

# CRIMINAL LAW AND THE DEVELOPMENT OF THE ASSIZES OF THE CRUSADER KINGDOM OF JERUSALEM IN THE TWELFTH CENTURY

by

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## Abstract

The legal treatises of the Kingdom of Jerusalem were written in the thirteenth century, when most of the kingdom had been re-conquered by the Muslims. There are no treatises from the twelfth century, when the kingdom was at its height. The thirteenth-century jurists claimed that the kingdom had always had written laws, but they may have been making this up for political purposes. The treatises also discuss issues important to the noble class of which the jurists were a part: property rights and the feudal services owed to the king, as well as the proper way to plead their cases in court. But what do they say about criminal law, and laws for the lower classes? How were crimes tried and punished in the twelfth century, and did this differ from the laws recorded in the thirteenth century?

Chapter one deals with the different treatises, and their claim that there was a set of laws called “*Letres dou Sepulcre*” in the twelfth century. The most important of the treatises for criminal law, the assizes of the burgess court, is examined in detail. Chapter two looks at the small number of laws that survive from the twelfth century, in charters, the canons of the Council of Nablus, and the chronicle of William of Tyre. Chapter three is a study of other descriptions of crusader law in the twelfth century, including those by Christian and Muslim pilgrims, and

especially the observations of Usama ibn Munqidh. These accounts are tied together by the common theme of theft and the ways that thieves could be punished. Chapter four deals with cases mentioned by thirteenth-century sources, including theft, assault, and prostitution, but especially cases that led to trials by battle. The usefulness of such trials for dating some of the laws is also examined.

The conclusion demonstrates that certain parts of the assizes relating to criminal law must have already existed in the twelfth century, and offers some tentative ideas about the specific origin of the laws. Avenues for future research are also introduced.

## Acknowledgments

In Mr. Peter Young's grade 11 World Civilizations class, I wrote a 1000-word essay about the crusades, and I was amazed not only that medieval Europeans knew about Jerusalem, but also that history happened at all that long ago. At the time I thought I should have been studying science or math or computers, but I was terrible at all of those things, and thanks to Mr. Young, history became something more than just a hobby.

At the University of Western Ontario, I took Maya Shatzmiller's seminar on the crusades, which was my first detailed introduction to the history and sources. I was sure I would never figure out which Baldwin was which, but Prof. Shatzmiller will be happy to know that I've got them all straightened out now. Her advice and support have been very helpful throughout the rest of my academic career.

From the University of Toronto I am grateful to the members of my PhD committee: Lawrin Armstrong, from whom I learned about law and diplomatics, and who made sure I always kept my citations coherent; Mark Meyerson, for whose class on medieval violence I wrote an essay that was the origin of this thesis; Linda Northrup, who encouraged me to study Arabic and the Muslim sources; and Michael Gervers, who kept everything on track and always had a perfect reference or contact for all of my questions. Along with Prof. Armstrong I should also thank George Rigg and David Townsend, with whom I spent four years as a teaching assistant for the Latin program at the Centre for Medieval Studies. I would also like to thank my friends and fellow students at the Centre. I did not get to see them very much, but we often discussed theses and historiographical problems over e-mail and Facebook status updates. Thanks also to Dominik Szymanski, for threatening violence whenever I wanted to give up.

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## Introduction

Jerusalem was captured on July 15, 1099, at the end the First Crusade, which had begun four years earlier in 1095. Along the way the crusaders had also conquered Edessa in Mesopotamia, and Antioch in northern Syria. This success was never repeated by subsequent crusades from Europe, but those who remained in Jerusalem after 1099 managed to carve out a Latin Christian kingdom along the Mediterranean coast.<sup>1</sup> “Jerusalem” is thus used here to refer to both the kingdom, and the city itself. The crusaders adhered to the Latin Roman Catholic rite, and so they and their kingdom are often called “Latin.” Because they usually came from the territory of the early medieval Franks, they often referred to themselves as “Franks” and “Frankish”, terms also used by the Muslims and Greeks whom the crusaders encountered in the east.

One of the leaders of the First Crusade, Godfrey of Bouillon, was elected as the first ruler of the kingdom. He died the next year in 1100, but despite his short reign, he was seen by later generations as a legendary hero who, among other things, established the first laws. At the time, however, no one was really sure if Jerusalem would be a secular kingdom, or if it would be ruled as a papal fief; the papal legate Daimbert of Pisa preferred the latter, and Godfrey may have promised to hand the city of Jerusalem over to him. However, when Godfrey died, his brother

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<sup>1</sup> The most up-to-date work on the First Crusade is Thomas Asbridge, *The First Crusade: A New History* (Oxford: Oxford University Press, 2004). There are many other recent scholarly histories of the crusades in general. The two I have found most useful are Jonathan Riley-Smith, *The Crusades: A History*, 2<sup>nd</sup> ed. (New Haven: Yale University Press, 2005), and Christopher Tyerman, *God's War: A New History of the Crusades* (London: Penguin, 2006). Another large history has recently been published by Jonathan Phillips, *Holy Warriors: A Modern History of the Crusades* (London: Random House, 2009). An older but still very useful summary is Hans E. Mayer, *The Crusades*, 2<sup>nd</sup> ed., trans. John Gillingham (Oxford: Oxford University Press, 1972).

Baldwin of Boulogne refused to cooperate with Daimbert, and the kingdom remained a secular state.<sup>2</sup>

Baldwin I expanded the borders of the kingdom and brought other important sites under crusader rule, including the cities of Acre, Tripoli, and Beirut on the coast, as well as the trade routes in the desert to the east. The kingdom eventually encompassed roughly modern Israel, the Palestinian territories, and Lebanon, as well as parts of Syria, Jordan, and Egypt. Baldwin died childless in 1118 and was succeeded by his cousin Baldwin of Bourcq. Under Baldwin II, the Knights Templar were founded in 1119, a short legal code was established at the Council of Nablus in 1120, and a treaty was signed with Venice in 1123, which not only led to the capture of the major coastal city of Tyre, but also allowed the Venetians and other Italian merchants to live in semi-autonomous trading communities. Baldwin II had only daughters, the oldest of whom, Melisende, married Count Fulk V of Anjou in 1129, and the two succeeded to the throne when Baldwin died in 1131.<sup>3</sup>

Fulk represented a break in the dynasty that had ruled Jerusalem for thirty years. He faced much opposition and occasionally rebellions, including the revolt of Count Hugh II of Jaffa, one of the kingdom's most important vassals, in 1134. Fulk and Melisende also had to deal with the unification of the Muslim states to the east. The disunity of these states had contributed to the success of the First Crusade and the subsequent expansion of the kingdom, but now, Zengi, the ruler of Mosul in Mesopotamia, had taken control of Aleppo, near Antioch, and was trying to annex Damascus, closer to the border with Jerusalem. Around 1138 Jerusalem and Damascus signed a treaty for mutual protection against Zengi. Fulk died in 1143, and the next

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<sup>2</sup> Riley-Smith, *The Crusades*, pp. 63-64.

<sup>3</sup> Riley-Smith, *The Crusades*, pp. 94-98.

year, Zengi conquered Edessa, the furthest north of the crusader territories. This sparked the Second Crusade, which arrived in 1148, led by Louis VII of France and Conrad III of Germany. Rather than attempt to recapture Edessa or any of the other northern lands, they tried instead to conquer Damascus, to avoid seeing it fall to Zengi's successors (Zengi himself had been assassinated in 1146). The crusader siege was a complete failure, however, and Damascus fell to Zengi's son Nur ad-Din a few years later.<sup>4</sup>

After Fulk's death his young son Baldwin III became king, with Melisende remaining in power as regent. By the time of the Second Crusade, Baldwin was of legal age to rule without a regent, but the nobility was split between support for Baldwin and Melisende. Among Baldwin's supporters was the Ibelin family, which had gained importance after their support of Fulk during the revolt in 1134. Baldwin III crowned himself as sole king in 1153, leading to a brief civil war, he and his mother were soon reconciled and Melisende became one of her son's chief advisors. Later in 1153, Baldwin captured Ascalon, the last remaining Egyptian outpost on the kingdom's southwestern frontier.<sup>5</sup> He also sought an alliance with the Byzantine Empire, and in 1157 married Theodora Comnena, a relative of Emperor Manuel Comnenus, who in turn married Baldwin's cousin. Baldwin died childless in 1162 and was succeeded by his brother Amalric I.

With Muslim Syria united to the north and east, Amalric turned his attention to Egypt in the west, where the ruling Fatimid dynasty was in political turmoil after a series of weak caliphs. Nur ad-Din, however, also wanted control of Egypt, and a complicated series of invasions followed, in which the Egyptian commanders alternately allied with and fought against Amalric

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<sup>4</sup> The attack on Damascus used to be seen as a strategic mistake, but according to Phillips it was in Jerusalem's best interest not to let Damascus fall to the Zengids, while recapturing Edessa would have made little difference to the political situation in the south. Jonathan Phillips, *The Second Crusade: Extending the Frontiers of Christendom* (New Haven: Yale University Press, 2007), p. 215 and generally throughout the book.

<sup>5</sup> Mayer, *The Crusades*, pp. 108-112.

and Nur ad-Din in their attempt to retain their independence. Meanwhile Amalric continued his brother's alliance with the Byzantine Empire, and in 1167 married Maria, another relative of Emperor Manuel. A joint Byzantine-crusader expedition against Egypt accomplished nothing, and by 1169 Egypt was firmly under the control of one of Nur ad-Din's generals, Saladin, who overthrew the Fatimid caliph and declared himself sultan in 1171. In 1174, both Amalric and Nur ad-Din died, and Saladin eventually took control of Nur ad-Din's Syrian territories as well.<sup>6</sup>

Amalric was succeeded by his son Baldwin IV. Because Baldwin was underaged and a leper, this is traditionally considered a period of decline for the Kingdom of Jerusalem, but more recently it has been seen as a prosperous time, when Jerusalem was more than a match for Saladin.<sup>7</sup> As Baldwin could also not marry or produce heirs, there was a lengthy search for a husband for Baldwin's sister Sibylla, who married William of Montferrat and then Guy of Lusignan after William's death. Baldwin died in 1185, and his nephew, Sibylla and William's son Baldwin V, became king but died while still a child in 1186. Guy and Sibylla succeeded him, but Guy was an incompetent strategist and Saladin overran the entire kingdom with the combined forces of Egypt and Syria after the Battle of Hattin in 1187. Jerusalem itself fell in October of that year.

The Third Crusade, led by Richard I of England and Philip II of France, won back most of the Mediterranean coast, but not Jerusalem itself, and the kingdom was re-established in Acre; this state is sometimes known as the "second kingdom" or the "Kingdom of Acre," although its inhabitants continued to call it "Jerusalem." Guy of Lusignan was not recognized as king after

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<sup>6</sup> Mayer, *The Crusades*, pp. 118-120.

<sup>7</sup> This is the argument of Bernard Hamilton, *The Leper King and his Heirs: Baldwin IV and the Crusader Kingdom of Jerusalem* (Cambridge: Cambridge University Press, 2000), throughout the book, and summarized in the prologue, pp. 1-5.

Hattin, but purchased the island of Cyprus from King Richard, who had captured it on his way to the east. For the next century Cyprus and Jerusalem, which were sometimes controlled by the same dynasty, faced numerous internal and external threats. New crusades were launched, mostly against Egypt, which was seen as the gateway to Syria, but Egypt remained under the control of the Ayyubid dynasty (the successors of Saladin), and then the Mamluk dynasty that overthrew it. In 1229, the Holy Roman Emperor Frederick II won back Jerusalem by treaty, but the government remained in Acre and Jerusalem was lost again in 1244. Frederick's attempt to impose imperial hegemony over the crusader states set off a civil war in Jerusalem and Cyprus in the 1220s and 1230s, in which the Ibelins, the most dominant noble family, led the opposition to the emperor.<sup>8</sup>

Jerusalem in the second half of the thirteenth century was little more than a pawn in the power struggles between the Mamluks, the remaining Ayyubids in Syria, and the Mongols. It was also weakened by the civil war, and by the disputes between the autonomous Italian communes, who sometimes waged war amongst themselves in the coastal cities. The Empire lost control of the kingdom, and the crusades of King Louis IX of France and other European leaders did not succeed in recapturing Jerusalem. The Mamluks gradually conquered the kingdom's remaining territory, along with the other crusader states in the north, until only Acre remained. Acre was destroyed in 1291, ending the crusader presence on the mainland. Cyprus continued to be ruled by its crusader kings until it fell under Venetian control at the end of the fifteenth century.<sup>9</sup>

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<sup>8</sup> Riley-Smith, *The Crusades*, pp. 137-146; 176-182.

<sup>9</sup> Riley-Smith, *The Crusades*, pp. 183-197; 207-214.

The inhabitants of the Kingdom of Jerusalem were ethnically and religiously diverse. The native eastern Christians, often referred to collectively as “Syrians” by the crusaders, belonged to the Eastern Orthodox churches or schismatic offshoots from them. These included the Greek Orthodox, Armenian, Coptic, Nestorian, Georgian, Ethiopian, Syrian, and Jacobite churches. In Lebanon there were Maronites who followed the Roman rite. There were also significant numbers of Jews, including the Karaite sect, and a small number of Samaritans in Nablus.<sup>10</sup>

The Frankish population, which was uniformly Roman Catholic, had come from many different parts of Europe. Fulcher of Chartres, who was present on the crusade, listed French, Flemings, Frisians, Swiss, Germans, English, Scots, Italians, and Bretons among the nationalities who participated.<sup>11</sup> He also noted, however, that in the decades after the crusade, those who had remained in the new kingdom began to think of themselves as “easterners”, rather than Europeans.<sup>12</sup> One group that tended to remain separate from the other Franks was the merchants, mostly Italian, who lived in somewhat segregated quarters in the kingdom’s coastal cities. They came from Amalfi, Ancona, Marseilles, Barcelona, and other cities in Europe, but the most numerous and influential communities were the Italians from Genoa, Pisa, and Venice. Each community made separate treaties with the kingdom, and was granted special rights and exemptions, in trade and sometimes also in law. At first the merchants tended not to remain in the kingdom year-round, but by the thirteenth century there were well-established families who

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<sup>10</sup> Riley-Smith, *The Crusades*, p. 61; Joshua Prawer, “Social classes in the Crusader States: The ‘Minorities’,” in Kenneth M. Setton, ed., *A History of the Crusades, vol. V: The Impact of the Crusades on the Near East*, ed. Norman P. Zacour and Harry W. Hazard (Madison: University of Wisconsin Press, 1985), pp. 65-70.

<sup>11</sup> *Fulcheri Carnotensis Historia Hierosolymitana*, ed. Heinrich Hagenmeyer (Heidelberg: Carl Winter, 1913), 1.13, p. 203.

<sup>12</sup> Fulcher of Chartres, 3.37, p. 748.

had lived there for generations. As mentioned, the Italians often fought amongst themselves and were responsible for a lengthy war in the kingdom in the mid-thirteenth century.<sup>13</sup>

The Muslim population was also religiously divided into Sunnis, whose spiritual head was the Abbasid caliph in Baghdad, and Shi'ites. The Shi'ites were further divided into sects such as the Isma'ilis, who were normally persecuted by other Muslims, but had established the Fatimid dynasty in Tunisia in the tenth century and ruled Egypt from 969 until they were overthrown by Saladin, a Sunni, in 1171. There were also schismatic Isma'ili groups, including the Druze in Lebanon, and the Nizaris, who established an independent state in Syria in 1094 and had frequent contact with the crusader states. The Nizaris often attacked and murdered Muslim and Christian political figures, and in an attempt to explain this, Sunni authors claimed that the Nizaris were brainwashed by their leader and drugged with hashish. The derogative term for them, *hashshāshīyyīn*, was adopted in European languages as "Assassins."<sup>14</sup>

Most of the Muslims encountered by the crusaders were Sunnis, but there were large pockets of Shi'ites in northern Palestine, especially in cities such as Tiberias and Nablus. There were many Muslims in the countryside and the northern cities, but fewer in the southern cities, and during crusader rule in the twelfth century, Muslims were not allowed to live in Jerusalem itself. Nomadic Arab Bedouin also lived within the borders of the kingdom.<sup>15</sup> There were no native Turkic inhabitants, but the Seljuk Turks, who were Sunni and ruled on behalf of the

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<sup>13</sup> Prawer, "Social classes in the Latin Kingdom: The Franks," in *A History of the Crusades*, vol. 5, pp. 171-192.

<sup>14</sup> Farhad Daftary, *The Assassin Legends: Myths of the Isma'ilis* (London: I. B. Tauris & Co., 1994), pp. 1-6. They were also called "*ba'inīs*", or "partisans of the inner meaning", those who believed in hidden doctrines; Daftary, p. 174. The twelfth-century historian of Damascus, Ibn al-Qalanisi, describes them this way; *The Damascus Chronicle of the Crusades, Extracted and Translated from the Chronicle of Ibn al-Qalanisi*, trans. H. A. R. Gibb (London: Luzac, 1932, repr. Dover Publications, 2002), p. 75 [= Ibn al-Qalanisi, *History of Damascus*, ed. H. F. Amedroz (Leiden: Brill, 1908), p. 150]. The name "Assassin" was already current in Latin in the twelfth century. William of Tyre called them "*assissini*" in Latin; *Willelmi Tyrensis Archiepiscopi Chronicon*, ed. R. B. C. Huygens, Corpus Christianorum Continuatio Medievalis 38 (Turnout: Brepols, 1986), 20.30, pp. 954-955.

<sup>15</sup> Prawer, "Social classes: The 'Minorities'," pp. 62-65.

Abbasid caliph, had temporarily held Palestine in the decades before the arrival of the crusaders. The Turks often raided the crusader kingdom, and as relative newcomers to the Levant, they were seen as a common threat by both Christians, eastern or western, and native Muslims.<sup>16</sup>

It is impossible to know the exact population of the crusader kingdom, and any estimate is inherently unreliable.<sup>17</sup> Nevertheless, Josiah Russell calculates that all of Syria had about 2.3 million people at the time of the crusades, living in perhaps eleven thousand villages, although of course most of these were outside crusader rule even at the greatest extent of all four crusader states.<sup>18</sup> One estimate for the population of the Kingdom of Jerusalem gives as many as three hundred and sixty thousand non-Franks, of whom two hundred and fifty thousand were villagers in the countryside. The Franks may have accounted for only fifteen to twenty-five percent of the total population.<sup>19</sup>

Prior to the establishment of the kingdom, the usual Muslim legal authority in cities under Fatimid and Seljuk rule was the *qāḍī al-quḍāt*, the chief judge, who administered justice according to religious *shariʿa* law. In practise, however, this “was supplemented by customary usages and the decrees of the ruler, who also appointed and dismissed the judges at his arbitrary discretion.”<sup>20</sup> Civil cases, personal disputes, and bureaucratic matters were adjudicated by the courts named after the Arabic word for “injustices,” “*maẓālim*.” These courts operated more

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<sup>16</sup> Ronnie Ellenblum, *Frankish Rural Settlement in the Latin Kingdom of Jerusalem* (Cambridge: Cambridge University Press, 1998), pp. 26-28.

<sup>17</sup> Ellenblum, p. 31.

<sup>18</sup> Josiah C. Russell, “Population of the Crusader States,” in *A History of the Crusades*, vol. 5, p. 108.

<sup>19</sup> Benjamin Z. Kedar, “The subjected Muslims of the Frankish Levant,” in *The Crusades: The Essential Readings*, ed. Thomas Madden (Oxford: Blackwell, 2002), p. 244 (originally in *Muslims Under Latin Rule, 1100-1300*, ed. James M. Powell (Princeton: Princeton University Press, 1990), p. 148-149. Kedar’s numbers are from Prawer, “Histoire du royaume latin de Jérusalem,” tr. G. Nahon (Paris, 1969), vol. 1, pp. 498, 568–72.

<sup>20</sup> P. M. Holt, *The Age of the Crusades: The Near East from the Eleventh Century to 1517* (London: Longman, 1986), p. 79.

quickly than religious courts and had executive power. There was also a separate religious official, the *muḥtasib*, who was “responsible for ensuring the observance of religious obligations,” and who also inspected markets and regulated trade. This official retained his commercial duties under the crusaders, who rendered the title as *mathesep*.<sup>21</sup>

Although the crusaders may have kept these institutions, the legal status of the kingdom’s inhabitants changed under crusader rule. Muslims were generally ignored by their Frankish lords, and they had few legal rights. Rural Muslims, especially, had almost no rights at all, and were nothing more than “chattels of the state.”<sup>22</sup> The native Christian peasants had more rights and a better social standing. The Franks often settled among the existing Christian settlements and sometimes intermarried with the native Christians, although the legal status of the natives was not equal to that of the Roman Catholic Franks.<sup>23</sup> The Muslims, on the other hand, were now of the same *dhimmī* status that the Eastern Christians had been under Muslim rule. Muslims now paid the *jizya*, the tax formerly imposed on non-Muslims.<sup>24</sup>

The crusaders adapted the pre-existing agricultural system to fit their own needs and expectations, but generally left it to run as it had before.<sup>25</sup> Under the Seljuks, Jerusalem and other territories were granted as *iqṭā*’s, which were “primarily an assignment of revenue levied on *kharāj* lands, i.e. estates which at the time of the Arab conquest had been left in the hands of their non-Muslim owners, and which were taxed at a higher rate than lands which had passed

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<sup>21</sup> Holt, *The Age of the Crusades*, pp. 79-80.

<sup>22</sup> Hans Mayer, “Latins, Muslims, and Greeks in the Latin Kingdom of Jerusalem,” *History* 63 (1978), repr. in *Probleme des lateinischen Königreichs Jerusalem* (Aldershot: Ashgate, Variorum Collected Studies Series, 1983), p. 177.

<sup>23</sup> Ellenblum, pp. 283-285.

<sup>24</sup> Prawer, *Crusader Institutions* (Oxford: Oxford University Press, 1980, repr. Oxford: Sandpiper Books, 1998), p. 202.

<sup>25</sup> Prawer, “Social classes: The ‘Minorities’,” p. 101.

into Muslim proprietorship.”<sup>26</sup> The recipient of an *iqṭāʿ*, the *muqṭaʿ*, did not necessarily have to live in this territory, but any revenue produced from the land was assigned to the landholder, rather than to the state, and consequently an *iqṭāʿ* could easily turn into an independent fief. This also meant that the inhabitants of the land were subject to their immediate lord rather than the Seljuk sultan, and because they produced revenue for their lord alone, they were thus tied to the land.<sup>27</sup>

This system was somewhat similar to the “feudal” type of land ownership the crusaders knew in Europe. Peasants under Frankish rule were also tied to the land, and if the land was sold to another crusader lord, they and their possessions were sold along with it.<sup>28</sup> Unlike in Europe, however, the Franks tended to be absentee landlords, and villages were run by a native *raʾīs*, a local authority who acted on behalf of the lord.<sup>29</sup> The nomadic Bedouin were one exception to this: since they did not live in a single place, they were legally considered personal property of the king and were under his protection, although they could be sold or alienated like any other property.<sup>30</sup> Muslims could also be sold as slaves, especially in the early twelfth century when the crusaders captured the major cities; slaves in the late twelfth century and the thirteenth century were often prisoners captured in battle, or were purchased from Italian or Muslim slave traders in the markets of Acre and the other coastal cities. Occasionally, when the Franks were unable to

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<sup>26</sup> Holt, *The Age of the Crusades*, p. 64.

<sup>27</sup> Holt, *The Age of the Crusades*, p. 69;

<sup>28</sup> Prawer, *Crusader Institutions*, p. 205.

<sup>29</sup> Jonathan Riley-Smith, *The Feudal Nobility and the Kingdom of Jerusalem, 1174-1277* (London: Macmillan, 1973), pp. 46-48. “*Raʾīs*,” from the word for “head,” is also the Arabic term for the heads of state of modern republics.

<sup>30</sup> Prawer, *Crusader Institutions*, p. 214.

distinguish them from Muslims, native Christians were also sold as slaves, although this was prohibited by law.<sup>31</sup>

The Muslims who remained in the cities after the initial crusader conquests had a few more rights and privileges than their rural and enslaved counterparts. They were free to live wherever they wanted, and had freedom of movement throughout the kingdom, except in Jerusalem itself. They could own their own property, although they also paid extra taxes that were not imposed on the Franks.<sup>32</sup>

The population of the cities is also unknown. According to the Persian traveller Naser-e Khosraw, who visited around 1050, the population of Jerusalem was about twenty thousand people, and the number could be doubled by Christian, Muslim, and Jewish pilgrims, but he does not say what kinds of Muslims or Christians were living there.<sup>33</sup> After the massacre and expulsion of most of the population at the end of the First Crusade, Jerusalem certainly no longer had twenty thousand inhabitants. William of Tyre, who was writing over a century after Naser, says that the city was still almost deserted even a year after the conquest.<sup>34</sup>

William also notes that Christians and Muslims had lived together in Jerusalem until 1063, when they were segregated into separate quarters. They had often quarrelled while living together, and their disputes were originally settled by Muslim authorities, but after 1063, all disputes among the Christians were settled by the Patriarch of Jerusalem.<sup>35</sup> This state of affairs

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<sup>31</sup> Riley-Smith, *Feudal Nobility*, p. 62-63.

<sup>32</sup> Prawer, *Crusader Institutions*, pp. 202, 211-12.

<sup>33</sup> *Naser-e Khosraw's Book of Travels*, ed. W. M. Thackston (Albany: Bibliotheca Persica, 1986), pp. 21-22.

<sup>34</sup> William of Tyre, 9.19, p. 446

<sup>35</sup> William of Tyre, 9.18, p. 444.

ended with the arrival of the crusaders. For the most part, religious authorities no longer had any jurisdiction over disputes that did not directly pertain to the church.

The legal system that the crusaders introduced was based on the different kinds of law they already knew in Europe. The crusades, not coincidentally, took place in an era when the power of the papacy was increasing. Papal reform began in the eleventh century under Gregory VII and his successors, who claimed supremacy over all other ecclesiastical and secular rulers, particularly the Holy Roman Emperor. Unlike the corrupt and worldly popes of the tenth and eleventh centuries, the Gregorian popes asserted their moral and legal superiority. Not everyone agreed, and there were various anti-popes set up by the Emperors; even as Urban II called the First Crusade in 1095 there was a separate pope supported by the Emperor Henry IV and anti-reform clerics. But the reforms were effective, and it has been argued that the crusades could not have happened at all without a dominant papacy.<sup>36</sup>

The legal authority of the papacy was laid out in canon law, which began to be collected in the eleventh and twelfth centuries from many separate documents. The popes were concerned with the proper election and consecration of bishops, over which the Emperors also claimed rights; this was known as the Investiture Controversy and was solved partly by the papacy's new reliance on canon law. Some clerics became experts in the details of the canons, and schools in France and Italy grew up around particular scholars. In France, Ivo of Chartres published a collection of canons, and in Italy, Irnerius and his successors taught canon law at Bologna. In the first half of the twelfth century, a new collection of canons was compiled by Gratian. His

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<sup>36</sup> This is the essence of the "Erdmann thesis," although not all historians agree with his assessment. H. E. J. Cowdrey, "Pope Urban II's preaching of the First Crusade," *History* 55 (1970), repr. in *The Crusades: The Essential Readings*, ed. Thomas F. Madden (Oxford: Blackwell, 2002), pp. 17-18.

work, known as the *Decretum*, was completed around 1140, and quickly became the standard text.<sup>37</sup>

Canon law, in theory, applied to all Catholics, no matter where they lived or what their social status was.<sup>38</sup> Secular laws could be influenced by the canons of the church, but they were a different kind of law. Roman law, which centuries earlier had applied to all citizens of the Roman Empire, was also being rediscovered at the same time as canon law. The *Digest* of Justinian, a sixth-century summary of the law, was found in Italy, possibly at the monastery of Monte Cassino, which had close ties to the Gregorian reformers. The reform movement itself may have led to the discovery of the *Digest*, because reformers scoured ecclesiastical archives for documents that would prove the supremacy of the papacy. After its discovery, the *Digest* was copied and studied, especially at Bologna, which remained the centre of legal studies for centuries.<sup>39</sup> There were also schools developing elsewhere in Europe, including Paris and Chartres in northern France, where history, literature and other secular subjects were taught.<sup>40</sup> Students in France and Italy were typically clerics, and studied both Roman and canon law.<sup>41</sup> Some of the leading officials in Jerusalem in the late twelfth-century, including the historian William of Tyre and Heraclius, Patriarch of Jerusalem, were educated at these schools.

Along with Roman and canon law, Germanic laws also still existed in medieval Europe. When the Germanic tribes settled in, or conquered, parts of the Roman Empire, their own laws were introduced alongside those of Rome. In the early sixth century one collection of Germanic

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<sup>37</sup> James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), pp. 36-47.

<sup>38</sup> Brundage, *Medieval Canon Law*, p. 3.

<sup>39</sup> Stephan Kuttner, "The Revival of Jurisprudence," in *Renaissance and Renewal in the Twelfth Century*, ed. Robert L. Benson, Giles Constable, and Carol D. Lanham (Cambridge: Harvard University Press, 1982), pp. 301-304

<sup>40</sup> R. W. Southern, "The Schools of Paris and the School of Chartres," in *Renaissance and Renewal in the Twelfth Century*, pp. 119-121

<sup>41</sup> Brundage, *Medieval Canon Law*, pp. 59-60.

tribes, the Franks, issued written laws with the help of their Roman subjects. The part of the Roman Empire that the Franks ruled, the future north of France, was not as heavily Romanized as southern Gaul and parts closer to Rome, so there was less direct influence from Roman law on the Frankish code than there was on other Germanic codes, such as those of the Ostrogoths and Burgundians, who had settled in Italy. The Frankish code probably records the Germanic laws that were most different from the pre-existing Roman ones, so that the remaining Roman citizens would be able to understand the major differences. The code was not adopted throughout Gaul, and had fallen out of use even in northern France by the time that Roman law was being rediscovered in the eleventh and twelfth centuries, but nevertheless some of the laws survived up to the French revolution in the eighteenth century.<sup>42</sup>

The Frankish code fell out of use because it was mostly irrelevant to the feudal system of property ownership that arose during the Middle Ages. Instead, new customs were created to deal with the needs of a feudal society. The rediscovery and compilation of Roman and canon law affected these customs as well, and they too began to be written down. The customs of Normandy were written in Latin at the beginning of the thirteenth century, and were translated into French in the middle of the century. Also in mid-century the customs of Orleans and Touraine were written (collectively known as the *Etablissements de Saint Louis* although they were not official royal law), as was the *Livre de justice et de plet*. Later in the thirteenth century, and in the fourteenth, the customs of Toulouse, Champagne, and Brittany, among others, were written down.<sup>43</sup> The longest set of customs written in France were those of Clermont-en-

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<sup>42</sup> Katherine Fischer Drew, trans., *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991), introduction, pp. 29-31.

<sup>43</sup> *The Coutumes de Beauvaisis of Philippe de Beaumanoir*, trans. F. R. P. Akehurst (Philadelphia: University of Pennsylvania Press, 1992), introduction, pp. xvii-xviii.

Beauvais, by Philippe de Beaumanoir, but like the other customs they applied only to the area in which they were written. There was no set of customs for the entire Kingdom of France.<sup>44</sup>

At the same time that these French customs were being written, some of the native nobles of Jerusalem, all members of the Ibelin family or their supporters, also compiled legal treatises to explain the law of their own day in Acre and Cyprus. Whatever the laws may have been in the twelfth century, these thirteenth-century compilations are the only surviving law books from Jerusalem. They were probably written as a result of the dispute between the Ibelins and the emperor, but they do fit into the general European trend of writing legal treatises in the thirteenth century.

It is also possible that the crusaders were influenced by the laws that were already being used by the native Muslims and Christians. As noted earlier, the Franks tended not to interfere in the administration of trade and agricultural production, and they allowed the indigenous population to settle their own disputes, but only for minor matters. Could the Franks have also borrowed native Christian and Muslim laws, incorporating them into their own laws? It is difficult to answer this question, as the surviving crusader legal sources do not admit to any such influence; the sources normally do not even tell us when they were written, or whether there was any particular influence from European laws. The likelihood of European influence will be discussed in the following chapters. The influence of native eastern laws will be examined wherever it can be identified, although, in the context of this thesis, the possibility of native influence can only be speculation.

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<sup>44</sup> Akehurst, introduction, pp. xiii-xiv.

Laws about feudal property make up the majority of medieval laws, including those of Jerusalem. The focus of this thesis, however, is crimes, such as theft, assault, and murder. Although the precise definitions of these crimes, as well as the ways they were tried and punished, differed depending on where and when in the Middle Ages they occurred, they are crimes common throughout Europe and elsewhere in the world in every time period. There were also moral crimes, such as adultery or prostitution, which are no longer considered crimes or are no longer punished as harshly as they were in medieval Europe. Medieval crimes also differed from modern ones in that there was usually no state system to arrest and prosecute criminals. The victim, or a relative, was responsible for making an accusation, and the accused could appear before a local town court, a church court, or a royal court, depending on the circumstances of the case. When there were no official courts available to apply the law to an entire state, the victims themselves were often left to take vengeance on the person who had committed the crime. At the same time, it was in the Middle Ages that modern ideas of justice and punishment were being developed.<sup>45</sup>

By examining crimes committed in Jerusalem in the twelfth and thirteenth centuries, I intend to shed some light on the laws that were in use in the twelfth century, in comparison with the assizes that were first written down in the thirteenth.

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<sup>45</sup> Barbara A. Hanawalt and David Wallace, ed., *Medieval Crime and Social Control* (Minneapolis: University of Minnesota Press, 1999), introduction, pp. ix-x.

## Chapter 1

### The Assizes of Jerusalem

There are numerous surviving legal treatises from the thirteenth-century Kingdom of Jerusalem, which are collectively known as the “Assizes of Jerusalem”, although they were never a single set of assizes. They can be divided into assizes of the *Haute Cour*, or high court, which had jurisdiction over “feudal” law for the king and the nobility, and assizes of the *Cour des Bourgeois*, or burgess court, for the merchants and other non-noble population. There is only one collection of burgess assizes, but a number of different (though ultimately related) texts for the high court. The authors of the treatises for the high court were eager to show that their laws had existed “from the beginning”, and that the so-called “*Letres dou Sepulcre*” had been lost after the fall of Jerusalem in 1187. What is the actual origin of both the high court and burgess court assizes, and what do they say about twelfth-century criminal law?

#### Assizes of the *Haute Cour*

The thirteenth-century kingdom produced a “juristic culture” which was very fond of the subtleties of the law. As Jonathan Riley-Smith has remarked, “the practise of law was a route to fame and status in the Latin East.”<sup>46</sup> Many names of jurists who were famous in their own day are known, although their works, if they wrote any, do not survive. These jurists include Gerard of Montreal, Ralph of Tiberias, John of Beirut, and Balian of Sidon, who were all mentioned as predecessors of Philip of Novara and John of Ibelin, whose works do survive; other known jurists are Philip of Baisdoin, Raymond of Conches, James Vidal, Philip of Montfort, and the

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<sup>46</sup> Riley-Smith, *Feudal Nobility*, p. 122.

Antiaume family, including Raymond and his son Nicholas. These jurists were all baronial sympathizers and were all involved in the struggle against Holy Roman Emperor Frederick II. They probably did not have the time or opportunity to write lengthy treatises.<sup>47</sup>

One early jurist whose work has survived is Geoffrey le Tor, a partisan of the Ibelin family against the emperor. His treatise is “slight and of limited interest.”<sup>48</sup> He was from a noble family and was chamberlain of the Kingdom of Cyprus, and was possibly a student of Ralph of Tiberias and the earlier jurists. The date of his treatise is unknown, but he apparently wrote before John of Ibelin.<sup>49</sup>

### Philip of Novara

The earliest major surviving legal treatise was written by Philip of Novara. Philip was born in Lombardy, probably around 1200, as he was a young squire at the Siege of Damietta during the Fifth Crusade. He died sometime between 1269 and 1277. After the crusade he entered the service of John of Ibelin, the Old Lord of Beirut (uncle of the jurist of the same name), and wrote a “highly partisan” account of the war between the Ibelins and Frederick II, in which he exaggerated his own importance. He also served under John’s son Balian at the Battle of Agridi in 1232, and in 1242 Queen Alice of Cyprus gave him a stipend of one thousand bezants. He had at least three wives, one of whom was the mother of Balian, named after Philip’s lord; his other two wives were members of distinguished noble families. As Philip also appears in numerous royal charters, he was apparently accepted into the higher nobility, despite his foreign

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<sup>47</sup> Riley-Smith, *Feudal Nobility*, p. 124.

<sup>48</sup> Peter W. Edbury, *John of Ibelin and the Kingdom of Jerusalem* (Woodbridge: Boydell Press, 1997), p. 106.

<sup>49</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, p. 172; Riley-Smith, *Feudal Nobility*, p. 123.

birth. As a member of the high court in the 1230s, he became known as one of the court's best pleaders.<sup>50</sup>

Philip's legal treatise is known as the *Livre de forme de plait* or the *Livre a un sien ami*. This treatise was written, as the latter title suggests, to a friend, and is mostly concerned with the procedure of the high court; he was concerned more with the exact formulas and rituals of pleading a case than with the actual laws of the kingdom.<sup>51</sup> The first two-thirds of the treatise are about such rituals, as well as what should be done in court in cases of disputes between vassals and their lords. The last third deals with particular assizes.<sup>52</sup>

Auguste-Arthur Beugnot was the first to edit Philip's treatise, in the initial volume of *Lois* in the *Recueil des historiens des croisades* in 1841.<sup>53</sup> Grandclaude called this edition "extremely defective", and although he worked out which manuscripts Beugnot should have used, he did not re-edit the text himself.<sup>54</sup> Peter Edbury has recently published a new edition and translation, which distinguishes between the chapters Philip probably included in his original treatise, and those that were added later.<sup>55</sup>

Philip's treatise must have been written in the 1250s or early 1260s, because he refers to John of Ibelin as the count of Jaffa. John became count around 1246, and later copied some of

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<sup>50</sup> Philip of Novara, *Le Livre de forme de plait*, ed. and trans. Peter W. Edbury (Nicosia: Cyprus Research Centre, 2009), introduction, pp. 15-19.

<sup>51</sup> Peter W. Edbury, "Philip of Novara and the *Livre de forme de plait*," in *Praktika tou tritou diethnous Kyprologikou sunedriou*, vol. 2, ed. Athanasios Papageorgiou (Nicosia: Etaireia Kupriakou Spoudou, 2001), p. 555.

