

WILLIAM LYNDWOOD AND THE PROVINCIALE: CANON LAW IN AN UNDIVIDED WESTERN CHURCH

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INTRODUCTION

Anyone coming across the fourteenth-century church of St Cornelius in Lyndewode, now Linwood, a short distance from the Lincolnshire town of Market Rasen, is struck by its stark isolation—it virtually stands alone in fields. Anyone entering the church will most likely be struck by two interesting objects which have some bearing on this lecture. The first, at the west end of the north aisle, are two fine excellently preserved brasses, both of wool men. They had clearly prospered in the economic development of Lincolnshire in the later middle ages.¹ One of these brasses is of John Lyndwood, who died in 1419, with his wife, four sons and three daughters under smaller canopies. The other represents another John Lyndwood, the son of the former, who died in 1421.

It is the figure in the centre, the fourth son, that interests us. He appears to be wearing a cassock, a gown with two slits (*taberdum talare*) and possibly tippet and hood. Unfortunately the state of the brass makes it impossible to state positively what kind of head dress, if any, is worn. There is every likelihood that this represents William Lyndwood, *utriusque juris doctor*, author of the *Provinciale*, Bishop of St David's and the subject of this inaugural Lyndwood lecture.

I should briefly mention the other object of interest in the church. It is the stained glass on the south of the chancel. Here we find a figure of a bishop taken from a medieval window. It would be attractive to think that this was Lyndwood himself, and it is probably meant to represent him, but unfortunately we cannot be certain.

It is fitting and I suspect would have pleased William Lyndwood to think that 550 years after his death on 21 October 1446, we would be recording the event with a lecture devoted both to him and arguably the most important testament to his life, his famous commentary on English canon law, the *Provinciale*. It would also have pleased though rather surprised him to know that the lecture would be under the auspices of two societies dedicated to the study, investigation and understanding of the law of the Church in England: the Ecclesiastical Law Society and the Canon Law Society of Great Britain and Ireland.

His surprise would have resulted from the fact that two apparently diverse, though clearly linked, systems and traditions of Church law had developed over the centuries, each represented by the two societies. In a sense this explains the title of this lecture, *Canon Law in an undivided Western Church*.

I would like to consider how Lyndwood perceived canon law in England in the period before the Reformation. A number of interrelated questions come immediately to mind in grappling with how Lyndwood perceived the Church's law in an undivided Western Church. What were the characteristics of the canon law in western Europe some one hundred years before the Reformation? What was the

¹ For the brasses, see H Druitt, *A Manual of Costumes as Illustrated by Monumental Brasses* (London, 1906), pp 132–133, and M Norris, *Monumental Brasses, The Memorials* (London, 1977), vol I, p 79. For Lincolnshire's economic development and its implications for wool production, see G Platts, *Land and People in Medieval Lincolnshire* (History of Lincolnshire IV, Lincoln, 1985), pp 180–181.

relationship between England's legal landscape and the papal vision of law? To what extent did the famous Stubbs-Maitland dispute at the end of the last century affect our perception of the canon law in pre-Reformation England? Was the canon law in England and in western Europe in fact far more complex and subtle than perhaps we might be led to believe by a reading of this dispute or even a cursory reading of the texts?

In an hour's lecture none of these questions respond to quick or easy answers, but I hope at least to offer some indications and to establish some parameters that may help form a response. On the other hand there is no doubt that Lyndwood offers us a particularly useful vantage point from which to survey the canon law in late medieval England and to determine its characteristics and its relationship with the *ius commune*. He is one of the few English canonists from the later middle ages whose thought is accessible in the shape of his *Provinciale*, a study of which is fundamental if we are to understand his perception of the canon law and its place in late medieval England.

I should like to divide this lecture into three sections: the first devoted to a brief but I trust useful biographical sketch of Lyndwood, the second to a description of the *Provinciale*, and the third to an analysis of the place of the canon law in Lyndwood's thought and in Western Europe before the Reformation. Finally, I should like to draw some general conclusions which may be of some use to our understanding of the nature of canon law before the Reformation.

THE LIFE OF WILLIAM LYNDWOOD²

As Lyndwood's will informs us, he was born in Lyndwood, the village near Market Rasen, Lincolnshire, probably sometime around 1375.³ He came from a relatively well off family as his father, John, clearly a prosperous wool merchant, left possessions at his death valued in excess of £500, not including dwelling houses or other buildings he may have owned.⁴

It is not easy to trace Lyndwood's education due not only to the precarious state of the records that remain but also to the fact that the curriculum of civil and canon law at both Oxford and Cambridge was susceptible to change and various short cuts on the part of students.⁵ Whatever, we do know that he was a bachelor in civil law at Cambridge in 1403, probably having been a commoner at Gonville Hall, to which he gave two windows in the library as well as having been a sometime Fellow of Pembroke Hall to which he endowed a loan chest with another Fellow.⁶

For some reason, perhaps due to an association with Henry Chichele, his future guide and patron and who held the *cathedra civilis* at Oxford, he migrated to

² On Lyndwood in general, see B E Ferme, *Canon Law in Late Medieval England. A Study of William Lyndwood's Provinciale with particular reference to Testamentary Law* (Studia et Textus Historiae Iuris Canonici 8, Rome, 1996). See also J H Baker, 'Famous English Canon Lawyers IV: William Lyndwood' (1992) 2 *Ecc L J* 268–272; C R Cheney, 'William Lyndwood's *Provinciale*' (1961) 21 *The Jurist* 405–434; A C Reeves, 'The Careers of William Lyndwood', in *Documenting the Past. Essays in Medieval History presented to George Peddy Cuttino*, eds J S Hamilton and P J Bradley (Woodbridge, 1989), pp 197–216.

³ For Lyndwood's will, dated 22 November 1443, see (1852) 34 *Archaeologia* 418–420. At p 418 we read: 'Item lego ecclesie de lyndwod ubi natus sum, antiphonarium meum minorem de tribus'.

