sup>63</sup>

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<sup>61</sup> Donald Kagay (trans. and ed.), *The Usatges of Barcelona, The fundamental Law of Catalonia* (Philadelphia: University of Pennsylvania Press, 1994), n.3, p.64. Thomas Bisson believes that the articles were promulgated as early as 1064 (See Bisson, ‘The Origins of the Corts of Catalonia’, p.32).

<sup>62</sup> Kagay, *Usatges*, p.16.

<sup>63</sup> Rannulf Glanvill, *The treatise on the laws and customs of England commonly called Glanvill*, ed. and trans. G.D.G. Hall (Oxford, 1993), *Prologus*, pp.1-2: ‘*Regiam potestatem non solum armis contra rebelles et gentes sibi regnoque insurgentes oportet esse decoratam, sed et legibus ad subditos et populos pacificos regendos decet esse ornatam.*’ See also John of Salisbury, *Policraticus*, ed. and trans. in C. Nederman and K. Langdon (eds), *Medieval Political Theory* (London 1993), p.30.