<sup>52</sup> Edbury, *Le Livre de forme de plait*, introduction, p. 24-25.

<sup>53</sup> *Livre de Philippe de Navarre*, ed. Beugnot, *RHC Lois* I.

<sup>54</sup> "Extrêmement defectueuse," Grandclaude, *Étude critique*, p. 79.

<sup>55</sup> Because this edition is so new and so difficult to find, I will include the corresponding chapter and page numbers from Beugnot's edition in square brackets.

Philip's work into his own treatise in the mid-1260s.<sup>56</sup> Grandclaude dated it more specifically to between 1252 and 1257.<sup>57</sup> Edbury pointed out that Philip's references to the second Siege of Damietta during the Seventh Crusade, and to King Henry I of Cyprus, probably indicate that it was written between 1249, when the siege ended, and 1253, when Henry died.<sup>58</sup> Although his treatise was "written primarily with the High Court of Cyprus in mind", Philip believed the laws could also apply to what was left of the Kingdom of Jerusalem.<sup>59</sup>

Philip also wrote about the establishment of the legal system in the early days of the Kingdom of Jerusalem, and many legal historians have used him as a basic historical source; as Auguste-Arthur Beugnot wrote, "the worth that we should most like to find in a work such as Novara's is historical truth."<sup>60</sup> Maurice Grandclaude also thought Philip was important for the legal history of the early kingdom, but that otherwise he was not very useful, since his treatise was a private work for a friend and it was quickly overshadowed by the treatise of John of Ibelin.<sup>61</sup> Nevertheless Philip's work was somewhat influential; although it only survives in three manuscripts, all appended to the end of manuscripts of John of Ibelin with the other minor treatises, John and medieval editors of John's text all borrowed chapters from Philip.<sup>62</sup>

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<sup>56</sup> Edbury, "Philip of Novara and the *Livre de forme de plait*," p. 557.

<sup>57</sup> Grandclaude, *Étude critique*, pp. 80-81.

<sup>58</sup> Edbury, *Le Livre de forme de plait*, introduction, p. 22.

<sup>59</sup> Edbury, "Philip of Novara and the *Livre de forme de plait*," p. 555; Edbury, *John of Ibelin and the Kingdom of Jerusalem*, p. 106.

<sup>60</sup> "La mérite que l'on doit le plus désirer de trouver dans un ouvrage tel que celui de Navarre, est la vérité historique." Auguste-Arthur Beugnot, ed., *Recueil des historiens des croisades, Lois*, vol. 1 (Paris: Académie royal des inscriptions et belles-lettres, 1841, repr. Farnborough: Gregg, 1967), introduction, p. xlvi.

<sup>61</sup> Maurice Grandclaude, *Étude critique sur les Livres des assises de Jérusalem* (Paris: Jouve, 1932), pp. 134-35.

<sup>62</sup> Edbury, *Le Livre de forme de plait*, introduction, p. 26.

## John of Ibelin

The longest and most important of the thirteenth-century treatises was written by John of Ibelin. John was born around 1215. His family had been prominent in Jerusalem for a hundred years, and in the thirteenth century was one of the most important and powerful families in Jerusalem and Cyprus. His uncle, also named John, the “old lord of Beirut”, was the son of Balian of Ibelin, who had defended Jerusalem against Saladin in 1187. John’s family led the anti-imperial faction during the struggle with the Emperor. He was present at the Battle of Casal Imbert in 1232, where the imperial forces defeated the Ibelins, and at the Ibelin victory at the subsequent Battle of Agridi. From then until 1246 he lived mainly on Cyprus, and around 1240 he married Maria, the sister of both King Hethoum of Armenia and of Stephanie, wife of King Henry of Cyprus.<sup>63</sup>

John was involved in the regency crisis in Jerusalem in the 1240s. Frederick II’s son Conrad was an infant, and his mother, Queen Isabella II, had died in childbirth. Frederick claimed the regency, and the kingship, for himself, but the Ibelins supported Isabella’s relatives, and Frederick was eventually forced to leave the kingdom in 1243. Around 1247, King Henry, now regent for Conrad, granted John the territories of Jaffa and Ramla in the south of the kingdom. The County of Jaffa was a prestigious title, but John was now in the difficult position of defending the southern border of the kingdom.<sup>64</sup> In 1249 he took part in the Seventh Crusade and was present at the Siege of Damietta, where King Louis IX of France was taken captive. After Louis’ release the French army was stationed at Jaffa until they returned home.<sup>65</sup>

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<sup>63</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, pp. 65-67.

<sup>64</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, p. 76.

<sup>65</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, pp. 84-85.

In 1255 John became *bailli*, or regent, of Jerusalem, which allowed him to use the kingdom's resources to fight against Egypt. He also supported the Venetians against Genoa in the War of St. Sabas, a conflict between the merchant communities in the kingdom.<sup>66</sup> Around 1261 he became involved in an affair with Plaisance, the dowager queen of Cyprus; King Henry had married her after the death of John's sister-in-law Stephanie. From around 1258 to 1266, John was isolated in Jaffa, surrounded by Mamluks and Mongols. He was forced to sign a truce with the Mamluks in 1261, but after his death in 1266 the Mamluks ignored the truce and Jaffa fell to them in 1268.<sup>67</sup>

John's treatise is the longest of the crusader legal texts. Like Philip's, much of the treatise, especially the first half, is concerned with the procedure of the high court: how to plead a case, what kind of person a good pleader should be, the rights and duties of a pleader, and specific formulas and rituals to be used in court. The second half is an explanation of "feudal" law: the rights of fiefholders, the relationship between the king (or regent) and his vassals, and such details, presented in an impossibly ideal way, that have led so many historians to believe that Jerusalem was the most perfect example of a feudal state.<sup>68</sup> A relatively small number of early chapters are dedicated to "criminal" law, explaining what kind of crimes could be tried in court and how to plead in such cases. These include murder, homicide, rape, and assault, and when such cases can be solved by judicial duel.<sup>69</sup> There is almost nothing in the treatise about theft, aside perhaps from one assize about lost property that is found in someone else's

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<sup>66</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, pp. 88-93.

<sup>67</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, pp. 96-98.

<sup>68</sup> John of Ibelin, *Livre des Assises*, ed. Peter W. Edbury (Leiden: Brill, 2003), introduction, pp. 34-39.

<sup>69</sup> *Livre des Assises*, 67-97, pp. 184-257.

possession,<sup>70</sup> and some fourteenth-century additions to one of the manuscripts about theft of animals.<sup>71</sup>

The treatise was probably written in the late 1250s and early 1260s; Grandclaude dated it specifically to 1265-1266, just before John's death.<sup>72</sup> It was expanded after his death, and an official text was compiled for use in the High Court of Cyprus in 1369. In 1531, the Venetians, who had taken control of Cyprus about sixty years earlier, translated it into Italian, although they did not use the official 1369 version, but rather attempted to find John's original text, much like a modern critical edition. Gaspard Thaumas de la Thaumassière printed a copy of the French text in 1690, and in 1841 it was edited by Beugnot in *RHC Lois I*. However, Beugnot used only the manuscripts he could find in Paris "and he totally failed to appreciate the nature of the manuscript tradition."<sup>73</sup>

John's son James of Ibelin also wrote a short treatise in the 1270s.<sup>74</sup> Another minor text, the *Clef des Assises*, is a summary of the chapters in John of Ibelin, and also dates from the end of the kingdom, between 1270-1291. Beugnot's edition of this is considered acceptable, although the text is not important.<sup>75</sup>

### The *Livre au Roi*

The earliest surviving law book for the High Court is the anonymous *Livre au Roi*, which actually predates Philip, John, and the other jurists. It was written around 1200 during the reign

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<sup>70</sup> *Livre des Assises*, 117, pp. 294-295.

<sup>71</sup> *Livre des Assises*, app. 7.11.18.1-4, pp. 795-800.

<sup>72</sup> Grandclaude, *Étude Critique*, p. 88.

<sup>73</sup> Edbury, *Livre des Assises*, introduction, pp. 2-4.

<sup>74</sup> Beugnot, *RHC Lois I*, introduction, p. lxiv, Beugnot narrowed the date to 1271-1272. Riley-Smith thought 1276, *Feudal Nobility*, p. 127.

<sup>75</sup> Grandclaude, *Étude Critique*, p. 89.

of Amalric II and deals exclusively with royal and feudal justice. It is somewhat out of place with the other treatises as it does not belong to the mid-thirteenth-century tradition, but rather represents an intermediate stage between the loss of Jerusalem in 1187 and the later jurists.<sup>76</sup>

Édouard Kausler edited an incomplete version in 1839 at the end of his edition of the burgess court assizes. The first author to deal with the text in detail was Beugnot, whose edition was included in *RHC Lois I* in 1841. He admitted he had not studied the text very closely, but at first thought that it might date from the twelfth century. This was a closer guess than his final conclusion, that it must date from the end of the kingdom, between 1271 and 1291.<sup>77</sup> Alexis Paulin Paris, who reviewed the *RHC* later in 1841, argued that it dated from the end of the twelfth century, sometime after the loss of Jerusalem in 1187. He thought it may have been written to reconstruct the “*Letres dou sepulchre*”, which were supposed to have been lost in 1187.<sup>78</sup>

The *Livre* was generally ignored until Maurice Grandclaude examined it in the 1920s. Grandclaude argued that references to the inheritance situation of Isabella I, the wife of Amalric II (and grandmother of the aforementioned Isabella II), and her daughter from her previous marriage to Conrad of Montferrat, prove that the *Livre* was written between 1197 and 1205 when Isabella was queen of Jerusalem. This conclusion is accepted by the *Livre*'s most recent editor, Myriam Greilsammer.<sup>79</sup>

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<sup>76</sup> Myriam Greilsammer, ed., *Le Livre au roi* (Paris: Académie des inscriptions et belles-lettres, 1995), introduction, p. 24.

<sup>77</sup> Beugnot, *RHC Lois I*, introduction, p. lxvi.

<sup>78</sup> Alexis Paulin Paris, review of *RHC Lois I*, *Journal des savants* (May 1841), p. 293.

<sup>79</sup> Grandclaude, *Étude critique*, p. 50; Greilsammer, *Livre au roi*, introduction, pp. 83-86.

Grandclaude thought the *Livre* was a collection of judgements and ordinances, and thus “purer” law, as opposed to the treatises of John of Ibelin and Philip of Novara, which record only their authors’ opinions on the law. Because of the date of, and likely reason for, its composition, he also thought it was fundamental for understanding twelfth-century law.<sup>80</sup> Jonathan Riley-Smith thought the *Livre* was written so that the laws, lost in 1187, would not be completely forgotten, and that they were reconstructed with reference to contemporary issues important to the feudal system and the royal court.<sup>81</sup>

All of these texts deal with what could be called “royal” or “feudal” law. Historians have often debated the veracity of Philip and John and the other jurists, and many have believed, based on their work, that Jerusalem was a perfect feudal state, in which the monarchy was weak and the nobles were absolute lords of their own domains. This dispute is not directly relevant to this thesis, although some of the laws contained in the treatises do pertain to criminal law and may be helpful in determining the evolution of crusader law in the twelfth century.

### The “*Letres dou Sepulcre*”

Because the thirteenth-century assizes were written so long after the fall of Jerusalem in 1187, and they were written in the context of a specific political dispute, it is difficult to determine how they might be related to whatever laws might have existed in the twelfth century. The jurists themselves, however, claimed that the laws had always existed, and that they were originally known as the the “*Letres dou Sepulcre*.” For almost three hundred years, since the first modern publications of the assizes, there has been a debate about the nature and sometimes about the very existence of the *Letres*. Because of their supposed early date they would, if they actually

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<sup>80</sup> Grandclaude, “Caractère du *Livre au Roi*,” *Revue historique de droit français et étranger* 5 (1926), pp. 310-314.

<sup>81</sup> Riley-Smith, *Feudal Nobility*, p. 155.

existed, be a vital source of information for the development of the legal system in Jerusalem. Dozens of authors have mentioned them to greater or lesser degrees in the past three centuries, including, most recently, Peter Edbury and Marwan Nader. It is worth considering all these different viewpoints, on the one hand to see how the *Letres* have been viewed in the historiography of the crusades, and on the other hand simply because such a survey has never been done before.

Philip of Novara claimed that the laws were written down soon after the conquest of Jerusalem in 1099, and were lost when Saladin overran the kingdom in 1187. Because of this, according to Philip, in the mid-thirteenth century jurists knew the laws “all too poorly. We only know the *assises* by hearsay and usage.”<sup>82</sup> Philip described the original laws as:

“...all the *assises* and good *usages* and good customs, that is to say any *usage* of great authority, were written down and kept at the Sepulchre, and they called them the ‘Letters of the Sepulchre’ because each *assise*, *usage* and custom was written out separately on a large noble parchment. Also there were the *usages* and the *assises* of the *cour des bourgeois* as well as those of the High Court. Each parchment had the seal and sign manual of the king and also of the patriarch and the viscount of Jerusalem. All the ‘Letters’ were in large writing, and the first initial was a large letter illuminated in gold, and all the rubrics were crimson.”<sup>83</sup>

The assizes were made soon after Jerusalem was conquered in 1099. The *Letres* could only be consulted in an elaborate ceremony in the presence of “the king, or, on his behalf, one of his great men...and two of his liege men, and the patriarch or, in his place, the prior of the

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<sup>82</sup> “Povrement...mais que par oir dire et par usage.” Philip of Novara, 47, p. 119, trans. p. 259 [= *Livre de Phippe de Navarre*, 47, p. 521].

<sup>83</sup> “...toutes les assises et bons us et bones costumes, c’est assaver aucuns us de grant auctorité, estoient en escrit et en garde au Sepulcre, et les apeloit om ‘Les Letres dou Sepulcre’, por ce que chascune assise et us et costume estoit escrite par sei en .i. grant parchemin franchois. Et si y estoient aussi bien les us et les assises de la cort des borgois, come de la haute court. Et en chascune chartre aveit le seau et le signau dou roi et dou patriarche aussi, et dou vesconte de Jerusalem aussi. Et toutes les lettres estoient grans lettres torneés, et la premiere lettre dou commencement estoit une grant lettre enluminee d’or, et toutes les rebriques estoient vermeilles.” Philip of Novara, 47, p. 119, trans. p. 259 [= *Livre de Phippe de Navarre*, 47, pp. 521-522].

Sepulchre, and two of his canons, and the viscount of Jerusalem and two *jurés* of the *cour des bourgeois*.”<sup>84</sup> The *Letres* were lost after Saladin conquered Jerusalem in 1187. Philip was told this “by many who had seen and known it before the land was lost, and from many others who knew it well from some of those who had had charge of the ‘Letters’ at some time.”<sup>85</sup>

John of Ibelin’s account is similar, but shorter, and he does not mention the *Letres* specifically.<sup>86</sup> Peter Edbury noted that the *Letres* story does not appear at all in the earliest manuscripts of John’s treatise. It was taken from Philip, along with other passages, and was “awkwardly inserted” into a previously coherent chapter, possibly by John himself.<sup>87</sup>

John and Philip also wrote that Godfrey established the kingdom’s two courts, the high court and the burgess court. Godfrey himself presided over the high court, while he established a viscount to preside over the burgess court. The judges of the high court were his vassals, and those of the burgess court were loyal and wise men from the city of Jerusalem. The courts and the law books were established at the same time.<sup>88</sup>

The laws were emended and expanded by Godfrey and his successors, along with the patriarch and other important men, by interviewing pilgrims for new laws and customs from their own countries. Lastly, the native Syrian population came to Godfrey and asked him to establish

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<sup>84</sup> “le rei ou aucun de ses haus homes y fust en leu de lui, et .ii. de ses homes lieges, et le patriarche ou le priour dou Sepulcre en leu de lui, et .ii. de ses chanoines et le visconte de Jerusalem, et .ii. jurés de la court des borgeis.” Philip of Novara, 47, p. 119, trans. p. 260 [= *Livre de Philippe de Navarre*, 47, p. 522].

<sup>85</sup> “à plusours qui ce virent et sorent ains que la terre fust perdue, et as plusors autres qui bien le savoient par aucuns de ceaux qui les lettres gardernt en aucun tens.” Philip of Novara, 47, p. 119, trans. p. 260 [= *Livre de Philippe de Navarre*, 47, pp. 522-523].

<sup>86</sup> Edbury, *Livre des Assises*, prologue, pp. 52-55.

<sup>87</sup> Edbury, *Livre des Assises*, prologue, p. 14; Edbury, “Law and custom in the Latin East,” pp. 72-73.

<sup>88</sup> Edbury, *The Livre des Assises*, prologue, p. 52.

a court for them as well, according to their own ancient customs.<sup>89</sup> The story of the *Letres* and the two courts is also found in the *Clef des Assises*, summarized from John of Ibelin's account.<sup>90</sup>

### The *Letres* in history, 1690-1839

Subsequent historians of the crusades and of crusader law have either taken this account as pure fact, have been somewhat skeptical, have rejected it outright, or have accepted some parts and rejected others, usually depending on when and where they were writing and what historiographical tradition they were following.

Thaumassière, whose 1690 edition was standard throughout the 18th century, repeated the story of the *Letres*, assuming it was a factual account. He did not mention that they were supposed to have been lost in 1187, but believed that John of Ibelin simply edited them and gave them a coherent order.<sup>91</sup>

In the late eighteenth century, Edward Gibbon dealt with the crusades in his *History of the Decline and Fall of the Roman Empire*. His account of the establishment of crusader laws follows exactly from John of Ibelin, based on the edition of Thaumassière. He also thought they were reconstructed by John in the thirteenth century.<sup>92</sup> However, he noted that he was somewhat sceptical of the account of the *Letres*: there was no sack of Jerusalem in 1187, so there was no reason for the *Letres* to have been lost, and there is no mention of the *Letres* in any other source.

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<sup>89</sup> Edbury, *The Livre des Assises*, prologue, pp. 53-54.

<sup>90</sup> Beugnot, ed., *Clef des Assises de la Haute Cour, RHC Lois I*, prologue, p. 575.

<sup>91</sup> Gaspard Thaumassière, ed., *Coustumes de Beauvoisis par messire Philippes de Beaumanoir, Assises et bons usages du royaume de Jerusalem, par messire Jean d'Ibelin, et autres anciennes coutumes* (Bourges: François Toubreau, 1690), pt. 2, p. ii (p. 516).

<sup>92</sup> Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, ed. J. B. Bury (London: Methuen, 1909-14, repr. New York: AMS Press, 1974), vol. 6, pp. 329-334.

He “sometimes suspected the existence of this original copy of the Holy Sepulchre, which might be invented to sanctify and authenticate the traditionary customs of the French in Palestine.”<sup>93</sup>

Whereas Gibbon dealt with the crusades incidentally to his work on the Roman Empire, Charles Mills was the first modern English historian of the crusades to make them a separate field of study. Mills, writing in 1821, also used Thaumassiere’s edition of the assizes as a basic historical source for his chapter on the constitutional history of the kingdom.<sup>94</sup> His appendix on the assizes of Jerusalem notes that the *Letres* “are said to have been lost when Jerusalem was taken by Saladin”, but unless this can be taken as a slight hint of scepticism, there is no deviation from the information given by John of Ibelin.<sup>95</sup>

The German Friedrich Wilken and the French Joseph François Michaud also mentioned the *Letres* in their works in the early nineteenth century. Wilken began publishing his seven-volume history of the crusades in 1807. Chapter thirteen of the first volume deals with crusader laws and institutions, including the *Letres*, but like Gibbon, he was sceptical. Wilken thought Godfrey was too busy setting up the kingdom to establish particular laws for situations that he could not have imagined during his short reign, such as the creation of trading colonies and the military orders, and the yearly arrival of pilgrims. Wilken did agree, however, that new laws were borrowed from European visitors to the kingdom.<sup>96</sup> Michaud repeated the story in the main

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<sup>93</sup> Gibbon, p. 330, n. 141.

<sup>94</sup> Charles Mills, *The History of the Crusades for the Recovery and Possession of the Holy Land* (London: Longman, Hurst, Rees, Orme and Brown, 1821), vol. 1, pp. 310ff.

<sup>95</sup> Mills, vol. 1, note K, pp. 476-478

<sup>96</sup> Friedrich Wilken, *Geschichte der Kreuzzüge nach morgenländischen und abendländischen Bericht*, vol. 1: *Grundung des Königreichs Jerusalem* (Leipzig: Siegfried Lebrecht Crusius, 1807), pp. 309-310.

body of his work in the 1820s<sup>97</sup>, but in an appendix he also doubted that Godfrey was responsible for the final form of the laws. What John of Ibelin described was only a later tradition.<sup>98</sup>

## Beugnot and Paris

The study of crusader law changed radically beginning in 1839, when Kausler published the assizes of the burgess court.<sup>99</sup> Most importantly, in influence if not in quality, was the immense collection of crusader documents, the *Recueil des historiens des croisades*, the first volumes of which, the *Lois*, were published by Auguste-Arthur Beugnot in 1841 and 1843. The first volume of *Lois* contained the legal treatises of the high court: John of Ibelin, Philip of Novara, James of Ibelin, and Geoffrey Le Tor, as well as the *Livre au Roi*, printed together for the first time. Beugnot's lengthy introduction was also the first extensive commentary on the law and legal system of Latin Jerusalem. The earlier authors tended to take the legal texts for granted as sources of historical information; while Beugnot generally did the same, he was the first to question where the laws came from, and to discuss John and Philip's historical accuracy.

Beugnot thought the laws originated in France and were established just after the conquest in 1099. The crusaders, he believed, would not have had time to examine all the laws of Europe to find the ones that best fit their situation, so they simply adopted the laws of their homeland, France.<sup>100</sup> Upon the election of Godfrey in 1099 as ruler of Jerusalem and the

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<sup>97</sup> Joseph François Michaud, *Histoire des croisades*, (1822; 7<sup>th</sup> ed., Paris: Fume, 1854), pp. 282-283.

<sup>98</sup> Michaud, p. 466.

<sup>99</sup> Édouard H. Kausler, ed., *Les Livres des Assises et des Usages dou Reaume de Jerusalem sive Leges et Instituta Regni Hierosolymitani* (Stuttgart, Adolf Krabbe, 1839). He said nothing about John of Ibelin and the assizes of the high court, and made no comment about the *Letres*. Indeed, his edition had no introduction at all. This was followed soon after by Victor Foucher's publication of the burgess court assizes along with the sixteenth-century Italian translation; Fournier also says nothing about the *Letres*, although the competing publications led to a bitter argument between Kausler and Fournier, which was about manuscripts rather than the actual content of the laws and is not relevant here. The assizes of the burgess court will be discussed below.

<sup>100</sup> Beugnot, *RHC Lois* I, introduction, p. xii.

formation of a government, the crusaders immediately put into writing civil and criminal laws, founded the two courts, and composed the *Letres*, as recorded by Philip and John.<sup>101</sup>

Beugnot was aware that certain objections could be raised about the existence of the *Letres*. He wondered why a code of laws would be hidden away, able to be consulted only in a spectacular ceremony, and argued that the crusaders hid the laws in the Sepulchre because there were no written codes in Europe at the time. A written law code was an innovation of the crusaders, and as there was no precedent for leaving a written law code open to the public, they made it inaccessible.<sup>102</sup>

If the *Letres* were left behind in Jerusalem in 1187 and they subsequently disappeared, what exactly happened to them? Beugnot conjectured that the native Syrians sold them to Saladin. The Syrians, who Beugnot believed had been subjected to harsh Latin rule, must have felt no connection to the laws of their overlords. The Syrians must have resented Frankish rule just as much as they had previously resented the Turks.<sup>103</sup>

The complete loss of the *Letres* implied, for Beugnot, that there was only one copy, and that they would have been committed to memory by the judges and jurors who did not have regular access to them. As John says, there were twenty-two other courts in the kingdom, and it would have been even less possible for the jurors of those courts, living outside Jerusalem, to ever have seen the *Letres*. Thus, it is likely that the other courts used their own oral customary law, not the written law of Jerusalem.<sup>104</sup>

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<sup>101</sup> Beugnot, *RHC Lois I*, introduction, pp. xiv-xv.

<sup>102</sup> Beugnot, *RHC Lois I*, introduction, pp. xv-xvi.

<sup>103</sup> Beugnot, *RHC Lois I*, introduction, pp. xvii, xxiv, xlii.

<sup>104</sup> Beugnot, *RHC Lois I*, introduction, p. xxix.

Beugnot's work was reviewed by Alexis Paulin Paris in the *Journal des savants* later in 1841, and Beugnot responded in the introduction to the second volume of the *Lois* in 1843. Wilken, Beugnot, and Paris all agreed that the crusaders would not have had time to compose a code of laws in 1099. However, while Beugnot concluded that they adopted the laws of France that they already knew, Paris, like Wilken, assumed this meant that they did not create a law code at all. As Paris also wrote, the laws as described by John of Ibelin were hardly relevant to the situation of the kingdom in 1100. Furthermore, Godfrey was a man of the eleventh century, an age where there was no central authority, whether in France or in Jerusalem, strong enough to establish and impose such a code.<sup>105</sup>

Beugnot was apparently flustered by Paris' objections, and his introduction to volume two is often contradictory from one page to another. He thought that the laws had always been written down in distinct books, as Philip and John say,<sup>106</sup> but then argued that Godfrey did not create written law, only the foundations of a constitution which later generations expanded and codified in writing.<sup>107</sup> At the same time, he thought the creation of a code of law would have been Godfrey's first act as king, to civilize a violent, lawless territory weakened by conquest.<sup>108</sup> He insisted that there was no reason to doubt the story of the *Letres*; Godfrey was perhaps not the only author, but the laws were later attributed to him alone because he had been the first to write them down. No one, not even Paris, doubted that Godfrey granted laws to the Syrians, so why should there be any doubt that he created the laws of the noble and burgess courts as well?<sup>109</sup>

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<sup>105</sup> Paris, p. 301.

<sup>106</sup> Beugnot, ed. *Recueil des historiens des croisades, Lois*, vol. II (Paris: Académie royal des inscriptions et belles-lettres, 1843, repr. Farnborough: Gregg, 1967), introduction, pp. ix-x.

<sup>107</sup> Beugnot, *RHC Lois* II, introduction, p. xiii.

<sup>108</sup> Beugnot, *RHC Lois* II, introduction, p. xii.

<sup>109</sup> Beugnot, *RHC Lois* II, introduction, pp. x-xi.

John of Ibelin's account contains "the clearest, most precise, and most minute details that an historian could give", and Beugnot could not comprehend why Paris would reject them.<sup>110</sup> He accused Paris of denying long historical tradition, and took the rather extreme position that "if assertions as clear and positive as these can be rejected simply by logical argument, we must resolve to change all the conditions of historical certainty."<sup>111</sup>

Paris did believe that some kind of law was necessary in the earliest days of the kingdom, and suggested it was something like the Domesday Book created after the Norman Conquest of England. This "*Livre des fiefs*" must have existed, according to Paris, simply because it would have been necessary to make a list of all the territories under crusader control, and to know who was in charge of each of them. The list was hidden away in the Holy Sepulchre, to correct or verify claims about who owned what and who owed how many knights for military service. The thirteenth-century jurists later confused this with the assizes, which were never actually written down. Beugnot's assertion that the *Letres* were hidden because the crusaders were not used to written laws does not make sense; the vassals, who must have had their own copies, would not have marked out their territory in a document and then willingly made that document extremely difficult to consult.<sup>112</sup>

Beugnot recognized that there was a document containing a list of fiefs, but correctly noted that it was the list that John of Ibelin included in his book. Since John distinguishes between them and the *Letres*, they cannot be the same thing. John also says the *Letres* pertained

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<sup>110</sup> "...les details les plus clairs, les plus précis, les plus minutieux qu'un historien puisse fournir." Beugnot, *RHC Lois II*, introduction, p. xi.

<sup>111</sup> "...si des assertions aussi claires, aussi positives peuvent être infirmés par de simple raisonnements, il faut se résoudre à changer toutes les conditions de la certitude historique..." Beugnot, *RHC Lois II*, introduction, pp. xi-xii.

<sup>112</sup> Paris, pp. 302-305.

to the burgesses as well as the nobles, which would not be true if the *Letres* were a simple list of fiefs held by the nobles.<sup>113</sup> This is one of the few cases where Paris was in error.

Contrary to Paris' assertion that the *Letres* would not have been hidden, Beugnot thought this was a normal aspect of pre-modern law, like the Twelve Tables of ancient Rome, which were only visible in a simplified and summarized form. Further evidence that the *Letres* were hidden is that the 1369 edition was kept in a box with nine keys in the cathedral at Nicosia, exactly as the *Letres* were said to have been in Jerusalem.<sup>114</sup> However, this is not evidence that John was right; it means only that the Cypriot editors believed him, just as Beugnot did centuries later. The fourteenth century editors were as far removed in time from John as John was from the *Letres*, so whatever they did with their law-book is not evidence for what was supposed to have been done in Jerusalem over three centuries earlier.

Beugnot ended his response to Paris by noting that medieval actions should not be judged according to modern expectations. "Scepticism is a powerful weapon, in support of which one may impose great changes upon history."<sup>115</sup> Unfortunately, Beugnot was equally guilty of imposing his own ideas, and of not being sceptical enough. But the *RHC* made crusader documents widely available for the first time, and Beugnot's opinions were accepted almost without question for many years afterward. Almost all historiography on crusader law in the nineteenth century was a reaction to Beugnot, mostly positive, and rarely negative.

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<sup>113</sup> Beugnot, *RHC Lois* II, p. xiv.

<sup>114</sup> Beugnot, *RHC Lois* II, p. xv.

<sup>115</sup> "Le scepticisme est une arme puissante, à l'aide de laquelle on peut opérer de grands changements dans l'histoire." Beugnot, *RHC Lois* II, pp. xv-xvi.

## French and German reactions to Beugnot

It was another thirty years before there was any other major discussion of crusader law. In 1874 Alphonse Vétaut published a biography of Godfrey of Bouillon that touched upon the creation of the laws. Vétaut thought the assizes were promulgated during the meeting of Godfrey and Patriarch Daimbert. At that meeting they also discussed making Jerusalem a theocratic state with the Patriarch as its leader; a secular state would be created for Godfrey in one of the other cities the crusaders had captured.<sup>116</sup> Otherwise, Vétaut took the story of the *Letres* and the establishment of the courts as fact, directly from John and Philip.<sup>117</sup>

Also in 1874, Francis Monnier published a study of Godfrey and the assizes. He also accepted the story of the *Letres* as fact, using John as his source. The influence of both Beugnot and Paris is quite apparent, for example in Monnier's comparison of the *Letres* to the Domesday Book, although neither are referenced in Monnier's notes.<sup>118</sup>

Monnier, however, did not believe that the assizes of John of Ibelin were exactly the same as the *Letres*, since they were written 150 years apart.<sup>119</sup> Paris said that Godfrey was a man of his times and could not have had the royal authority to enact such a code of laws; but Monnier went further, noting that Godfrey was never a king at all, and therefore could not have had a royal court or a royal household. The assizes of the thirteenth century frequently refer to an established monarchy, and could not possibly date from Godfrey's reign.<sup>120</sup>

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<sup>116</sup> Alphonse Vétaut, *Godefroi de Bouillon* (Tours: Alfred Mame et fils, 1874), p. 315.

<sup>117</sup> Vétaut, pp. 315-319.

<sup>118</sup> Francis Monnier, *Godefroi de Bouillon et les Assises de Jérusalem* (Paris: Didier et Compagnie, 1874), pp. 1-2, 30-33, 38.

<sup>119</sup> Monnier, pp. 38-39.

<sup>120</sup> Monnier, p. 39.

Monnier also argued that the *Letres* could not have contained any information about court procedure, as the assizes do, because an inaccessible box of laws hidden away in the Sepulchre would be of no use in explaining obscure matters of procedure. Godfrey, he believed, would also not have included information about how to argue or trick one's way out of an accusation, information that belonged to the thirteenth century, not the "primitive age" of Godfrey's time.<sup>121</sup>

So, after removing all the chapters about court procedure and subtle trickery, as well as all the historical information provided by John which was obviously not a part of the original *Letres*, and keeping all the assizes which are already attributed to twelfth-century kings, Monnier argued that it should be possible from the remaining assizes to determine what the *Letres* might have been like.<sup>122</sup> He did not attempt to do this, but it was a novel idea, one that was not taken up again until Maurice Grandclaude did so fifty years later.

In the course of the twelfth-century the *Letres* were expanded, and although they were written they must have been considered customary law, as William of Tyre says that Kings Baldwin III and Amalric I were knowledgeable in the customs of the kingdom. Therefore, Monnier thought, the *Letres* were a collection of customs in the same sense as the customs of Orleans, Normandy, Paris, and other collections from the twelfth and thirteenth centuries.<sup>123</sup>

Since the *Letres* were customs, Monnier had no problem with the statement that they were locked away in the Holy Sepulchre. If customary law was openly available it could be easily changed, unlike, for example, the Twelve Tables, which were carved in stone because they were supposed to be immutable. By the thirteenth century, Roman law was prevalent in Europe,

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<sup>121</sup> "époque naïve". Monnier, pp. 39-40.

<sup>122</sup> Monnier, pp. 40-42.

<sup>123</sup> Monnier, pp. 64-65.

and other types of law began to be considered permanent and unchangeable as well. Thus, the thirteenth-century jurists could write a publicly accessible law code that did not need to be hidden.<sup>124</sup>

Monnier made a few good points and in some ways he was ahead of his time. In other ways, however, he was far from scholarly. Although his arguments are often obviously taken from Beugnot or Paris, he never specifically cites them; for example, the idea that the Syrians sold the *Letres* because they hated the Franks.<sup>125</sup> He also confuses Amalric II with Amalric I.<sup>126</sup> Sometimes he shows a basic misunderstanding of the Old French texts, and his imagination sometimes replaces a critical mind. He says that there were only two *Letres*, one each containing all the laws pertaining to either court, although the story actually says that each law was written on a separate piece of parchment, and that this was done separately for each of the two courts.<sup>127</sup>

He interprets “parchemin franchois” to mean that the *Letres* were written in French, specifically in the Picard dialect. Prior to this no one really commented on what language the laws were supposed to have been written in, only that the surviving laws are in French and they were derived from French law, whether those were written in Latin or French. As already noted, in his recent translation Peter Edbury interprets “franchois” as “noble”, and there does not seem to be any other evidence that they were written in any dialect of French.<sup>128</sup>

Scepticism for the entire story returned with the German Bernhard von Kugler. In 1880, he published his *Geschichte der Kreuzzüge*, and wrote that the attribution of the assizes to

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<sup>124</sup> Monnier, pp. 75-76.

<sup>125</sup> Monnier, p. 76.

<sup>126</sup> Monnier, pp. 38, 40.

<sup>127</sup> Monnier, p. 33.

<sup>128</sup> Monnier, p. 42; for Edbury’s translation, see above, n. 57.

Godfrey was definitely only a legend. He agreed with those who believed Godfrey was in no position to create a set of assizes.<sup>129</sup> Kugler thought the development of the laws began in the twelfth century, but not until the reign of King Fulk, when the borders of the kingdom expanded and there was a large influx of Europeans. Fulk's predecessor, Baldwin II, had made the first attempts to regulate behaviour at the Council of Nablus in 1120. Fulk's sons Baldwin III and Amalric were known to be legislators and, as mentioned, were knowledgeable in the law. Therefore, it seemed likely to Kugler that Fulk was the first to promulgate what would later be known as the Assizes.<sup>130</sup>

The next year, in 1881, Heinrich von Sybel published the second edition of his *Geschichte des ersten Kreuzzugs*. He briefly discussed the laws of the Kingdom and was disappointed that earlier historians, aside from Wilken, had blindly accepted the story of the *Letres* as fact. Sybel was not completely skeptical, however; he thought the thirteenth-century assizes were an abridgement of the *Letres*, since they must have been taken from memory and not all the laws would have been preserved. The specific link to Godfrey, however, was only a legend.<sup>131</sup> The crusaders probably did not need a law code in the early years of the kingdom, because there were too few of them. Only after many years when the population had grown would they have needed to establish laws.<sup>132</sup> Godfrey earned enough praise in setting up the kingdom and ensuring that it would last after his death; it is unnecessary, even foolish, to attribute the laws to Godfrey on top of his other accomplishments.<sup>133</sup>

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<sup>129</sup> Bernhard von Kugler, *Geschichte der Kreuzzüge* (Berlin: G. Grote, 1880), p. 69 and 69 n.1.

<sup>130</sup> Kugler, pp. 122-124.

<sup>131</sup> Heinrich von Sybel, *Geschichte des ersten Kreuzzugs* (Dusseldorf: J. H. C. Schreiner, 1841; 2<sup>nd</sup> ed., Leipzig: Friedrich Fleischer, 1881), p. 438.

<sup>132</sup> Sybel, p. 441.

<sup>133</sup> Sybel, pp. 445-446.

The first edition of Sybel's *Geschichte* had been published in 1841, too early to use Beugnot's edition of the assizes, but he made use of it in the second edition, along with Paris and Monnier, and noted that only Paris and himself were suspicious of the story.<sup>134</sup> He also noted that Monnier was slightly more critical of the story than Beugnot, but not by much; for the most part he dismissed Monnier's "wild imagination."<sup>135</sup>

Sybel was followed in 1883 by Hans Prutz's *Kulturgeschichte der Kreuzzüge*. Prutz also thought the story was unlikely. A document that could not be consulted would be inadequate for use in the courts, especially the dozens of courts that existed outside Jerusalem. There was plenty of evidence for military and economic activities in the twelfth century, but no evidence at all for any legal activity that matches the claims of the thirteenth-century assizes.<sup>136</sup>

Gaston Dodu published a study of the institutions of Latin Jerusalem in 1894. He was a rare French sceptic. He believed that some type of law had been created in 1099, but wondered what, if anything, this had to do with the assizes of the thirteenth century.<sup>137</sup> He agreed with the Germans who questioned the existence of the *Letres*, but was not satisfied with their arguments, which seemed to him to be their personal opinions with no basis in fact.<sup>138</sup> His own argument was that there is no mention of the ceremony of consulting the *Letres* in twelfth-century documents, even though this would have been a spectacular occasion due to the people who were supposed to be involved, and surely they must have been consulted at some point. William of Tyre's statement that Baldwin III and Amalric I were knowledgeable in the customary law of the

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<sup>134</sup> Sybel, p. 437.