⁴ John Lyndwood's will is found in E F Jacob, *The Register of Henry Chichele, Archbishop of Canterbury, 1414–1443* (Canterbury and York Society, vols. 42, 45–47, Oxford, 1938–1947), vol. II, pp. 185–186. See also C W Foster, 'Lincolnshire Wills proved in the Prerogative Court of Canterbury, 1348–1468' (1932) 41 *Associated Architectural Societies' Reports and Papers* pp 71–72.

⁵ See in general L E Boyle, 'Canon Law before 1380', in *The History of the University of Oxford*, vol. I, *The Early Oxford Schools*, ed. J I Catto (Oxford, 1984), pp 531–564.

⁶ In general, see J Venn, *Biographical History of Gonville and Caius College, 1349–1897* (Cambridge, 1897), vol. I, p 8, and C Brooke, *A History of Gonville and Caius College* (Woodbridge, 1985), pp 21–22, 26–27.

Oxford, where we are told that by 1407 he was doctor in civil and canon law.⁷ In that same year on 12 March he was ordained a priest, and some eighteen months later, with his doctorate in both laws, he was commissioned on 22 September 1408 by Robert Hallum, Bishop of Salisbury, to preside over his consistory court at Salisbury.⁸ This was the first step on a lifelong involvement in both judicial activity and ecclesiastical administration.

A study of Lyndwood's life reflects a steady but sure rise in the career of both Church and state, rewarded with positions of responsibility and a series of attractive benefices.⁹ True, there was nothing remarkable in this and his career was mirrored in many others, but his life does demonstrate the extent to which talented individuals who were dedicated and ambitious were fundamental to the smooth running of both the civil and ecclesiastical systems. The fact is that Lyndwood clearly had a sharp legal mind and was an extremely competent administrator. Men of this calibre were likely to do well.

Within six years the newly appointed Archbishop of Canterbury, Henry Chichele, who may have known of his talents at an earlier date, commissioned him on 1 August 1414 to be his Chancellor and Auditor of Causes.¹⁰ It was a shrewd move on the part of the new archbishop to appoint a capable canonist, and their close relationship spanned Chichele's life. Chichele was to die in 1443, only three years before Lyndwood. In many respects the intricate problems and daily preoccupations of the archbishop were to be those of arguably his closest assistant, and perhaps it was a sign of Lyndwood's esteem and affection for his patron that he dedicated his *Provinciale* to the ageing archbishop. The fact is that from 1414 until his appointment as Keeper of the Privy Seal in 1432, Lyndwood was to be very much at the centre of the legal and ecclesiastical administration of the archbishop.

The Archbishop of Canterbury was at the summit of an administrative and legal apparatus that covered to varying degrees both his diocese and the province. He had the normal responsibilities peculiar to any diocesan bishop. As archbishop he was involved in the supervision of his province by means of visitations, the provision for the administration of vacant sees through death or translation, the appointment of new bishops, and presiding over provincial assemblies and the various courts under his jurisdiction. To meet the ever pressing demands of these various responsibilities, a complex structure had evolved which by Chichele's time had led to the existence of the courts of the province: the Court of Audience, the archbishop's own personal tribunal in which he was assisted by the Chancellor and Auditor, occasionally the same person; the Prerogative Court normally delegated to the keeper of the Prerogative; and the provincial court proper, the Court of Canterbury, where his jurisdiction was exercised by the Official, the Dean of Arches and the Commissary-General.¹¹

It was within this juridical and administrative complex that Lyndwood toiled, first as Auditor and Chancellor and then later as Official. One cannot over-emphasise the critical importance of Lyndwood, and indeed of the other lawyer administrators, in this legal and administrative organization. Lyndwood's presence would have demanded a close and profound knowledge of the *ius commune* balanced with

⁷ See T Fuller, *The History of the Worthies of England* (London, 1811), vol II, p 10.

⁸ See J M Horn, *The Register of Robert Hallum* (Canterbury and York Society, vol. 72, Torquay, 1982), p 139. See also A B Emden, *A Biographical Register of the University of Oxford to AD 1500* (Oxford, 1957-59), vol II, p 1191.

⁹ For the benefices held by Lyndwood, see B E Ferme, *Canon Law in Late Medieval England*, pp 149-151.

¹⁰ For the legal machinery of the Archbishop of Canterbury, see I J Churchill, *Canterbury Administration* (London, 1933). The commission as Chancellor and Auditor of Causes is printed in vol II, pp 214-215.

¹¹ As well as the indispensable study of I J Churchill, *Canterbury Administration* (London, 1933), see also B L Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952).

a shrewd appreciation of the customs and traditions peculiar to the southern province of the Church in England. A study of Chichele's register and other sources demonstrates that Lyndwood was involved in a wide variety of judicial and administrative activities which in turn were to be the practical foundation for his future work in the *Provinciale*. It is not without importance that he began his gloss or commentary on the provincial constitutions, which he had finished selecting and arranging in 1423, during a period in which he was most deeply involved in the archbishop's administration. In other words, the *Provinciale* was written by a canonist, keenly alert to the practical questions of the law and ecclesiastical administration and the need to forge solutions to legal problems that would demand a subtle balance between the *ius commune* and those local customs which at times modified or seemingly changed the law of the Church. The fact is that during the years in which he held responsibilities in the courts of the province, Lyndwood was ideally placed to reflect upon and to put into effect the canon and civil law he had studied and which he was later to develop in a singular manner in the *Provinciale*. The editor of Chichele's register, E F Jacob, perceptively remarked:

'If this is the registrar's book, it is also Lyndwood's even though his appearances in it occur but sparsely in his connexion with his work as official of the Court of Arches. In convocation, in the Archbishop's visitations, in the work of the Audience, whenever consultation or precedent was needed, the author of the *Provinciale* was always at hand.'¹²

A glance at the register highlights the type of legal activity Lyndwood was involved in: defamation cases, matrimonial causes, testamentary questions, tithes suits, complaints of non residence, disputes over benefices etc. Judicial activity was to be both modified and extended when sometime between April and October 1417 he was appointed Official of the archbishop, that is president of the provincial court. The suits he heard were similar to those found in the court of Audience, and possibly it was his experience in the provincial court that prompted him to dedicate himself to preparing the *Provinciale*.¹³

Apart from strictly legal questions I have also underlined Lyndwood's involvement in the general ecclesiastical administration of the archbishop in its many facets, and therefore some reference needs to be made to a number of these activities which were not strictly judicial but which clearly required the presence of a keen legal mind.

One of these areas was his involvement in the provincial assembly of Canterbury, whose constitutions were the basis of his selection and arrangement in the *Provinciale*. Once the preliminaries of a provincial assembly had been completed, the normal practice was for the inferior prelates and other clergy to withdraw for debate to the undercroft of the chapter house of St Paul's while the archbishop and the bishops met by themselves. The decisions of the lower clergy were then relayed to the bishops by the Prelocutor, an office filled by Lyndwood on a number of occasions (1419, 1421, 1424, 1425, 1426).¹⁴ This should in fact come as no surprise. The Prelocutor had to be a skilled negotiator and learned in the legal rights and duties of the clergy in convocation, for they had to convey with conviction the clergy's decisions, whether it be to refuse to make a grant or to request exemptions. It is understandable therefore why men like Lyndwood were called upon. Indeed it was generally the practice to elect the official of the court of

¹² *Reg. Chichele*, vol I, pp lxxxviii.

¹³ For various suits in which Lyndwood was involved, see B E Ferme, *Canon Law in Late Medieval England*, pp 23–35.

¹⁴ For an account of his election, on 24 April 1425, see *Reg. Chichele*, vol III, p 103. See also a reference in the *Provinciale*, p 192a, a.v. *Provinciam: "Me tunc existente praelocutore ipsius cleri"*.

Canterbury: Henry Ware, Thomas Bekyngton and Lyndwood himself. A capable legal mind was required, but one that the archbishop could rely upon. It was useful therefore that the clergy be guided by one of his own administration.

Other activities that involved Lyndwood reflected not only the complexity of the archbishop's responsibilities but also Lyndwood's competence and trustworthiness. The round of activities is endless: he was present at episcopal consecrations and the swearing of obedience of new incumbents, at visitations of the province, and was concerned with disputes at and visitations to Oxford.¹⁵ One interesting involvement was in two celebrated heresy cases of the fifteenth century, those of the distinguished academic William Taylor and the minorite William Russell. It is probably not an unimportant fact that in 1418 Lyndwood was licensed to preach anywhere in the province of Canterbury in either Latin or English, which may have been a deft move on the part of Chichele to bring Lyndwood to bear on the challenge of Lollard teaching and influence.¹⁶

It is probably not surprising that Lyndwood would in time come to the attention of the political powers. We know that between March and September 1422 Lyndwood was part of an unsuccessful mission to Portugal, the aim of which was to petition Portugal for soldiers. Shortly before he returned Henry V had died in France, leaving a son not yet a year old as his heir.¹⁷ We know that it was after this trip that he began his gloss (1423) on the constitutions he had already selected and arranged before his absence in Portugal from March to September.¹⁸ By 1430 he had been appointed Secondary in the Privy Seal Office. In mid-March 1431 he had been in the entourage that accompanied Henry VI for his coronation as King of France at Notre Dame on 16 December.¹⁹ The return of Henry VI to England in February 1432 resulted in a reshaping of the Council, and on 21 February 1432 Lyndwood was appointed Keeper of the Privy Seal, the third of the great departments of state at the heart of the king's administration.²⁰ It is not to be wondered at that someone with Lyndwood's administrative and legal ability should be appointed.

The trust he was held in also reflected in a number of other tasks that were entrusted to him in this period. We know of his involvement in a number of diplomatic missions, including the congress of Arras as part of Cardinal Beaufort's delegation.²¹ Further he was part of a number of other projects that have left their mark on English society. He was probably connected with the foundation of All Souls College, and it is possible that he had a hand in the gift of books to the college by Henry VI in 1440.²² At about the same time he was also appointed one of the commissaries of Bishop Alnwick of Lincoln to further the king's plans to found a college at Eton.²³ He was also asked to act as one of the commissaries who were

¹⁵ See B E Ferme, *Canon Law in Late Medieval England*, pp 33–34.

¹⁶ See *Reg. Chichele*, vol III, pp 118–57, 157–73. Other cases in which Lyndwood was involved included that of John Claydon. *Reg. Chichele*, vol IV, pp 132–138; John Barton, *idem*, vol III, pp 15, 16, 25; and Ralph Mungyn, *idem*, vol III, pp 195–205.

¹⁷ See T Rymer, *Foedera, Conventiones et Litterae* (London, 1727–35), vol X, p 167, and J H Wylie, *History of England under Henry the Fourth* (London, 1884–98), vol II, p 330.

¹⁸ See the Dedication to Chichele in the *Provinciale*: 'Demumque post Hispanici Littoris sulcata maria, & a Regno Portugalliae reditum (piissimae memoriae Henrico Rege Angliae Quinto, in cujus Legatione tunc eram, ultimo die Augusti. Anno Domini 1422. apud Boscum Vicennarum in Francia vita functo) reassumpto Officialitatis officio, anno tunc sequenti eadem Statuta glossare proposui'.

¹⁹ See R Griffiths, *The Reign of Henry VI* (London, 1981), p 192.

²⁰ See R L Storey, 'English Officers of State, 1399–1485' (1958) 31 *BIHR* p 87, and J F Baldwin, *The King's Council in England during the Middle Ages* (Oxford, 1913), p 185.

²¹ See generally J G Dickinson, *The Congress of Arras* (Oxford, 1955). For other diplomatic missions involving Lyndwood, see J Ferguson, *English Diplomacy, 1422–1461* (Oxford, 1972), pp 45–46, 190, 196.

²² See R Weiss, 'Henry VI and the Library of All Souls College' (1942) 57 *EHR* pp 102–105.