<sup>135</sup> "wunderliche Vorstellungen." Sybel, p. 446, n. 1.

<sup>136</sup> Hans Prutz, *Kulturgeschichte der Kreuzzüge* (Berlin: Ernst Siegfried Mittler und Sohn, 1883), p. 216.

<sup>137</sup> Gaston Dodu, *Histoire des institutions monarchiques dans le royaume latin de Jérusalem* (Paris: Hachette, 1894), p. 37.

<sup>138</sup> Dodu, p. 41 n. 2.

kingdom is by no means proof of the *Letres*, but rather it proves that there were no *Letres* at all, and the law was customary in a strictly oral sense. John and Philip confused these unwritten customs and usages with written assizes when they were compiling their own assizes in the thirteenth century.<sup>139</sup>

The loss of the *Letres* in 1187 is equally suspect because Jerusalem was not sacked by Saladin. Dodu is the first to mention the Arab sources for this event, in particular Ibn al-Athir, who said that the Patriarch carried away all the treasures of the Holy Sepulchre.<sup>140</sup> Why then did he not take the *Letres*? None of the other eyewitnesses, Christian or Muslim, mention anything about the *Letres* being lost by the crusaders or found by Saladin.<sup>141</sup> Dodu also disagreed that the *Letres* were actually a *Livre des Fiefs*, for the same reason as Beugnot, because they were supposed to have contained laws for the burgess court.<sup>142</sup>

Despite the skepticism of Dodu and the Germans, Beugnot's influence extended into the twentieth century. In 1912, Pierre Christin, a French lawyer, published his thesis on the legal status of the lower classes of Jerusalem. His account of the *Letres* was largely a summary of Beugnot and Dodu, but he disagreed with Dodu and asserted that Godfrey himself was the originator and editor of the *Letres*, which were then lost in 1187. He also believed that Godfrey had founded the courts.<sup>143</sup>

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<sup>139</sup> Dodu, pp. 42-44.

<sup>140</sup> *The Chronicle of Ibn al-Athir for the Crusading Period, from al-Kāmil fī 'l-ta'rikh, pt. 2, the Years 541 - 589/1146-1193: The Age of Nur al-Din and Saladin*, trans. D. S. Richards (Aldershot: Ashgate, 2007), p. 333 [=Ibn al-Athir, *al-Kāmil fī 'l-Ta'rikh*, vol. 11 (Beirut: Dar Sadir, 1965-1967), p. 551; =Ibn al-Athir, *al-Kāmil fī 'l-Ta'rikh*, vol. 10, ed. 'Umar 'Abd al-Salam Tadmuri (Beirut: Dar al-Kitāb al-'Arabi, 1997), p. 38].

<sup>141</sup> Dodu, pp. 46-47.

<sup>142</sup> Dodu, p. 48.

<sup>143</sup> Pierre Christin, *Étude des classes inférieures d'après les assises de Jérusalem* (doctoral thesis, Faculty of Law, University of Poitiers, 1912), pp. 8-16.

## Maurice Grandclaude and the twentieth century

The next major progression in the study of crusader law was Maurice Grandclaude's *Étude Critique sur les Livres des Assises de Jérusalem*, published in 1923. All subsequent studies are indebted to the work done by Grandclaude, but not because his opinions on the laws are particularly insightful; in fact, they mostly follow Beugnot and ignore the intervening century of scepticism. Instead, he is most important because he sorted out the dates and provenances of the original manuscripts, which Beugnot had failed to do.

Grandclaude believed the *Letres* existed, although there was no proof that they were exactly as Philip and John described them, or that Godfrey himself established any legal texts. Godfrey may have created some legislation, but this was separate from the *Letres*. He saw no reason to doubt Philip, who claimed to have talked to men who guarded the *Letres* before they were lost.<sup>144</sup> The *Letres* were expanded with new laws throughout the twelfth century, but after 1187 the law became customary and traditional, and new legislation was something to be avoided.<sup>145</sup>

In 1929, Grandclaude attempted to date certain laws to the twelfth century, and again defended the accuracy of the *Letres* story. The description given by Philip and John is “generally exact”, and “the existence of a legislative *oeuvre* of Godfrey of Bouillon is probable.” Part of this “oeuvre” was preserved in the later assizes.<sup>146</sup> Grandclaude did not wish to attribute an entire body of legislation to Godfrey, but because there was some legislative activity even

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<sup>144</sup> Grandclaude, *Étude critique*, pp. 100-102.

<sup>145</sup> Grandclaude, *Étude critique*, p. 107.

<sup>146</sup> “...exacte dans ses grandes lignes,” and “l’existence d’une oeuvre législative de Godefroy de Bouillon est probable.” Grandclaude, “Liste des assises remontant au premier royaume de Jérusalem (1099-1187),” in *Mélanges Paul Fournier* (Paris: Société d'Histoire du Droit, 1929), p. 330.

during the First Crusade, before Jerusalem was captured, it would not be surprising to find that legislation was enacted as soon as the crusaders were in control of the city.<sup>147</sup>

Grandclaude did not think that Philip and John's statements should be ignored just because they lived in the mid-thirteenth century. They claimed to have known men who lived in the twelfth century and had seen the *Letres*, so we would have to reject those eyewitnesses, not Philip and John themselves. On the other hand, he admits that there is no contemporary twelfth-century reference to the *Letres* and it is impossible to say for certain that they existed.<sup>148</sup>

Much of the article lists a number of assizes which Grandclaude argues are from the twelfth-century; his work was intended as a first step toward a reconstruction of the laws as they existed in the early kingdom. This point will be discussed further below.

### English and French scholarship after Grandclaude

In 1925, a French-Lebanese lawyer, Dimitri Hayek, wrote *Le droit franc en Syrie pendant les croisades*. As an historian he was "quite inadequate and uncritical,"<sup>149</sup> but his opinions from the point of view of a lawyer are nevertheless interesting. He was almost fanatically in support of the French Mandate of Lebanon, which he believed was essentially a continuation of the crusades, although this was of course not an uncommon opinion at the height of French colonialism.

According to Hayek, the secrecy of *Letres* was not just to prevent anyone from changing the law on their own. It was actually an excuse to hold a lavish public ceremony whenever the

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<sup>147</sup> Grandclaude, "Liste des assises," p. 332.

<sup>148</sup> Grandclaude, "Liste des assises," pp. 333-335.

<sup>149</sup> Joshua Prawer, "The 'Assise de teneure' and the 'assise de vente': a study of landed property in the Latin Kingdom," *Economic History Review*, new series, 4:1 (1951), p. 77, n. 1.

laws needed to be consulted, even though such a ceremony was not really necessary. He also disagreed that they would be difficult or impossible to consult; there is no evidence to suggest they could not be consulted easily, nor does holding a grand spectacle necessarily mean that the *Letres* were difficult to consult. Therefore, there is no reason to believe that the *Letres* were a list of fiefs, but rather they were a collection of laws just as Philip and John said. Since they were easy to consult, they must have been easy to copy as well.<sup>150</sup> Because both John and Philip agree on the origin of the law, and because William of Tyre also wrote that Godfrey established at least one law (that anyone who left the kingdom forfeited their land if they did not return within a year and a day), there is no reason to think the story of the *Letres* is legendary.<sup>151</sup>

By the end of the nineteenth century and beginning of the twentieth, English-language crusade scholarship was beginning to develop. In England, historians were more concerned with the chivalrous stories of King Richard and the Anglo-centric Third Crusade, although there were a few popular histories that dealt with the early kingdom and its laws. T. A. Archer and C. L. Kingsford repeat the story of the *Letres*,<sup>152</sup> and Claude Conder also briefly mentioned them as the “nucleus” of the later assizes.<sup>153</sup> Conder, who was not an historian, thought the laws were based not on the laws of France, but on the Code of Justinian. He assumed that Justinian’s code was still known in the Levant while it had yet to be fully rediscovered in Europe.<sup>154</sup>

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<sup>150</sup> Dimitri Hayek, *Le droit franc en Syrie pendant les croisades* (Paris: Éditions Spes, 1925), p. 35.

<sup>151</sup> Hayek, p. 46. The “year and a day” law will be discussed below.

<sup>152</sup> T. A. Archer and Charles L. Kingsford, *The Crusades: The Story of the Latin Kingdom of Jerusalem* (New York: G. P. Putnam’s Sons, 1894), pp. 122-123.

<sup>153</sup> C. R. Conder, *The Latin Kingdom of Jerusalem, 1099 to 1291 A.D.* (London: Palestine Exploration Fund, 1897), p. 72.

<sup>154</sup> Conder, p. 172. Conder was a soldier who travelled to Palestine and wrote a popular history of the Kingdom of Jerusalem. His influence on non-specialists seems similar to that of Steven Runciman sixty years later; for example, G. K. Chesterton quoted Conder’s description of the assizes in his *New Jerusalem*, and concluded that they were an early form of communism.

Crusader studies began in the United States around the same time under such historians as Dana C. Munro, August C. Krey, and John L. La Monte. Munro very bluntly rejected the *Letres* story. He said that “there is no truth whatever” to the story and that John of Ibelin invented it “to give greater prestige to the code of assizes which he had himself collected from the memories of older men.” This was, he believed, a fact recognized by all serious scholars, and he was critical of those who “do not hesitate to use these assizes as historical sources for a period anterior to their redaction.”<sup>155</sup>

English-language historiography of crusader laws and institutions really began with La Monte in the 1930s. La Monte was an enthusiastic follower of Grandclaude. He thought the basis of crusader law “was that code prepared by the wise men appointed by Duke Godfrey at the time of the conquest”, although he was not so certain that this code contained any of the laws preserved in the thirteenth-century treatises.<sup>156</sup> Following Paris, he also agreed that the *Letres* might have been a crusader Domesday Book.<sup>157</sup> However, writing in the 1940s, La Monte now thought that the list of fiefs in John of Ibelin proved that some pre-1187 documents must have survived; Paris and Prutz, furthermore, could not have been correct about the nature of the *Letres*, since the evidence of John, as Beugnot had already argued, shows that the list of fiefs, which apparently survived to be copied into the *Livre des Assises*, were distinct from the *Letres*, which did not survive at all.<sup>158</sup> He still believed that the *Letres* had existed in the twelfth

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<sup>155</sup> Dana Carleton Munro, *The Kingdom of the Crusaders* (New York: D. Appleton-Century, 1935, repr. New York: Kennikat Press, 1966), pp. 79-80.

<sup>156</sup> John L. La Monte, *Feudal Monarchy in the Latin Kingdom of Jerusalem* (Cambridge: Medieval Academy of America, 1932, repr. New York: Krauss, 1970), p. 97.

<sup>157</sup> La Monte, *Feudal Monarchy*, p. 166.

<sup>158</sup> John L. La Monte, “Three questions concerning the *Assises de Jerusalem*,” *Byzantina-Metabyzantina* 1 (1946), p. 207.

century, since “common sense would dictate that the crusaders must have drawn up some laws for their new state.”<sup>159</sup>

In the 1950s, Jean Richard believed the tradition of the *Letres* was “inexact.” The Council of Nablus also implies that no other laws existed in 1120, at least for a number of basic crimes that the *Letres* apparently must not have dealt with. However, he was unwilling to “deny all legislative activity” because the thirteenth-century jurists were so precise in their accounts.<sup>160</sup> In later chapters Richard seems to take the existence of the *Letres* for granted.<sup>161</sup>

Despite his decades of scholarship on the institutions and laws of the crusader kingdom, Israeli historian Joshua Prawer wrote surprisingly little about the *Letres*. Prawer simply accepted that the *Letres* had existed and had been lost in the thirteenth century.<sup>162</sup> He did, however, disagree that they were a “Crusader’s Domesday book.”<sup>163</sup> He noted that the story told by Ibelin and Novara was “suspect and is singularly reminiscent of the legends associated with the great Greek and Roman law-givers”, but accepted that “there was no doubt” that laws were written and deposited in the Holy Sepulchre.<sup>164</sup>

Hans Mayer thought “there may be a grain of truth in the story,” but it was “unlikely that there was ever a real code of law.” The story was most likely invented by John and Philip in order to oppose to Frederick II and his Hohenstaufen lieutenants; by claiming they already had a

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<sup>159</sup> La Monte, “Three questions,” p. 208.

<sup>160</sup> Jean Richard, *The Latin Kingdom of Jerusalem*, trans. Janet Shirley (New York: North Holland, 1979), pp. 67-69.

<sup>161</sup> Richard, *Latin Kingdom*, pp. 252, 409.

<sup>162</sup> Prawer, *Crusader Institutions* (Oxford: Oxford University Press, 1980, repr. Oxford: Sandpiper Books, 1998), pp. 10, 354, 359.

<sup>163</sup> Prawer, “Assise de teneure,” pp. 85-87.

<sup>164</sup> Prawer, *The Crusaders' Kingdom: European Colonialism in the Middle Ages* (New York: Praeger, 1972, repr. London: Phoenix Press, 2001), p. 122.

written code of laws, they could resist the attempt to bring Cyprus and Jerusalem under central imperial control.<sup>165</sup> Jonathan Riley-Smith, however, accepted the story as fact.<sup>166</sup>

John Carl Andressohn, in his study of Godfrey of Bouillon, said it was a “pious fiction” to attribute the establishment of laws and courts to Godfrey; John of Ibelin’s statement that they were established at a meeting at Acre is particularly troubling, because Acre was not captured for many years after Godfrey’s death.<sup>167</sup> Andressohn followed Sybel in saying that the population was so small that they would not have needed a law code. “Laws of some nature, no doubt, existed, but a systematic code was hardly undertaken; at least we have no evidence to that effect.”<sup>168</sup>

The most notable recent historian of crusader law is Peter Edbury, who completely rejected the story in his article about the *Letres*. Although he did not dispute that there was legislative activity in the twelfth century, the point of the *Letres* story, he thought, was that it was no longer possible in the thirteenth century to distinguish between customary and written law.<sup>169</sup> According to Edbury the *Letres* “never existed” and the story is a “legal fiction concocted in the mid-thirteenth century in response to a particular problem then facing the ruling clique in the Latin Kingdom,” that is, the conflict between the native nobles and the Holy Roman Empire.<sup>170</sup>

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<sup>165</sup> Hans E. Mayer, *The Crusades*, 2nd ed., trans. John Gillingham (Oxford: Oxford University Press, 1972), p. 161.

<sup>166</sup> Riley-Smith, *Feudal Nobility*, p. 133.

<sup>167</sup> John Carl Andressohn, *The Ancestry and Life of Godfrey of Bouillon* (Bloomington: Indiana University Publications, Social Science Series 5, 1947), pp. 124-125.

<sup>168</sup> Andressohn, p. 125.

<sup>169</sup> Peter W. Edbury, “Law and custom in the Latin East: *Les Letres dou Sepulcre*,” *Mediterranean Historical Review* 10 (1995), repr. *Kingdoms of the Crusaders: From Jerusalem to Cyprus* (Aldershot: Ashgate, Variorum Collected Series Studies, 1999), p. 72.

<sup>170</sup> Edbury, “Law and custom in the Latin East,” p. 73.

As with previous objections, Edbury thought the story did not make any sense. Public documents would not be hidden away in the Holy Sepulchre, which was the most public place in the kingdom. Litigants would be unable to consult them before making their case, and would be allowed to view them only if the court deemed it necessary. In that case, Edbury wondered why they were not simply kept in the court itself, where they were promulgated and were most useful. It also does not make sense that they would stop recording laws after 1187, and the supposed attempt by Amalric II and Ralph of Tiberias to reconstruct them does not seem to have been much of a real effort. Most importantly, Jerusalem was not destroyed in 1187, and the Christians were given ample opportunity to collect their treasures and travel safely to other cities, so why did they not bring the laws with them or attempt to recover them afterwards? There is no mention of the *Letres* in any other source, even though William of Tyre, who was chancellor of the kingdom, certainly had access to whatever archives may have existed, and even if he does not always include the full text of the documents he mentions, he would have at least mentioned the *Letres* if they had been available to him.<sup>171</sup>

The importance of written law for the thirteenth century has been overstated as well. The legal texts are explanations and opinions, not records of legislation, and when, in 1251, there was a discussion about whether to keep written court records, the court decided not to do so. Edbury also wondered why documents which were supposedly a product of the crown would need the signature of the viscount and the patriarch; why the manuscripts were illuminated in the way described, when this was a feature typical of thirteenth century documents; and why the church, as Philip claims, would have borrowed secular law in place of their own canons and decretals.<sup>172</sup>

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<sup>171</sup> Edbury, "Law and custom in the Latin East," pp. 74-75.

<sup>172</sup> Edbury, "Law and custom in the Latin East," p. 75.

Edbury considers Philip an untrustworthy source, as he exaggerated many details of his history of the Ibelin war with Frederick II. Perhaps his claim that he knew people who saw the original *Letres* is also exaggerated.<sup>173</sup> The story may have arisen because there was new dependence on written law in England and France in the thirteenth century, or because Roman law had been introduced to Jerusalem and it was easier to use than the “archaic and inflexible” rules of procedure of crusader law. Philip may also have been responding to the claims of Hugh of Brienne, who declared that Jerusalem should follow French custom, and in a case where Jerusalem already had a particular custom, the French custom should take precedence.<sup>174</sup> Philip did not necessarily invent the story himself; he may have heard it from the earlier jurists, who themselves may have had to deal with claims of French precedence during the Third Crusade.<sup>175</sup> Certainly the story was known to jurists of the previous generation, as the jurist Balian of Sidon mentioned in 1231 to Richard Filangieri, Frederick II’s lieutenant in the east, that the laws had been established after the original conquest, although he did not name them as the “*Letres*.”<sup>176</sup>

Another important fact, which, due to the defective earlier editions, was overlooked prior to Edbury, is that the *Letres* story does not even appear in the earliest manuscripts of John of Ibelin’s *Livre*. It was taken from Philip, along with other passages, and the chapter into which the story was inserted is no longer coherent because of this.<sup>177</sup>

The story is also an attempt to set the foundation of the kingdom in a mythologically ideal past. “The Prologue begins with the myth of Godfrey of Bouillon as the kingdom’s law-

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<sup>173</sup> Edbury, “Law and custom in the Latin East,” p. 76.

<sup>174</sup> Edbury, *Livre de forme de plait*, introduction, p. 23.

<sup>175</sup> Edbury, *Livre de forme de plait*, introduction, p. 24.

<sup>176</sup> *L'Estoire de Eracles empereur et la conquete de la terre d'Outremer*, in RHC Occ II, 33.24, pp. 389-390.

<sup>177</sup> Edbury, “Law and custom in the Latin East,” pp. 72-73; Edbury, *Livre des Assises*, introduction, p. 14.

giver. It is an attribute shared by other founding fathers of their respective realms including men as diverse as Moses and Chinggis Khan.”<sup>178</sup> Another likely comparison, as Prawer also mentioned, is Livy’s story that the Romans composed the Twelve Tables after sending a delegation to Athens.<sup>179</sup> The story of the *Letres* and the fall of Jerusalem also have interesting parallels to the destruction of Rome by the Gauls in the fourth century BC. According to Livy, everyone fled Rome when the Gauls arrived, and took all the sacred treasures with them.<sup>180</sup> The inhabitants of Jerusalem did the same in 1187, although this was after the city had already fallen to Saladin. The Gauls were eventually defeated and Rome was restored, unlike Jerusalem, which remained under Saladin’s control. However, it is possible that the Romans never recovered the original Twelve Tables. According to Livy the few written records that existed at the time were burned by the Gauls. The Romans did look for the laws among the ruins, but it is not clear from Livy whether they found them or not.<sup>181</sup> Cicero, who was writing in the first century BC, hundreds of years after the sack of Rome (and a century before Livy), had to memorize the Twelve Tables as a child, but he complained that this was no longer done.<sup>182</sup> Historians of ancient Rome have argued about the details and even the existence of the Twelve Tables, but it is generally agreed that they were indeed destroyed by the Gauls and did not exist in classical Rome, and what Cicero would have memorized was only an oral tradition.<sup>183</sup>

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<sup>178</sup> Edbury, *Livre des Assises*, introduction, p. 34.

<sup>179</sup> Prawer, *Crusader Institutions*, p. 430. This refers to the story in Livy, 3.31.8 (*Ab Urbe Condita*, Volume 1: Books I-V, ed. Robert Seymour Conway and Charles Flamstead Walters (Oxford: Oxford University Press, 1914, repr. 1964).

<sup>180</sup> Livy, 5.41.

<sup>181</sup> Livy, *Ab Urbe Condita*, Volume 1: Books VI-X, ed. Robert Seymour Conway and Charles Flamstead Walters (Oxford: Oxford University Press, 1919, repr. 1961), 6.1.2, 6.1.10.

<sup>182</sup> *M. Tulli Ciceronis de Re Publica, de Legibus, Cato Maior de Senectute, Laelius de Amicitia*, ed. J.G.F. Powell (Oxford: Oxford University Press, 2006), de Legibus 2.23.59, p. 229.

<sup>183</sup> A. Arthur Schiller, *Roman Law: Mechanisms of Development* (Malta: Mouton, 1978), pp. 147-148

The stories are not exactly equivalent, but it is possible that the authors of the legal treatises were influenced by Livy's account. Livy was known in the Middle Ages, although his work had been divided into smaller units and did not survive in its complete form. He was occasionally studied in schools, and was quoted and imitated by authors such as Einhard, the ninth-century biographer of Charlemagne, the twelfth-century English chronicler William of Malmesbury, and by William of Tyre and his contemporaries (and possibly classmates) John of Salisbury and Peter of Blois.<sup>184</sup> Of course, the jurists Philip and John were secular knights and probably did not have the same kind of education as William. Since they wrote in French, it is impossible to say how well they knew Latin, if they knew it at all, but Livy's statement that "when the city was burned, most [of the records] were destroyed" is similar to, although less pessimistic than, John's "when the land was lost, all was lost."<sup>185</sup>

In any case, not everyone believes the *Letres* story is completely inaccurate. The most recent scholar to write about crusader law is Marwan Nader, who believed the thirteenth-century jurists had a "proclivity...to myth-making,"<sup>186</sup> but he did not agree with Edbury that the *Letres* were a fabrication. Although Philip and John were probably embellishing the story, dismissing it entirely would underestimate the development of the early law courts.<sup>187</sup> Nader was also puzzled by the lack of early references to the *Letres*. Fulcher of Chartres and William of Tyre sometimes

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<sup>184</sup> Conor Kostick, "William of Tyre, Livy, and the vocabulary of class," *Journal of the History of Ideas* 65 (2004), pp. 357-360.

<sup>185</sup> "incensa urbe pleraeque interiere," Livy, 6.1.2; "après la terre perdue fu tot perdu," *Livre des Assises*, app. 3.13, p. 684. John's statement was actually added to the text by a later editor; see Edbury's explanation, p. 626. Perhaps this editor was familiar with Livy. Philip of Novara says, somewhat less pithily, that "all of this was lost when Saladin captured Jerusalem" ("tout ce fu perdu quand Saladin prist Jerusalem," Philip of Novara, 47, p. 119, trans. p. 260 [= *Livre de Philippe de Navarre*, 47, pp. 522-523].) The editor who added to John's text was undoubtedly more familiar with this sentence in Philip than anything in Livy, but the similarity between the two sentences is still intriguing.

<sup>186</sup> Marwan Nader, *Burgesses and Burgess Law in the Latin Kingdoms of Jerusalem and Cyprus (1099-1325)* (Aldershot: Ashgate, 2006), p. 29.

<sup>187</sup> Nader, *Burgesses and Burgess Law*, p. 29.

neglected certain events of the early kingdom that made them uncomfortable, but why would they omit the creation of the first laws by Godfrey or his successors? This would especially be true for Godfrey, whom William admired as a figure of almost mythological stature; why leave out another praiseworthy accomplishment? William, as royal chancellor, would also have had access to any written laws, even if they were hidden away from normal view, but says nothing about them. The burgess assizes, which often mention earlier twelfth-century laws, make no mention of the *Letres*, even though John and Philip claim they were pertinent to the burgess community.<sup>188</sup>

## Conclusions

One problem with attempting to summarize the different arguments is that many of the authors are not really arguing about the same thing. What did happen in 1099-1100? Did the assizes spring fully-formed from Godfrey's head in 1099? John and Philip might have wanted their readers to think so, even though they themselves noted that the laws were modified and expanded in the early years of the kingdom. Were they finished in 1099? Were they a list of fiefs? New arguments are frequently introduced and later refuted and still no one is exactly sure what the dispute is about.

If the previous arguments can be summarized, it would seem that there was an early period of slight scepticism, but also uncertainty about what else to make of the *Letres*. Beugnot forcefully argued that John and Philip must be taken at their word, as if this was the only appropriate conclusion an historian could make. Paris, on the other hand, thought the *Letres* could be disproven by logic; why should we necessarily trust the jurists, when they could,

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<sup>188</sup> Nader, *Burgesses and Burgess Law*, pp. 37-38.

logically, have ulterior motives for their claims? Unfortunately Paris also popularized the idea that the *Letres* were a "*livre des fiefs*", which obviously cannot be true, although at least he was making an effort to understand them, unlike Beugnot. But both Beugnot and the RHC were very famous and widely used, so Beugnot's conclusions were the default argument for most of the nineteenth century. The Germans were generally sceptical, but could not really explain why they were so, aside from their opinions that, while logical and probably correct, had as little basis in fact as the story of the *Letres* itself.

At the end of the nineteenth century, Dodu was the first to more fully examine the narrative sources to show that there was no mention of the *Letres*. Grandclaude, for all his important work on the manuscripts, did not really have much to say about the *Letres*, but took the more neutral position that there was some sort of law in the twelfth century, which could have been known as "*Letres*" even if the story told by John and Philip is not completely accurate. He also showed, as Monnier suggested, that twelfth-century laws could be picked out of the thirteenth-century assizes. After Grandclaude, only a few references were made to the *Letres* in the twentieth century, and there was no agreement on what they actually were or whether they were real, even if it was generally agreed that some kind of law might have existed. Among the most recent studies of crusader law, Edbury completely dismissed John and Philip's account, while Nader thought there could be some truth to it. Nevertheless, both agreed that the twelfth-century crusaders enacted laws.

In the end, the argument that makes the most sense is that John and Philip were heavily exaggerating, in order to oppose Frederick II and possibly also Hugh of Brienne; but that they were also not making things up entirely, since it is clear from other sources, and even from the assizes themselves, that some laws did exist in the twelfth century.

In support of the first part of this conclusion, I would also add that Philip and John's palaeographical and philological details are suspect. The “lettres tornées” are often assumed to have been “majuscules”, as Thaumassière says in his notes<sup>189</sup>, or sometimes “Gothic”. Jacques Paul Migne thought they were Gothic, and noted that the Syrians still used majuscules in their own writing, so the crusaders could have adopted that usage. Since some twelfth-century Latin charters were written entirely in majuscules, he thought it was also possible that the *Letres*, which are described more like charters than any other kind of document, could also have been written that way.<sup>190</sup> It would not be impossible for the script to have been Gothic, since the late form of Carolingian script which eventually came to be known as Gothic was already in use in northern France by the late eleventh century.<sup>191</sup>

However, this opinion seems very unlikely, as the description makes more sense if we assume that the jurists were describing what their own scripts looked like in the thirteenth century, not what they were supposed to have looked like in the late eleventh or early twelfth. Edbury, as mentioned above, translated “tornées” as “ornate”, and this probably means the flowery script used in rubrics and chapter headings. As for the language, Edbury translated “francois” as “noble”, although it is not necessary to avoid translating this as “French”. Obviously, the nineteenth-century French historians such as Beugnot and Monnier were happy to translate it as “French”, without thinking too critically about it; however, it makes sense that John and Philip would have said that the laws were written in French, if their story was actually untrue, as Edbury believes it is. The crusaders did not write anything in French in the twelfth

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<sup>189</sup> Thaumassière, pt. 2, p. 240 (p. 765).

<sup>190</sup> Jacques Paul Migne, *Dictionnaire de paléographie, de cryptographie, de dactyologie, d'hiéoglyphie, de sténographie, et de télégraphie* (Paris: Ateliers Catholiques, 1854), cols. 447-448 and n. 459.

<sup>191</sup> Bernhard Bischoff, *Latin Palaeography: Antiquity and the Middle Ages*, trans. Dáibhí Ó Cróinín and David Ganz (Cambridge: Cambridge University Press, 1990), p. 127.

century. If there were written laws that early, they would have been written in Latin, and presumably anyone who had seen them would have known that and reported it correctly to Philip. The palaeographical and philological information actually serves to disprove the story.

Another point that may be made about the *Letres* follows from the observation that no one other than Philip and John mention them. Our picture of thirteenth-century crusader law is distorted by the political allegiances of one family and their supporters, the Ibelins; the only surviving text not written by them is the *Livre au Roi*. The Ibelin influence actually might go back much further than this, to the narrative historical sources of the late twelfth century; the French translations and continuations of William of Tyre also originate with the Ibelin family, as the supposed author of the earliest continuation was Ernoul, a squire of Balian of Ibelin. William himself was also a supporter of the Ibelins in the 1170s and 1180s, when the family was opposed to King Guy of Lusignan. Neither William, nor his translators and continuators, mention anything like the *Letres*; Ernoul describes in detail the peaceful exodus from Jerusalem when it was conquered by Saladin in 1187, but says nothing about the laws.<sup>192</sup> Could we expect them to have mentioned them, if they had existed and were apparently so important to the Ibelins? This suggests that the story of the *Letres* did not originate in the twelfth-century and was not a tradition carried down from the early Ibelin family. This is further evidence that the story is not true.

However, the most important result of this historiographical dispute is not any conclusion about whether the *Letres* existed or not, or which particular details given by John and Philip are true or false, but rather Monnier's suggestion, and Grandclaude's attempt to prove, that the

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<sup>192</sup> *Chronique d'Ernoul et de Bernard le Trésorier*, ed. Louis de Mas Latrie (Paris: Jules Renouard, 1871), pp. 221-230.

twelfth-century assizes could be reconstructed by removing everything that obviously dated from the thirteenth century. In many ways this thesis can be considered a continuation of Grandclaude's efforts. Which laws existed in the twelfth century will be discussed in later chapters, with additional evidence not used by Grandclaude or other historians.

## Assizes of the *Cour des Bourgeois*

The assizes of the *cour des bourgeois*, or burgess court, have never been studied as closely as those of the high court, and they have been printed less often. The earliest edition, of sorts, was the translation made in Venice in 1535. Copies of the original French manuscripts were found in France in the 1780s, but by then the assizes were seen only as an historical curiosity with no relevance to contemporary law, and the French Revolution interrupted any plans there may have been to print them.<sup>193</sup>

The first modern edition of the burgess court assizes was published in 1839 by Édouard Kausler, from a manuscript located in Munich, which according to Grandclaude had been written on Cyprus around 1315.<sup>194</sup> In 1839 Victor Foucher also published an edition of the Italian and Old French versions, from the manuscript of 1535; this led to a bitter debate between Kausler and Foucher, although it was entirely about the use of the different manuscripts, not the actual contents of the assizes.<sup>195</sup>

In any case both Kausler and Foucher were quickly forgotten when Beugnot published an edition in volume II of the *Lois* in the RHC in 1843. Beugnot knew the previous editions, and

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<sup>193</sup> Prawer, *Crusader Institutions*, p. 358.

<sup>194</sup> Prawer, *Crusader Institutions*, p. 359, Grandclaude, *Étude Critique*, pp. 65-66.

<sup>195</sup> Victor Foucher, ed., *Les Assises du Royaume de Jérusalem (textes français et italien)*, vol. 1, pt. 1: *Assises des Bourgeois* (Rennes: Blin, 1839). Aside from Foucher's introduction I have been unable to find more on the dispute between him and Kausler. Foucher also does not seem to have published any other parts or volumes.

praised the excellence of Kausler's, but thought, for some reason, that he should "follow a different path."<sup>196</sup> As Grandclaude noted, Beugnot's different path was actually the incorrect one, because he had used the later, and less correct, manuscript from Venice, with corrections from the Munich manuscript. In Grandclaude's judgement, Kausler was a superior editor and had produced a superior edition.<sup>197</sup>

Nevertheless, Beugnot's edition is much more widely available in the RHC, and his conclusions about the assizes were as influential as those of the high court assizes in the first volume of *Lois*, at least until Grandclaude. Unfortunately, Kausler's text is rather more obscure and difficult to obtain, and contains no introduction and few notes. An entirely new critical edition of the burgess court assizes would be ideal, to accompany the new editions of the *Livre au Roi*, John of Ibelin, and Philip of Novara. A translation would also be useful. There is an English translation by Nicholas Coureas of two Greek manuscripts, which were written on Cyprus and translated from the original French or perhaps from the Italian.<sup>198</sup> Although this translation is not directly from the Old French, it is remarkably faithful to the French and can sometimes be used as a guide.

The contents of the burgess court assizes are quite different from those of the assizes for the high court. They are arranged by general themes, although this organization is not completely logical. The first twenty-six chapters in Kausler's edition discuss procedure and pleading, and who is allowed to bring a case before the court. Subsequent chapters deal with buying and selling of property, the payment of debts, renting and leasing property and animals,

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<sup>196</sup> "suivre une voie différente," Beugnot, *RHC Lois* II, introduction, p. lxxi.

<sup>197</sup> Grandclaude, *Étude Critique*, pp. 65-66.

<sup>198</sup> Nicholas Coureas, *The Assizes of the Lusignan Kingdom of Cyprus* (Nicosia, Cyprus Research Centre, 2002).

the number of witnesses required for different cases and who is entitled to give testimony in court, marriage laws, wills and laws of inheritance, and crimes such as murder, theft, rape, assault, and arson. Criminal laws appear somewhat randomly throughout the assizes, but most of them are collected together in a large section at the end, approximately chapters 236-292 in Kausler's edition (roughly 241-299 in Beugnot), although there are also many non-criminal matters included within these chapters.

### Dating the assizes

Beugnot noted that Amalric I is the latest king mentioned in the assizes, and that they were obviously written while Jerusalem was under Christian control. He concluded that they must have been written after the death of Amalric in 1173, and before 1187 when Jerusalem fell to Saladin. He thought it was unlikely that they would have been written during the latter part of Baldwin IV's reign, due to the regency and succession crises stemming from Baldwin's leprosy, and because the kingdom was almost always at war with Saladin during that period; nor is it likely that they were written during the reign of the child Baldwin V, or of Guy and Sibylla immediately before Saladin's conquest. Therefore, Beugnot considered it likely that they were written in the early years of Baldwin IV's reign, between 1173 and 1180 when the kingdom was at relative peace and the king was not yet incapacitated by his leprosy.<sup>199</sup> Beugnot believed the assizes could have been written with the *Letres* as a guide, since, if they actually existed as Beugnot thought they did, they would not yet have been lost. The French assizes do not actually say anything about the *Letres*, which is usually considered evidence that they did not exist, but the Greek manuscripts do include the story, and Beugnot thought there might be an undiscovered

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<sup>199</sup> Beugnot, *RHC Lois II*, introduction, p. xxxvii. Amalric actually died in 1174.

French manuscript from which the Greek copyist was translating.<sup>200</sup> In 1187, the burgess assizes survived the fall of Jerusalem because they had already been published and copied by other burgess courts, unlike the *Letres*, which existed only in Jerusalem.<sup>201</sup>

As with his opinions on the high court and the *Letres*, Beugnot's influence is easy to trace throughout the nineteenth century, although not as much attention was paid to the burgess court as to the high court. Monnier accepted his dating<sup>202</sup>, as did Dodu, who also thought the burgess court assizes may have preserved the contents of the *Letres*.<sup>203</sup> Prutz agreed that they were written before 1187, but extended the date further back, to the death of King Fulk.<sup>204</sup> Christin also followed Beugnot's dating.<sup>205</sup>

Grandclaude, however, showed that references in the assizes to a *bailli*, or regent, in Jerusalem prove that they must have been written between 1229-1244. Jerusalem had been returned to Christian control by treaty in 1229, but the kingdom was still administered in Acre and only a *bailli* governed Jerusalem itself. The city was lost again to the Muslims in 1244. References to a queen, Grandclaude thought, further narrowed the date to between 1243-1244 when Alice, queen of Cyprus, was regent for the absentee king Conrad IV of Germany.<sup>206</sup> This dating is generally accepted; it is at least agreed that the assizes should be assigned to the mid-

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<sup>200</sup> Beugnot, *RHC Lois* II, introduction, p. xxxviii. However, he also notes that the Greek translator could have added the story himself, borrowing it from John of Ibelin or Philip of Novara.

<sup>201</sup> Beugnot, *RHC Lois* II, introduction, p. lviii.

<sup>202</sup> Monnier, p. 5.

<sup>203</sup> Dodu, pp. 54-55.

<sup>204</sup> Prutz, p. 345.

<sup>205</sup> Christin, p. 22.

<sup>206</sup> Grandclaude, *Étude Critique*, pp. 66-69.

thirteenth century, not the late twelfth. La Monte agreed that they were written in the mid-thirteenth century,<sup>207</sup> while Riley-Smith thought they might have been compiled in the 1260s.<sup>208</sup>

Prawer accepted Grandclaude's date of 1229-1244 but narrowed the date more specifically to between 1240-1244. He also speculated that they were written by one anonymous author who was a professional lawyer from the burgess class in Acre, although not by one of the elite families of burgesses who actually served in the burgess court, such as the Antiaumes. He did not, however, think that the author had any formal training in the legal schools in Europe.<sup>209</sup>

Nader also agreed with Grandclaude, although he thought Grandclaude was only accidentally correct; contrary to Grandclaude and Prawer, the assizes were not written by one person in a short period of time, but were probably compiled by many people throughout the thirteenth century. Some of the chapters on marriage seem to have been written before the laws of consanguinity were changed at the Fourth Lateran Council in 1215, and other chapters were apparently written after 1251, as they mention the creation of a written archive, which occurred in that year.<sup>210</sup>

## Origins of the burgesses

The origins of the burgesses themselves are an important part of the origin of their court and their assizes. According to Beugnot, there was no class of burgesses in Europe that could be used as an example for the establishment of a burgess community in Jerusalem; some cities did have burgesses, but their status and functions varied from place to place. The matter was made

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<sup>207</sup> La Monte, *Feudal Monarchy*, p. 30.

<sup>208</sup> Riley-Smith, *Feudal Nobility*, p. 69.