²³ See H C M Lyte, *History of Eton College* (4th edn, London, 1911), pp 1–6, and R A Griffiths, *The Reign of Henry VI*, pp 242–248.

to devise the constitutions for the new college at Cambridge, the first stone of which the king had laid on 2 April 1441.²⁴

In the same year that Chichele died, 1443, Lyndwood was replaced as Keeper by Thomas Bekynton. In the previous year he had been named Bishop of St David's by papal provision on 27 June. It is a strange irony that he was so late in coming to episcopal honours and then to the hardly enticing see of St David's. It is quite possible that he was given St David's because it was available and the see of Hereford for which he had been earmarked remained unavailable. In 1438 he had been recommended by Henry VI to fill the see of Hereford when it became vacant on the resignation of Thomas Spofford, but nothing came of it as Spofford tenaciously held on until 1448.²⁵ Whatever the reasons for Lyndwood's failure to obtain earlier episcopal preferment, he died on 21 October 1446 and was buried in St Stephen's Chapel, Westminster.

In many respects Lyndwood's life and career cannot be considered as particularly unique. There were any number of highly talented and motivated ecclesiastics who by dint of intelligence, hard work, ambition and patronage, and most probably a judicious combination of all, followed a similar *cursus honorum*. What marks Lyndwood out from his contemporaries is his *Provinciale*, the written testament of his life. It is not surprising therefore that he left very precise instructions in his will concerning copies of this work.

The *Provinciale* was in many respects the logical conclusion to the many faceted legal and administrative situations and problems in which he found himself over many years of service in the administration of Chichele. Here was a well trained and experienced canonist who after years of practical application and consideration would now turn his hand to selecting and arranging the provincial constitutions which he had applied. To these constitutions he added an extensive legal commentary. It was to be a highly significant contribution to legal learning in England and it is to the *Provinciale* we must now turn.

THE PROVINCIALE

The provincial constitutions of the southern province, which had been promulgated from Langton to Chichele, were the basic material for Lyndwood's *Provinciale*. In his preface, dedicated to Chichele, Lyndwood explained his purpose in writing the work. At the urging of the archbishop ('*vestrae paternitatis reverendissimae hortamentis instigatus*') he had for a long time carefully read and considered the statutes of successive Archbishops of Canterbury, including those of Chichele himself. He claims, and there is much justification for this observation, that he found them in an unpromising and disorderly state: some were corrupted by bad scribes; others were confusing due to their long and wordy preambles; others were of uncertain authorship; many were of only passing or no importance.

Given this state of affairs Lyndwood tells us that he proceeded to remove the superfluous, choose the more useful, and then collect them, occasionally in abridged form, and then finally arrange them under appropriate titles following the model of the Decretals of Gregory IX. From his dedication to Chichele he had completed this rather arduous task by 1422, almost certainly before he left on his mission to Portugal in March of that year.

For how long he had worked on this collection, selection and arrangement is impossible to tell. Given that it was at Chichele's suggestion it may have been early

²⁴ See R Willis and J W Clark, *The Architectural History of the University of Cambridge and of the Colleges of Cambridge and Eton* (Cambridge, 1896), vol I, p ix, and R A Griffiths, *The Reign of Henry VI*, p 247.

²⁵ The recommendation is printed in G Williams, *Correspondence of Thomas Bekynton Secretary to Henry VI and Bishop of Bath and Wells* (Rolls Series, London, 1872), vol I, pp 1–3.

on in their formal connection, namely from 1414, which would mean somewhere around eight years. On the other hand he may have realized a particular need when he was more fully involved in the Provincial Court, namely from 1417. However long he took, the collection of the constitutions says much for his energy and determination given what we know of his particularly busy life. He possibly knew of other collections on the continent which during the fourteenth and fifteenth centuries had been similarly arranged thereby giving some order to local laws in the provinces of the Church.²⁶

On the other hand there were some notable and important differences between Lyndwood's work and those produced on the Continent. Lyndwood's collection remained an unofficial book despite Chichele's encouragement, and this possibly underlines the fact that these constitutions always had to be understood in reference to the *ius commune*. But of greater significance is the fact that, unlike the continental compilers, Lyndwood supplied his collection with an extensive gloss. This was a creative and highly significant addition. It allowed practitioners to come to a better understanding of provincial law and its specific interpretation in the light of the *ius commune*. He may have been influenced by John Acton's gloss on the legatine constitutions of Otto and Ottobono prepared almost a century before. He also claims that he had in mind the less well informed, well equipped students,²⁷ and given that many judges and practitioners of canon law scattered throughout the province would not have had access to well equipped libraries, his lengthy and learned gloss most likely served a useful purpose. The analysis of legal terms and the presentation of the opinions of the great commentators on any number of complex but relevant legal questions certainly made the work highly valuable.

On the other hand we should not be misled into thinking that this was not a highly serious work, and there is more than a hint as one carefully reads the gloss that Lyndwood, if he did have the less well informed students in mind, may have very quickly lost them as he went into long and at times somewhat irrelevant academic flourishes. It would be interesting to know what a judge or chancellor in Hereford or his old stamping ground Salisbury would have made of a number of his glosses. A reading of the gloss often gives the impression that Lyndwood very quickly lost sight of his purported original aim of helping the less well informed or well equipped students. That of course is natural enough and in a sense we remain in debt to Lyndwood that he did roam widely in the canonical tradition, as it gives us that rare possibility to enter into the mind of an English canonist from the later middle ages.

Whatever the case, we know, again from the dedication to Chichele, when the gloss was written. After his return from Portugal he decided in 1423 to gloss the statutes he had selected. He claims he was influenced by a number of factors in this task. Through a study of the fundamental laws and canons he wished to equip himself more adequately to deal more effectively with the suits and general business in which as Official he was constantly engaged. In addition he was aware that many in the province—prelates, judges, and their subjects—neglected to observe the constitutions, and he felt that they would be better known and studied if they were in fact more clearly presented. He presented his completed work to the archbishop, having finished the gloss, we are told in a note at the end of his commentary, on the eve of Whitsun 1430, about seven years after he had begun writing.²⁸

The framework of the *Provinciale* was dictated by Lyndwood's intention of modelling his constitutions on the *Decretales*, that is practically fitting the selected

²⁶ See C R Cheney, '*Provinciale*', p 161. n 4, where it is pointed out that at the very time of Lyndwood's writing, Archbishop Nicholas of Gniezno had published in 1420 a collection of provincial statutes in five books *sub certis et consuets titulis*.