<sup>209</sup> Prawer, *Crusader Institutions*, pp. 366-367.

<sup>210</sup> Nader, *Burgesses and Burgess Law*, pp. 50-53.

more complicated because no group of burgesses survived the crusade simply as burgesses; that is, “they had all become warriors, motivated only by combat and pillage.”<sup>211</sup>

The burgesses established themselves early in the kingdom and their presence and role in government was, Beugnot believed, never contested. The kings were wise to take advantage of their presence, because their mercantile contacts allowed them to call on support from Europe when the kingdom was in danger.<sup>212</sup> Beugnot thought the burgesses were entirely French, and that they considered the kingdom a vassal state of both the papacy and of France. However, unlike their French counterparts, who lived in villages and participated in honourable trades, the burgesses of Jerusalem were decadent; they hid themselves away in the cities and neglected agriculture, and their wealth allowed them to gain influence almost on the same level as the nobles. Socially, whereas in France they were above only the serfs, in Jerusalem they were also higher than the natives of whatever status. For these reasons, Beugnot thought, Jerusalem was an attractive centre of immigration for French burgesses.<sup>213</sup>

The question of the origins of the burgesses was largely ignored after Beugnot; it was vaguely assumed that they came from France, and it was not until Prawer took up the subject that anyone attempted to trace their origins in more detail. Prawer thought that the first burgesses must have come from the “*pedites*” who survived the First Crusade and remained in Jerusalem, of which there must have been only several thousand at most. This, however, would not be a sufficient number to explain why the class was so large later in the century. Since the number of peasants who came on crusade was never very large, and they usually returned home with their

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<sup>211</sup> “...étaient devenus des guerriers qu’animait le seul désir de combattre et dépiller.” Beugnot, *RHC Lois II*, introduction, p. vii.

<sup>212</sup> Beugnot, *RHC Lois II*, introduction, p. xviii.

<sup>213</sup> Beugnot, *RHC Lois II*, introduction, pp. xxvi-xxvii.

lords afterwards, most burgesses must have come from the other waves of migration and pilgrimage between the major crusades. They probably did not come from the cities of Europe; as those cities were themselves relatively new and were formed by burgess emigration from rural areas, Prawer did not think there would have been any reason for burgesses to emigrate a second time to the east. Most emigration to the east, at least from northern France, was not from the cities, but from rural areas.<sup>214</sup>

Prawer also thought that in southern France and Italy, where there was a continuous urban population from antiquity, it would be natural for urban populations to have emigrated to the east more regularly than their less-numerous counterparts in the north. However, southern rural populations would have also emigrated, just as they did in the north. It is, therefore, “rather natural to regard the south as the cradle of the class of the burgesses, and the southern peasant and city inhabitant as its principal element.”<sup>215</sup> This idea did not originate with Prawer; Hayek also thought the burgesses came from southern France.<sup>216</sup>

Prawer believed the Latin population of Jerusalem to have been entirely urban. Any rural settlements that existed were an exception to the rule. All of the burgesses, whether they were from rural or urban areas in the north of France or in southern France and Italy, would have had to adapt to the pre-existing urban environment in the east, and thus the burgess court was established to deal with this new mixture of populations which was unlike anywhere else in Europe.<sup>217</sup> Ronnie Ellenblum, however, has recently shown that this is not quite true.

Settlement in the crusader kingdom was both urban and rural, just as it was in Europe; the

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<sup>214</sup> Prawer, *Crusader Institutions*, pp. 380-382.

<sup>215</sup> Prawer, *Crusader Institutions*, pg. 382. He noted that he could not actually prove this.

<sup>216</sup> Hayek, pg. 78.

<sup>217</sup> Prawer, *Crusader Institutions*, p. 384; Prawer, “Social classes: The Franks,” p. 150.

crusaders usually did not completely integrate with the natives, but they also did not live only in the cities while the natives lived only in rural areas. Villages and cities that had traditionally remained Christian since the Muslim conquest in the seventh century were settled by the Latin crusaders, while those that had become Muslim since the seventh century remained Muslim and no, or very few, crusaders settled there.<sup>218</sup> This is true for the burgesses as much as for the nobility.

Following Ellenblum, Nader defined the burgesses as “Latin non-feudatories who arrived in the Holy Land either as crusaders, pilgrims, or colonists, and settled in the cities or rural villages”, or the descendants of these people who grew up in the kingdom.<sup>219</sup> Nader noted that a burgess must necessarily be defined as anyone who owned or rented a particular type of property known as “*borgesies*” in the surviving documents.<sup>220</sup> He agreed with Prawer that the “*pedites*” on the First Crusade came from rural areas, but emphasized that they also came from the northern towns.<sup>221</sup>

Nader noted that the burgesses had already developed as a separate class in eleventh-century Europe, where they became distinguished by their right to be judged by their peers, a right otherwise limited to the nobility. They did not suddenly appear at a particular time in the eleventh century, and they certainly did not exist everywhere, but where they are known to have existed, they were defined as Christians who did not fit into the usual three social orders; they were neither peasants, knights, or clerics. As they later did in Jerusalem, they lived in cities and

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<sup>218</sup> Ellenblum, pp. 36-37.

<sup>219</sup> Nader, *Burgesses and Burgess Law*, p. 1.

<sup>220</sup> Nader, *Burgesses and Burgess Law*, p. 7.

<sup>221</sup> Nader, *Burgesses and Burgess Law*, pp. 4-5.

villages, and had their own special courts with either written laws or unwritten customs pertaining to them.<sup>222</sup>

### Establishment of the court

After the end of the First Crusade, Beugnot thought, the crusaders had to defend their conquests, and had no time to colonize the land or conduct normal business. The legal system was eventually established as John of Ibelin described it; Beugnot did not think John was incorrect, as John does say that the courts were founded gradually, and not by Godfrey alone. Beugnot thought that if Godfrey did not create the burgess court, he must have created something that developed into it. Since there is no question that the early crusaders established a court for the native Syrian population, it would be logical that they also created a court for their own burgesses.<sup>223</sup> Dodu disagreed and thought there was no reason to doubt John of Ibelin's claim that Godfrey himself established the court.<sup>224</sup> Hayek also thought Godfrey must have established the court because the majority of crusaders were burgesses, or were at least non-noble.<sup>225</sup>

Joshua Prawer traced the development of the burgess court using evidence from charters and chroniclers, rather than from assumptions about what should have happened based on the thirteenth-century texts. There are a few collections of charters from the crusader states, the largest and most important of which are the *Regesta Regni Hierosolimitani*, and the cartularies of the Holy Sepulchre and the Knights Hospitaller.<sup>226</sup>

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<sup>222</sup> Nader, *Burgesses and Burgess Law*, pp. 16-19.

<sup>223</sup> Beugnot, *RHC Lois II*, introduction, pp. vii-viii.

<sup>224</sup> Dodu, pp. 277-278.

<sup>225</sup> Hayek, p. 78.

<sup>226</sup> Reinhold Röhrich, ed., *Regesta Regni Hierosolymitani (MXCVII-MCCXCII)* (Innsbruck: Libreria Academica Wagneriana, 1904); Geneviève Bresc-Bautier, ed., *Cartulaire de chapitre du Saint-Sépulchre de Jérusalem* (Paris: P. Geuthner, 1984); J. Delaville le Roulx, ed., *Cartulaire général des Hospitaliers de S. Jean de Jérusalem (1100-1310)* (Paris: Ernest Leroux, 1894).

Prawer relied mostly on charters concerning the buying and selling of property, and saw the numbers of witnesses increasing until there was a distinctive group of people acting as the jurors of an official court. He demonstrated that the Latin word “*burgenses*” first appears in the surviving charters in 1110, and a distinct burgess court is first mentioned in a document from 1149, when it is called the “royal court” and is presided over by Rohard, the viscount of Jerusalem. This, Prawer concluded, shows that the court developed gradually throughout the first half of the twelfth century, and was not fully formed right after the conquest in 1099; but because it was called the royal court and was presided over by the viscount in 1149, it must have been fully developed by then, as the the thirteenth-century jurists describe it in the same way. A charter of 1173 shows a transaction made in the “royal court” in the presence of the viscount, so the burgess court was certainly fully developed before the fall of Jerusalem to Saladin.<sup>227</sup>

The charters are somewhat different from the picture of the court given in the thirteenth century. “The legal procedure described by the treatises of law does not always correspond to the actual deeds. Moreover there is a large number of deeds in which one would expect the intervention of the court, but in which the latter is conspicuously absent. Conversely, there are also cases that were passed before the Court of Burgesses, but the name of the institution is not mentioned. In both cases we are dealing with peculiarities of Crusader law and procedure.”<sup>228</sup>

Nader thought that there was some kind of burgess court from the beginning, certainly under Baldwin I and possibly under Godfrey. The crusaders would have had to develop their own community within the communities they had conquered; there were too few Latins after the

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<sup>227</sup> Prawer, *Crusader Institutions*, pp. 264-277. The 1149 charter is in Röhrich, *RRH* 255, p. 64 (given by Prawer as 225 on p. 264, n. 6, either a mistake or a typo), and the charter of 1173 is in Röhrich, *RRH* 504, p. 133.

<sup>228</sup> Prawer, *Crusader Institutions*, p. 264.

end of the crusade to simply occupy the land.<sup>229</sup> The chronicles of the First Crusade also show that the crusaders were concerned about lawlessness during the crusade, and the establishment of a court would also have helped divide the newly-conquered property, to the immediate exclusion of the Muslims and native Christians.<sup>230</sup> Thus, while “the jurists and in particular John of Ibelin should be read with a modicum of skepticism...their histories should not be dismissed as complete fabrication.”<sup>231</sup>

### Composition and jurisdiction of the court

The assizes themselves talk about the workings of the court, as do later redactions and summaries such as the *Abregé* from the fourteenth century. These texts are presumably accurate for the periods in which they were written and used, if not the twelfth century, and they have been used as basic sources of information about the jurisdiction and structure of the court.<sup>232</sup>

As mentioned, the burgess court was also called the “royal court” (although this is not the same as the true royal court, the high court), the court of the viscount, the lower court, or the little court.<sup>233</sup> There was not just one burgess court; they existed wherever there was a “Frankish population of reasonable size,” and according to Riley-Smith, they adopted royal legislation and court procedure, although they may have had other customs as well. These courts were also headed by the viscount of the lordship.<sup>234</sup> Beugnot thought that Godfrey established all of the other burgess courts as well, although this seems unlikely since the crusaders controlled very few

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<sup>229</sup> Nader, *Burgesses and Burgess Law*, pp. 4-5.

<sup>230</sup> Nader, *Burgesses and Burgess Law*, p. 30.

<sup>231</sup> Nader, *Burgesses and Burgess Law*, p. 5.

<sup>232</sup> La Monte, *Feudal Monarchy*, p. 105.

<sup>233</sup> Praver, *Crusader Institutions*, p. 263.

<sup>234</sup> Riley-Smith, *Feudal Nobility*, p. 85.

places during Godfrey's rule.<sup>235</sup> John of Ibelin lists thirty-seven places with a burgess court, but if all known Frankish settlements are included, assuming that those colonists were all considered burgesses, there were at least fifty.<sup>236</sup> A lord's high court would temporarily become the royal high court whenever the king happened to be there, but this was not the case for the burgess court, which remained independent.<sup>237</sup>

As the name suggests, the burgess courts held jurisdiction over all the burgesses of the kingdom. They judged cases of damage against people and property, murder, theft, treason, and perjury. In extreme cases they could hand down punishment by death or mutilation, and the judicial duel was also an option for criminal cases or for cases pertaining to property worth more than a mark of silver.<sup>238</sup> Cases between nobles and non-nobles were always held in the burgess court, and non-Franks could be judged there as well for capital offenses. The burgess courts also heard cases from the lower maritime and native Syrian courts, if the case dealt with property worth more than a mark of silver or if it involved a capital offense.<sup>239</sup>

The earliest form of the burgess court probably had only a viscount and some burgess witnesses. It was a public assembly that gave royal legitimacy to specific matters within the burgess community.<sup>240</sup> By the thirteenth century, there were other officials involved in the court. Besides the viscount, the royal seneschal or the seneschal of a lordship, and in Jerusalem the castellan of the Tower of David, also participated. There was also a "*judex*", or judge, whose role is obscure, although he always seems to have been one of the burgesses. The *judex* was

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<sup>235</sup> Beugnot, *RHC Lois I*, introduction, p. xvii.

<sup>236</sup> Prawer, "Social classes: The Franks," p. 164.

<sup>237</sup> La Monte, *Feudal Monarchy*, p. 107-108.

<sup>238</sup> Nader, *Burgesses and Burgess Law*, p. 150.

<sup>239</sup> La Monte, *Feudal Monarchy*, p. 106-109.

<sup>240</sup> Nader, *Burgesses and Burgess Law*, p. 139.

chosen by the viscount, possibly because he had legal training in the schools of Europe. The court was also made up of jurors, who were responsible for carrying out the procedures of the burgess court and also of the maritime court, at least in Acre. They apparently also had legal knowledge and were chosen by the viscount. There was probably not a set number of jurors in the twelfth century.<sup>241</sup>

Non-Latins were not allowed to testify against Latins in the burgess court. They could act as witnesses for or against members of their own faith, but their evidence could be given only directly to the viscount, who did not have to use it. Muslim witnesses could swear only on the age of a witness or on the ownership of property in the burgess court; otherwise their testimony was invalid, unless they were testifying for or against other Muslims. They were allowed to swear upon the Qur'an, but such an oath was of less value than one taken by a Christian on the Gospels. As Riley-Smith says, as second-class citizens the Muslims "must always have been at a disadvantage in commercial and property cases." Serfs and slaves were also subject to the court but were not allowed to testify at all.<sup>242</sup>

The office of the viscount was also supposed to have been established by Godfrey. According to Beugnot, the viscount was probably not yet the head of the court at that time. At this point he simply ensured that advice was taken from people who were of the same social class as the parties in the lawsuit.<sup>243</sup> In the thirteenth and fourteenth centuries, the viscount also had the power to arrest criminals and deliver them to the appropriate court, to carry out the judgements of the court, to collect taxes and other incomes, and to issue royal proclamations on

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<sup>241</sup> Nader, *Burgesses and Burgess Law*, pp. 144-148.

<sup>242</sup> Riley-Smith, *Feudal Nobility*, p. 88; Kausler, 17-18, pp. 56-67 [=RHC *Lois* II, 17-18, pp. 28-29], and 236, pp. 270-274 [=RHC *Lois* II, 241, pp. 171-173].

<sup>243</sup> Beugnot, *RHC Lois* II, introduction, p. ix.

behalf of the king. He had a small police force to patrol the city, and sometimes appears to have been in command of the city's garrison. This is according to the *Abrégé* of the burgess court assizes, and so it might be true only for the Kingdom of Cyprus, where it was written.<sup>244</sup>

Another one of the viscount's duties was to place written records into the archive. This archive was apparently established before 1251, because in that year a joint meeting of the high court and the burgess court created an archive for the high court as well. Unfortunately no records survive from either court.<sup>245</sup>

### Other courts under burgess jurisdiction

The burgess court was in charge of a few lesser courts. These included native courts for the "Syrians", which, as mentioned, the assizes claimed were founded by Godfrey at the same time as the crusader courts. Riley-Smith believed that they were, since Syrian customs were already being used when the crusaders arrived, and it was in the crusaders' interest to let them judge their own cases. The one major change, especially if the crusaders took over native courts, would have been that there was a new division between "secular" and religious law. The Syrian courts were run by the *ra'is*, Arabic for "head" or leader, who sometimes may have been hereditary but sometimes appointed by the king, the local lord, or the viscount. In the twelfth century there is evidence for a *ra'is* in Jerusalem, Nablus, Tyre, and Bethlehem, so they presumably existed wherever there was a burgess court. The *ra'is* could only have settled personal disputes or minor offenses, because cases involving more than a mark of silver and capital offenses were under the jurisdiction of the burgess court.<sup>246</sup>

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<sup>244</sup> La Monte, *Feudal Monarchy*, pp. 135-136; Beugnot, ed., *Abrégé du Livre des Assises de la Cour des Bourgeois*, *RHC Lois* II, 7, pp. 239-241.

<sup>245</sup> Prawer, *Crusader Institutions*, pp. 290-291.

<sup>246</sup> Riley-Smith, *Feudal Nobility*, pp. 89-90

It is less clear that the native Muslims continued to use their own courts. According to Prawer, had their own dignitaries “who must have dispensed justice among the Moslems of their district.”<sup>247</sup> Hans Mayer, however, thought that “there was not even rudimentary jurisdiction among the Muslims for themselves”, and if there were any Muslim courts at all, they “would have dealt with only the most petty cases fit for a justice of the peace.”<sup>248</sup>

By the thirteenth century the native courts were absorbed into the *cour de la fonde*, a merchant court for the maritime cities, which may have been the same court as the *cour de la chaine*, another maritime court. The *cour de la fonde* had six jurors, who could be either Latin or native Christians, but never Muslims, even though all Muslim merchants were subject to it. The court was headed by the *bailli* of the burgess court, although his duties were performed by the *mathesep*, the Frankish pronunciation of *muh̄tasib*, the officer in charge of commercial courts before the arrival of the crusaders. These courts deferred to the burgess court in criminal cases and all other cases dealing with more than a mark of silver.<sup>249</sup> La Monte believed that these courts were established during the reign of Amalric I.<sup>250</sup>

### The burgess assizes and Roman law

The nineteenth-century historians were disappointed that they could not find a single source for the burgess court assizes. They pored over various other medieval legal codes and picked out random laws that seemed to be similar to those of Jerusalem. This matches the story told by John of Ibelin and Philip of Novara, but Prawer thought this conclusion was “very far

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<sup>247</sup> Prawer, *The Crusaders' Kingdom*, p. 56.

<sup>248</sup> Mayer, “Latins, Muslims, and Greeks,” p. 185.

<sup>249</sup> La Monte, *Feudal Monarchy*, pp. 108-109; Prawer, *Crusader Institutions*, pp. 153-154.

<sup>250</sup> La Monte, *Feudal Monarchy*, p. 21.

fetched.”<sup>251</sup> In order for customary law to be acceptable in Jerusalem, it must have been common to a large number of people, and those for whom it was not common would have to have accepted it. Prawer thought this was unlikely because the burgesses came from diverse parts of France and elsewhere in Europe. The customs of the high court could have developed in this way, because possession of fiefs was the basis of common law for all nobles, but the burgesses had no such common link.<sup>252</sup> What, then, was the common link?

Some historians have postulated that the burgess assizes can be traced back to Roman law. Prutz noted that Roman law was still being used by the native Christians, and this could have had some influence on crusader law.<sup>253</sup> Hayek wrote that Tyre and Beirut, both major cities in the kingdom, were ancient centres of Roman jurisprudence, so it was likely that there was still a tradition of Roman law in the eleventh century. He thought that both the Arabs and the crusaders must have been influenced by superior Greco-Roman culture after their conquests.<sup>254</sup> Grandclaude also believed that there was some influence from Roman law. Medieval law was not very concerned with written records, but Roman law was, and since the burgess court kept written records and the high court did not, the burgess court must have been influenced by Roman law in this aspect.<sup>255</sup> Grandclaude thought the author of the burgess assizes was trying to unite Roman law with the separate crusader law, but came up with nothing original. The author (Grandclaude thought there was only one), rarely refers to a generalized rule, as Roman law does, but rather cites specific circumstances in which a particular law could be applied. The author wanted to give the impression that Jerusalem had fixed customary law, but Grandclaude

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<sup>251</sup> Prawer, *Crusader Institutions*, p. 360.

<sup>252</sup> Prawer, *Crusader Institutions*, pp. 379-380.

<sup>253</sup> Prutz, pp. 347-348.

<sup>254</sup> Hayek, p. 33.

<sup>255</sup> Grandclaude, *Étude critique*, p. 67.

saw in the assizes that many problems were still being sorted out even in the thirteenth century; sometimes certain Roman laws that had fallen out of use elsewhere are claimed to have been used in Jerusalem, and sometimes contradictory laws are applied to the same circumstances. As none of the other law books make any mention of Roman law, the author of the burgess assizes must have had a peculiar interest in it, but he either did not understand it or used it poorly. This was also evidence for Grandclaude that the burgess assizes were not an official law book, but a private treatise.<sup>256</sup>

La Monte, as usual following Grandclaude, also thought burgess law was a mixture of Roman, Syrian, and Byzantine law, mixed with feudal law imported from Europe, and that the resulting customary law was in actual use in the kingdom, not a private treatise.<sup>257</sup> The crusaders took over local customs for the law of the lower classes, and the lower classes must have already been using Roman law, as they had been for hundreds of years.<sup>258</sup>

Prawer thought some aspects of the assizes, such as the office of the viscount, court procedure, and “public law” came from the north, especially Normandy and Flanders. Burgesses from the south, however, brought Roman customary law with them, which became the basis of some parts of the assizes, especially laws concerning marriages, dowries, contracts, and other business transactions. Other sources of Roman law could have been the Italian merchants, who were well aware of the revival of Roman law in Ravenna and Bologna, or from the Normans who used Roman law in Sicily. Additionally, as Prutz had already noted, Roman/Byzantine law

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<sup>256</sup> Grandclaude, *Étude critique*, pp. 123-125.

<sup>257</sup> La Monte, *Feudal Monarchy*, pp. xx, 111.

<sup>258</sup> La Monte, *Feudal Monarchy*, p. 101, n. 5.

could have been adopted from the Syrians, who certainly must still have used it.<sup>259</sup> Since both the native Syrian and the burgess laws were ultimately based on Roman law, it was not too difficult to reconcile them, and “a uniform legislation crystallized, acceptable to the burgesses as well as to the native population.”<sup>260</sup> This crystallization closed the burgess assizes to any further influence from European law. For example, marriage laws and laws about trial by ordeal were not affected by the canons of the Fourth Lateran Council in 1215.<sup>261</sup> Prawer also thought the burgess assizes were originally divided into books, titles, and chapters, like Roman law, and that there were twenty-six of these titles; the surviving copies, however, do not divide the text in such a manner.<sup>262</sup>

Prawer thought that the source of burgess law in general was a separate question from the specific literary source used as a model by the author. This second question is important if, as Prawer believed, the treatise was written by one author, and if it was a private document, not an official collection of laws.<sup>263</sup> The source identified by Prawer was a twelfth-century Provençal law book, *Lo Codi*. In addition to the overall layout, the author of the burgess assizes used *Lo Codi* as a source for laws of marriage and dowries, and a few other chapters. *Lo Codi* was written around 1149, and numerous translations were made, into Catalan, Latin, and other languages, which proves that other jurists found it theoretically interesting even if it was not used in practise.<sup>264</sup> According to Prawer, the Latin translation was the source of sixty-three chapters in the burgess assizes, and fifty-nine others were inspired by it although they were not direct

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<sup>259</sup> Prawer, *Crusader Institutions*, pp. 385-389.

<sup>260</sup> Prawer, *Crusader Institutions*, pp. 368, 390.

<sup>261</sup> Prawer, *Crusader Institutions*, p. 390.

<sup>262</sup> Prawer, *Crusader Institutions*, pp. 369-371.

<sup>263</sup> Prawer, *Crusader Institutions*, p. 359.

<sup>264</sup> Prawer, *Crusader Institutions*, p. 362.

translations. In some cases the source was changed slightly, to represent the different procedures that existed in Jerusalem.<sup>265</sup>

Nader did not find Prawer's suggestion convincing, since Prawer himself admitted that some of the laws and procedures came from northern France. If customary law had to be acceptable to all the burgesses, it does not seem likely that they would accept a mixture of laws from the north and laws from one southern treatise.<sup>266</sup> Prawer's efforts are no more satisfying than those of Beugnot in tracing particular laws to a European source. Nader agreed that there are similarities with *Lo Codi*, but since the burgess assizes are organized differently, are not a direct translation, and were not, contrary to Grandclaude and Prawer, a private treatise written by one author, *Lo Codi* could not be as significant a source as Prawer thought.<sup>267</sup> *Lo Codi* also does not explain the origin of the rest of the burgess assizes, especially as there are criminal laws in the assizes that predate the Provençal code, and, as Prawer himself said, that had "no resemblance whatsoever" to Roman criminal law.<sup>268</sup>

## Conclusion

In thirteenth-century Jerusalem and Cyprus there was great interest in the law, mostly by noble families who had been established in the east for generations, and mostly by members or supporters of the Ibelin family. The most important legal texts were written by Philip of Novara and John of Ibelin; minor authors include Geoffrey le Tor and James of Ibelin. They were all writing in the middle of the century or later, and probably in response to the political crisis caused by the meddling of the Holy Roman Emperor Frederick II and his supporters. They may

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<sup>265</sup> Prawer, *Crusader Institutions*, pp. 372-377.

<sup>266</sup> Nader, *Burgesses and Burgess Law*, p. 7.

<sup>267</sup> Nader, *Burgesses and Burgess Law*, pp. 56-57.

<sup>268</sup> Prawer, *Crusader Institutions*, p. 413.

also have been influenced by the presence of King Louis IX of France and other French crusaders who insisted upon the precedence of French law in the kingdom, as the nobility was largely descended from French crusaders. It is also likely that jurists trained in Roman law had settled in the kingdom, and offered a new, clearer and more logical system of law that was easier to use than the unwritten customs of crusader law; there were certainly jurists trained in Roman and canon law in the kingdom in the late twelfth century, such as Archbishop William of Tyre and Patriarch Heraclius of Jerusalem.<sup>269</sup> Philip, John, and the others therefore represent a very conservative element, opposed to legal innovations, and who wanted to preserve the old ways of the original twelfth-century kingdom in the new kingdom of the thirteenth century. But they could not turn back: even the laws that they claimed had always existed had been lost, according to their own story, and they did not even know what the old laws were supposed to have said.

There are no other legal records of this kind from the twelfth or thirteenth centuries, and from the perspective of the legal treatises, we are presented with a picture that is heavily biased towards the Ibelins and their political ideals. Some historians were happy to accept their claims that Jerusalem was a kind of feudal paradise, with a strong, independent nobility and a weak figurehead king. If they could accept that, it was also easy to accept that Jerusalem had a full set of written laws from the very beginning, the “*Letres dou Sepulcre*.” However, once Philip and John’s credibility has been shown to be suspect, their story of the *Letres* is much harder to believe; it does not matter what the *Letres* were, or who could see them, or where they were kept, if the entire story itself no longer makes any sense. The accepted and most sensible conclusion is that crusaders from the west arrived in Jerusalem and enquired about the legal situation; the

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<sup>269</sup> James Brundage, “Latin jurists in the Levant: The legal elite of the Crusader States,” in *Crusaders and Muslims in Twelfth-Century Syria*, ed. Maya Shatzmiller (Leiden: Brill, 1993), p. 22.

native barons realized they had only a unique set of unwritten customs that westerners, who had not lived through the same events and experiences, would probably not understand. They were forced to create the story of the *Letres* to give their customs a more dignified status. The fall of Jerusalem in 1187 was a convenient excuse for why these *Letres* did not physically exist.

Even if we dismiss this story as false, we are still left with a heavy Ibelin bias. There is no record of Roman law being used in the courts, and no legal treatises were written by opponents of the Ibelins. It may be that the legal opinions in the surviving treatises of the Ibelin faction do not reflect the reality of the legal system in Jerusalem. If they had to write their treatises to preserve their point of view, might that not suggest that their view was the minority, the obsolete or obsolescent position? If so, what was really happening? What laws were actually in use, and what laws had been in use before 1187? Despite these reservations, the thirteenth-century treatises are not useless. They must represent the way the law was practised at some point; the authors were well-known jurists and their works were copied and expanded, so they must have been useful in the courts. They also contain some laws that are attributed to specific kings of the twelfth century, and most importantly for this thesis, some of these laws deal with criminal matters. These laws are free from the obvious political biases of the *Letres* story, and they will be examined in comparison with events from twelfth-century sources in subsequent chapters.

Also surviving from the thirteenth century are the assizes of the burgess court. Although they were presumably composed because of the same trend that led to the composition of the high court assizes, they do not obviously belong to any particular faction, and do not seem to be advancing any particular agenda; rather they are just a simple collection of assizes, organized, but not very well, into different themes. Their author is unknown and it is likely that there was

more than one author or compiler; they were brought together from different sources written at different time periods, and many of the assizes may originally date from the twelfth century. As Praver noted, some of the laws may have been adopted from a twelfth-century Provençal legal code, and while this is a helpful idea when attempting to date the entire collection or even just the laws about debts and marriages which are most closely related to the Provençal code, it does not really help determine the origin of the criminal laws at the end of the treatise. The criminal laws in the burgess assizes are the most interesting of all the legal treatises; they show us what crusader society was like for the lower classes, the merchants, the non-Latin majority, and even the slaves, people for whom we have almost no other record. By comparing these laws with events recorded in the twelfth-century, it will also be shown in subsequent chapters that some of the laws were already in use in the first half of the twelfth-century, possibly even in a written form that survived into the thirteenth century. If this is not exactly a vindication of the *Letres* story, it will at least show that laws did exist from an early period, and that the burgess assizes were not a private treatise, written by a single person in the middle of the thirteenth century.

## Chapter 2

### Surviving and reconstructed laws from the twelfth century

Although there are no legal treatises from the twelfth century, some information about twelfth-century law can be found in twelfth- and thirteenth-century sources. These sources are usually internal or “native”, that is, written in Latin or French and produced in the kingdom itself, as opposed to external sources, which will be discussed in the next chapter. The sources are the canons of the Council of Nablus from 1120; a small number of charters; and the thirteenth-century assizes, when they name a specific twelfth-century king as the source of certain laws. There are also a number of cases mentioned by the twelfth-century chronicler William of Tyre, who, better than any other chronicler of the time, was in a position to know what the laws of the kingdom were. However, these sources all have their problems; their descriptions of the law are usually very vague and general. How useful are they as sources of legal history? What is the relationship between the laws they mention and the assizes of the thirteenth century?

#### The Council of Nablus

As mentioned in the previous chapter, the assizes as they have survived in their written form certainly date from the mid-thirteenth century. But there were laws being used in the twelfth century, some of which may have survived to be included in the assizes a century later. The earliest surviving laws were actually written at the Council of Nablus, which took place on January 16, 1120, although there is some debate about the nature of these laws and whether or not they were ever used.

The council was called after the crusaders experienced a number of disasters in the previous years. The kingdom and the other crusader states had suffered frequent attacks from the

surrounding Muslim states. The Battle of *Ager Sanguinis*, a defeat for the Principality of Antioch in the north, had just taken place a few months earlier in 1119. According to Fulcher of Chartres and William of Tyre, the kingdom also suffered from earthquakes and plagues of locusts and mice. Fulcher does not mention the council, but William says that the crusaders convened the council to correct the sins that they believed were the cause of their misfortune.<sup>270</sup>

The council was mainly concerned with ecclesiastical matters, and, as in church law, the twenty-five laws it produced are known as canons. The first three canons pertain to a dispute between King Baldwin II and Patriarch Warmund over tithes from royal property, which led Hans Mayer to characterize the document, or at least this part of it, as a concordat, similar to the Concordat of Worms which ended the Investiture Controversy in Europe a few years later.<sup>271</sup> The fourth through twenty-second canons deal with adultery, prostitution, sodomy, miscegenation with the Muslims, bigamy, false accusations, and clerical involvement in warfare. The last three canons deal with theft.<sup>272</sup>

William of Tyre, writing about fifty years later, said the canons were enacted “as if they had the force of law,” and that copies could be found in many churches in his day.<sup>273</sup> One of these, the copy made for the church at Sidon, was eventually copied in Europe and was printed in Mansi’s collection of church documents in the eighteenth century.<sup>274</sup> A new edition of the text was published by Benjamin Z. Kedar in 1999.<sup>275</sup>

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<sup>270</sup> William of Tyre, 12.13, p. 563; Fulcher of Chartres, 2.52, pp. 578-80.

<sup>271</sup> Hans Mayer, “The Concordat of Nablus,” *Journal of Ecclesiastical History* 33 (1982), p. 533.

<sup>272</sup> Benjamin Z. Kedar, “On the origins of the earliest laws of Frankish Jerusalem: the canons of the Council of Nablus,” *Speculum* 74 (1999), pp. 332-335.

<sup>273</sup> “quasi vim legis obtinentia,” William of Tyre, 12.13, pp. 535-536.

<sup>274</sup> Joannes Dominicus Mansi, ed., *Sacrorum Conciliorum Nova et Amplissima Collectio*, vol. 21 (Venice: Antonius Zatta, 1776), coll. 261-266.

<sup>275</sup> Kedar, “Council of Nablus,” p. 311.

## The Council in history

The canons have not attracted much attention from crusade historians. They do not fit in with the later assizes and no one seems to have known what to make of them. Even William of Tyre glossed over them without mentioning their actual contents. Among modern historians, Wilken thought that they may have been the new laws and customs that, according to John and Philip, were added to the *Letres dou Sepulcre*.<sup>276</sup> Mills noted that the canons contain “prohibition of public wrongs,” which the later assizes do not, and that the council “formed an imperfect criminal code,” but “little knowledge can be gained from it.” He also thought that “its description of offenses and punishments is very disgusting,” which is perhaps why historians have tended to ignore it.<sup>277</sup>

Beugnot thought the council was related to the development of the burgess court, although at this point he thought the burgesses must not have had any political influence, as none of them were consulted and none signed the list of canons. He thought it was a “curious monument” of crusader law, and that its sexual and marital prohibitions showed how far the crusaders’ morals had degenerated since 1099.<sup>278</sup>

According to Sybel, the canons were created for situations common to the crusaders in Jerusalem, which were not covered by the customs they had borrowed from France. There is no reference to the *Letres*, which means either that there were no *Letres*, or, the less likely possibility, that the original crusaders did not care about criminal law and that there were no

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<sup>276</sup> Wilken, p. 310, n. 8b.

<sup>277</sup> Mills, p. 343, n. 2.

<sup>278</sup> Beugnot, *RHC Lois* II, introduction, p. xviii.

criminal punishments in the first two decades of the kingdom.<sup>279</sup> Edbury also thought the lack of reference to the *Letres* was evidence that they did not exist.<sup>280</sup>

Dodu, like Beugnot, was interested in the council in comparison to the burgess court. Although he agreed with Beugnot that the burgess court must not have been well-developed at this point, he thought it was “imprudent” to assume that William listed everyone, as William may have forgotten some of the names, who may not have been well-known in his own day.<sup>281</sup> This is obviously not the case, since the list of witnesses in the document printed by Mansi does not include any burgesses either; William did not leave anyone out of his list. Beugnot knew about Mansi’s edition, and Dodu had read Beugnot, but Dodu apparently did not read Mansi.

La Monte considered the council a secular council at which ecclesiastical affairs were discussed. He believed it showed that the secular state was predominant in 1120, and the high court could intervene in church matters.<sup>282</sup> Most historians, however, consider it the opposite, a church council at which secular affairs were discussed, representing the influence of the church over the state. As Riley-Smith said, at Nablus “the king tried unsuccessfully to reserve certain kinds of case to his own jurisdiction.”<sup>283</sup> Praver thought that the last three canons, at least, showed that the secular state was dominant, as certain cases of theft were under the jurisdiction of the royal court, not a lesser court or a church court; but he also thought it was possible that the royal court is mentioned in those canons because they deal with children, and nobles who commit crimes outside their own lordship, matters over which the burgess court did not have

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<sup>279</sup> Sybel, p. 438.

<sup>280</sup> Edbury, “Law and custom in the Latin East,” p. 74.

<sup>281</sup> Dodu, pp. 273-274.

<sup>282</sup> La Monte, *Feudal Monarchy*, pp. 8-9, 94.

<sup>283</sup> Riley-Smith, *Feudal Nobility*, p. 26.

jurisdiction.<sup>284</sup> James Brundage thought the canons codified rules made during the First Crusade, when circumstances required a punishment to be enforced or perhaps made up on the spot.<sup>285</sup>

### Mayer and the Council as concordat

Hans Mayer was the first to study the council in detail. According to Mayer, the first twenty-one canons were under the jurisdiction of church courts, and the twenty-second, about false accusations, could be tried in either a secular or a church court. Canons twenty-three to twenty-five “were definitely secular in character.”<sup>286</sup> Mayer thought that the point of the council was to solve certain aspects of the Investiture Controversy that were present in the kingdom, especially control of churches and tithes by laymen. This was also related to the power struggle between Baldwin I and Patriarch Daimbert in 1101. The first three canons are intended to settle a dispute about the allocation of tithes by local bishops, as there were not yet any parish churches in the kingdom. The council, which, based on these three canons, could also be considered a concordat like that of Worms, could have been a compromise on the matter of tithes between the clergy and Baldwin I’s successor Baldwin II, who may have agreed to convene the council when he was crowned a month earlier in December 1119.<sup>287</sup>

Mayer thought that Fulcher ignored the council because it was a royal defeat, and contrary to the purpose of his chronicle, which was to praise the original crusaders, although he should have been personally pleased, as a cleric, at the ecclesiastical victory. Since he wrote about the end of the Investiture Controversy in Europe, he must have known about it in

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<sup>284</sup> Prawer, *Crusader Institutions*, pp. 116-117.

<sup>285</sup> James Brundage, “Prostitution, miscegenation, and sexual purity in the First Crusade,” in *Crusade and Settlement*, ed. Peter W. Edbury (Cardiff: University College Cardiff Press, 1985), p. 62.

<sup>286</sup> Mayer, “Concordat of Nablus,” p. 533.

<sup>287</sup> Mayer, “Concordat of Nablus, pp. 540-541, and *passim*.

Jerusalem.<sup>288</sup> William was also pleased with the ecclesiastical triumph, and said that the canons were available in every church because most of them were still applicable to church law and needed to be consulted regularly. However, as an official royal historian, he was hesitant to list the actual contents.<sup>289</sup> Mayer thought that the secular canons gave crusader judges a standard to follow, for hypothetical cases, but did not think that the very existence of the canons meant that there was a crisis of immorality, as earlier historians had assumed.<sup>290</sup>

### Kedar and the origins of the canons

Kedar, along with his new edition of the canons, also tried to determine their source. Kedar did not agree with Brundage that the canons were related to punishments given during the First Crusade, because the punishments in the Nablus canons are much harsher than, for example, the punishment given to promiscuous crusaders outside Antioch in 1097, where Albert of Aachen says that two adulterers were whipped.<sup>291</sup> Kedar pointed to Justinian's sixth-century *Novellae* as a possible source, since that law book has numerous references to mutilation as a punishment. However, Kedar thought it was more likely that the source of the canons was a later Byzantine law book, the eighth-century *Ecloga*, or one of its derivatives.<sup>292</sup>

The *Ecloga* was itself the basis for several other Byzantine codes, including the *Epanagoge*, the *Prochiron*, and the *Epitome legum*. It was translated into many other languages, including Arabic and Armenian, as well as an incomplete Latin version that was probably used in southern Italy. Kedar speculated that this Latin version may have been brought to Jerusalem by

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<sup>288</sup> Fulcher of Chartres, 3.12, pp. 653-654.

<sup>289</sup> Mayer, "Concordat of Nablus," pp. 541-542.

<sup>290</sup> Mayer, *The Crusades*, pp. 74-75.

<sup>291</sup> Albert of Aachen, *Historia Ierosolimitana*, ed. and trans. Susan Edgington (Oxford: Oxford Medieval Texts, 2007), 3.57, pp. 228-229.

<sup>292</sup> Kedar, "Council of Nablus," p. 313.

the kingdom's first chancellor, Pagan, who came from southern Italy, although he admitted that this idea was "rather far-fetched."<sup>293</sup> More likely, he thought, was that the crusaders borrowed it directly from the Greeks of Antioch or Jerusalem, or from the Armenians of Edessa, where Baldwin II had ruled before becoming king of Jerusalem.<sup>294</sup> Kedar thought the crusaders might have found Byzantine law more suitable to their problems than the laws they knew in Europe. Using Byzantine law also could have prevented complaints that laws from one area of Europe were being favoured over those from another area. It might also have been a way of appeasing the Greek population of the kingdom, who blamed the crusaders for the various plagues afflicting them, which had not occurred before the crusaders' arrival. "The simplest explanation of these links would be that some Frank(s) considered a Byzantine model to be worthy of imitation, even though this explanation runs counter to the accepted, though undocumented, notion of the early Franks' pervasive antagonism to all things Byzantine."<sup>295</sup> The canons were not totally Byzantine, however, and in one case, the fourth canon, they "exhibit a remarkable inventiveness" by combining Byzantine punishments with a trial by ordeal, which was unknown in Byzantine law.<sup>296</sup>

Kedar agreed with Mayer's explanation of why Fulcher ignored the council. William of Tyre is more difficult to understand. If the canons themselves were readily available, then the introduction and list of witnesses would also be available, so why would William copy those parts but not the canons? Elsewhere in his chronicle, William copied the entire text of archived documents, such as the treaty with the Venetians in 1123, which is included only a few chapters

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<sup>293</sup> Kedar, "Council of Nablus," pp. 316-320.

<sup>294</sup> Kedar, "Council of Nablus," pp. 320-321.

<sup>295</sup> Kedar, "Council of Nablus," p. 322.

<sup>296</sup> Kedar, "Council of Nablus," p. 323.

later.<sup>297</sup> Kedar did not agree with Mayer, since William often wrote about royal setbacks, even for his own patron, Amalric I. Instead, like Fulcher, William probably did not want to contradict his heroic depiction of the early crusaders. As a canon lawyer, he probably also disagreed with the non-canonical punishments, and with the acceptance of militant clerics in the twentieth canon. He may have also wanted to ignore the possibility that the crusaders had adopted Byzantine law.<sup>298</sup>

### Were the canons the law of the kingdom?

The Council of Nablus is a problem because, aside from William's statement that they had "the force of law," it is difficult to tell whether the laws had any practical use or if they had any influence on the thirteenth-century treatises. Kedar noted that the death penalty for homosexuals was the only law from Nablus included in the burgess assizes, but does that mean the rest of the canons were not actually enforced, or that they were simply outdated by the mid-thirteenth century? Kedar thought that the lack of similar laws in the thirteenth century meant that "the Nablus canons were no longer operative, not that they did not go into effect upon their promulgation." As proof of this, Kedar cites the lack of evidence for crusader-Muslim sexual relations after 1120.<sup>299</sup>

This is not very convincing, as the lack of evidence certainly does not imply that it never happened, only that no one mentioned it in the surviving sources. Who would have written about such relations? If Fulcher and William intended to praise the early crusaders, would they have mentioned illicit Christian-Muslim relationships, when they did not even mention the contents of

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<sup>297</sup> William of Tyre, 12.24-25, pp. 577-581.

<sup>298</sup> Kedar, "Council of Nablus," pp. 327-328. William's education and training in canon law is discussed below.

<sup>299</sup> Kedar, "Council of Nablus," p. 330.

the canons of Nablus? More importantly, however, there actually is evidence of such relationships twenty years later; Usama ibn Munqidh heard about a Muslim woman from Nablus who had killed her Christian husband, a “Frank,” i.e. a European. He heard this from the woman’s son, who was a “young man” around 1140 during Usama’s visit, so this marriage could have taken place after 1120.<sup>300</sup> If mixed marriages were forbidden, this law was apparently not enforced, even in Nablus where the laws were promulgated.

Kedar also thought that if the laws were not in use, then William would have said so, or would have ignored them altogether; but he also wondered if William’s use of “quasi” was significant.<sup>301</sup> William used this word frequently,<sup>302</sup> and in a number of different ways. What, then, does “quasi” mean here? William also used it when approximating a period of years or another number, as he did at the beginning of this same chapter (“for about four years”),<sup>303</sup> he also sometimes used its usual classical meaning of “as if” in hypothetical or imaginary situations, for example the phrase “as if one man” when talking about a large group of people acting in unison;<sup>304</sup> sometimes he used it to introduce a counterfactual statement, for example, from a later book, when one of Nur ad-Din’s generals, Shirkuh, entered Cairo “as if he had entered in peace” and then had the Egyptian vizier murdered.<sup>305</sup>

What does this suggest about the canons? That they approximately, but not quite, had the force of law? That they did for a short period of time? That only some of them did? That they

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<sup>300</sup> Usama ibn Munqidh, *The Book of Contemplation: Islam and the Crusades*, trans. Paul M. Cobb (London: Penguin, 2008), p. 152.

<sup>301</sup> Kedar, Council of Nablus,” p. 331.

<sup>302</sup> According to the concordance published with the Corpus Christianorum edition, William used “quasi” 418 times. *Willelmus Tyrensis Archiepiscopus Chronicon*, Corpus Christianorum Instrumenta Lexicologica Latina, fasc. 32, ser. A – formae (Turnhout: Brepols, 1986), p. 118.

<sup>303</sup> “quasi quadriennio continuo”; William of Tyre, 12.13, p. 535.

<sup>304</sup> “quasi vir unus”; William of Tyre, 12.17 and 12.20.

<sup>305</sup> “quasi pacificus esset eius introitus”; William of Tyre, 20.11.

were not official laws but were treated as such? Was William being sarcastic or dismissive of them? It is likely that William meant that they were treated as if they had the force of law, but at that point in the kingdom's history there were no other written laws to be enforced, so it was an unusual situation. It could also mean that they were temporary laws to solve the immediate problems of 1120 and the previous few years, not a code of laws to deal with any crime that had occurred or could occur in the future. They then fell out of use when the crusaders felt the problems were solved, or because they had new problems to occupy them, such as the *Pactum Warmundi* with Venice in 1123, the siege of Tyre and the regency government during Baldwin II's captivity in 1124, and the problem of finding a husband for Baldwin's daughter Melisende. Other evidence that the canons were out of use within a couple of decades will be presented below.

In any case, the existence of the canons certainly implies that there were courts in which these cases could be tried, even if the implication is that there was only a royal secular court at the time. If there was a lower secular court, a burgess court, it was either not yet fully established, or the canons simply did not relate to any matters that could have been tried there.

## Charters

The collections of charters mentioned in the previous chapter pertain mostly to property ownership, and other kinds of "feudal" matters that do not have anything to do with criminal law. The charters dealing with property owned by burgesses have recently been dealt with at length by Marwan Nader, and Prawer used them to trace the development of the burgess court, but nothing has been written about specific laws that might be mentioned in them. It is difficult to write much about this, because there are only two charters that mention criminal matters, and

both were written for communities that normally fell outside the jurisdiction of the royal courts. Coincidentally, both charters are dated to 1168, during the reign of Amalric I.

### Hospitaller charter for Bethgibelin

The first is a Hospitaller charter for the foundation of a Latin settlement outside Bethgibelin, the modern Beit Guvrin, about fifty kilometres southwest of Jerusalem. Bethgibelin was founded around 1136 by King Fulk, as one of a string of castles to surround the Egyptian-controlled port of Ascalon.<sup>306</sup> The castle was granted to the Hospitallers, who settled the surrounding land with Latin colonists from elsewhere in the kingdom as well as from Europe. The area was probably relatively peaceful after Ascalon was captured in 1153, although there were occasional Muslim attacks and the inhabitants of Bethgibelin probably owed military service to the Hospitallers. The settlement was also located on the trade route from Egypt to Damascus, and burgesses would have been interested in the financial opportunities there, despite the possible dangers.<sup>307</sup>

The charter gives the names, places of origin, and occupations of the male settlers, their property rights, and the taxes they owed. It also mentions two crimes and punishments. For the first crime, adultery, the guilty parties would be publicly whipped and expelled from the settlement. This punishment is significantly lighter than the mutilations ordered by the canons of the Council of Nablus, but it is the same as the punishment inflicted on adulterers in the army of the First Crusade. The second crime mentioned is theft. A thief would lose all his possessions and his fate would be determined by the local minister of the Hospital.<sup>308</sup>

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<sup>306</sup> William of Tyre, 14.22, pp. 659-661.

<sup>307</sup> Jonathan Riley-Smith, *The Knights of St. John in Jerusalem and Cyprus, c. 1050-1310* (London: Macmillan, 1967), pp. 466-467.

<sup>308</sup> Delaville le Roulx, p. 273. Interestingly, one of the settlers was named “Hugh the thief,” if the surname “Latro” is meant to be the regular Latin word.

The charter mentions that the settlement would follow the “customs of Lydda” and the “judgements of Jerusalem,” which, according to Beugnot, meant that the burgesses of Bethgibelin were under the legal jurisdiction of the burgess court in Jerusalem. He also thought the settlement was a military outpost, which would explain why the charter is so concerned with plunder.<sup>309</sup> Prutz also thought the site was a “Hospitaller capital” in the southwest of the kingdom, and that the law followed the assizes of the burgess court in Jerusalem.<sup>310</sup>

Prawer did not think that Bethgibelin was a military settlement. The settlers were farmers, cooks, shoemakers, and camel-drivers, and the number of sons and sons-in-law mentioned in the charter make it clear that there were entire families living there. The charter itself says the purpose of the settlement was to populate the land. Bethgibelin was also not under the jurisdiction of Jerusalem. The Hospitallers collected fines from judgements (the “judicia” of the charter), and they would not have sent this money back to Jerusalem. Jerusalem, according to Prawer, also had a more advanced legal code, which was certainly not being used for the relatively crude punishments in cases of adultery and theft in Bethgibelin. Prawer thought the customs of Lydda mentioned in the charter were so useful that they spread to other settlements in the kingdom as well, but he does not mention where else they were used.<sup>311</sup> Riley-Smith agreed with Prawer’s conclusions. He also thought that the reference to fines meant that the same fines imposed on certain crimes in Jerusalem were also imposed in Bethgibelin, not that the court in Jerusalem had jurisdiction over the settlement.<sup>312</sup>

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<sup>309</sup> Beugnot, *RHC Lois* II, introduction, p. xxix.

<sup>310</sup> Prutz, p. 246.

<sup>311</sup> Prawer, *Crusader Institutions*, pp. 120-124. This chapter was originally published as “Colonization activities in the Latin Kingdom,” *Revue belge de philologie et d’histoire* 29 (1951), pp. 1063-1118.

<sup>312</sup> Riley-Smith, *Knights of St. John*, pp. 461-462.

Beugnot thought the law of the kingdom had radically changed between 1120 and 1168<sup>313</sup>, and Kedar also thought the charter might mean that the Nablus canons were no longer in effect, at least for adultery and theft. However, he also noted that the charter is not meant to represent the law of Jerusalem itself, but rather the law for a specific colony of settlers, and it might have been more lenient to attract “unruly and impetuous would-be frontiersmen.” According to Kedar, it is not evidence that the Nablus canons were not in effect elsewhere in the kingdom.<sup>314</sup>

Nader disagreed with Kedar and thought that laws established at Nablus did not necessarily become the law of the entire kingdom. They could have instead been local customs, which were adopted in other towns, as apparently happened in Bethgibelin with the customs of Lydda. Another successful set of customs were those of Magna Mahumeria, a settlement similar to Bethgibelin, but founded by the canon priests of the Holy Sepulchre.<sup>315</sup> He also thought that the Bethgibelin charter did not mean that the Hospitallers controlled the secular burgess court, which is mentioned by John of Ibelin and probably existed before the Hospitallers gained control of the settlement. The secular court remained separate, and the Hospitallers had their own court for certain cases that usually fell outside their jurisdiction.<sup>316</sup> In any case, although it is difficult to understand the Hospitaller punishment for theft, the punishment for adultery is relatively easy to explain, as whipping and expulsion were also the punishment for fornication in the rule of the Hospitaller order.<sup>317</sup>

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<sup>313</sup> Beugnot, *RHC Lois* II, p. 223, note b.

<sup>314</sup> Kedar, “Council of Nablus,” pp. 330-331.

<sup>315</sup> Nader, *Burgesses and Burgess Law*, pp. 36-45.

<sup>316</sup> Nader, *Burgesses and Burgess Law*, p. 191.

<sup>317</sup> Delaville Le Roulx, 70, pp. 64-65.

## Royal charter for Pisan merchants

The only other charter that mentions criminal law is dated May 18, 1168. King Amalric granted judicial rights to the Pisan merchant community in Acre, but cases of homicide, murder, treason, theft, rape, and “other such forfeitures” were reserved for the royal courts. The autonomous Italian courts were not permitted to inflict punishments of death or dismemberment, which were required for those crimes.<sup>318</sup> The burgess assizes contain essentially the same law.<sup>319</sup> Another twelfth-century source, the anonymous *Tractatus de locis et statu sancte terre ierosolomitane*, which was probably written by a pilgrim in the 1170s or 1180s,<sup>320</sup> also mentions that the Italians were not normally subject to the royal courts.<sup>321</sup> There are other charters for the Italian communities in the twelfth century, but none of them mention criminal matters; the *Pactum Warmundi* with the Venetians, for example, allowed them to settle their own disputes but required them to use the royal courts for disputes with non-Venetians, although no specific crimes are mentioned.<sup>322</sup>

## Relevance of the charters

These charters do not really tell us very much about twelfth-century criminal law. The Pisan charter is at least evidence of what kinds of crimes were punished by mutilation or death in the twelfth century, and that the Pisan courts were not permitted to use such punishments, as was the usual arrangement with the Italian communes. The Hospitaller charter is more problematic. The Latin text can be confusing, and it is not entirely clear that the “customs of Lydda” had anything

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<sup>318</sup> Röhricht, *RRH* 449, p. 117.

<sup>319</sup> Kausler, 144, pp. 162-163 [= *RHC Lois* II, 147, pp. 100-101]

<sup>320</sup> Benjamin Z. Kedar, “The *Tractatus de locis et statu sancta terre ierosolomitane*,” in *The Crusades and their Sources. Essays Presented to Bernard Hamilton*, ed. John France and W.G. Zajac (Aldershot: Ashgate, 1998), p. 119.

<sup>321</sup> Kedar, “*Tractatus*,” p. 125.

<sup>322</sup> William of Tyre, 12.25, pp. 579-580; Gottlieb Lukas Friedrich Tafel and Georg Martin Thomas, ed., *Urkunden zur älteren Handels- und Staatsgeschichte der Republik Venedig*, vol. 1 (Vienna, 1856), XL, p. 87.

to do with the two crimes mentioned. The “judgements of Jerusalem” and the “customs of Lydda” are mentioned in connection with property rights.<sup>323</sup> Like the customs of Mahumeria, the customs of Lydda probably only dealt with property.

At this point in the charter the master of the Hospital confirmed the previous statements, which must have been granted in an earlier document. The rest of the charter seems to deal with new problems that had developed after the first charter was granted, such as the rights of the settlers to sell their property (perhaps some of them did not find the settlement as peaceful or as lucrative as they hoped), and the two crimes of adultery and theft. These must have been the most relevant crimes for a small community of rural settlers. There is no connection to any hypothetical customary legal code, either of Lydda or Jerusalem. Although Praver and Riley-Smith noted the assizes of Jerusalem were more subtle and advanced on these points, that would be true only if the thirteenth-century assizes existed in their entirety in the mid-twelfth century. Even if they did exist at the time, the Hospitallers were an ecclesiastical organization, usually exempt from the secular law of the kingdom, and they were apparently not using the burgess assizes; the punishment for adultery, at least, came from their own rule, not from the secular assizes. This would account for the differences with the Pisan charter, where theft is a serious crime punishable by mutilation in the royal court; the Pisans were subject to the same secular law as everyone else, except in certain minor or financial cases.

## Twelfth-century law in the thirteenth-century assizes

There are a few thirteenth-century assizes that can be dated to the twelfth century. Some of them are attributed to twelfth-century kings, although there were five kings named Baldwin in the

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<sup>323</sup> Nader, *Burgesses and Burgess Law*, p. 36, mistakenly thought that plunder was one of the crimes.

twelfth century, so an attribution to an unnumbered Baldwin is not always helpful. Prawer considered the claims of the thirteenth-century jurists “almost as useless as the sources of the twelfth-century Kingdom” for reconstructing the earliest laws, but nevertheless he thought the assizes might contain more information about the “everyday problems” of crusader life than the works of chroniclers who had no interest in the lower levels of society.<sup>324</sup>

### Property laws

The first attempt to reconstruct the original assizes was made in 1929 by Grandclaude.

According to him, the earliest law was about the dismemberment of fiefs, preserved in the treatise of Philip of Novara. Philip says this law was issued before another law about possessing property for a year and a day.<sup>325</sup> This second law is also mentioned by William of Tyre, who said the city of Jerusalem was sparsely populated in 1099-1100, and thieves often broke into the deserted houses. Many crusaders returned home to Europe until they thought it would be safe to return, so it was decreed that only those who possessed property in person for a year and a day would be allowed to keep it.<sup>326</sup> Prawer agreed that this was an early law, but thought it probably fell out of use once the crusaders stabilized their rule and conquered rural territories.<sup>327</sup> Jean Richard thought this law was established by Baldwin I, although he did not offer a specific year during Baldwin’s lengthy reign.<sup>328</sup>

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<sup>324</sup> Prawer, “Assise de teneur,” p. 77.

<sup>325</sup> Philip of Novara, 11, p. 46; 63, pp. 154-155 [= *Livre de Philippe de Navarre*, 11, pp. 484-485; 81, p. 554]; Grandclaude, “Liste des assises,” pp. 334-335.

<sup>326</sup> “per annum et diem...possederant.” William of Tyre, 9.19, p. 446.

<sup>327</sup> Prawer, “Assise de teneur,” pp. 80-82.

<sup>328</sup> Richard, *Latin Kingdom*, p. 67.

Philip also says a law about the succession of female heirs was issued “at the beginning, when the first assizes were made.”<sup>329</sup> Other laws, attributed to Baldwin II, allowed parents to disinherit their children, children to disinherit their parents, and the king to disinherit one of his vassals without judgement from the high court.<sup>330</sup>

There were also assizes about movable property. An assize about lost falcons is attributed to Fulk. Amalric I issued an assize about goods lost at sea, a matter that fell under the jurisdiction of the *cour de la chaine*, the maritime court. This law determined the circumstances in which sailors were allowed to throw their cargo into the sea, determined the rights of the owner of the cargo and the person who discovered it, and, in case of a shipwreck, allowed the owners of the cargo to reclaim their goods if they landed on someone else’s territory.<sup>331</sup> Other assizes dated by Grandclaude to the late twelfth century dealt with inheritance of property by sisters, marriage rights of a widow, and perjury.<sup>332</sup>

Apparently from a very early period, property disputes could lead to a trial by battle. When a dispute involved a sum of money greater than one mark of silver, the assizes allowed for proof to be given by two witnesses, one of whom could be used to fight a battle.<sup>333</sup> Grandclaude thought this meant that the trial by battle was used in all severe matters, and that it must have been one of the oldest aspects of crusader law. It certainly affected later legislation, some of which was a reaction against it.<sup>334</sup>

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<sup>329</sup> “au coumencement, quant les premieres assises furent faites.” Philip of Novara, 57, p. 141 [= *Livre de Phiippe de Navarre*, 71, p. 542].

<sup>330</sup> Grandclaude, “Liste des assises,” p. 338.

<sup>331</sup> Grandclaude, “Liste des assises,” pp. 339-340.

<sup>332</sup> Grandclaude, “Liste des assises,” pp. 340-341.

<sup>333</sup> Philip of Novara, 60, pp. 148-149 [= *Livre de Phiippe de Navarre*, 75, p. 546].

<sup>334</sup> Grandclaude, “Liste des assises,” p. 337.

## Murder and assault

According to Philip, there were assizes issued in the early kingdom dealing with criminal matters, but their exact dates are unknown. One of the first of these was an assize about murder, defined as a killing with no witnesses (as opposed to homicide, which did have witnesses). An accusation of murder had to come from the nearest relative of the dead person. The relative could make peace with the accused and avoid a trial, but if there was a trial and the murderer was convicted, he was hanged and his possessions passed to the lord.<sup>335</sup>

Another very early assize was the *assise de cop aparant*, dealing with assault. This crime included assault with a sharp weapon, which, if proven by an oath from the accused or by two witnesses, was punished by cutting off the hand of the guilty man. It also included assault with the teeth, the hands, or the feet, or with a stick, which was proven in the same way, but was punished by a fine of one hundred bezants paid to the local lord, and one hundred *sous* to the victim, if the victim was a Frank. However, if the victim demanded it, the assault could also be punished by cutting off the guilty man's hand. A crippling assault with the teeth was punished by removing four of the attacker's teeth, and a lethal assault with the teeth was treated as murder.<sup>336</sup>

John of Ibelin also has an assize for assault, but it is slightly different from Philip's version. John says that the assaulted man should come before the court to show his wounds, but Philip does not mention this. John also says that if the man accused of the assault does not deny the charge, he will pay a fine of one thousand bezants, not one hundred, as Philip says. The fine of one hundred bezants is reserved for a knight who assaults another man who is not a knight, or

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<sup>335</sup> Philip of Novara, 13, pp. 51-52; 16, pp. 59-60 [= *Livre de Phiippe de Navarre*, 13, p. 486; 16, pp. 490-91].

<sup>336</sup> Philip of Novara, 60, pp. 148-149 [= *Livre de Phiippe de Navarre*, 75-76, pp. 546-548].

assault between two non-knights. John does not say that a knight who assaults another knight should be punished by mutilation, but if a non-knight assaulted a knight, the attacker would lose his right hand.<sup>337</sup> Grandclaude thought this law must have been established after the assize about murder, because lethal assault with the teeth could otherwise not have been treated as murder, although he could not be sure about the dates for either law.<sup>338</sup>

Philip says the original *assise de cop aparant* had to be changed because the parties tended to call for a trial by battle. The second version of this law was the same as the earlier one, but proof could now be obtained by an oath from the accused, rather than allowing witnesses to stand for the accuser and accused in battle.<sup>339</sup> Beugnot thought this version of the law was issued by Baldwin I.<sup>340</sup> Grandclaude agreed, because an unnumbered Baldwin in the assizes most likely refers to the first, who was known for leading expeditions against thieves and bandits and who was concerned with maintaining order in the kingdom. However, Grandclaude again admitted he could not be sure of the date.<sup>341</sup> La Monte thought the Baldwin in question was the much later Baldwin IV, and that the assize dated from around 1180, because Baldwin I would not have repealed a law described as being in use “for a long time.”<sup>342</sup> Praver also could not determine a date for this assize but thought it was from the reign of Baldwin III.<sup>343</sup>

According to Grandclaude, the *assise de force aparant* was also from the early kingdom, although the assizes do not specifically say so. It included all violence against people or against

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<sup>337</sup> *Livre des Assises* 100-101, pp. 262-264.

<sup>338</sup> Grandclaude, “Liste des assises,” pp. 336-337.

<sup>339</sup> Philip of Novara, 60, pp. 148-149 [= *Livre de Phiippe de Navarre*, 75, pp. 547-548].

<sup>340</sup> Beugnot, *RHC Lois* I, p. xxii.

<sup>341</sup> Grandclaude, “Liste des assises,” p. 338.

<sup>342</sup> La Monte, *Feudal Monarchy*, p. 30.

<sup>343</sup> Praver, *Crusader Institutions*, p. 428.

the possessions of the lord. It could be proven by a vow, by catching the accused in the act of committing the crime, or by combat, but in the thirteenth century an inquest could be held, and the guilty man's fate was up to the local lord.<sup>344</sup>

### Dating the early laws

As Grandclaude frequently admitted, he did not know the dates of most of these assizes, and could only speculate that they really came from the twelfth century. Nader said Grandclaude was only accidentally right about the dating the burgess assizes, and he was probably accidentally right about these early laws as well. Some of them certainly existed but there are other ways of proving it using twelfth-century sources, which Grandclaude generally neglected to do. Although he mentioned a few laws in William of Tyre, there are others he did not notice.<sup>345</sup> He also admitted his list was hastily compiled, and further research would be necessary, ideally with better editions of the primary sources. With John of Ibelin and Philip of Novara, at least, this is now possible, although there is not yet a new edition of the burgess assizes.

This evidence provided by Grandclaude, though sparse and incomplete, does show that there was an active legal system in Jerusalem in the twelfth century. It is likely that many more laws were produced, but the sources usually neglect to mention them, and no collection survives from such an early date. If the attribution of some of the laws to particular kings is correct, this shows that the high court was certainly functioning as a judicial body probably during the reign of Baldwin II, and that by the reign of Amalric I some of the courts subordinate to the burgess

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<sup>344</sup> Philip of Novara, app. 1.3, pp. 185-186 [= *Livre de Phiippe de Navarre*, 77, pp. 549-550]; Grandclaude, "Liste des assises," p. 342. This assize was not in Philip's original manuscript, but was added to a later version, possibly by Philip himself.

<sup>345</sup> Grandclaude, "Liste des assises," pp. 344-345.

court also existed, which implies the existence of the burgess court itself. However, it is impossible to say whether most of these laws applied to the high court or burgess court, although it is reasonable to assume that they were for the high court when no court is specified, and everyone may have been subject to the high court until the burgess court was fully established. Are those laws, then, useful in any attempt to reconstruct twelfth-century burgess law? Were similar laws used by both courts? Is there any evidence of burgess laws being used in the twelfth-century sources? To answer these questions, some other examples of laws recorded by twelfth-century writers will be examined.

## William of Tyre

William's description of the "year and a day" law has already been noted, but there are other examples of law in William's chronicle that have never been examined in detail. Who was William, and why should he be useful as a source for twelfth-century legal history? William was born in Jerusalem around 1130. His parents were probably merchants, who either emigrated from Europe themselves or were descended from immigrants who arrived shortly after the First Crusade. He had at least one brother, named Ralph, who was also a merchant.<sup>346</sup> Ralph witnessed a grant of property in 1175 under the authority of Rohard, viscount of Jerusalem and thus head, or one of the heads, of the burgess court, which shows that Ralph was probably one of the kingdom's leading burgesses.<sup>347</sup>

William received a basic education in Jerusalem. When he was about fifteen years old he left for Europe, where he spent twenty years studying, among other things, canon and civil law in

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<sup>346</sup> Peter W. Edbury and John G. Rowe, *William of Tyre: Historian of the Latin East* (Cambridge: Cambridge University Press, 1988), p. 14.

<sup>347</sup> Röhrich, *RRH* 531, p. 142.

Paris and Bologna.<sup>348</sup> After he returned to Jerusalem he became archdeacon of Tyre, an ambassador for King Amalric I to the Byzantine Empire, and tutor to Amalric's son, the future King Baldwin IV. After Baldwin succeeded to the throne in 1174, William was appointed chancellor of the kingdom and the next year was elected archbishop of Tyre.<sup>349</sup>

William's education and placement in the political and ecclesiastical offices of the kingdom made him an excellent historian, but he was most interested in recording the deeds of the ruling dynasty and their ancestors. As archbishop of Tyre and chancellor of the kingdom, he had access to archived charters and documents, and as a trained lawyer he should have been capable of explaining the legal structure of the kingdom, but unfortunately he does not seem to have cared about it very much. Aside from the "year and a day" law and his brief note about the Council of Nablus, he is not a very informative source. When he quotes the collections of Roman law, it is never in a legal sense; most of his quotes are from the Roman jurist (and fellow Tyrian) Ulpian in the Digest, to illustrate the history or geography of Tyre and the cities along the Mediterranean coast.<sup>350</sup>

In matters of canon law William certainly knew what was legal and illegal, and was sure to tell his readers when, for example, an ecclesiastical election or a marriage was performed uncanonically. William especially disliked the election of Arnulf of Chocques as the first Latin patriarch of Jerusalem in 1099, which was "dissolved as easily and as quickly as it was imprudently done." In contrast, Daimbert, the archbishop of Pisa and papal legate, was properly

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<sup>348</sup> Huygens, "Guillaume de Tyr étudiant: un chapitre (XIX, 12) de son Histoire retrouvé," *Latomus* 21 (1962), p. 813; William of Tyre, 19.12, pp. 879-881.

<sup>349</sup> Edbury and Rowe, pp. 16-17.

<sup>350</sup> Dig. 50.15.1, for Laodicea (William of Tyre, 10.22, p. 482), Beirut (11.13, p. 515), Tyre (13.1, p. 584), and Palmyra (21.10, p. 975).

elected to replace Arnulf.<sup>351</sup> He even took care to mention the irregular election of Pope Honorius II in 1124, which was soon corrected with a regular election, even though this event was relatively minor and had no effect on Jerusalem.<sup>352</sup> William also mentioned that the marriage of Amalric I and Agnes of Courtenay went against canon law because they were related within the prohibited degrees of consanguinity. He could have ignored this episode, which was potentially embarrassing to his friend and patron, Amalric, but the proper application of church law was apparently more important.<sup>353</sup>

William also noted that Amalric, and Amalric's brother and predecessor Baldwin III, had excellent knowledge of the "*ius consuetudinarium*" of the kingdom. Other nobles were, according to William, amazed at their skill, and frequently consulted them about difficult legal questions.<sup>354</sup> Even if this is an exaggeration, it means that the kingdom had customary law, which may or may not have been written down, and which was well-known to all, possibly including William. Other sources also mention Amalric in a legal context. According to John of Ibelin, the coronation oath of the kings of Jerusalem dated from the time of Amalric and his son Baldwin IV. The oath recorded by John says that the kings promised to uphold the "ancient customs of the Kingdom of Jerusalem."<sup>355</sup> Edbury thought the oath specifically mentioned those two kings in order to pass over the troubles that the kingdom experienced after Baldwin IV's death, and because Amalric and Baldwin were remembered as "major legislators."<sup>356</sup> The oath is also mentioned by the twelfth-century *Tractatus*, whose author may have witnessed the

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<sup>351</sup> William of Tyre, 9.15, p. 440.

<sup>352</sup> William of Tyre, 13.15, p. 604.

<sup>353</sup> William of Tyre, 19.4, pp. 868-870.

<sup>354</sup> William of Tyre, 16.2, p. 716 (for Baldwin III); 19.2, p. 865 (for Amalric I).

<sup>355</sup> "ancienes costumes dou reiaume de Jerusalem," *Livre des Assises*, 220, p. 571.

<sup>356</sup> Peter W. Edbury, "Fiefs and vassals in the Kingdom of Jerusalem from the twelfth century to the thirteenth," *Crusades* 1 (2002), p. 59.

coronation of a king, possibly Baldwin IV in 1174; he wrote that the king swore to “uphold the ancestral customs of the country.”<sup>357</sup> Although William mentions the succession and coronation of the kings, he never fully describes the ceremony. He was present at the coronation of Amalric I, which took place in Tyre in 1167, but said nothing about the oath.<sup>358</sup>

### The revolt of Hugh II of Jaffa

Secular law, concerning crimes and disputes that had no direct effect on the church or its clergy, is mentioned much less frequently than canon law, and usually incidentally to the point William is trying to illustrate. The first time William describes a secular legal case in meaningful detail is the revolt of Hugh II, Count of Jaffa, against King Fulk early in Fulk’s reign. The details are found in book fourteen of William’s chronicle.

Jaffa was one of the major cities of the kingdom and Hugh II was an influential baron. Hugh’s father, the lord of Le Puiset in France, had come to Jerusalem on a pilgrimage during the reign of Baldwin II, and Hugh was born in Italy during the journey, according to William.<sup>359</sup> However, according to La Monte, the elder Hugh came to the east on Bohemond of Taranto’s crusade against the Byzantine Empire in 1106, and William confused him with another member of the Le Puiset family, also named Hugh, who came to Jerusalem sometime later. In any case, the elder Hugh was named count of Jaffa after his arrival (presumably by Baldwin I, if the year was 1106), but soon died. When Hugh II came of age he arrived in Jerusalem to claim his inheritance, and married Emma, the daughter of the Patriarch Arnulf.<sup>360</sup> Hugh first appears in a

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<sup>357</sup> “consuetudines patrie et mores patrios conservare,” Kedar, “*Tractatus*,” p. 129.

<sup>358</sup> William of Tyre, 20.1, p. 913.

<sup>359</sup> William of Tyre, 14.15, p. 651.

<sup>360</sup> La Monte, “The lords of Le Puiset on the crusades,” *Speculum* 17 (1942), p. 102.

charter of 1122, as “consul” of Jaffa, consenting to the donation of a number of churches by his constable Balian.<sup>361</sup>

Hugh’s revolt may have taken place in 1132, as La Monte believed,<sup>362</sup> although more recently Mayer has argued that the year was 1134.<sup>363</sup> In 1133 Hugh donated land as lord of Jaffa,<sup>364</sup> and his name appears for the last time on a charter dated to July of 1134, when he witnessed a land grant in Antioch.<sup>365</sup>

William mentions two rumours about Hugh; the first, that he was “on too familiar terms with the queen,” his cousin and Fulk’s wife Melisende; and the second, that Hugh was arrogant and refused to pay Fulk the proper respect as a vassal. At a meeting of the high court, Hugh’s stepson Walter of Caesarea accused Hugh of treason and conspiracy against the king. Hugh denied the accusation, and the court decided that the case would be settled by a judicial combat, but on the appointed day, Hugh did not appear. The court assumed that Hugh was guilty and declared him so *in absentia*. In response, Hugh allied with the Egyptian garrison at Ascalon, a fortress on the Mediterranean coast to the southwest of Jerusalem. The Egyptians raided the kingdom as far north as Arsuf, and Fulk marched to Jaffa with his army, along with some of Hugh’s own vassals, including his constable Balian,<sup>366</sup> and Baldwin, lord of Ramla. Jaffa was besieged and Hugh was captured, ending the revolt. Through the mediation of the Patriarch William of Malines, Hugh’s punishment was three years of exile.<sup>367</sup>

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<sup>361</sup> Röhricht, *RRH* 100, p. 22.

<sup>362</sup> La Monte, *Feudal Monarchy*, p. 23 n. 4.

<sup>363</sup> Hans E. Mayer, “Studies in the History of Queen Melisende of Jerusalem,” *Dumbarton Oaks Papers* 26 (1972), pp. 104-105.

<sup>364</sup> Röhricht, *RRH* 147, p. 37.

<sup>365</sup> Röhricht, *RRH*, Additamentum, 151a, p. 12.

<sup>366</sup> Balian was also the great-grandfather of the jurist John of Ibelin.

<sup>367</sup> William of Tyre, 14.15-17, pp. 652-654.

William of Tyre says nothing more about the laws and legal procedures that may have been involved in this case. Since it involved high-ranking nobles and the king, the events fell under the jurisdiction of the high court, and as we can see from William's description, this court was functioning as a court of law in the early twelfth century.

There are many thirteenth-century laws concerning accusations of treason and declaration of judicial combat. Philip and John distinguished between "apparent" and "non apparent" forms of treason, and according to both, apparent treason was grounds for judicial combat. Treason was "apparent" when, for example, a vassal surrendered a castle or fortress, attacked his lord, or allowed his lord's relatives to be captured or killed.<sup>368</sup> John also explained at length how to deny a charge in court and how to offer battle against the accuser.<sup>369</sup>

Hugh had not done any of this when the original accusation was made, and William believed that the accusation was false, so presumably this was an accusation of non-apparent treason. According to John, the accuser had to make such a claim in the presence of the accused and the king, and if the accused denied it, the accuser could call for judicial combat. If the king accepted the challenge, a day would be appointed for the duel. The king did not have to accept the challenge, because there was no legal requirement for a duel if the treason was non-apparent, but if the challenge was accepted there was no way out of the duel, even if the two parties made peace before the appointed day.<sup>370</sup>

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<sup>368</sup> Philip of Novara, 14, pp. 53-54 [= *Livre de Philippe de Navarre*, 14, p. 407]; *Livre des Assises*, 84, pp. 227-229.

<sup>369</sup> *Livre des Assises*, 61, pp. 170-174.

<sup>370</sup> *Livre des Assises*, 82, pp. 223. The accusation could also be made if the accused was not there, but the accused would have to be found and the accuser would have to repeat the claim to his face; *Livre des Assises*, 85, pp. 230-232.

William says Hugh denied the charge but the meeting in the court is very brief and seems to lack the formulaic rituals required by John and Philip. William does not say whether it was Walter or Hugh who offered the challenge to duel. There is no indication of a distinction between apparent and non-apparent treason, although Fulk or Walter could have accused Hugh of anything, true or not, so the distinction is probably not important, if it even existed at the time. Certainly there would have been no reason for Fulk to reject the offer of battle, if he wanted to get rid of Hugh, but perhaps judicial combat was simply decreed “according to the custom of the Franks,” presumably by the court, as William says.<sup>371</sup> John’s treatise goes on to explain the rules of conduct for judicial duels<sup>372</sup>, but in this case, even if these rules had existed in 1134 they would not have applied, as Hugh did not appear on the appointed day.