²⁷ See *Provinciale*, p 95a, a.v. *Commenta*.

²⁸ *Provinciale*, p. 356a. He also seems to have prepared an index or '*tabula compendiosa*' completed 'in festo conversionis sancti pauli, anno domini MCCCCXXXIII'

constitutions into the structure of the books and titles of Gregory IX's collection. It was a rather artificial task. There are 75 titles in the *Provinciale* compared with 185 in the Decretals. Maitland pointed to the difficulty of this task by looking at his survey of marriage law: the *Provinciale* contained four chapters, the *Decretales* 166.²⁹

However artificial the task, Lyndwood chose some 240 chapters, divided them according to the five books of the Decretals and at the head of each named the author. As well as the constitutions of the archbishops he also included two secular pronouncements: *Circumspecte agatis* (1286) and part of the royal replies to the *Articuli Cleri* (1316). It was an extensive representation of the laws of the archbishops from Langton to Chichele.

Professor C R Cheney has studied at length both the constitutions of the English Church and those Lyndwood chose and his conclusions remain valid.³⁰ In his studies he has shown those constitutions to which Lyndwood gave incorrect ascriptions or even at times conflated and changed. This in fact is not surprising. Apart from the state of the collections, one of the reasons which prompted Lyndwood to embark upon the project, it is important to remember that Lyndwood was a lawyer not primarily a historian. True, he does demonstrate care in his selection of a number of constitutions,³¹ but in general it is doubtful whether he would try to penetrate deeply behind the texts he had before him. His aim was their legal significance rather than their correct textual transmission. In other words I doubt that he would have looked in difficult or distant places, but would rather rely in general on the *textus receptus* that lay before him. This does mean that the constitutions must be used with a certain care in any attempt to trace the legislation they contain. While it is true that his *Provinciale* does provide a guide to the provincial law of the English Church and how it was perceived and interpreted in the fifteenth century, the constitutions alone cannot be safely used to trace the earlier history of the legislation they contain.

In his will Lyndwood gave precise instructions about the preservation of an authentic copy of the *Provinciale*, perhaps conscious after his own researches as to how quickly scribal and other errors could begin.³² His instruction that an exemplar copy be kept chained in St Stephen's Chapel, in order that copyists could have recourse to it to correct their own copies, probably reflects that even in his own lifetime the *Provinciale* had become, if not a standard work, certainly one that was highly regarded. Indeed, some 55 manuscripts of the *Provinciale* are still extant though in varying degrees of completeness.³³

This popularity of the *Provinciale* is also attested to by the long record of printed editions. It was one of the first books produced by the emerging Oxford printing press around 1483. This edition included both the gloss and the constitutions. Other editions printed over the centuries might contain both the gloss and constitutions or only the latter and sometimes the constitutions with an abridged gloss. In 1679 a comprehensive edition was published at Oxford which, in addition to the constitutions with Lyndwood's gloss, also contained the legatine constitutions

²⁹ F W Maitland, *Roman Canon Law in the Church of England* (London, 1898), p 38.

³⁰ See C R Cheney, 'Legislation of the Medieval English Church' (1935) 50 EHR pp 193–224, and 'Textual Problems of the English Provincial Canons', in *idem*, *Medieval Texts and Studies* (Oxford, 1973), pp 111–137.

³¹ See *Provinciale*, p 22b, a.v. *Interpretatione*; p 32a, a.v. *Quia quidam et infra*; p 90a, a.v. *Excussis*; p 191b, a.v. *Quoniam*; p 167b, a.v. *De Lambeth*.

³² See (1852) 34 *Archaeologia* pp 419–420: 'Item, volo quod liber meus quem compilavi super constitutiones provinciales reponatur in cathenis et inferratus sit, ut salvo et secure custodiatur, in superiori parte capelle sancti Stephani predictae vel alias in vestiario eius capelle, ut quociens opus fuerit pro veritate scripture primarie eiusdem pro correctione aliorum librorum ab eodem tractatu copiatorum recurri poterit dum sit opus'.

³³ For a list of manuscripts, see B E Ferme, *Canon Law in late Medieval England*, pp 147–148.

with the gloss of John Acton as well as other documents. It is this edition which remains the *textus receptus*.³⁴

I should add a word about other possible writings of Lyndwood. In his commentary he speaks as though there were some lectures of his on the *Decretum* which were in circulation.³⁵ Further, according to Bale, there was also a commentary on certain psalms and a *Summa Causarum*, though John Leland is unsure whether Lyndwood wrote anything besides the *Provinciale*.³⁶ If they did exist they are either no longer extant or as yet unidentified. There is also a possibility that he wrote a poem addressed to the clergy which appears in manuscript form at the end of a 1505 edition of the *Provinciale*.³⁷ Finally, some have put forward Lyndwood's name as the author of a tract on the rule of princes written for Henry VI, though this remains as yet only conjecture.³⁸

What definitively remains of Lyndwood's literary activities is the *Provinciale*, a work that was popular, relevant and in wide demand and that became the *de facto* official collection of English ecclesiastical law in the fifteenth century and beyond. Its gloss gives us a rare insight into the workings of an English canonist before the Reformation and is of particular relevance in helping us confront the third of the tasks I have set myself: Canon Law in an undivided Western Church.

CANON LAW IN AN UNDIVIDED WESTERN CHURCH

It is one of those neat ironies of history that to understand something of the nature of the canon law in an undivided pre-Reformation Western Church we must turn to a celebrated dispute towards the end of the nineteenth century between two of England's more noted historians. The details of what came to be known as the Stubbs-Maitland controversy are well known.³⁹ In his study of the history and development of ecclesiastical jurisdiction, Stubbs along with other scholars argued for a substantial continuity between the pre- and post-Reformation English Church. An important role was played by the canon law both in this affirmation and in the dispute at large. We find his position neatly summarised in a sentence from the Report of the Ecclesiastical Courts Commission: 'But the canon law of Rome, though always regarded as of great authority in England, was not held to be binding on the courts'.⁴⁰ They could disregard the decretal law as local needs, preferences and particular situations demanded. The English Church courts were able and in fact did follow a course independent of the papacy.