Hugh’s subsequent actions, allying with the Egyptian garrison at Ascalon, were certainly treasonous by any definition. In this case, the *établissement* attributed to Fulk’s father-in-law Baldwin II would be the most relevant law. The text of this *établissement* is preserved only in the *Livre au Roi* of the late twelfth or early thirteenth century. The *Livre* lists twelve reasons for which “the king can disinherit his liegemen without the judgement of the court,” of which three can apply to Hugh’s revolt:

“The first reason is if any liegeman raises arms against his lord...The second reason is if any liegeman commits treason against his lord or against his land...The seventh reason is if any liegeman enters [the kingdom] against the will of his lord with help from the Saracens...”<sup>373</sup>

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<sup>371</sup> “de consuetudine Francorum.” William of Tyre, 14.16, p. 652.

<sup>372</sup> *Livre des Assises*, 88-96, pp. 233-253.

<sup>373</sup> “peut li rois deseriter ses homes liges sans esgart de cort...La premiere raison si est, s’il avient que aucun home lige lieve armes contre son seignor...La seconde raison si est, c’il avient que aucun home lige fait traïson contre son seignor ou contre sa terre...La septime raison est se aucun home lige entre par force des Sarasins contre la volenté de son seignor...” *Livre au Roi* 16, pp. 177-182.

Grandclaude agreed that the Baldwin in question was Baldwin II,<sup>374</sup> but Prawer suggested the *établissement* was actually the work of Baldwin III, who reigned from 1143 to 1162.<sup>375</sup> If so, it is possible that the specific facts of Hugh's revolt influenced, in hindsight, the writing of this law, which is why the reasons for confiscation match up so well with the events in Hugh's case. Baldwin III was, according to William, interested in legal matters. However, the case against Hugh could have proceeded as it did because there was already a legal structure set up to deal with such an event, and the law is specifically attributed to Baldwin II in the *Livre au Roi*. This was the conclusion reached by Riley-Smith, who said "the events tally fairly well with the procedures the *établissement* laid down."<sup>376</sup> Hugh raised arms against the king, committed treason, and allied with the Muslims, and was therefore disinherited just as the *Livre au Roi* states should have happened. But the *Livre au Roi* also says the king could disinherit a vassal without consulting the court, which does not seem to be the case in 1134, so the provisions of the *établissement* were not necessarily the only options available.

Neither John of Ibelin nor Philip of Novara mention the *établissement*. As nobles themselves, they were probably more concerned with the rights of the noble class than with affirming the right of the king to disinherit them; the *Livre au Roi*, written for the king, as its title shows, had no such reservation. However, John of Ibelin did describe the ways in which a vassal can be disinherited, and there are many similarities to the *Livre*, although they differ in the details. John wrote that a vassal could lose his fief for a year and a day, for his entire life, or for his life and the life of his heirs. The last of these reasons, the disinheritance of a vassal for his

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<sup>374</sup> Grandclaude, "Liste des assises," p. 339.

<sup>375</sup> Prawer, *Crusader Institutions*, p. 468.

<sup>376</sup> Riley-Smith, "Further thoughts on Baldwin II's *établissement* on the confiscation of fiefs," in *Crusade and Settlement*, p. 177.

whole life and for the life of his heirs, was described the most briefly, and is the most relevant to Hugh's revolt: "he who takes up arms against his lord in the field" and "he who is accused of treason and is defeated in the field or fails to come to defend himself from his lord in court against the treason of which he was accused" are among the reasons given.<sup>377</sup>

This is a very severe punishment, but although Hugh fits both criteria, he was not punished in this way. Possibly this particular assize did not yet exist in 1134, or, as Mayer notes, Hugh was influential enough that any punishment decreed by law could probably be bypassed by mediation, in this case by the mediation of the Patriarch. Melisende also likely had some influence in softening the punishment.<sup>378</sup>

## Attack against Hugh II

The second crime reported by William is directly related to the first. After Hugh of Jaffa was sentenced to exile, he was free to remain in Jerusalem until a ship was available to bring him back to Europe. One day he was playing dice outside a shop on a busy street, and was suddenly attacked by a Breton knight, who stabbed Hugh numerous times with his sword. The inhabitants of Jerusalem had previously supported Fulk, as Hugh was assumed to be guilty after not appearing at the judicial combat and allying with the Egyptians, but William reports that public opinion now changed. Fulk was assumed to have ordered the attack, and Hugh was therefore considered to be innocent. Fulk, of course, denied any involvement in the attack.<sup>379</sup>

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<sup>377</sup> "Qui vient a armes contre son seignor en champ" and "qui est apelé de trayson et vencu en champ ou defaillant de venir soy defender en la court de son seignor de la traïson que l'on li met sus, se il est semons si con il doit." *Livre des Assises*, 172, p. 430. This is repeated in chapter 174. If Hugh had fought the duel and lost, he and his heirs would have also been disinherited, according to *Livre des Assises*, 90, pp. 240-245.

<sup>378</sup> Mayer, "Studies in the History of Queen Melisende," pp. 108-109.

<sup>379</sup> William of Tyre, 14.18, p. 654.

The knight committed his assault in the middle of a crowded street, and was easily apprehended and brought before the high court. The large number of witnesses made the usual process of the law, the “*legis ordo*,” unnecessary, and the court decided that the knight should be punished by having his limbs mutilated. Fulk agreed, but ordered that the man’s tongue should be left intact, so Fulk would not be accused of silencing him and preventing him from naming the king as the instigator. The knight, however, never accused Fulk, even when interrogated in secret; he claimed only that he had attacked Hugh in order to gain Fulk’s favour.<sup>380</sup>

Mayer believed that Fulk probably was involved in this attack, just as he had probably incited Hugh to revolt.<sup>381</sup> If Fulk was trying to increase his power and remove Melisende’s influence, it did not work. Both the general public and the church supported Melisende, the legal heir of the kingdom, and when the two were eventually reconciled, Fulk no longer took any action without consulting her. As for Hugh, he remained in Jerusalem while his wounds healed, and eventually went into exile in Apulia, possibly stopping in Antioch along the way. He did not fully recover, and died soon afterwards.<sup>382</sup>

William’s account of the attack and the legal proceedings is the most detailed Latin explanation of crusader law in the twelfth century, but it is still tantalizingly brief and vague. It is at least evident that William thought that there was a “*legis ordo*” in 1134, even if it did not need to be followed in this particular case, and that it was the same as the “*legis ordo*” of his own day forty years later. William probably also knew what the “*legis ordo*” was, since he knew when it did not apply, even if he did not think it was necessary to explain what it was.

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<sup>380</sup> William of Tyre, 14.18, p. 655.

<sup>381</sup> Mayer, “Studies in the history of Queen Melisende,” p. 110.

<sup>382</sup> William of Tyre, 14.18, p. 656.

As Grandclaude noted, the assizes about murder and assault in Philip of Novara's treatise most likely dated from the early twelfth century. If so, they were probably discussed by the court in 1134. Had Hugh died immediately this would have been a case of homicide, a witnessed killing; according to John of Ibelin, if the accused denied the charge, the case could be solved by judicial combat, but the body of the deceased would have to be brought before the court.<sup>383</sup> Hugh did not die in Jerusalem, and the Breton knight had already been convicted and punished, so none of this would have applied.

Like William, the thirteenth-century jurists do not spend much time describing cases like this with many witnesses, as it was a straightforward matter of arresting and punishing the guilty party. This was a case of *cop aparant*, simple assault with a sharp weapon, for which the punishment was cutting off the hand of the guilty man. In William's account apparently all of the Breton knight's limbs were mutilated, but it is hard to imagine that the knight lost his arms and legs and possibly his eyes or other extremities, since this likely would have killed him, and he seems to have lived to be interrogated numerous times afterwards.<sup>384</sup> Perhaps the story had become exaggerated by the time William was writing, or perhaps the knight was punished in an extraordinary way because of the political importance of the crime. But clearly at least one hand was removed, which fits with Philip's assize. However, it does not fit with John of Ibelin's version of the assize, in which the only punishment for a knight who attacks another knight is a fine of one thousand bezants. John's version could represent a later amendment, much like the second version of the *assise de cop aparant* allowed for fines to replace judicial combat.

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<sup>383</sup> *Livre des Assises*, 80-81.

<sup>384</sup> However, in the Old French translation of this part of William's chronicle, the Breton knight was sentenced to death and was pulled apart limb by limb. Alexis Paulin Paris, ed., *Guillaume de Tyr et ses continuaturs* (Paris: Firmin-Didot, 1880), vol. 2, 14.15, p. 23.

Crusader law tried to eliminate needless violence, or at least the thirteenth-century jurists wanted to think that it did.

Another possibility is that William's description of the attack on Hugh was influenced by events that had just occurred as William was writing, namely the assassination of Thomas Becket, archbishop of Canterbury, on December 29, 1170. Becket was killed because Henry II of England had expressed his desire to rid his kingdom of a powerful opponent, and four knights had interpreted this as a command, whether Henry meant it to be one or not. William mentions the event in his chronicle very briefly, as if he did not know the full story, although the phrase "crowned in his own blood" suggests he had heard all the gory details.<sup>385</sup>

William does not directly implicate Henry in the murder, probably for political reasons. In the next chapter he mentions that King Amalric was seeking military assistance against the Muslims from various European kings, including his nephew Henry II; Henry was a grandson of Amalric's father, King Fulk, through Fulk's first wife. Henry was a supporter of the crusader kingdom, although he never fulfilled his promises to go on crusade himself. William probably did not want to offend him at such a delicate time of international diplomacy. This was the same period in which William was beginning to write his chronicle, and at the same time, Becket's assassins may have been in Jerusalem, where, according to thirteenth-century English historian Roger of Hoveden, they had been sent to do penance by Pope Alexander III. Hoveden says they all died there and were buried at the entrance to the Temple.<sup>386</sup> Since only Hoveden mentions

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<sup>385</sup> "proprio sanguine laureatus," William of Tyre, 20.21, p. 940. Thomas' assassins struck him on the head with their swords and scattered his brain on the floor of the cathedral. For an eyewitness description, see Edward Grim, who was also injured in the attack, *Vita Sancti Thomae, Cantuariensis Archiepiscopi et Martyris*, in *Materials for the Life of Thomas Becket*, vol. 2, ed. James Craigie Robertson (London: Rolls Series, 1876, repr. Wiesbaden: Kraus, 1965), 82, p. 437-438.

<sup>386</sup> *Chronica magistri Rogeri de Houedene*, vol. 2 (ed. William Stubbs, 1869), p. 17.

this and there are other legends about the fate of the assassins, it is not entirely clear what happened to them, but it is likely that they at least started the journey, and either died along the way, or died in Jerusalem soon after their arrival.<sup>387</sup>

There is no explicit link between the two stories, but they are somewhat similar in that an attack was made by someone either on the king's instructions, or alone but with the hope of gaining the king's favour. Hugh's attempted assassin, and the assassin who dealt the final blow to Becket, were both Bretons. Perhaps William conflated the two stories to fill in the details for an event that took place when he was a child, or those whom he interviewed about the attack on Hugh also conflated the stories based on more recent events. This is not to suggest that the attack on Hugh II never occurred, only that some the facts may have been mixed up.

In general, though, the two events are not very similar, and William's descriptions of the laws are close to the written laws of the thirteenth century. It is, therefore, most likely that he accurately recorded an example of the laws being used in the twelfth century.

### Other laws in William of Tyre

William mentions some other laws, but they are always in reference to extraordinary events. In 1172, Bishop William of Acre was sent on a diplomatic mission to the Byzantine Empire by King Amalric. On June 29, the bishop was killed at Adrianople by one of his retinue, a cleric named Robert. William of Tyre did not know why Robert had killed the bishop, but reported rumours that he had gone temporarily insane and was not legally responsible for his actions; nevertheless some other members of the bishop's retinue wanted to imprison him "according to the law of homicide." Robert was not punished because the bishop forgave him before he

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<sup>387</sup> Nicholas Vincent, "The murderers of Thomas Becket," in *Bischofsmord im Mittelalter: Murder of Bishops*, ed. Natalie Fryde and Dirk Reitz (Gottingen: Vandenhoeck and Ruprecht, 2003), p. 262.

succumbed to his injuries.<sup>388</sup> It is not clear what William means by “the law of homicide,” since this took place in Byzantine territory, far from Jerusalem, and involved clergy, not laymen. But he does correctly say that it is homicide, which according to the thirteenth-century assizes is a witnessed killing. It is also interesting to note that, at least in the minds of some people, if not in law, insanity could be used as a defense.

William also mentions legal proceedings in two other extraordinary circumstances, involving the Knights Templar. In these cases it is useful to remember that William is persistently biased against the Templars, whom he believed had abandoned their honourable beginnings and were, in his day in the late twelfth century, motivated by greed and power rather than religious duty.<sup>389</sup> The first case occurred in 1165, when the Templars surrendered a cave-fortress in the Oultrejordain to the Muslims. As punishment, King Amalric considered this treasonous and ordered twelve Templars to be hanged.<sup>390</sup> Malcolm Barber has noted that this story is out of place with the rest of the chapter, although he does not believe William made it up entirely, since the fortress was located in territory that was probably granted to the Templars when Philip of Milly, formerly the lord of Oultrejordain, became Grand Master.<sup>391</sup> Unfortunately, William does not mention anything else about the event so we do not know if the Templars underwent any kind of trial.

The second case occurred in 1173 when an ambassador from the Assassins, who had been granted safe-conduct by Amalric, was ambushed and killed by the Templars. Amalric declared this to be *lèse majesté*, treason against his own person, and the Templar responsible,

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<sup>388</sup> “homicidarum lege,” William of Tyre, 20.25, p. 948.

<sup>389</sup> Malcolm Barber, *The New Knighthood: A History of the Order of the Temple* (Cambridge: Cambridge University Press, 1994), p. 394.

<sup>390</sup> William of Tyre, 19.11, p. 879.

<sup>391</sup> Barber, pp. 99-100.

Walter of Maisnil, was imprisoned.<sup>392</sup> Barber thinks William's account is believable, at least for the king's point of view, which William would have known first-hand, although he may not have known the whole story from the perspective of the Templars and the Assassins.<sup>393</sup> The Grand Master of the order tried to prevent Amalric from handing down any punishment at all, based on the 1139 papal bull *Omne datum optimum*, which granted the Templars papal protection. The Templars, at least, believed this meant they were not subject to secular authorities. Amalric ignored this in 1165 when he ordered twelve of them to be hanged, but in 1173 he was apparently not able to inflict any greater punishment.<sup>394</sup>

Laws of "apparent treason," which includes the loss of a city or fortress on purpose or through incompetence, call for a trial by combat, not hanging.<sup>395</sup> William does not say what Amalric's intentions were in the events of 1173, but presumably he would also have had the Templar killed if he thought he could get away with it. In these cases it is clear that, if the thirteenth-century laws were already in place, Amalric was acting beyond their provisions.

The only other legal cases mentioned by William actually took place long before his birth. The first is the establishment of a very basic criminal code during the First Crusade, a passage borrowed from Albert of Aachen; at Antioch in 1097 various practises were forbidden, such as theft and rape, along with using fraudulent weights and playing games of chance.<sup>396</sup> The second occurred in 1110, and is not recorded by any other sources, including Fulcher of Chartres who is the usual eyewitness source for that period. According to William, King Baldwin I had a

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<sup>392</sup> William of Tyre, 20.30, pp. 954-955.

<sup>393</sup> Barber, pp. 103-104.

<sup>394</sup> Barber, p. 105. Barber also notes (p. 100) that the disputes between Amalric and the Templars were similar to those between Henry II and Becket in England.

<sup>395</sup> *Livre des Assises*, 84, pp. 227-228.

<sup>396</sup> William of Tyre, 4.22, pp. 264-265; Albert of Aachen, iii.57, pp. 228-229.

servant, a baptised Muslim christened Baldwin after him, whom the Muslim nobles of Sidon paid to assassinate the king during the siege of that city. The plan was discovered, and the king had the man brought before a council of nobles, where he confessed and was sentenced to be hanged.<sup>397</sup> Neither of these seem to have any relation to the later assizes. At Antioch the crusaders were trying to control behaviour on a long and difficult journey, and at Sidon the king and his nobles made an emergency decision on the battlefield.

There are laws mentioned in other sources that were adopted during William's lifetime, which William does not mention. He gave a lengthy account of the construction of Bethgibelin, but never mentioned the settlers or their laws. According to some manuscripts of John of Ibelin and Philip of Novara, when Count Stephen of Sancerre visited Jerusalem, he suggested a new law allowing sisters to inherit fiefs.<sup>398</sup> William did mention Stephen's visit in 1171, when he was supposed to marry Amalric's daughter Sibylla, but according to William the count led "a disgracefully licentious lifestyle for several months" and then returned home, being captured by the Armenians along the way.<sup>399</sup> If the account in John and Philip is true, it supports their claim that European visitors were sometimes the source of new laws, as was supposed to have happened after the creation of the *Letres dou Sepulcre* at the beginning of the kingdom. William does not mention any of this.

William also does not mention the *assise sur la ligece*, which turned all rear-vassals into direct vassals of the king, and was, according to Philip and John, issued after a dispute between

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<sup>397</sup> William of Tyre, 11.14, p. 518.

<sup>398</sup> Grandclaude, "Liste des assises," p. 340; Philip of Novara, 57, pp. 141-142 [= *Livre de Phiippe de Navarre*, 71, p. 542, although the manuscript Beugnot was using does not mention Stephen specifically]; *Livre des Assises*, app. 7.11.4, p. 763 (also an addition to a later manuscript).

<sup>399</sup> William of Tyre, 20.25, p. 947.

Gerald of Sidon and King Amalric I.<sup>400</sup> William also ignores the dispute that led to the settlement, which probably means it wasn't very significant at the time, although it became much more important in the thirteenth century when the kings of Jerusalem were often foreign monarchs who were absent from the kingdom.<sup>401</sup>

### Assessment of William

After examining William's descriptions of crusader laws, our knowledge of the development of the legal system in Jerusalem is still very unclear. Although William was trained in canon and civil law, and he was in a perfect position to know about whatever legal structure the kingdom may have had, he rarely ever mentions the law, and when he does, it is usually in vague terms, incidental to the event he is discussing.

William actually leaves us with more questions than answers. Why was he not more interested in the law? A simple answer would be that he intended to recount the deeds of the first crusaders and of the kings and nobles of Jerusalem, and to explain why the kingdom was in decline in the 1180s; he was not interested in recording the trivia of everyday life, or the minutiae of court cases, even if they affected the entire kingdom. But there may be other reasons. Sometimes when William mentions laws, it is as if they are something foreign, something he did not learn about in the schools of Paris and Bologna. For example, he says Baldwin III and Amalric I were skilled in the *ius consuetudinarium* of the kingdom, and in the events of 1134 he describes the judicial combat as a "consuetudo Francorum." A.C. Krey suggested that this could simply mean William was not a Frank himself, as his parents may have

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<sup>400</sup> *Livre des Assises*, 126, p. 307; Philip of Novara, 49, pp. 123-124 [= *Livre de Philippe de Navarre*, 50, p. 525-526].

<sup>401</sup> Graham A. Loud, "The *Assise sur la ligece* and Ralph of Tiberias," in *Crusade and Settlement*, p. 205.

been Italian<sup>402</sup>, but it is also possible that William meant that this sort of law was customary, Germanic, and not related to the Roman or canon law he had learned in Europe. Like the canons of Nablus, which were also unlike what he considered proper law, William did not think these customs were worthy of mention.

This is not to suggest that he was simply arrogant, and he could have written about the laws if he wished; perhaps he simply felt uncomfortable describing something with which he had no experience. Rather than attempt to give details, and possibly get them wrong, he wrote as much as he could, that there was a legal system and that it worked in a regular fashion. Rather than indifference or arrogance, this is actually a tacit acknowledgement, frustrating but admirable, that he did not know as much as he may have wanted. It may also mean that Roman law, at least in the form that William knew it, was not regularly used in Jerusalem in the twelfth century. If it had been, William probably would have had a far better understanding of crusader law. On the other hand, it could mean that William was not an expert on Roman law. He frequently mentions canon law, but the only references to Roman law are to portions of the Digest that give geographical and historical information about Tyre. If he had really studied both canon and civil law as he claimed, maybe he had not studied civil law very thoroughly.

Of course, William was not simply an annalist, but a litterateur, and he had a classical education. At least in his portraits of Baldwin III and Amalric I, the notion that they were legal scholars may be a literary device, not necessarily factual statements. D. W. T. C. Vessey argued that because William was familiar with the *topoi* of ancient and medieval literature, “the

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<sup>402</sup> William of Tyre, *A History of Deeds Done Beyond the Sea*, trans. E.A. Babcock and A.C. Krey (Columbia University Press, 1943), vol. 2, p. 72, n. 43.

assertion of Amalric's devotion to 'historiae' is not to be overstressed."<sup>403</sup> What, then, of Amalric's devotion to the law? As previously mentioned, Edbury thought that Godfrey's legal activities were exaggerated for political purposes, and William may have similarly exaggerated with Baldwin and Amalric, especially as he does not give any other evidence for their interest in the law. Muslim historians gave similar descriptions of their leaders; Nur ad-Din, for example, who died in 1174, the same year as Amalric, was known for his dedication to the law, and established a "house of justice" (*dar al-'adl*) in Aleppo and Damascus.<sup>404</sup> The thirteenth-century historian Ibn al-Athir noted that Nur ad-Din was knowledgeable in *shari'a* law, built schools of jurisprudence and administration, and ensured that all of his subjects were treated equally, no matter their ethnicity or religion.<sup>405</sup> Perhaps William was also influenced by Arabic literary themes when describing the two kings (although not specifically by Ibn al-Athir, who wrote around 1230, long after William's death).

However, since William was trying to write objectively about Amalric and Baldwin, and this information appears in biographical chapters where he also describes their faults, there does not seem to be any reason that the statements would be untrue, even if they are at the same time a literary device. It is certainly possible that William considered knowledge of the law to be an attribute of a good king, whether the kings actually possessed such knowledge or not, but he does not mention the legal aptitude of any earlier kings, not even Godfrey, whom he was otherwise happy to praise (and who, it may be inferred, was not the great legislator the assizes claim).

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<sup>403</sup> D. W. T. C. Vessey, "William of Tyre and the art of historiography," *Mediaeval Studies* 35 (1973), pp. 437-438.

<sup>404</sup> H. A. R. Gibb, "The career of Nur ad-Din," in *A History of the Crusades, vol 1: The first hundred years*, ed. Marshall W. Baldwin (Madison: University of Wisconsin Press, 1969), p. 519; Holt, *The Age of the Crusades*, pp. 72-73.

<sup>405</sup> Ibn al-Athir, trans. Richards, pp. 222-223 [=Ibn al-Athir, *al-Kamil fi'l-ta'rikh*, vol. 11, p. 404. In the 1997 edition, this is in volume 9, which I was unable to consult].

Although he was familiar with literary *topoi*, this does not mean he was incapable of composing his history without them.

## Conclusions

These varied sources must take the place of a written twelfth-century legal treatise, which does not exist and presumably never existed. Although they are all internal or “native” sources, produced in the kingdom itself, they do not do very much to clarify the legal system of the twelfth century, and sometimes make the picture even more confusing. The earliest code of laws, the canons of the Council of Nablus, are especially hard to understand. What do these laws mean? For the most part they are ecclesiastical canons, and those laws may have remained in use long after 1120, but what about the few criminal laws? Was this really the only criminal code that existed in Jerusalem? Kedar thought they were the actual law of Jerusalem, although at some point they were made obsolete by the thirteenth-century assizes, but I think it is more likely that they were temporary solutions for the crises the crusaders were experiencing at the time. It was simple enough to blame adulterers, homosexuals, and thieves, and to punish them harshly; but this would not be very useful as a general law code, and it is even possible that the Nablus canons were meant to be used only in Nablus, or in territories controlled directly by the king (of which Nablus was one). Other evidence suggests that the canons fell out of use very quickly. Kedar’s attempt to link the canons to Byzantine law is fascinating, and it would be useful to discover other instances of Byzantine influence in the early kingdom, but ultimately crusader law seems to have developed independently, or dependent on something else entirely. While the canons represent an interesting and, as Beugnot said, “curious” moment in crusader history, they are not very relevant for the development of crusader law.

The small amount of evidence that can be gleaned from charters is not much more useful than the canons. There are apparently only two that are useful, both from 1168; the Hospitaller charter might mean that there were local customs for different settlements, which were sometimes adopted by other settlements. This supports my idea that the Nablus canons could have been a local set of customs, but otherwise the Hospitaller charter has more in common with the *ad hoc* justice of the First Crusade than with the thirteenth-century assizes. The second charter, granting mercantile concessions to the Pisans, mentions only that criminal cases cannot be tried in the Pisan court. There is no information about specific cases, trials, or punishments, but it at least does tell us what was considered a serious crime, and the fact that the Pisans could not try these crimes matches the information given in the later assizes. Since the charters apparently indicate that the Hospitallers and Pisans were not normally under the jurisdiction of the legal system, a system would therefore have to have existed by the 1160s. Such a system probably did not exist in 1120, at least not to the same extent.

The thirteenth-century assizes themselves actually make essentially the same claim. The story of the *Letres* is not entirely true, and constructed around an obvious political bias, but what about all the other laws that Philip and John claim were enacted in the twelfth century? There is no political baggage to deal with in these laws and there is no reason to think that they are inaccurate. It is sometimes unclear who enacted them, because a king named Baldwin ruled for fifty-four of the eighty-eight years that the first kingdom existed, and most of the time it is complete speculation to which Baldwin the assizes refer. It makes sense that laws about property ownership, murder, and assault would have been current in the twelfth-century, but Grandclaude, who first made a list of these assizes, did not use all the available evidence to show when these laws could have been created.

The only native source that contains any evidence of trials and punishments is the chronicle of William of Tyre. William is almost the only source for most of the kingdom's history and historians have always depended on him, although Grandclaude did not use him as fully as he could have done. William was trained in the law, but apparently not crusader law. He sometimes mentions, however vaguely, that there were laws in place and that trials and punishments occurred based on them, so it is clear that Jerusalem had a legal system even if, for whatever reason, he did not want to discuss it in detail. His description of the revolt of Hugh II of Jaffa, and the subsequent attack on Hugh, are close to the details given in the thirteenth-century assizes for similar cases. Similar is not the same as exact, of course, although we have to allow for a certain amount of royal interference given the people involved. The similarities are intriguing, since William was writing about the event at least forty years later, and the assizes were not written down for almost another century after that.

We should also always be aware of William's literary themes; he seems to have borrowed details from similar events to flesh out the story of the attack on Hugh, and whenever a historian praises his patron as a law-giver, this could be a literary device and not necessarily the truth. William does mention Amalric's interest in legal matters elsewhere in his chronicle, and Baldwin III could be one of the Baldwins mentioned in the assizes. If William was using a literary device, it is nevertheless true that Amalric had an interest in the law.

Still, William's descriptions of legal cases are not especially useful. If Jerusalem had a well-developed legal system, did William understand it? He probably did, and he makes it clear that the laws were known by everyone else as well, although they were different enough from the canon and Roman law he learned in Europe that he did not bother to explain it, or he did not think he was fully capable of doing so. He was, after all, an historian of the royal dynasty. He

wanted to describe what was happening in the Kingdom and to place these events in a wider context, perhaps ultimately in order to request military and monetary assistance from Europe. He was, despite his education and training, not a legal historian, in the sense that the minutiae of crimes, trials, and punishments could have been a major theme of his work.

The point is that by the mid-twelfth century, the Kingdom of Jerusalem had a legal system and at least some of its laws were very similar to laws recorded a century later in the written assizes. Is there any other evidence that would help us see what twelfth-century law was like? It would be ideal to have at least one description of a crime that includes the circumstances of the crime itself, the apprehension of the criminal, the trial, and the punishment; then we might be able to see more specifically what the legal system was like, rather than attempt to reconstruct something from the vague mentions. Such a description does not exist in a “native” source from the kingdom, but in the next chapter “non-native,” external sources will be examined.

## Chapter 3

### Cases of theft in the twelfth century

There are a few other sources from the twelfth century that mention crusader law, crime, and punishment. These sources are mostly external to the kingdom, written in Latin and Arabic by people who visited the kingdom as pilgrims, travellers, or diplomats. They all discuss crimes that can broadly be classified as theft, which is also the most frequently mentioned crime in twelfth-century sources.

Neither the assizes nor the various sources ever give a strict definition of theft, which is generally true of all medieval sources. The clearest definition of theft comes from the customs of Beauvaisis, compiled by Philippe de Beaumanoir in the late thirteenth century, although as previously mentioned these customs were not necessarily the same as other French laws. Beaumanoir defined “larceny” as “taking something belonging to another without the other’s knowledge, with intent to convert it to one’s own profit and to the loss of the person to whom it belonged.”<sup>406</sup>

There were different Latin words for different kinds of thieves; a “*latro*” was, in classical Latin, a mercenary soldier, and in medieval usage could refer to a bandit or highway robber, someone who committed theft in the open, violently and with a weapon. A “*fur*,” on the other hand, was someone who committed theft in secret, likely at night.<sup>407</sup> In medieval French, however, the word for any kind of thief, “*laron*,” was derived from the Latin “*latro*”. In both

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<sup>406</sup> Beaumanoir, trans. Akehurst, ch. 31, para. 938, p. 334 [=Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. Am. Salmon (Paris, Alphone Picard et fils, 1899), ch. 31, para. 938, p. 476].

<sup>407</sup> Valérie Toureille, *Vol et brigandage au Moyen Âge* (Paris: Presses Universitaires de France, 2006), p. 36.

French and Latin there were not yet clear legal distinctions between different types of theft or the different motivations that thieves may have had. A petty thief who robbed a house at night was not much different from an organized band of highway robbers. Other crimes had specific punishments, but a thief could be fined, exiled, mutilated, or executed, according to the severity or the frequency of the crime.<sup>408</sup> In English translations, “*latro*” is often translated as “brigand.” This is a convenient term, although it was coined in Italy in the fourteenth century and was therefore unknown to the authors used here. As a further complication, the words for “thief” used by the Arabic sources do not indicate any particular shades of meaning, and at the same time do not have exact equivalents in French or Latin.

Both petty thieves and highway robbers will be discussed here, as both appear in the sources. By comparison, actions that involve deprivation of feudal rights or property, for example a lord disinheriting a vassal of a fief, are not considered “theft” for the purposes of this thesis.

Like the other sources discussed previously, accounts of theft in the twelfth century can be difficult to use. The authors of these sources never intended to write neutral observations about the legal system, and their information is usually incidental to their main points. The accounts of Christian and Muslim pilgrims are generally vague and indicate only that some kind of legal system was operating. The most important information comes from the Damascene poet and occasional diplomat Usama ibn Munqidh, who gave a detailed description of a judicial battle in Nablus. The evidence from Usama and the other accounts may help to determine what kind of

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<sup>408</sup> Toureille, pp. 23-25.

law existed in the twelfth century, and whether these laws were related to the thirteenth-century assizes.

## Christian sources

The prohibitions against theft during the First Crusade, mentioned by Albert of Aix and William of Tyre, and the thieves mentioned by William in the aftermath of the conquest of Jerusalem in 1099, are both described in Latin as “*furta*” and “*fures*” respectively. There are a few other mentions of theft in the early kingdom, in which the terms “*latro*” and related words are used. The first mention is by Fulcher of Chartres; he is not an “external” source although he was not part of the army that captured Jerusalem. He participated in the crusade as the chaplain of Baldwin of Boulogne, and left the main army when Baldwin went to Edessa. Baldwin established himself as Count of Edessa in 1097, before succeeding his brother Godfrey as King of Jerusalem in 1100. Fulcher accompanied Baldwin to Jerusalem, where he remained until at least 1127, the year in which his chronicle ends. He described one of Baldwin’s expeditions to the southwest of Jerusalem in 1100, during which the inhabitants, both Muslims and native Christians, hid from the Latin army in caves. The native Christians told the army that some of the Muslims were brigands (“*latrunculi*”) who had been robbing Latins between Ramla and Jerusalem, so Baldwin had about one hundred of them executed.<sup>409</sup>

Early pilgrims to the kingdom also noted the presence of organized brigands. The English pilgrim Saewulf, writing around 1103, said that there were still Muslim thieves on the road from Jaffa to Jerusalem, hiding in the mountains and caves.<sup>410</sup> The Russian monk Daniel,

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<sup>409</sup> Fulcher of Chartres, 2.4.2-3, pp. 373-374. William of Tyre also mentions this event, 10.8, p.

<sup>410</sup> R. B. C. Huygens, ed., *Peregrinationes tres: Saewulf, Iohannes Wirziburgensis, Theodericus*, Corpus Christianorum Continuatio Medievalis 139 (Turnhout: Brepols, 1995), pp. 63-64.

writing around 1106, frequently mentioned “the large number of Saracens who carry out brigandage in the mountains” and on the roads between the pilgrimage sites. At one point a friendly Muslim chieftain had to escort Daniel and his fellow pilgrims back to Bethlehem to protect them from robbers.<sup>411</sup>

The anonymous author of the *Tractatus*, who probably visited the kingdom in the 1170s, listed the various religious and ethnic groups who lived there. He described the Bedouin as “*latrones*,” which fits their lifestyle; they could easily attack pilgrims and caravans, but would not likely rob houses in towns and cities at night.<sup>412</sup> In 1178-1179, during the construction of a castle at Jacob’s Ford on the River Jordan, William of Tyre wrote that the army was attacked by brigands living in the mountains near Acre. These brigands had attracted thieves and murderers from both Christian and Muslim territories, people “fleeing from due punishment”. They had been chased out of the land by Baldwin IV, but in March 1179 they made another attack inside the kingdom, and fell into an ambush. Baldwin IV captured nine of them and killed seventy others.<sup>413</sup> Interestingly, William described the brigands as “*latrunculi*,” but the thefts they had committed before becoming brigands were “*furta*.”

Unfortunately, these incidents do not seem to have been punished in the high court or the burgess court. They involve organized militias and the crusader army, and the solution was simply to kill as many of the brigands as possible, as would be the case in any other battle. The brigands of 1179 apparently included people who had escaped punishment in the courts, but we do not know anything else about them or their crimes. The European pilgrims are also not very

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<sup>411</sup> C. W. Wilson, ed., *The Pilgrimage of the Russian Abbot Daniel to the Holy Land, 1106-1107 A.D.* (London: Palestine Pilgrims’ Text Society, 1888), ch. 51, p. 42; ch. 56, p. 50; ch. 88, p. 69.

<sup>412</sup> Kedar, “*Tractatus*,” p. 131.

<sup>413</sup> William of Tyre, 21.25(26), pp. 997-98.

informative. In comparison to William of Tyre, they are sometimes interested in the lower classes and the people they encounter on their pilgrimages, more than in political events, but they do not say anything specific about crusader law.

## Ibn Jubayr

The accounts of Muslim pilgrims and travellers can also be useful, and there are three that are relevant to Jerusalem's legal history. One of these is an Andalusian traveller, Ibn Jubayr, who visited the kingdom on the way home from a pilgrimage to Mecca in 1184. He stopped for some time in Damascus, and then travelled west through the kingdom to Acre, where he boarded a ship to take him back to Europe. He often marvelled at the Christians and Muslims living together in relative peace, but also noted, in an interesting contrast to Christian pilgrims, that there were Frankish brigands on the road near Banias, a city that frequently passed between Christian and Muslim control, and was at the time Muslim.<sup>414</sup> This is an interesting contrast to the Christian pilgrims, who so often mention Muslim brigands. He also observed that in that part of the kingdom, the Muslim and Christian peasants farmed and pastured their animals together, and the Muslims were "accustomed to justice" from their crusader overlords.<sup>415</sup>

He was in the kingdom for less than a month, and visited only the small area on the road between Banias and Acre, so he would not have been able to make accurate observations about the entire kingdom. What he did know, however, he must have learned from the local Muslims, so there is probably some truth in his observation.<sup>416</sup> However, his motivations have sometimes been questioned. Why was he so interested in the treatment of Muslims by the crusaders? Was

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<sup>414</sup> *The Travels of Ibn Jubayr*, trans. Roland Broadhurst (London: J. Cape, 1952), p. 315.

<sup>415</sup> Ibn Jubayr, p. 317.

<sup>416</sup> Kedar, "Subjected Muslims," pp. 258-259.

it really better than their treatment by fellow Muslims in Muslim territories? He may have been trying to “shame Muslim landlords into better treatment of their peasants,” but this does not necessarily make his observations untrustworthy, as his argument would not have been effective if the crusaders had not actually treated the Muslims well.<sup>417</sup> Mayer believed that the Muslims were not really any better off under the crusaders,<sup>418</sup> following the opinion of Claude Cahen who considered the passage an exaggerated piece of propaganda.<sup>419</sup>

While Ibn Jubayr has often been used as a source for the general treatment of Muslims by the crusaders, his observation is rather vague and unhelpful for crusader legal history. The word he uses in this passage is “*‘adl*,”<sup>420</sup> which means “justice” in the sense of goodness, fair treatment, and moral rectitude.<sup>421</sup> Ibn Jubayr also uses this word when he says that Saladin and the Abbasid caliph in Baghdad provided justice to their people.<sup>422</sup> Could it mean that the crusaders oversaw Muslim legal disputes and administered justice in this way? The Muslims had their own courts for minor disputes, so could that be what he is referring to? Could he have witnessed any legal proceedings during his brief stay in the kingdom? Unfortunately he did not elaborate on what he meant by “justice,” and he is not very informative about the legal structure of the kingdom, except possibly in an abstract way.

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<sup>417</sup> Christopher MacEvitt, *The Crusades and the World of the Christian East: Rough Tolerance* (Philadelphia: University of Pennsylvania Press, 2007), p. 148.

<sup>418</sup> Mayer, “Latins, Muslims, and Greeks,” p. 181.

<sup>419</sup> Claude Cahen, “Indigènes et croisés: quelques mots à propos d'un médecin d'Amaury et de Saladin,” *Syria* 15 (1934), p. 356.

<sup>420</sup> *The Travels of Ibn Jubayr*, ed. William Wright, 2<sup>nd</sup> ed. rev. M. J. de Goeje (London: Luzac and Co., 1907), p. 302.

<sup>421</sup> Émile Tyan, “‘Adl,” *Encyclopaedia of Islam*, 2<sup>nd</sup> edition, ed. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs (Leiden: Brill, 1960), vol. 1, p. 209.

<sup>422</sup> For Saladin, Ibn Jubayr, p. 56 [=Wright p. 63]; for the caliph, p. 237 [=Wright, p. 227].