Maitland could not accept this. He ironically made the point that Stubbs and his supporters were in fact trying to demonstrate that the Church of England was protestant before the Reformation and catholic after it. All the evidence that he had studied, including Lyndwood's *Provinciale*, to which he dedicated a stimulating chapter in his book on Roman canon law in England, demonstrated that the

³⁴ *Ibid.*, pp 52–53.

³⁵ *Provinciale*, p 298b, a.v. *Fore praestanda*.

³⁶ See J Bale, *Index Britanniae Scriptorum*, ed R L Poole and M Bateson (Oxford, 1902), p 133, and J Bale, *Illustrium Maioris Britanniae Scriptorum* (Ipswich, 1584), fol 158b.

³⁷ See B E Ferme, 'William Lyndwood', *The Cayan*, November 1989, pp 62–68.

³⁸ See R Griffiths, *The Reign of Henry VI*, p 265, n 47.

³⁹ For discussion of the dispute see, Ch Donahue Jr, 'Roman Canon Law in the Medieval English Church: Stubbs vs Maitland Re-examined after 75 years in the Light of some Records from the Church Courts' (1974) 72 *Michigan Law Review*, pp 647–715; G R Elton, *F W Maitland* (London, 1985), pp 69–79; J W Gray, 'Canon Law in England: Some Reflections on the Stubbs-Maitland Controversy', in *Studies in Church History*, ed J G Cumming, (Leiden, 1966), pp 46–88; R H Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990), pp 4–12; *Idem*, 'The History of English Law. Centenary Essays on Pollock and Maitland' (1996) 89 *Proceedings of the British Academy* pp 145–169.

⁴⁰ *Report of the Commissioners appointed to inquire into the Constitution and Working of the Ecclesiastical Courts . . .* (London, 1883), vol I, p xviii.

medieval English Church and its courts were dependent on the papal law.⁴¹ He argued, with a certain justification, that where the hands of the Church courts were free, that is not tied by writs of prohibition for example, they invariably followed the canon law, and in what was to become a classical and oft-repeated remark, as far as he could ascertain English ecclesiastical courts treated the papal decretals as 'binding statute law'.⁴²

Central to his conclusions was his reading of Lyndwood's *Provinciale*. Maitland concluded that 'those, therefore, who maintain that the English ecclesiastical courts held themselves free to accept or reject the laws that were found in *corpore Decretorum et Decretalium*, should be prepared to treat Lyndwood's book as an exception, an aberration; for what we find there is stark papalism, which leaves little enough room for local custom, and absolutely no room for any liberties of the Anglican Church which can be upheld against the law-giving power of the pope'.⁴³

Much research has followed upon this original dispute, and there have been a considerable number of important and far-reaching advances in our perception and understanding of the workings of the Church courts and of the law applied there.⁴⁴ It must be admitted that much of Maitland's insight remains valid. There is no doubt that the Church courts and what we might term the English medieval canon law both recognised and followed the papal decretals. It would have been particularly odd if this were found not to be the case. The fact is that ecclesiastical law in medieval England, namely that particular law promulgated in various diocesan and provincial synods throughout the middle ages, was locked into, influenced by and dependent upon a system that encompassed western Europe. It was also influenced at least in its practical application by the canonical commentators who were involved in a constant process of glossing and commenting upon the peculiarities and difficulties that were found in the canon law of the western Church, a law that had steadily become more complex though more unified especially after the promulgation of the *Decretales* by Gregory IX in 1234.

A reading of the *Provinciale* confirms this dependence upon and influence by the western canon law. As far as I have been able to ascertain, there is no clear and unambiguous instance in this work in which the authority of the papal law is explicitly rejected.⁴⁵ True, this has a certain significance given that the Church was still alert to the ecclesiological and legal questions that the western schism had fathered. Indeed the problem of the relative powers of Pope and Council were still very much under consideration, and we know that Lyndwood was as Keeper involved in various practical negotiations concerning the Council of Basle.

On the other hand Lyndwood himself, like all commentators he consulted, interpreted and moulded the canon law to the legal questions that he confronted. Even the most pro-conciliar canonists would have been wary of denying or dismissing lightly the papal '*plenitudo potestatis*'. Rather they would have explained and interpreted the concept as it affected the conciliar question. This very normal activity of the canonists and of Lyndwood should not be dismissed too lightly as it gives us an insight not only into the merits of the Stubbs–Maitland controversy but also into another question that in fact lies at the basis of this dispute: what was the relationship of what I have termed the English medieval canon law to what would later

⁴¹ Maitland's views are collected in F W Maitland, *Roman Canon Law*. The first chapter is dedicated to Lyndwood.

⁴² *Roman Canon Law*, p 2.

⁴³ *Ibid* p 72.

⁴⁴ For examples, see N Adams and Ch Donahue, *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c 1200–1301* (Selden Society, vol. 95, London, 1981), and R H Helmholz, *Canon Law and the Law of England* (London, 1987).

⁴⁵ For examples of Lyndwood's underlining papal authority and the '*plenitudo potestatis*', see *Provinciale*, p 28b, a.v. *Expresse*; p 104a, a.v. *Fratrum nostrorum Consilio*; p 292b, a.v. *Declarantur*; p 297a, a.v. *Decretalibus*; p 320b, a.v. *interdicto*.

be known as the *Corpus Iuris Canonici*, namely that series of collections, some official, others private, that in fact would be the basis of the canon law of the Roman Catholic Church until 1917 when the first Code of Canon Law was promulgated.