## Theft in the Nablus area

There are two other Muslim sources, Diya ad-Din al-Maqdisi and Usama ibn Munqidh, who both wrote about the town of Nablus and the surrounding villages. It would, therefore, be useful to examine the situation of Nablus and its inhabitants in the twelfth century.

Nablus is located about sixty kilometres north of Jerusalem. It was the most important town in the ancient region of Samaria, and at the time of the First Crusade it was controlled by the Seljuk Turks. While the majority of the crusaders were besieging Jerusalem in July 1099, Tancred of Hauteville and Eustace of Boulogne left the main army and pillaged Nablus on July 10. The Turks fled, and the local Christians agreed to hand over the city to the crusaders after Jerusalem was captured on July 15.<sup>423</sup>

Nablus was part of the royal domain in the early twelfth century, and was the site of the aforementioned secular and ecclesiastical council in 1120. It was unfortified, and in 1137 was raided and burned by an army from Damascus.<sup>424</sup> During the power struggle between Queen Melisende and her son Baldwin III in 1152, Nablus was one of the towns controlled by the Queen. Baldwin seized it, but in the settlement that followed, Melisende regained control of Nablus in exchange for Jerusalem.<sup>425</sup> Nablus at this time was actually a possession of Philip of Milly, who professed loyalty during the dispute to both Melisende and Baldwin III. He gave Nablus back to Baldwin III in 1161 in exchange for the much more important lordship of

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<sup>423</sup> Benjamin Z. Kedar, "The Samaritans in the Frankish period," in *The Samaritans*, ed. Alan David Crown (Tübingen: J.C.B. Mohr, 1989), p. 82. The fullest account of this is by an anonymous adapter of the chronicle of Baldric of Dol. Baldricus episcopus Dolensis, *Historia Jerosolimitana*, *RHC historiens occidentaux*, vol. 4 (Paris, 1879), p. 100, n. 13.

<sup>424</sup> William of Tyre, 14.27, pp. 666-667.

<sup>425</sup> William of Tyre, 17.14, pp. 778-780.

Oultrejordain.<sup>426</sup> Another council was held at Nablus in 1166, when King Amalric imposed a tithe on the kingdom to help pay for his expedition against Egypt.<sup>427</sup> The town was given to the Byzantine princess Maria Comnena as a dowry when she married Amalric in 1167, and it passed into the territories of the Ibelin family when Maria married Balian of Ibelin in 1177, after Amalric's death.<sup>428</sup> The author of the *Tractatus* was probably in the kingdom a few years before this, as he wrote that Nablus was still in the royal domain.<sup>429</sup> Nablus was raided again in 1184 by Saladin, who burned it and took numerous prisoners; Ibn Jubayr happened to see them arrive in Damascus.<sup>430</sup> Nablus was lost to Saladin in 1187 along with the rest of the kingdom, and it was never regained as part of the second kingdom in the thirteenth century.<sup>431</sup>

Samaria was an ethnically diverse part of the kingdom. According to the Jewish traveller Benjamin of Tudela, who visited the area in the 1170s, there were about a thousand Samaritans in Nablus.<sup>432</sup> Unlike the Jews and the Muslims, the Samaritans were allowed to practise their religion in their holiest places, as the author of the *Tractatus* noticed.<sup>433</sup> According to Benjamin the Samaritans were untrustworthy, but the crusaders considered them peaceful and harmless, and they may also have been tolerated because of their favourable depiction in the New Testament.<sup>434</sup> There were also Muslims living in and around Nablus. The Christian pilgrim Theoderich of Würzburg, who was in the Kingdom around Easter in 1169, was somewhat

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<sup>426</sup> Malcolm Barber, "The career of Philip of Nablus in the kingdom of Jerusalem," in *The Experience of Crusading*, vol. 2: *Defining the Crusader Kingdom*, ed. Peter Edbury and Jonathan Philips (Cambridge: Cambridge University Press, 2003), pp. 68-71.

<sup>427</sup> William of Tyre, 19.13, pp. 882-883.

<sup>428</sup> William of Tyre, 21.17(18), p. 986. Balian was the grandfather of the jurist John of Ibelin.

<sup>429</sup> Kedar, "*Tractatus*," p. 130.

<sup>430</sup> Ibn Jubayr, p. 314.

<sup>431</sup> Kedar, "The Samaritans in the Frankish period," pp. 92-93.

<sup>432</sup> *The Itinerary of Benjamin of Tudela*, ed. and trans. Marcus Nathan Adler (New York: Phillip Feldheim, 1907), p. 33.

<sup>433</sup> Kedar, "*Tractatus*," p. 131.

<sup>434</sup> Kedar, "The Samaritans in the Frankish period," pp. 86-87.

frightened by the sight of Muslims there, whom he saw farming the land and who, he believed, were under the protection of the king and the military orders.<sup>435</sup>

According to Ellenblum, the area must have had a large Muslim population, because otherwise the rulers of Damascus would not have been interested in attempting to regain it.<sup>436</sup> Ellenblum also argued that Palestine had not been entirely Islamized after the Muslim conquest in the seventh century, and Christians continued to live where they had lived in the previous centuries. The Latin crusaders and their descendants settled among these Christian towns and villages, where they could share their common religion, culture, and places of worship. The territory around Nablus was inhabited mostly by Muslims, interspersed with a few native Christian settlements, but the two communities rarely interacted with each other.<sup>437</sup>

Some evidence for the Muslim inhabitants living apart from the Christians comes from Muslim sources of the thirteenth century. Abu Shama, who was writing in the mid-thirteenth century, quoted Imad ad-Din al-Isfahani, Saladin's secretary in the late twelfth century, in saying that the Muslim inhabitants of Nablus were left alone by the crusaders and were accustomed to living under Frankish lords. The Franks collected taxes from them, but otherwise did not interfere with their laws or religion.<sup>438</sup> In this case Abu Shama/Imad ad-Din uses the word “*shari'a*” for the law that the Franks did not change.

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<sup>435</sup> *Peregrinationes tres*, p. 187.

<sup>436</sup> Ellenblum, pp. 245-247.

<sup>437</sup> Ellenblum, p. 251.

<sup>438</sup> D.S. Richards, “A text of ‘Imad al-Din on 12th century Frankish-Muslim relations,” *Arabica* 25 (1978), p. 203 [=Abu Shama, *Kitāb al-Rawḍatayn*, *RHC historiens orientaux*, vol. 4 (Paris, 1898), p. 301]; [=Abu Shama, *Kitāb al-Rawḍatayn fī akhbār al-dawlatayn al-Nūrīyah wa-al-Ṣalāhīyah*, ed. Ibrahim al-Zaybaq, vol. 3, p. 316].

## Diya ad-Din al-Maqdisi

Another thirteenth-century source is Diya ad-Din Abu 'Abd Allah Muhammad ibn Abd al-Wahid al-Maqdisi, who lived from 1173 to 1245. He was born in Damascus, but his parents had lived in the vicinity of Nablus in the 1160s or 1170s, and left for Damascus along with many other Muslims, in response to perceived threats from the Frankish lord of Nablus (probably Baldwin of Ibelin). This particular community of Muslims followed the Hanbali school of Sunni Islam. The Hanbali legal school was founded in the ninth century by Ahmad ibn Hanbal, who believed that the only proper legal authority was the Qur'an and the hadith traditions. The school was opposed to the older legal schools, which relied too heavily, according to ibn Hanbal, on their own rational interpretations.<sup>439</sup> By the twelfth century, the Hanbalis were also influenced by Sufi asceticism. Among Diya ad-Din's works was a collection of anecdotes about the *shaykhs* (in this context, holy men) who lived in the Nablus area in the twelfth century, before the mass emigration.<sup>440</sup>

Only about a third of this text survives, but some of the anecdotes mention thieves. In one story, Muslim merchants on their way to Jerusalem are captured by Frankish bandits.<sup>441</sup> In another, one of the *shaykhs* discovers a (Muslim) thief inside a house, and warns him against continuing his life of crime. "Some time later," the man was captured by the Franks and

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<sup>439</sup> Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), p. 71. The Hanbali school was not popular in the Middle Ages, but in the eighteenth century it influenced the Wahhabi movement, and is currently the official school of law in Saudi Arabia (Coulson, pp. 101-102).

<sup>440</sup> Daniella Talmon-Heller, "*The Cited Tales of the Wondrous Doings of the Shaykhs of the Holy Land* by Diya' al-Din Abu 'Abd Allah Muhammad b. Abd al-Wahid al-Maqdisi (569/1173-643/1245): text, translation, and commentary," *Crusades* 1 (2002), pp. 111-113.

<sup>441</sup> Talmon-Heller, "*Cited Tales*," p. 131; Arabic, p. 118

killed.<sup>442</sup> The first anecdote does not use a specific word for thieves or bandits, but in the second, the man is called a “*ḥarāmī*,” a typical word for a thief.

This text is rather problematic. It is incomplete, Diya ad-Din gives no dates, and the anecdotes are not a first-hand historical account, but literature based on the oral tradition of two or three previous generations. As Kedar said, Diya ad-Din also “reflects the attitudes of a tiny, radical minority.”<sup>443</sup> It is therefore not directly useful as a source for the legal history of Jerusalem, but it is evidence that Muslim communities had to deal with theft and banditry in the 1160s, just as Christian sources mention Muslim banditry in the same period. The conclusion of the second anecdote may also be evidence that Muslim thieves were subject to the Frankish legal process, if it means that this thief was arrested, tried, and executed according to crusader law. However, in the absence of any further information from Diya ad-Din, it is difficult to make such a firm conclusion.

## Usama ibn Munqidh

The most informative Arabic source, and the only eyewitness source from the twelfth century who had any direct interest in the legal procedures of Jerusalem, is Usama ibn Munqidh. Usama’s life, from 1095 to 1188, covered approximately the same period as the first Kingdom of Jerusalem. Through his own writings we know quite a lot about him. He had an adventurous life throughout the Islamic world as a soldier, diplomat, author, and, above all, a poet. He was the nephew of the emir of Shaizar, a castle on the Orontes River near the borders with the crusader states in Tripoli and Antioch. His father Murshid would have succeeded as emir, but refused the position on account of his extreme piety, and it passed instead to another brother,

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<sup>442</sup> Talmon-Heller, “*Cited Tales*,” p. 139; Arabic, p. 122

<sup>443</sup> Kedar, “Subjected Muslims,” p. 237.

Usama's uncle Sultan ibn Munqidh. After religious and grammatical education as a child, as well as hunting excursions and battles against Shaizar's Christian and Muslim neighbours, Usama was exiled from Shaizar by Sultan in 1131, probably because Sultan feared that the proud and successful Usama would try to overthrow him. Considering Usama's subsequent career, Sultan was probably right to be suspicious of him.<sup>444</sup>

After his exile he entered the service of Zengi, the atabeg of Mosul, then went to Damascus, where he served as a diplomat under the *atabeg* Mu'in ad-Din Unur.<sup>445</sup> It was during this period that he made most of his observations about life in the Kingdom of Jerusalem, where he had been sent to negotiate an alliance against his old master Zengi. However, Usama managed to find trouble in Damascus as well, and was exiled in 1144 after scheming against Unur.<sup>446</sup> If Usama enjoyed implicating himself in political conspiracies, unstable Fatimid Egypt was a perfect place for him. He managed to get himself exiled again in 1154, this time leaving his possessions and his family behind in Cairo. His family was able to follow him to Damascus two years later, but they were pillaged by crusaders along the way.<sup>447</sup>

Almost all of Usama's family died in an earthquake at Shaizar in 1157, after which he was less active in politics. He served briefly with Zengi's son, Nur ad-Din, in Damascus, then travelled to the Artuqid emirate at Hisn Kayfa in northern Mesopotamia, where he probably

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<sup>444</sup> Paul M. Cobb, *Usama ibn Munqidh: Warrior Poet of the Age of Crusades* (Oxford: OneWorld, 2006), pp. 4-19. "Sultan" was Usama's uncle's name, not a title.

<sup>445</sup> An *atabeg* was a Turkic military chief in Seljuk principalities, who ruled on behalf of an underage sultan. By the twelfth century the title was hereditary and the *atabeg* ruled in place of the sultan. Zengi and Nur ad-Din were *atabegs* in Mosul and Aleppo. Claude Cahen, "Atabak (Atabeg)", in *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., vol. 1, p. 731. Mu'in ad-Din ruled in place of the Burid sultans of Damascus.

<sup>446</sup> Cobb, *Usama ibn Munqidh*, pp. 20-31.

<sup>447</sup> Cobb, *Usama ibn Munqidh*, pp. 34-43.

began to write the majority of his works.<sup>448</sup> In 1174, he returned to Damascus, where he spent the rest of his life in retirement at the court of Saladin, until his death in 1188.<sup>449</sup>

Usama wrote many works, mostly anthologies of poetry, for which he was famous in his own day; the medieval biographer Ibn Khallikan devotes his entry on Usama almost exclusively to his poetry.<sup>450</sup> Today, he is most remembered for his *Kitāb al-i'tibār*. The only known manuscript of the *Kitāb*, which is incomplete, was discovered in Madrid by Hartwig Derenbourg in 1880. Derenbourg edited the Arabic text and translated it into French, and also wrote a lengthy biography of Usama.<sup>451</sup> Philip Hitti re-edited the Arabic text and produced an English translation in 1929-1930<sup>452</sup>, and Paul Cobb has recently published a new English translation.<sup>453</sup>

Derenbourg recognized that Usama was trying to entertain his audience, but for the most part accepted his stories as factual, if somewhat tedious and insignificant. He was disappointed that Usama did not have deeper insights into Christian-Muslim relations.<sup>454</sup> Usama has a reputation for being a rambling old man, as the *Kitāb* is not written in chronological order, but seemingly rather in whatever order the stories sprung to mind as he was writing or reciting them. However, it was not his intent to write memoirs or an autobiography, and Hitti's interpretation of *i'tibār* as "memoirs" is inaccurate. The word refers to stories that show correct attitudes and behaviour, and cause the reader or listener to reflect on what they have read or heard. This was a

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<sup>448</sup> Cobb, *Usama ibn Munqidh*, pp. 44-48.

<sup>449</sup> Cobb, *Usama ibn Munqidh*, pp. 63-64.

<sup>450</sup> *Ibn Khallikan's Biographical Dictionary*, trans. William MacGuckin, baron de Slane, vol. 1 (London: Oriental Translation Fund, 1842), pp. 177-180.

<sup>451</sup> Hartwig Derenbourg, *Ousama ibn Mounkidh, un emir Syrien au premier siècle des croisades (1095-1188)* (Paris: Ernest Leroux, 1889).

<sup>452</sup> *An Arab-Syrian Gentleman and Warrior in the Period of the Crusades; Memoirs of Usamah ibn-Munqidh (Kitāb al i'tibār)*, trans. Philip K. Hitti (New York: Columbia University Press, 1929), and *Memoirs Entitled Kitāb al-i'tibār*, ed. Philip K. Hitti (Princeton: Princeton University Press, 1930).

<sup>453</sup> *The Book of Contemplation: Islam and the Crusades*, trans. Paul M. Cobb (London: Penguin Classics, 2008).

<sup>454</sup> Derenbourg, p. 497.

popular theme in Arabic literature, *The Thousand and One Nights* being the most well-known example.<sup>455</sup> Thus, the *Kitāb* fits into a style of Arabic literature known as *adab*. Usama's apparent rambling is not due to senility, but is an aspect of *adab*, which is not required to have a consistent chronological arrangement.<sup>456</sup>

It also means, however, that Usama's anecdotes, even when referring to historical events, cannot necessarily be taken as factual. When he is apparently quoting dialogue, the quotations are "streamlined fictional items" intended to give Usama's idea of the motivations and goals of the person to whom a speech is attributed.<sup>457</sup> Some of his stories are meant to be humorous, especially when referring to the Franks, whose unusual and improper habits were meant to be contrasted with the proper conduct of a good Muslim. As Cobb wrote, "historians who accept Usama's anecdotes, jokes and twice-told tales as truth do so at their own peril,"<sup>458</sup> and his "contribution to our general knowledge of the culture of the European settlers in the Levant should not be exaggerated."<sup>459</sup> According to Carole Hillenbrand, it would be "dangerously misleading to take the evidence of his book at its face value."<sup>460</sup> Robert Irwin noted that Usama was most certainly "not writing to provide twentieth-century infidel historians with accurate documentary information about Christian-Muslim relations in the twelfth century."<sup>461</sup>

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<sup>455</sup> Robert Irwin, "Usamah ibn Munqidh: An Arab-Syrian gentleman at the time of the crusades reconsidered," in *The Crusades and their Sources: Essays Presented to Bernard Hamilton*, ed. John France and W.G. Zajac (Aldershot: Ashgate, 1998), pp. 73-74.

<sup>456</sup> Cobb, *The Book of Contemplation*, introduction, p. xxxi.

<sup>457</sup> Stefan Wild, "Open questions, new light: Usama ibn Munqidh's account of his battles against Muslims and Franks," in *The Frankish Wars and their Influence on Palestine*, ed. Khalil Athamina and Roger Heacock (Birzeit: Birzeit University Publications, 1994), pp. 13-14.

<sup>458</sup> Cobb, *Usama ibn Munqidh*, p. 69.

<sup>459</sup> Cobb, *The Book of Contemplation*, introduction, p. xxxi.

<sup>460</sup> Carole Hillenbrand, *The Crusades: Islamic Perspectives* (New York: Routledge, 2000), p. 260.

<sup>461</sup> Irwin, "Usamah ibn Munqidh," p. 73.

While all these reminders are generally correct, it was probably not Usama's intent to invent bizarre stories about the Franks. The anecdotes would not have been as credible had they not contain at least a kernel of truth. For the most part, his stories are unverifiable; there is probably no way of knowing whether the Franks really were fascinated by shaved pubic hair, or if they ever made two old women race after a pig.<sup>462</sup> It is relatively easy, however, to demonstrate that Usama's anecdotes about the crusader legal system are true, even if his intent was to mock the barbaric character of their laws.

### Usama and judicial combat

Usama was part of a diplomatic mission to the kingdom around 1137 or 1138, led by his Damascene patron Mu'in ad-Din Unur. While they were in Nablus to meet with King Fulk, Usama also happened to witness a judicial duel. One peasant had accused another of helping thieves (*"ḥarāmiyyā"*) rob a village near Nablus. The accused man fled, but returned when the king took his children as hostages. He asked the king to "grant justice" to him (*"anṣafa"*), and challenged his accuser to a duel. The challenge was accepted but the peasant who had made the accusation did not have to fight. The king instead ordered the lord (*"ṣāḥib"*) of the village to find a suitable combatant; a blacksmith was chosen, so that the lord would not lose any of his valuable farmers.<sup>463</sup> The blacksmith was strong but cowardly, and the accused was a feisty old man. Usama describes the duel:

"Then the *vicomte* came - he is the governor of the town - and gave each one of the duellists a staff and a shield and arranged the people around them in a circle. The two men met. The old man would press the blacksmith back until he pushed him away as far as the circle of people, then he would return to the centre. They continued exchanging blows until the two of them stood there looking like pillars

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<sup>462</sup> *The Book of Contemplation*, pp. 149-151 [=Memoirs Entitled *Kitāb al-l'tibār*, pp. 137-138].

<sup>463</sup> *The Book of Contemplation*, p. 151 [=Memoirs Entitled *Kitāb al-l'tibār*, pp. 138-139].

spattered with blood. The whole affair was going on too long and the *vicomte* began to urge them to hurry, saying, ‘Be quick about it!’ The blacksmith benefited from the fact that he was used to swinging a hammer, but the old man was worn out. The blacksmith hit him and he collapsed, his staff falling underneath his back. The blacksmith then crouched on top of him and tried to stick his fingers in the old man’s eyes, but couldn’t do it because of all the blood. So he stood up and beat the man’s head in with his staff until he had killed him. In a flash, they tied a rope round the old man’s neck, dragged him off and strung him up.”<sup>464</sup>

Usama concludes that Frankish jurisprudence is strange and, as usual when he mentions the Franks, invokes God’s curse upon them. He was obviously amused by the spectacle, and even decades later he remembered the goriest details of head-bashing and eye-gouging. His other details are somewhat ambiguous and sparse, but he unintentionally recorded many useful pieces of information. The presence of Muslim thieves is not surprising, considering the other evidence for thieves in the kingdom throughout the twelfth century; Usama also mentions in passing that there were bandits and robbers, both Muslim and Christian, in various parts of the crusader kingdom. Christian pilgrims were apparently easy targets for Muslim robbers.<sup>465</sup> In his description of one of these thieves, named al-Zamarrakal, Usama uses the word “*laṣṣ*” instead of “*ḥarāmī*.” This does not seem to be as significant as the difference between a “*latro*” and a “*fur*,” especially as al-Zamarrakal had the characteristics of both a petty thief and a brigand.<sup>466</sup>

As for the duel, although numerous historians have commented on it, no one has ever seemed to realize its significance for the kingdom’s legal history. Derenbourg described the events and the people involved, but did not make any connection to crusader law.<sup>467</sup> He was more interested in Usama’s reactions. He thought Usama was fascinated by the idea of a duel because it fit in so well with the fatalistic theme of the *Kitāb*, in which God’s will and judgement

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<sup>464</sup> *The Book of Contemplation*, pp. 151-152 [= *Memoirs Entitled Kitāb al-l’tibār*, p. 139].

<sup>465</sup> *The Book of Contemplation*, pp. 139-142.

<sup>466</sup> *The Book of Contemplation*, pp. 54-56 [= *Memoirs Entitled Kitāb al-l’tibār*, pp. 44-45]. Usama also uses the verb “*saraqā*” and the noun “*al-sarqā*” for the act of stealing, but not the noun “*sariq*,” which also means “thief.”

<sup>467</sup> Derenbourg, p. 188.

were seemingly arbitrary and incomprehensible to humans. In this case the Franks also left the judgement up to God. Derenbourg also noted that Usama was simply making fun of the Franks and their uncivilized legal system.<sup>468</sup> La Monte mentioned the case as well, but despite his work on crusader law he did not notice the connection to the assizes.<sup>469</sup> He believed that “cases which are recorded seldom conform to the law in all their details,” although he does not mention any specifically and seems to be referring to events from the thirteenth century.<sup>470</sup> Ellenblum used the case as evidence for his thesis that Muslims and Christians lived apart.<sup>471</sup> Most recently, Nader mentioned that Usama accurately described the role of the viscount in this case, but did not elaborate any further.<sup>472</sup>

Further elaboration is necessary, however, because this case is actually quite significant. Firstly, some of the people mentioned by Usama are easy to identify. The king is Fulk, whom Usama names on numerous other occasions. Usama does not name the specific village he visited, so its lord cannot be identified, but from numerous charters we know that there was a viscount of Nablus, and that Ulric was viscount from approximately 1115 to 1152, which includes the entire reign of King Fulk.<sup>473</sup> Ulric witnessed a charter granted by Fulk at Nablus in 1138, which may have been issued when the king was there to meet with the Damascene embassy.<sup>474</sup>

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<sup>468</sup> Derenbourg, pp. 476-479.

<sup>469</sup> La Monte, *Feudal Monarchy*, p. 111.

<sup>470</sup> La Monte, *Feudal Monarchy*, p. 280.

<sup>471</sup> Ellenblum, pp. 246-247.

<sup>472</sup> Marwan Nader, “Urban Muslims, Latin laws, and legal institutions in the Kingdom of Jerusalem,” *Medieval Encounters* 13 (2007), p. 254.

<sup>473</sup> John L. La Monte, “The viscounts of Naplouse in the twelfth century,” *Syria* 19 (1938), p. 272.

<sup>474</sup> Röhrich, *RRH* 181, p. 45.

Usama also knew the duties of the viscount. He transliterated the Old French “*visconte*” as “*biskund*,” but translated it as “*shihna*,” which originally referred to Seljuk military administrators in the Abbasid caliphate. By the twelfth century the office was usually combined with that of the *hajib* or chamberlain, the chief administrative officer of a city.<sup>475</sup> Edward Lane’s lexicon defines *shihna* as a force controlling a province on behalf of the sultan, but also notes that the word was used popularly as a synonym for “*amir*,” the usual term for “commander.”<sup>476</sup>

The term appears in other Arabic chronicles from the same period. Ibn al-Qalanisi mentions the *shihna* of Damascus, Sayf ad-Dawla Yusuf ibn Furuz, whom Usama must have known during his time there. Yusuf was both chamberlain and military governor. He was responsible for hunting down and executing the Assassins who were harrassing the city in 1128.<sup>477</sup> When Shams al-Muluk came to power in 1132, he entrusted the government of the city to Yusuf.<sup>478</sup> Shams al-Muluk then attempted to confiscate Yusuf’s property in 1135, but was overthrown and replaced by his brother Shihab ad-Din, who gave the city of Homs as a fief to Yusuf in 1136.<sup>479</sup> Saladin may also have been *shihna* of Damascus in 1156, although this comes from a quotation of Ibn Abi Tayy by Abu Shama, who was unsure about Ibn Abi Tayy’s account.<sup>480</sup> Abu Shama also noted that when the crusaders invaded Egypt in 1168, they brought

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<sup>475</sup> Holt, *The Age of the Crusades*: p. 70.

<sup>476</sup> Edward William Lane, *An Arabic-English Lexicon* (London: Williams and Norgate, 1863), p. 1514.

<sup>477</sup> *Damascus Chronicle of the Crusades*, pp. 237-238 [= *History of Damascus*, p. 224].

<sup>478</sup> *Damascus Chronicle of the Crusades*, pp. 211-212 [= *History of Damascus*, p. 234].

<sup>479</sup> *Damascus Chronicle of the Crusades*, pp. 237-238 [= *History of Damascus*, p. 252].

<sup>480</sup> Malcolm Cameron Lyons and D. E. P. Jackson, *Saladin: The Politics of the Holy War* (Cambridge: Cambridge University Press, 1982), p. 10. They cite Abu Shama, *Kitab al-Rawdatayn*, ed. M. Hilmi. M. Ahmad (Cairo, 1956), vol. 1, p. 100, although it is actually on pp. 250-251. The account does not seem to be in the *RHC* edition. In al-Zaybaq’s edition it is vol. 1, pp. 318-319.

with them enemies of the Fatimid vizier Shawar, and set them up as *shiḥnas* in Fustat and Cairo.<sup>481</sup>

The duties of a typical *shiḥna* included “preservation of public order, security on the roads and the suppression of bandits and robbers,” and he had a police force and a court to judge local criminals.<sup>482</sup> He also carried out the decisions of the religious court of the *qāḍī*, and made sure other officials such as tax-collectors could fulfill their own duties; although the *shiḥna* was a military governor, “he was concerned merely with the maintenance of order.”<sup>483</sup> Ibn Jubayr attributes a speech to Saladin in which the sultan calls himself the “*shiḥna* of the law,” who carries out its judgements, but does not create the judgements himself. There was presumably no *shiḥna* in Andalusia, as Ibn Jubayr helpfully defines the term for his readers as “*ṣāḥib ash-shurṭa*,” or “chief of police.”<sup>484</sup> The *shurṭa* was responsible for punishing crimes such as theft, false accusations, fornication, and drunkenness, not exactly “religious” crimes, but nevertheless things forbidden by the Qur’an.<sup>485</sup> Islamic legal historian Émile Tyan also noted numerous other references to a *shiḥna* as the *ṣāḥib ash-shurṭa*, in Egypt and Syria from the ninth century to the fourteenth.<sup>486</sup>

Riley-Smith noted that the duties of the *shurṭa* were probably taken over by the viscount, but he was referring to the thirteenth century and did not mention any cases as evidence.<sup>487</sup> But from Usama and Ibn Jubayr it is evident that the *shiḥna* had essentially the same duties as those

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<sup>481</sup> Al-Zaybag, vol. 2, p. 37 [=RHC Occ IV, p. 112].

<sup>482</sup> Ann K. S. Lambton, “Shiḥna,” *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., vol. 9, p. 437.

<sup>483</sup> Ann K. S. Lambton, “The internal structure of the Saljuq Empire,” in *The Cambridge History of Iran*, vol. 5, *The Saljuq and Mongol Periods*, ed. John Andrew Boyle (Cambridge: Cambridge University Press, 1968), pp. 244-245.

<sup>484</sup> Ibn Jubayr, p. 312 [=Wright, p. 298].

<sup>485</sup> Émile Tyan, *Histoire de l’organisation judiciaire en pays d’Islam*, 2<sup>nd</sup> ed. (Leiden: Brill, 1960), pp. 566-571.

<sup>486</sup> Tyan, *Histoire de l’organisation judiciaire en pays d’Islam*, p. 576 n. 1.

<sup>487</sup> Riley-Smith, *Feudal Nobility*, pp. 88-89.

of the viscount, as described by the *abrégé* of the burgess assizes.<sup>488</sup> Although this abridgement was written in Cyprus in the fourteenth century, Usama's translation of the title as "*shihna*" suggests that the viscount already had these duties in the mid-twelfth century. There were other terms he could have used; Ibn al-Qalanisi for example used "*wāli*" for the Muslim governors of the cities on the Mediterranean coast.<sup>489</sup> Usama's careful choice of words shows that he understood crusader administration, especially in comparison to the administrative system he knew in Damascus.

Other details can also be verified from Frankish sources. Nablus had both a royal court and a burgess court, according to John of Ibelin.<sup>490</sup> If John is correct, the courts must have existed sometime between 1099 and 1187 when the city was in crusader hands, and not in John's own time, although Edbury has questioned the accuracy of this statement. Nablus, and other places that were no longer under Christian control, may have been included in John's list of courts not because he was using a pre-1187 list, but because they were also on his list of places that owed military service, a list that did date from before 1187.<sup>491</sup> The fact that Nablus had a viscount, however, would normally be proof enough that there was also a burgess court there, and the details of this case seem to be proof that the burgess court was fully operative.

Nablus also had a *Cour des Syriens* for disputes among the Muslims and native Christians, although for criminal cases, even if the disputants were non-Latins, jurisdiction fell to the burgess court. The thirteenth-century jurists claimed that the Syrian court was founded by

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<sup>488</sup> *Abrégé, RHC Lois* II, 7, pp. 239-241.

<sup>489</sup> For example, the *wāli* of Tyre, before the city was captured by the crusaders; *Damascus Chronicle of the Crusades*, p. 75 [= *History of Damascus*, p. 151].

<sup>490</sup> *Livre des Assises*, 236, p. 603.

<sup>491</sup> Edbury, *John of Ibelin and the Kingdom of Jerusalem*, pp. 130-131, 157.

Godfrey, even before the *Letres* were written, although the first mention of it is not until 1178.<sup>492</sup> Usama says the thieves were Muslims, but does not specify the religion of the peasant accused of helping him, the other peasant who made the accusation, or the blacksmith. The man who was accused of helping the Muslims may have been Muslim himself, or perhaps a native Christian who was sympathetic to them. On the other hand, since everyone involved was acquainted with the Frankish custom of duelling, it would make sense if they were all Latins, especially as Ellenblum argued that Christians and Muslims lived separately in this part of the kingdom.<sup>493</sup> The village was possessed by a Latin lord as a vassal of the king (as Usama fully understood, as he described the lord of the village as the “*ṣāḥib*”), but its inhabitants did not necessarily have to be Latin Christians. However, the burgess assizes also note that non-Latins could not challenge Latins to a duel, which would likely make the accused, at least, a Latin.<sup>494</sup> Whatever religion they were, the case was severe enough to result in a duel. The *Cour des Syriens*, if it existed at the time, would not have had jurisdiction over such cases.

If this case came before the burgess court, what laws was it using at the time? The canons of the Council of Nablus discuss theft at the end, after the ecclesiastical articles, and these were issued in Nablus, the same area in which Usama’s anecdote takes place, less than twenty years earlier. The twenty-third canon prescribes the mutilation of a hand, foot, or eye for theft of property worth more than one bezant, and branding on the face and public whipping for property worth less than one bezant. If the thief was caught, but no longer possessed the stolen property,

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<sup>492</sup> Riley-Smith, *Feudal Nobility*, p. 90; Delaville Le Roulx, 530-532, pp. 362-364 mentions “Guy the ra’is” of Nablus. The ra’is was in charge of the Syrian court.

<sup>493</sup> Ellenblum, pp. 36-37.

<sup>494</sup> Kausler, 269, p. 327 [= *RHC Lois* II, 276, p. 209].

he would be placed at the mercy of his victim.<sup>495</sup> This is essentially the same as the punishment for theft in the assizes of the burgess court. Anyone caught stealing would be beaten, branded, and banished from the town. For those caught stealing a second time, the punishment was hanging.<sup>496</sup>

These details might suggest that there is a continuity in the laws about theft from the rudimentary code of penalties made in 1098 during the First Crusade, through the Council of Nablus, and up to the assizes of the thirteenth century, all of which give branding and whipping as the punishment for theft. This might be the case based on the assizes themselves, although the burgess assizes also say that this is the punishment for theft only when the items stolen are worth less than one mark of silver. Unfortunately, there is still no evidence of anyone ever being punished this way, because Usama lost interest in the thieves once he witnessed the duel. Based on the anecdotes of Diya al-Din, the crusaders probably sometimes caught petty Muslim thieves, but were the ones in Usama's story caught and prosecuted? It is impossible to say.

The twenty-second Nablus canon deals with false accusations, for which the punishment is exile.<sup>497</sup> Whether the accusation was false or not, the old man lost, and therefore the accusation was true according to the standards of crusader justice. The purpose of an ordeal was not exactly to prove guilt or innocence, but to prove or disprove an accusation when the truth could not be revealed in any other way, especially when there were no witnesses.<sup>498</sup> This seems to have been what happened in Usama's anecdote. The blacksmith, or the peasant who made the accusation, would not have suffered any punishment. Although the canons mention other forms

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<sup>495</sup> Kedar, "Council of Nablus," p. 334.

<sup>496</sup> Kausler, 291-292, pp. 348-349 [= *RHC Lois* II, 298-299, p. 223].

<sup>497</sup> Kedar, "Council of Nablus," p. 334.

<sup>498</sup> Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Oxford University Press, 1986), p. 26.

of trial by ordeal, there is no provision for trials by battle, which perhaps means they were written before the ordeal of battle was introduced into the kingdom.

Theft is dealt with far more extensively in the burgess assizes than in the one brief Nablus canon. The various treatises dealing with the *Haute Cour* almost never mention theft, but the burgess assizes specifically list theft as one of the matters over which someone might be brought before the court.<sup>499</sup> If there was any continuity between the Nablus canons of 1120 and the burgess assizes of the mid-thirteenth century, then many new definitions of theft and new punishments had been introduced in the meantime. The Nablus canon would have applied only to someone convicted of theft, but why did the old man, who was accused only of aiding the thieves, have to fight a duel for a crime he may not have committed? The burgess assizes require anyone who catches a thief in the act of stealing to bring the thief and the stolen goods to the court. If he lets the thief go, he will be considered as guilty as the thief and will suffer the same punishment.<sup>500</sup> Since the peasant helped the thieves escape, according to this assize he himself would be legally responsible for the theft.

In the assizes of the high court, any damage, including theft, worth more than a mark of silver, can lead to a judicial combat.<sup>501</sup> The treatises for the high court generally ignored these sorts of crimes, but there are many laws in the burgess court assizes that apply to thieves and judicial combat. In most cases the assizes assume that the accuser will normally challenge the accused to a duel.<sup>502</sup> However, the accused could also challenge his accuser, which matches the

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<sup>499</sup> Kausler, 23, pp. 59-60 [=RHC Lois II, 23, p. 32].

<sup>500</sup> Kausler, 240, pp. 289-290 [=RHC Lois II, 245, p. 184].

<sup>501</sup> *Livre des Assises*, 91, pp. 246-247.

<sup>502</sup> For example, someone who is accused of assault, but denies it, should remain in prison for a year and a day, and can be challenged by the accuser or his relatives during that time. Kausler, 260, pp. 315-317 [=RHC Lois II, 266, p. 201-202].

details given by Usama.<sup>503</sup> The burgess assizes are vague on the details of appointing a replacement combatant, a champion, but all the legal treatises agree that a wounded man or a man over the age of sixty can appoint a replacement.<sup>504</sup> Usama does not mention the accuser's age. The accused seemed to Usama to be an old man, but was he over sixty? He had children but that does not help determine his age. In any case the accused did not get to choose a champion, while the accuser did. Perhaps the accuser was over sixty, although from Usama's description of the events, it seems more likely that this was simply the whim of the king and the lord of the village, who were looking out for their own economic interests.

The burgess assizes are more detailed about events after a duel was called. If the combatants were unable to provide their own equipment, as was most likely the case with these peasant farmers, the court would equip them. This included food and drink, but also the necessities for the duel, the red clothing and shoes, as well as a staff and a shield.<sup>505</sup> The combatants could be provisioned for up to forty days while preparing for the duel, although in Usama's anecdote the theft, accusation, and combat seem to take place within a single day. He also does not mention a specific court, only the viscount and the king. Did he forget this detail, or was there no actual court at the time?

At the beginning of the combat, the two combatants were supposed to make one last attempt at reconciliation, although Usama does not mention this either. If they could not reconcile, according to the burgess assizes the accuser would swear on the Gospels that his

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<sup>503</sup> Kausler, 261, pp. 317-318 [= *RHC Lois* II, 267, pp. 202-203].

<sup>504</sup> Kausler, 145, p. 163-164 [= *RHC Lois* II, 148, p. 101]; *Livre des Assises*, 93, p. 250; Geoffrey Le Tort, *RHC Lois* I, 23, p. 441; James of Ibelin, *RHC Lois* I, 18, p. 459; Philip of Novara, 10, p. 44 [= *Livre de Philippe de Navarre*, 10, p. 483].

<sup>505</sup> Kausler, 266, pp. 323-324 [= *RHC Lois* II, 273, p. 206]. John of Ibelin also gives a similar description for combat between non-knights; *Livre des Assises*, 95, p. 252.

accusation was true, and the accused would likewise swear that it was false. Afterwards the combatants would be given their shield and staff, and would be placed in a field at midday, so that the position of the sun would not give either side an unfair advantage. They could each make a statement if they wished, and then the combat would begin, with each combatant attacking each other simultaneously. The loser, whether he was alive or dead, would be taken away and hanged.<sup>506</sup>

Usama does not say specifically that the combat took place at midday, but the comments of the viscount could be interpreted this way. Why would he encourage the combatants to hurry up? It is purely speculation, but perhaps the sun was getting lower in the sky and giving an advantage to the combatant who could avoid facing it. Usama's account of the outcome of the battle, however, is exactly the same as the outcome prescribed by the *assize*: the defeated man, who happened to be the accused, was taken away and hanged, even though he had already been killed. From this description it is clear that the *assizes* about judicial combat must have been in place by the 1140s; they might not yet have been written, but apparently there was no meaningful change in trials by combat in the over one hundred years between this case and the time the *burgess assizes* were written down.