There are no easy or necessarily clear and uniform answers to this complex question, and many facets of the multi-faceted landscape of the canon law and its application in England need to be considered before a complete or satisfactory answer can be safely offered. True, a great deal has now been done to fill in the many gaps that existed when Maitland and Stubbs wrote. Thus, in the research carried out on the practice of the Church courts in England we now know there was greater flexibility and room for manoeuvre than a reading of Maitland might have suggested. Commenting on the nature of the canon law and its application in England, Professor Helmholz remarked: 'It left more room for judges whose "hands were free" from temporal bindings to follow local traditions and needs, sometimes even when decretal law appeared to direct the contrary. That sort of freedom, far from making the English Church "insular", shows that it was fully part of Continental legal traditions.'⁴⁶

These continental legal traditions were well known to Lyndwood. One obvious way of confronting this question and of determining the merits of Stubbs and Maitland is to turn to one of Maitland's basic sources for his position and to determine whether he was correct in his assessment. I refer of course to Lyndwood. Maitland's very first essay in the rebuttal of Stubbs' position was a provocative study of the *Provinciale*, and he was clear at the end of this research that if we were to follow Lyndwood, then Stubbs' views on the role of the papal canon law in England were clearly incorrect.

I cannot here analyse all the possible instances in Lyndwood which reflect this debate but I would like to offer some considerations which I believe do shed some light upon it and which will necessarily force us to reconsider the terms of the debate and more importantly the place of the western canon law in medieval England.

Most of the applied canon law in England fitted comfortably with the papal law books, but it needs to be remembered that differences could very easily appear, due at one level to different interpretations and the demands of local custom and practice, but at a more profound level, due to the very nature and complexity of the medieval canon law itself. I have elsewhere tried to point out that a close and careful study of Lyndwood does not fit comfortably with Maitland's views.⁴⁷ Specifically, if we consider his treatment of testamentary law and of the role of the executor in particular, what we have is a canonist not so much involved in a process of slavishly forcing English practice into the western canon law, but rather involved in a far more subtle task, namely that of harmonising English practice with the *ius commune*. Lyndwood had no particular intention of underlining those places in which there was divergence between papal law and local custom, for this would have undermined the basic thrust of his work, which was one of harmony. This task reflects a reality that seemed to have either been forgotten or simply neglected by Maitland, namely that the complexities and flexibility of the medieval canon law was in fact one of its essential characteristics and that at nearly every point it required an ability to harmonise texts, various traditions and differing customs. This was hardly new. Already in the mid-twelfth century the father of the science of canon law, Gratian, had attempted the same, naming his work *Concordia discordantium canonum*. The search for harmony, *Concordia*, was part of a canonical tradition to which Lyndwood was heir.

In other words Lyndwood is not quite the best place for Maitland to have begun

⁴⁶ R M Helmholz, *Roman Canon Law in Reformation England*, p 19.

⁴⁷ 'The testamentary executor in Lyndwood's *Provinciale*', (1989) 49 *Jurist* pp 632–678.

his research and this for two reasons. First, because Lyndwood was not interested in determining where there were divergences between papal law and local practice but rather, if there were differences, of establishing *concordia* between them. Secondly, and this follows logically and directly from the first, Lyndwood's approach reflected the ever-constant reality that the western canon law was far more complex and flexible than perhaps Maitland realised. In other words, while Stubbs certainly overstated his case, he nevertheless had an insight into the inherent complexities of the medieval canon law and its practical application when he talked of its 'scientific element'.⁴⁸

Obviously decretal law shaped practice and English canon law at all points and its texts were clearly the basis or starting point for any discussion of a legal problem—who would execute the will, was this defamation, had the parties been cited etc—but the canonists, and this includes Lyndwood, did not see the papal canon law simply as 'binding statute law', as Maitland held. The manner and the seeming freedom with which Lyndwood and other canonists treated the legal texts they had before them is difficult to understand on the basis of what we might term a highly positivist perception and understanding of law, which we might in brief characterise as a judicial command enforceable by a legal sanction. As Professor Helmholz has recently underlined: 'The reality is that the medieval *ius commune* admitted a greater latitude of interpretation by the jurists and a greater role for customary practice by the courts than is compatible with the regime of papal legislative sovereignty that Maitland carried into his famous dispute with Stubbs.'⁴⁹

This characteristic can be seen at another theoretical level when Lyndwood treats of a problem, already widely commented upon by the canonists, of whether the pope could dispense a bigamist to receive the higher orders. The type of bigamy which was a bar to ordination was known as '*bigamia interpretativa*' as distinct from '*bigamia vere*'. The former arose from a variety of circumstances: marriage to a widow, successive marriage, concubinage, failure to dismiss an adulterous wife. The latter referred to the person who had two wives at once.⁵⁰

The question had occupied the canonists because it involved the possibility of dispensing from the apostolic law itself, namely from those list of qualifications that St Paul had regarded as necessary for ordination.⁵¹ Lyndwood in his gloss was clearly aware of the canonical discussion on the problem.⁵² Both Bernardus Parminiensis and Johannes de Deo had denied this power to the pope, though the general view, supported by Hostiensis and Johannes Andreae, among others, was that technically the pope was free to dispense on the basis of his '*plenitudo potestatis*'. Lyndwood's position is neatly summarised: '*Quoad bigamum ad ordines promovendum etiam potest Papa dispensare ex plenitudine potestatis*'. On the other hand he did point to an important moral restriction to the pope's dispensatory power in this specific case, which he had found in Hostiensis and Johannes Andreae and which could not be too easily dismissed: '*Papa tamen de potestate sua recte regulata non potest dispensare, ut bigamus promoveatur ad Diaconatum & Presbyterum*'.⁵³

Hostiensis had argued that it would not be fitting for the pope to dispense, and thus he ought not to undertake this action. In fact Hostiensis refers to Innocent III, who had written that the pope cannot dispense from the essence of the vow of

⁴⁸ W Stubbs, *Seventeen Lectures on the Study of Mediaeval and Modern History* (3rd. edn., Oxford, 1900), p 351: 'As we proceed, however, we are struck more and more with the prominence of the scientific element in legal education'.

⁴⁹ 'The History of English Law' (cited in note 39 above), p. 165.

⁵⁰ See S. Kuttner, 'Pope Lucius III and the Bigamous Archbishop of Palermo', in *Medieval Studies Presented to Aubrey Gwynn*, S J ed J A Watt, (Dublin, 1961), pp 409-453.

⁵¹ See I Tim 3:2,12; Tit 1:6.

⁵² See *Provinciale*, p 31a, a.v. *Bigamos*.

⁵³ *Ibid*.

poverty.⁵⁴ Lyndwood followed this interpretation of the correct or congruent use of papal power. His reading of the law underlines exactly the complexity of interpreting legal texts and the need to take into account many factors that a bald reading of the text might not suggest, or that a reading of the Stubbs-Maitland controversy would not readily have suggested. Thus, another factor that Lyndwood pointed to in his discussion of papal power was that no one was to obey a mandate of the pope that involved '*periculum animae*'. The provision of a boy to a benefice with cure of souls was a case in point.⁵⁵ Or again the pope's '*plenitudo potestatis*' was not so great that he could dissolve '*carnale matrimonium*'.⁵⁶

One perhaps should not make too much of this as it was part of the classic canonical treatment of the papacy, but it is important to take these factors into account if we are to understand the legal import of the texts. The bald statement that the pope enjoyed the '*plenitudo potestatis*' was open to interpretation and clarification and this was understood by Lyndwood and the canonists upon whom he relied. To see them simply as 'binding statute law' is not to do them justice. Life and canonical tradition were far more complex than a stark reading of the papal law might have suggested.

This typical approach is found elsewhere in Lyndwood. For example, in my own examination of the *Provinciale* I have been struck, not so much by Lyndwood's pro-papal line in an era of conciliar tendencies, nor even by his erudition and competence, nor by his up-to-date acquaintance with contemporary commentators, but rather by his particular style of argumentation, and specifically by the extent to which Lyndwood defers to the Roman law. He not only uses the language of this law, but frequently uses its specific argumentation in analysing various legal questions. In one sense this is understandable—'*Legista sine canonibus parum valet, canonista sine legibus nihil*'. On the other hand what comes through is a reluctance to rely merely upon English usage and practice, of which there was no doubt, or upon the Provincial Constitutions or papal law, which were perfectly explicit, if he could press into service the civil law. This deference led him at times into academic displays of learning as well as to conclusions that do not correspond to what we know of fifteenth-century practice.

Thus in his explanation of intestate procedure Lyndwood makes the peculiar point that if there is no widow, the Fisc succeeds, unless the deceased be a member of certain privileged *collegia*, when this *collegium* takes to the exclusion of the Fisc. It is clear from his references that Lyndwood is giving us the Roman law rules, but what this means in practice is very difficult to determine. I can only suspect Lyndwood of romanising, given that it was the Ordinary who had discretion in this situation. To bring in the Fisc is odd and it does seem to be an example of the type of reference to and dependence upon Roman law that is typical of Lyndwood's style of argumentation.⁵⁷ It also underlines the fact that to talk simply of 'binding statute law' does not do full justice to the complexities of interpretation in which Lyndwood was involved. A reading of this and other examples would also lead us to think that, at least for Lyndwood, the civil law was as important as the papal law as practical questions were confronted.

⁵⁴ See Hostiensis, *Summa Aurea* (Lyons, 1588), f 50d: '*Hoc tamen "non potest", idest non congruit potentiae suae*'. The reference is to the decretal *cum ad monasterium*, X.3.35.6.

⁵⁵ See *Provinciale*, p 91b. a.v. *Teneatur: 'Alium casum habes, si Mandatum vergat in periculum animae, utputa, si papa mandat provideri impuberi de Beneficio curato*'.

⁵⁶ *Provinciale*, p 273a. a.v. *Solennem Editionem: '... hic vero tenet, quia non est potestas Papae in dissolvendo carnale matrimonium, sicut spirituale*'.

⁵⁷ See *Provinciale*, p 180a. a.v. *Decedentium*. For further examples, see *Provinciale*, p 173b. a.v. *Voluntatem ultimam*: p 172a. a.v. *Intestatis*: p 176b. a.v. *Inventarium*.

CONCLUSION

The medieval canon law was highly flexible, and this flexibility was based on a perception of a higher need, namely that justice be achieved. This was a constant refrain of the canonists, and the balancing and ordering of texts and opinions was in a sense its natural outcome. Thus, Lyndwood would devote a lengthy and complex gloss in which he balanced and juggled with various texts in order to justify the right of the married woman to dispose of property by will.⁵⁸

It was a tradition that had a long canonical history in the learned laws. Hostiensis in the preface to his *Summa Aurea* could argue that one of the benefits of the study of canon law is that it enables a man to distinguish between what is just and unjust and to render to each what is his due and that such justice is to be tempered by equity.⁵⁹ In a very real sense the canon law of the middle ages reflected this limitation on all who enforced and interpreted legal rules and papal decretals. There was a certain reluctance to speak with complete certainty about the law, for as long as it was meant to meet the higher demands of justice there was clearly much room for interpretation and careful reasoning. The balancing of texts, the dissection of terms and the consequent disputes were an inevitable result. There is no doubt that in an undivided Western Church, Lyndwood was heir to this tradition and approach and his *Provinciale* offers ample evidence that he applied it to his consideration of the English canon law of the middle ages. If we were simply to consider the canon law before the Reformation there was much in the corpus that underlined the unity of the Church.

(This is the text of the Lyndwood Lecture given at a joint meeting of the Canon Law Society of Great Britain and Ireland and the Ecclesiastical Law Society in London on 2nd November 1996.)

⁵⁸ See Ch Donahue, 'Lyndwood's Gloss *propriarum uxorum*: Marital Property and the *ius commune* in Fifteenth-Century England', in *Europaisches Rechtsdenken in Geschichte und Gegenwart. Festschrift für Helmut Coing zum 70. Geburtstag*, ed N Horn, (Munich, 1982), vol I, pp 19–37.

⁵⁹ *Summa Aurea*, I. De officio ordinarii, n 4. See C Gallagher, *Canon Law and the Christian Community* (Rome, 1978), pp 126–138. For Hostiensis' concept of equity, see G Brugnotto, "L'Equitas Canonica". Studio e Analisi del Concetto negli Scritti di Enrico da Susa (Cardinal Ostiense)', unpublished doctoral dissertation, Università Pontificia Gregoriana, Rome 1996.