### Usama and the ordeal of water

Usama mentions another case, although one that he did not personally witness. When he was in Nablus with Mu'in ad-Din, presumably during the same visit in 1138, they met a blind Muslim man who wished to enter Mu'in ad-Din's service. The man's mother had been married to a Frank, whom she later killed. The man and his mother also attacked, robbed, and killed

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<sup>506</sup> Kausler, 268, pp. 325-327 [= *RHC Lois* II, 275, pp. 207-208].

Christian pilgrims, but the man was caught and was put on trial.<sup>507</sup> He must have denied the charge, because he was tied up and thrown into a cask of water, and as Usama explained, if he was innocent he would sink, and if guilty he would float. The man tried in vain to make himself sink, so he was pronounced guilty and was blinded. Although the man now wanted to join the army in Damascus, Mu'in ad-Din instead had someone teach him the Qur'an and jurisprudence ("fiqh").<sup>508</sup>

Trial by water is mentioned only twice in the burgess assizes, but it was indeed used as a method of proving murder. The first assize says that the ordeal of water should be used when someone is accused of murder by the relatives of the victim; if he is found guilty he would be hanged, but if not, then he would be jailed for a year and a day.<sup>509</sup> The second says that if someone buries a body inside his house, the body should be dug up and examined; if there are signs of violence and the owner of the house is suspected of murder, he would undergo the trial by water, and would be buried alive if he was found guilty.<sup>510</sup>

This case touches upon a few issues in crusader law. Usama says the man's mother was married to a Frank, although, as mentioned earlier, Kedar did not think there was any evidence for interfaith marriages after the Council of Nablus. Does this mean she was married to him before 1120, when it was explicitly forbidden, or after 1120? Unfortunately, Usama was not interested in the marriage, or the subsequent murder. Was the murdered husband the man's father, or was the man the child of a different marriage? Usama says only that the man himself was Muslim. He also does not mention the fate of the man's mother. Was she also caught and

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<sup>507</sup> *The Book of Contemplation*, p. 152; *Memoirs Entitled Kitāb al-I'tibār*, p. 139.

<sup>508</sup> *The Book of Contemplation*, pp. 152-153; *Memoirs Entitled Kitāb al-I'tibār*, pp. 139-140.

<sup>509</sup> Kausler, 259, p. 314-315 [=RHC *Lois* II, 265, p. 200].

<sup>510</sup> Kausler, 278, p. 338-339 [=RHC *Lois* II, 285, p. 216].

prosecuted? Nothing more is known. While the story is probably evidence that Muslims and Christians married even after the Council of Nablus, it is not helpful for the question of whether the Nablus canons were ever enforced. The existence of a law against something does not mean that thing never occurred again, only that the crusaders tried to prevent it. Theft and murder were also illegal, but they still occurred. Even if they were enforced it does not necessarily mean the crusaders were able to enforce the law in every instance, especially if, as Ellenblum argued, the area around Nablus was inhabited mostly by Muslims, whom the crusader government would have left largely alone.

Unlike the case of theft and the judicial duel, the ordeal of water does not exactly match the burgess assizes, except in the general sense that it could be used after an accusation of murder. Usama probably did not have all the details, since he did not witness the events himself, but he was right about the circumstances in which the ordeal of water could be used. As mentioned above, the ordeal was meant to prove or disprove an accusation when the truth could not otherwise be found, and this seems to have been the point of the ordeal in Usama's story. He was also correct that a guilty man was supposed to float. This was such common knowledge among Europeans that references to the ordeal rarely ever mention what was supposed to happen. The twelfth-century Assizes of Clarendon and Northampton, for example, say that the ordeal of water should be used in cases of murder and theft, but never describe the details of the ordeal.<sup>511</sup> In the few examples where details are given, the authors were either praising or denouncing the custom, and not describing a particular case. In the ninth century, Hincmar of Reims wrote that a guilty man would float because the water, which signified God's truth, would

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<sup>511</sup> *Chronica magistri Rogeri de Houedene*, vol. 2, pp. 248-250.

not allow him to sink.<sup>512</sup> In the twelfth century, Peter Cantor opposed the practise and noted that bodies naturally float; in order to prove a man's innocence, God would have to cause nature to do something unnatural. Peter did not like the implication that humans were tempting God, which he felt was impious and possibly blasphemous.<sup>513</sup> The *Liber Augustalis*, a Sicilian legal code written around the same time as the burgess assizes, also opposed the ordeal, arguing that people float because of the air inside their body, not because of their supposed guilt.<sup>514</sup>

The thirteenth-century assizes do not explain the punishment given to the man in Usama's story, but the punishments for crimes in the Nablus canons are harsher than those in the thirteenth-century assizes. Perhaps blinding was used as a punishment at this time, and fell out of use before the assizes were written down. Blinding was the punishment in a similar case in England in the 1170s, in which a thief failed the ordeal of water and was blinded and castrated.<sup>515</sup> The lack of this specific punishment in the assizes does not necessarily mean blinding was never used in an earlier period, although at the same time there is no other evidence of blinding as a punishment.

Aside from the blinding, it is clear from this anecdote that Usama correctly described an ordeal of water, and that in its basic details the story matches both the later burgess assizes and other examples of European ordeals. Since there was nothing like this in Islamic law, and, as

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<sup>512</sup> Hinkmar von Reims, *De divortio Lotharii regis et Theutbergae reginae*, Responsio 6, ed. Letha Böhringer, *Monumenta Germaniae Historica, Concilia 4, Supplementum 1* (Hannover: Hahn, 1992), p. 156.

<sup>513</sup> *Petri Cantoris Verbum abbreviatum*, ed. George Galopin, *Patrologia Latina* 205 (Paris: Garnier, 1855), 78, coll. 227-228, 233.

<sup>514</sup> *Die Konstitutionen Friedrichs II. für das Königreich Sizilien*, ed. Wolfgang Stürner, *Monumenta Germaniae Historica, Constitutiones et Acta Publica Imperatorum et Regum*, vol. 2, supp. (Hannover: Hahn 1996), 2.31, p. 337.

<sup>515</sup> William of Canterbury, *Miracula Sanctae Thomae Cantuariensis*, in *Materials for the Life of Thomas Becket*, vol. 1, ed. James Craigie Robertson (London: Rolls Series, 1875; repr. Wiesbaden: Kraus, 1965), p. 157. No date is given, but the man's eyesight was supposed to have been miraculously restored by Becket, so it must have happened after Becket was murdered.

with the other cases, Usama was more interested in the apparent barbarism of crusader law than in recording accurate details for the historical record, his correct description of the ordeal is proof that it was being used in the 1130s or before.

### Usama and shipwrecks

The chronologically last legal anecdote told by Usama, although it is actually the first in the book, is about a shipwreck, which fits into the theme of theft. When Usama left Egypt in 1154, he returned to Damascus to serve at the court of Nur ad-Din, who had taken control of the city after it was besieged during the Second Crusade in 1148. Nur ad-Din obtained a letter of safe-conduct from the king of Jerusalem, Baldwin III, so that Usama's family could join him in Damascus, and they sailed from the Egyptian port of Damietta to Acre in a Frankish ship. However, Baldwin sent some of his own men to sabotage the ship and sink it off the coast near Acre, and the king then confiscated its cargo, including Usama's library of four thousand books. Baldwin explained to Usama's family that according to Muslim custom, the inhabitants of a town were allowed to take the cargo of any ship that was wrecked offshore. Although Usama estimated the cargo to be worth thirty thousand dinars, Baldwin gave them only five hundred to pay for their journey to Damascus.<sup>516</sup>

This is an unusual story. Medieval maritime law usually recognized that wrecked cargo still belonged to its owners. The aforementioned *Pactum Warmundi* allowed the Venetians to keep their shipwrecked property,<sup>517</sup> and as Grandclaude noted, the burgess assizes attribute a similar law to Baldwin III's brother and successor Amalric I.<sup>518</sup> This was also recognized by

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<sup>516</sup> *The Book of Contemplation*, pp. 43-44 [= *Memoirs Entitled Kitāb al-l'tibār*, pp. 34-35].

<sup>517</sup> William of Tyre, 12.25, p. 580; Tafel-Thomas, vol. 1, XL, p. 87.

<sup>518</sup> Kausler, 49, p. 81-82 [= *RHC Lois* II, 49, p. 47].

Roman law, so it was certainly not a new concept.<sup>519</sup> The various schools of Islamic law, while they disagreed about various other laws, all agreed on the property rights of the cargo's owners.<sup>520</sup>

Aside from the *Pactum Warmundi*, there are numerous other treaties from the twelfth and thirteenth centuries, between Muslim and Frankish states, the crusaders and Italian communities, and the Italians and Muslim states, all of which recognize the property rights of the shipwrecked party. The Venetians reached the same agreement with Antioch in 1140 and again in 1153, around the same time as Usama's story.<sup>521</sup> They retained the same rights in treaties with the Ayyubid sultans of Aleppo and Egypt in 1225 and 1238 respectively, and the Mamluk sultan of Egypt in 1254.<sup>522</sup> Likewise, the Genoese concluded a treaty with the Mamluks in 1290, which contained the same clause.<sup>523</sup> Certainly, in an official legal sense, shipwrecked property was long recognized as belonging to the owner of the ship.

What, then, is going on in this story? One clue is Usama's wording: he uses the term *rasm*, which is a custom or a general practise, not a law. Did Baldwin mean that the inhabitants of coastal towns looted shipwrecks out of habit, regardless of the law? Usama does not say that Baldwin was wrong. Maybe he realized he could do nothing about it from Damascus, or he was more disturbed by the loss of his library than by the legal details. Perhaps Baldwin simply knew he could get away with looting the cargo. Another possibility is that it was retaliation for some

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<sup>519</sup> For example, the opinion of the Roman jurist Ulpian, in Dig. 47.9.3.

<sup>520</sup> Hassan Salih Khalilieh, *Islamic Maritime Law: An Introduction* (New York: Brill, 1998), pp. 110-112.

<sup>521</sup> Tafel-Thomas, vol. 1, XLVI, p. 102 (for the 1140 treaty); vol. 1, LV, p. 134 (for 1153). The same clause about shipwrecks is found in another treaty with Antioch in 1183 (vol. 1, LXVIII, p. 176), as well as with John of Ibelin, the "old Lord of Beirut" in 1221 (vol. 2, CCLXI, p. 232).

<sup>522</sup> Tafel-Thomas, vol. 2, CCLXX, p. 256 (for 1225); vol. 2, CCXCIV, p. 339 (for 1238); vol. 2, CCCXXV, p. 484 (for 1254).

<sup>523</sup> Holt, *Early Mamluk Diplomacy, 1260-1290: Treaties of Baybars and Qalawun with Christian Rulers* (Leiden: Brill, 1995), p. 147.

other unknown event; Ibn Jubayr mentions that the crusaders taxed Moroccan pilgrims and merchants more heavily than other Muslims, because some Moroccans had participated in an attack on Christians while in the kingdom.<sup>524</sup>

Whatever the case, this does not follow any of the usual laws and treaties about shipwrecks, and may be an example of royal prerogative to ignore an inconvenient law. It was not even a true shipwreck since Baldwin himself caused it; would he have followed the law if the ship had been wrecked in a storm? Usama gives the impression that the king could do whatever he wanted, which is presumably a literary comment on how a king should *not* act. But other kings also meddled in legal disputes; as already mentioned, King Fulk set up Hugh II of Jaffa as a traitor, and had the blacksmith appointed as a champion in the duel in Nablus. Similarly, Baldwin I and Baldwin IV used military force rather than the law to deal with organized groups of brigands.

Is it also unusual that Jerusalem had no law about shipwrecks until the reign of Amalric I, especially since there was a clause about them in the *Pactum Warmundi* and other Venetian treaties. Jerusalem depended on maritime trade and military support from Europe, and pilgrims also usually travelled by ship. Why would there not be a law about shipwrecks for over sixty years? However, the attribution of this law to Amalric does not necessarily mean that no law existed before him. Amalric could have enacted a new law to replace older customs. Maritime law was also not directly relevant to Jerusalem itself, which is not on the coast, and the kingdom had no royal fleet, so the high court was probably not concerned with it. The Venetians and the

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<sup>524</sup> Ibn Jubayr, p. 316. The attack could have been retaliation for a Muslim attack against a Frankish ship, or for the pillaging of a Frankish shipwreck. In 1153, the year before the attack on Usama's ship, the crusaders had captured the Egyptian fortress of Ascalon, with help from a small crusader fleet. Perhaps this attack was retaliation for an incident that occurred during the siege. There is, however, no evidence for any such incidents.

other Italian communities in the coastal cities could have handled these issues without the involvement of any of the royal courts, at least until Amalric decided the burgess court should be involved.

### Usama and the *Haute Cour*

There is one final example of Usama's knowledge of crusader law, from the period when he was in Damascus with Mu'in ad-Din. The Frankish lord of Banias, presumably Renier Brus although Usama does not name him specifically, stole some flocks of sheep from Muslim territory while Damascus and Jerusalem had a truce. Although the flocks were returned, some of the sheep were lost. Usama asked for compensation from King Fulk, who ordered "six or seven" of his knights to retire to a separate room and make a decision about the case. They decided that the lord of Banias should pay for the lost sheep, and he gave Usama four hundred dinars. Usama was generally not impressed by the Franks, but he thought the knights were courageous, and noted that "it is they who are the masters of legal reasoning (*"ra'y"*), judgement (*"qaḍā"*), and sentencing (*"ḥukm"*)."<sup>525</sup> This must have occurred around 1140 after Usama had helped conclude the treaty with Jerusalem. Banias had been captured by Zengi a few years earlier and a joint army from Jerusalem and Damascus recaptured it in 1140, when it was returned to Renier Brus.<sup>526</sup>

In this anecdote Usama wanted to show that the knights were the only honourable members of crusader society. As with the other anecdotes, he did not intend to make a record of crusader legal practise, but his observations were accurate. Knights were members of the high court, although in this period, before the *assise sur la ligece* made all knights direct vassals of the

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<sup>525</sup> *The Book of Contemplation*, pp. 76-77; *Memoirs Entitled Kitāb al-l'tibār*, pp. 64-65.

<sup>526</sup> William of Tyre, 15.7-11, pp. 684-691. The siege of Banias was a major event and takes up much of book 15.

king, only a few of them were eligible to attend, and as La Monte noted, the “six or seven” mentioned by Usama may have been the only ones eligible at the time.<sup>527</sup> La Monte used Usama's story as evidence for this point, but other examples can be found. The court convicted Hugh II of Jaffa for treason in 1134,<sup>528</sup> and under Amalric I in 1174 it tried to punish the Templar who had killed the Assassin ambassador.<sup>529</sup> This action is also corroborated by the thirteenth-century assizes of the high court. John of Ibelin lists the investigation and judgement of crimes and disputes among the services owed by the knights.<sup>530</sup> Usama's description is similar to that of Geoffrey le Tor, who says all knights had equal status in the court, and were obliged to make judgements and support each other's decisions.<sup>531</sup>

### Assessment of Usama

Usama's reputation as a story-teller, whose accounts are inaccurate if not completely untrue, is not entirely undeserved. Many of his anecdotes are clearly jokes, and as he was writing thirty or forty years after the events, the details may not be exact. It is also clear that he was writing in a specific literary style to entertain his audience, and to educate them, not with the facts of history, but with examples of proper moral behaviour. It would not be surprising if all of his stories were exaggerations or fictions with stereotypical Muslim and Christian characters. According to Cobb, Hillenbrand, and Irwin, Usama's stories are little more than fiction.

This, however, goes too far. It is true that the *Kitāb* is a work of literature, not an historical chronicle (although chroniclers like William of Tyre were also likely to include literary

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<sup>527</sup> La Monte, *Feudal Monarchy*, pp. 90-92.

<sup>528</sup> William of Tyre, 14.15-17, pp. 652-654.

<sup>529</sup> William of Tyre, 20.30, pp. 954-955. Since this was after the *assise sur la ligece*, there were probably many more knights eligible to make judgements, although this does not necessarily mean more of them were actually present.

<sup>530</sup> *Livre des Assises*, 187, pp. 481-483.

<sup>531</sup> Geoffrey le Tor, 15, p. 448.

elements in their work). However, the people, places, and events in the *Kitāb* are real. Usama's audience would not have considered the *Kitāb* fiction, and when reading or hearing it read, they would be reminded of people they had actually met, or events in which they had participated. Some of the stories are definitely stereotypical jokes, and they are always meant to describe the types of behaviour a good Muslim should emulate or avoid, but this is not their only function. The anecdotes about crusader law are accurate descriptions. Would his audience believe his stories about the Franks if the stories were false? Would he invent the smallest details, which, as Derenbourg noted, can sometimes be rather dull? When compared to Latin sources, however, the details are not only believable, but almost exactly correct.

Usama understood the role of the knights in the high court. He correctly observed that there was a viscount in Nablus, and based on his use of the word “*shihna*,” he understood the viscount's law-enforcement duties. He also accurately described the viscount's role in the judicial combat, as well as the process of a trial by water. The combat itself was described almost as if Usama had been copying from the burgess court assizes while writing the *Kitāb*. If Usama had been making all of this up, the coincidences would be impossible. Surely, Usama was not spinning false tales, at least about the crusader legal system.

## Conclusions

Sometimes it is useful to observe an institution like a legal system from the outside. Pilgrims, travellers, and others who were not native to the Kingdom of Jerusalem give some evidence about the crusader legal system in the twelfth century. Their accounts can be loosely organized around the crime of theft.

Theft was a problem from the earliest days of the kingdom. The city's inhabitants had fled before the crusaders arrived, and those who remained to defend it were killed during the

siege and battle. Most of the crusaders returned home after their vow to visit the Holy Sepulchre had been fulfilled, so the city was largely vacant and prone to looting. In the first decade of the kingdom, the crusaders tried to control the rural areas between the cities they had occupied, but sometimes, as pilgrims frequently noted, there were still organized bands of Muslim thieves. This was even true decades later in the 1170s, which shows how precariously the crusaders held on to frontier areas. Was there ever a regular legal process to deal with these thieves? It appears that they were treated like any other enemy army, and were taken prisoner or killed rather than arrested and put on trial. Muslim visitors similarly noted the presence of Christian brigands on the frontiers of the kingdom.

Muslim authors occasionally also give vague indications about the treatment of other Muslims by the crusaders. Ibn Jubayr's statement that the Muslim peasants were "accustomed to justice" from their crusader overlords has been interpreted in various ways, often as a piece of propaganda against the poor treatment of Muslim peasants in Muslim countries, but it could also mean that Muslims were treated fairly under crusader law. He may also have been referring to the Muslim courts for minor disputes under the jurisdiction of the burgess courts. Another similarly vague source is Diya ad-Din al-Maqdisi, who talks about petty thieves and suggests that they were also captured by the crusaders, and possibly that they were tried and punished.

Diya ad-Din's ancestors were from Nablus, a significant city for crusader legal history. Did the laws enacted at the council there in 1120 have anything to do with the laws of the kingdom in the thirteenth century, or even in the twelfth? The most informative source about twelfth-century law also happened to write about events that took place in Nablus. Usama ibn Munqidh's anecdotes about the habits of the "Franks" from all levels of society are well-known to crusade historians, but they have never really been examined from the perspective of the

development of crusader law. His stories are not just amusing tales. Some of them are also vague and do not tell us very much about the law; we can see that knights played an important role in the high court, that he understood how a trial by water worked, and that the king could loot the cargo of a shipwreck if he wanted to, even if European and Muslim law both considered this illegal.

Despite their vagueness, the anecdotes sometimes match the details given in the thirteenth-century assizes. The story of the trial by battle, although it also glosses over some of the details, is nevertheless a very good match. This must mean that some of the burgess assizes already existed in the first half of the twelfth-century. This is not to say that the crusaders turned to a particular assize in a specific book when they wanted to know what to do with a thief. The thirteenth-century burgess court assizes did not exist in the form in which they currently survive, but the similarities between those assizes and Usama's description suggest that, if the law was not yet written down, it did not change much, or at all, in the following hundred years. Is it possible that this case set the precedent that was later recorded in the assizes? That is an unnecessary stretch of the imagination; it is more likely that the crusaders knew what to do because they, or their European ancestors, had encountered similar problems before and already had a solution.

Where, then, did this law originate? Was it already present in the collective memory of the original crusaders, and adopted into the law of Jerusalem? Did it have a specific origin in one or more European law books? These questions are further dealt with in the following chapter, but the existence of ordeals earlier than 1140, which are the same as the ordeals in the burgess assizes of over a century later, affects Prawer's argument about the Provençal *Lo Codi*. If some of the burgess assizes existed before 1140, then they could not have been borrowed from

*Lo Codi*, which was not written down until a decade after Usama's visit to Jerusalem. Praver, of course, argued that only some of the assizes, such as those dealing with marriage, and perhaps also the overall organization of the treatise, were borrowed from *Lo Codi*, and he did not necessarily mean that *Lo Codi* was present in the kingdom in the twelfth century, only that it was used by the compiler of the burgess assizes when they were written down in the thirteenth. But Usama's story also means that the assizes had at least one other source that was not *Lo Codi*, and that this source was already being used in the twelfth century; whatever this source was, whether it was another law book or simply the unwritten customary law of the kingdom, it survived the fall of the first kingdom in 1187. In this case, it is hard to believe that assizes about judicial ordeals would be the only ones that survived from the twelfth century; the laws attributed to twelfth-century kings are therefore presumably also accurate, as are probably many others, for which we unfortunately do not have any evidence.

The anecdotes also affect the debate about the Council of Nablus. As mentioned, there is at least evidence that Christians and Muslims intermarried even after the canons were enacted, although this is not proof that the Nablus canons were not enforced, only that they may not have been enforced in this instance, in an area that according to Ellenblum was majority Muslim and likely beyond complete crusader control. But, because of the evidence that some of the thirteenth-century burgess assizes were already in use around 1140 and earlier, the assizes must already have been in development, perhaps even at an advanced stage of development, over a century before they were written down. The Nablus canons must have existed alongside, or have already been replaced by, what would become the burgess assizes, very soon after 1120; the possibility that they were a local code, used only in Nablus or in other areas controlled directly by the crown, does not seem to be the best explanation, since Usama's stories take place mostly in Nablus and do not have any obvious connection to the canons. There are some similarities

between the punishments for theft in the Nablus canons and the punishments in the assizes, but combined with the other evidence about judicial duels, this does not mean the Nablus canons were still in force. If anything it probably means that they were adapted into the burgess assizes. It was an early, possibly unwritten, form of the burgess assizes that were in use in Nablus around 1140.

## Chapter 4 Thirteenth-century cases

After the death of both Amalric I and Nur ad-Din in 1174, Jerusalem was surrounded by Muslim territories united under Saladin. Amalric's brother Baldwin IV, although increasingly incapacitated by leprosy, successfully defended the kingdom, but his successor Guy of Lusignan was defeated at the Battle of Hattin in 1187. Saladin conquered the entire kingdom, except for a few castles and the coastal city of Tyre. The subsequent Third Crusade regained most of the Mediterranean coast, but Jerusalem remained under Saladin's control. The kingdom was re-established with its capital at Acre, and survived for another century, until 1291.

There are a few sources that mention legal cases from this period. Some of them are from the somewhat anarchic years of the Third Crusade, when there may not have been any legal system at all. Later sources are from the middle of the thirteenth century, after the kingdom had been re-established, and closer to the years in which the legal treatises were actually written. How do the cases mentioned in these sources relate to the twelfth-century cases examined in the previous chapters? Was there any continuity between the customs of the twelfth century and the written assizes of the thirteenth? A number of the cases mentioned in the thirteenth century deal with judicial battles; can these cases help trace the development of crusader law, compared with earlier battles in Jerusalem and similar laws in Europe in the same period?

### The Third Crusade

After Jerusalem fell to Saladin in 1187, the kingdom was limited to the city of Tyre, which was never recaptured by Saladin, and the few cities along the coast that were retaken during the Third Crusade, including Acre and Jaffa. As there was no real kingdom at this point, nor even a

universally-acknowledged king, it is hard to imagine that there was a functioning legal system. The assizes of the mid-thirteenth century did not yet exist in writing, and according to the story of the *Letres*, even if they had existed, they would have been lost in 1187. However, there are a few mentions of quasi-legal cases during the Third Crusade. One is a fairly simple story about a thief, who, according to the author of the *Itinerarium Peregrinorum*, was not a random criminal but a starving nobleman. In 1190, the crusaders were encamped outside Acre, which was then still in Muslim hands, and they were themselves surrounded by Saladin's army, which had come to relieve the crusader siege. Famine and disease were rampant, and some crusaders resorted to stealing bread. The unnamed thief mentioned by the *Itinerarium* was caught by the baker and tied up, although he managed to untie himself and escape.<sup>532</sup> The author was a little lazier with his words than William of Tyre, as the man is described as both a “*fur*” and a “*latro*.” The options available to deal with thieves in the twelfth century, whether it was executing large numbers of brigands or arresting them and putting them on trial, were presumably not available in the middle of a difficult siege. The crusaders had much more important matters to deal with, and the baker was left to deal with the thief by himself. However, this was not really petty theft, but a matter of survival. People were stealing because food was scarce and prices were inflated.<sup>533</sup>

Another quasi-legal dispute involved the question of who should rule the remnant of the kingdom. There were numerous claimants to the throne. King Guy had been taken prisoner after the Battle of Hattin in 1187, and when he was released in 1190, Conrad of Montferrat, who had defended Tyre, refused to recognize Guy's claim to a kingdom that essentially no longer existed.

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<sup>532</sup> Ricardus canonicus Sanctae Trinitatis Londoniensis, *Itinerarium Peregrinorum et Gesta Regis Ricardi*, ed. William Stubbs (London: Rolls Series, 1864,) 1.73, pp. 130-131.

<sup>533</sup> Fights broke out at the ovens and whoever had the most money bought up as much bread as they could. *Itinerarium*, 1.71, pp. 128-129.

When Philip II of France and Richard I of England arrived on crusade, they began a lengthy siege of Acre, during which Queen Sibylla died. Sibylla was the legal heiress of the kingdom, and Guy's claim died with her, or at least this was the excuse made by those who no longer wanted him as king.

The inheritance fell to Isabella, Sibylla's half-sister; Sibylla's mother was Amalric's first wife Agnes of Courtenay, while Isabella's mother was Amalric's second wife Maria Comnena, who in 1190 was married to Balian of Ibelin. Isabella had married Humphrey IV of Toron in 1183, when she was about eleven years old, younger than the legal marriage age of thirteen. As Humphrey was not considered a suitable partner for a queen, Isabella's mother and step-father arranged for a divorce and for Isabella to marry Conrad instead. Conrad was the brother of Sibylla's first husband William of Montferrat, and the uncle of the long-deceased Baldwin V. Perhaps more importantly, he had also successfully defended Tyre against Saladin. Humphrey at first refused to go along with this scheme, but supporters of Conrad, including Balian, King Philip II and the French crusaders, and the Archbishop of Pisa acting as papal legate, argued that the marriage was canonically invalid because of Isabella's age at the time. One of the French crusaders, Guy III of Senlis, even accused Humphrey of forcing Isabella into the marriage and challenged him to a duel.<sup>534</sup> Humphrey denied the charge but also did not accept the challenge; as Riley-Smith says, "in law he was quite right not to do so."<sup>535</sup>

This is unlike the case of Hugh II of Jaffa in 1134. Hugh was guilty because he accepted the challenge and then did not show up for the duel. If the accused did not accept the challenge,

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<sup>534</sup> Riley-Smith, *Feudal Nobility*, pp. 114-115; Margaret Ruth Morgan, ed., *La Continuation de Guillaume de Tyr (1184-1197)* (Paris: Académie des inscriptions et belles-lettres, 1982), p. 106. The same story is in *Eracles* 25.12, p. 153.

<sup>535</sup> Riley-Smith, *Feudal Nobility*, p. 116.

the parties would have to find another way to settle their dispute. There were various ways to deny an accusation and to challenge someone to a duel, according to John of Ibelin: for example, in a dispute over property worth more than a mark of silver, the challenge could be denied if the accuser was not willing to produce witnesses.<sup>536</sup> If there were witnesses, battle could be avoided if the accused simply denied their claims.<sup>537</sup> John also wrote that “non-apparent” treason would not automatically result in a duel, and the accuser, accused, and their lord all had to agree to it if either the accuser or accused called for one. However, the challenge could be refused as long as the accused came to court unarmed and denied the charge.<sup>538</sup>

Because of the situation of the crusader kingdom at the time, the argument between Guy of Senlis and Humphrey does not really help determine what the legal system was like. The laws about duelling were probably already in place by the 1130s, before Hugh II’s revolt, and the dispute between Guy and Humphrey shows that duels must have been similar enough in France and Jerusalem that everyone involved understood the requirements and the consequences. But Humphrey had not really committed a crime and there was no need for a duel; the marriage may have been canonically illegal, but that was for the Church to decide. As with the original accusation against Hugh II, however, this dispute was entirely political. The presence, or at least the imminent arrival, of the kings of France and England and the papal legate, among other important European leaders, meant that there was nothing Humphrey could do. An uncanonical marriage could be easily ignored, or legitimized, but Humphrey was on the wrong side.

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<sup>536</sup> *Livre des Assises*, 61, p. 173.

<sup>537</sup> *Livre des Assises*, 218, p. 566.

<sup>538</sup> *Livre des Assises*, 82-83, p. 223-226. Philip also says that a man accused of treason can simply deny the charges and avoid battle (14, pp. 53-54 [= *Livre de Philippe de Navarre*, 14, pp. 487-488]).

## James of Vitry

The thefts, and Humphrey's unfortunate case, took place when there was no kingdom and probably no legal system, but the kingdom was re-established in Acre in 1192. It was limited to a few cities along the coast, but it was relatively stable; Saladin died in 1193 and his successors were busy fighting each other over the various parts of his empire. More crusades were launched in an attempt to regain Jerusalem. The Fourth Crusade ended up far off-track and captured Constantinople in 1204, but the Fifth arrived at Egypt in 1218. One participant in the Fifth Crusade, James of Vitry, briefly mentioned people and incidents that could be related to the laws of Jerusalem. James was born between 1165 and 1170 and, like William of Tyre, he studied in Paris, although he may not have been ordained as a priest until around 1210. In 1216 he was elected Bishop of Acre, although he had never been to the east. He was present on the crusade in Egypt from 1218 to 1221, but left Acre in 1225 and resigned his episcopate in 1227. In 1229 he became Cardinal-Bishop of Tusculum, and he died in 1240.<sup>539</sup> While in Acre, probably between 1216 and 1224, he wrote his letters and the *Historia Orientalis*, which borrowed heavily from William's chronicle.<sup>540</sup>

James was not impressed by Acre. Upon his arrival in 1216, he complained that “murders, both secret and in plain view, were committed almost every day and night: men strangled their wives at night when they displeased them, and women killed their husbands, according to the ancient custom, with drugs and poisons, so that they might marry other men.”<sup>541</sup> In his *Historia Orientalis*, he listed the types of people who went on crusade and “defiled” the

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<sup>539</sup> Jacques de Vitry, *Histoire orientale/Historia orientalis*, ed. and trans. Jean Donnadiu (Turnhout: Brepols, 2008), introduction, pp. 7-8.

<sup>540</sup> Donnadiu, *Histoire orientale/Historia orientalis*, introduction, pp. 11-12, 21-23.

<sup>541</sup> “fiebut autem singulis fere diebus et noctibus homicidia tam manifesta quam occulta: viri de nocte suas iugulabant uxores cum eis displicerent, mulieres ex antiqua consuetudine venenis et potionibus maritos suos ut aliis nuberet perimebant,” *Lettres de Jacques de Vitry*, ed. R. B. C. Huygens (Leiden: Brill, 1960), 2:190-194, p. 87.

Holy Land, including thieves (“*fures*”), murderers (“*homicidae*”), mimes, dice-players, and other sinners.<sup>542</sup> It is unlikely that this description of Acre is entirely accurate; he disliked the native Latins as degenerates, far-removed from their heroic ancestors who fought in the First Crusade.<sup>543</sup> In addition to this bias, James also “had an unbounded appetite for the marvellous, and no critical faculty whatever.”<sup>544</sup>

If he knew anything about the laws of Jerusalem, he did not mention them specifically, and he did not say whether these supposed murderers were caught or punished. There is one law in the burgess assizes that is similar to his complaint: according to an assize attributed to Amalric I, if a man found his wife in bed with another man, he could kill both of them; but if he killed only one of them, he should be hanged.<sup>545</sup> Of course, James’ complaint probably has nothing to do with this law. He was a preacher, not a legal historian. It is more likely that he was trying to explain why Jerusalem had been lost, and that his audience in Europe should help correct the morals of their compatriots in the east. Perhaps he had heard about a wife who had killed her husband, but could he have heard about this happening every day? Unfortunately James is not a good source for the legal history of the kingdom.

### Burchard of Mount Sion

James’ work was popular later in the thirteenth century, and one pilgrim who had read his history was Burchard of Mount Sion. Burchard was a German Dominican, who visited the kingdom between 1280 and 1283, when almost all but Acre had been captured or destroyed by the

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<sup>542</sup> *Histoire orientale/Historia orientalis*, 83, pp. 332-336.

<sup>543</sup> Donnadieu, *Histoire orientale/Historia orientalis*, introduction, pp. 24-25.

<sup>544</sup> Jacques of Vitry, *History of Jerusalem*, trans. Aubrey Stewart (London: Palestine Pilgrims’ Text Society, vol. 11, 1896), introduction, pp. v-vi.

<sup>545</sup> Kausler, 281, pp. 341-342 [=RHC *Lois* II, 288, pp. 218-219].

Mamluks.<sup>546</sup> Like James, he complained that Acre was full of thieves (both “*fures*” and “*latrones*”), murderers, and other criminals, who had fled Europe to escape punishment for their crimes.<sup>547</sup> Apparently Acre was not very appealing to visitors from the west. Pilgrims had to land there, but had no interest in it because it was not an important Biblical site. “The pilgrim who did not consider Acre to be part of the Holy Land also considered the 'Latins' to be the dregs of its society.”<sup>548</sup>

Burchard thought that pilgrims were treated better by the Muslims than by the Latins in Acre, which is essentially the same complaint made by Ibn Jubayr, who thought that the crusaders treated Muslim peasants better than Muslim lords did. Perhaps Burchard was exaggerating in order to shame the local Latins into behaving better. It is also possible that both Burchard and James were exaggerating in order to explain why Jerusalem was lost, and, at least for Burchard, to explain why Acre was also about to fall, as it did about ten years later.

In any case, Burchard is no more useful than James for understanding the legal system of Jerusalem. In fact, Burchard mentions crimes and punishments only in reference to Armenia, far to the north, where he noted that thieves and other criminals were punished with castration.<sup>549</sup>

## Philip of Novara and the war against Frederick II

The Fifth Crusade was unsuccessful, and a Sixth was planned in the 1220s, although Emperor Frederick II, who was supposed to lead it, continually delayed his departure and was ultimately

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<sup>546</sup> Aryeh Grabois, “Christian pilgrims in the thirteenth century and the Latin Kingdom of Jerusalem: Burchard of Mount Sion,” in *Outremer: Studies in the History of the Crusading Kingdom of Jerusalem, Presented to Joshua Prawer*, ed. B.Z. Kedar, H.E. Mayer, R.C. Smail (Jerusalem: Yad Izhak Ben-Zvi Institute, 1982), pp. 288-289.

<sup>547</sup> *Burchardi de Monte Sion Descriptio Terrae Sanctae*, in *Peregrinatores medii aevi quattuor*, ed. J. C. M. Laurent (Leipzig: J. C. Hinrichs, 1864), 13, p. 88. Burchard knew James’ history, but probably not his letters; Grabois, p. 295.

<sup>548</sup> Grabois, p. 294.

<sup>549</sup> *Descriptio Terrae Sanctae*, 13, p. 93.

excommunicated. When he finally arrived in the east he was opposed by some of the native nobility of Cyprus and Jerusalem. This dispute was chronicled by the jurist Philip of Novara, who wrote sometime before 1247, although he may have revised his work in the 1250s, a few decades after the events occurred.<sup>550</sup> Unlike, for example, William of Tyre, who at least pretended to be neutral and was often silent about people he did not like, Philip's work is rather "at once a philippic against the imperial party in the East and a panegyric of the house of Ibelin."<sup>551</sup>

The kingdoms of Cyprus and Jerusalem were distinct, but linked through marriages, and occasionally both were ruled by the same person. As with the dispute over Jerusalem in 1190, the relationships are quite complicated. At the end of the Third Crusade, Conrad of Montferrat, having successfully married Isabella as described above, was crowned King of Jerusalem. From Cyprus, Guy of Lusignan continued to claim Jerusalem until he died in 1194, but he never again ruled there. Meanwhile, days after being crowned in 1192, Conrad was assassinated, and Isabella quickly found a third husband in Henry of Champagne. He accidentally fell out of a window and died in 1194, so Isabella married Guy's brother Amalric of Lusignan, who had just succeeded Guy as king of Cyprus. Isabella and Amalric ruled both Cyprus and Jerusalem until they died in 1205. Jerusalem passed to Maria of Montferrat, daughter of Isabella and Conrad, and Cyprus passed to Hugh I, Amalric's son from his first marriage to Eschiva of Ibelin, a daughter of Baldwin of Ibelin (who was the brother of Isabella's step-father Balian).<sup>552</sup>

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<sup>550</sup> Philip of Novara, *The Wars of Frederick II against the Ibelins in Syria and Cyprus*, trans. John L. La Monte (New York: Columbia University Press, 1936), introduction, pp. 16-18.

<sup>551</sup> *The Wars of Frederick II*, introduction, p. 17.

<sup>552</sup> Peter W. Edbury, *The Kingdom of Cyprus and the Crusades, 1191-1374* (Cambridge: Cambridge University Press, 1991), pp. 25-34. Amalric was of course Amalric II of Jerusalem; to avoid confusion with the twelfth-century king of the same name, he is sometimes known as Aimery or Amaury.

Isabella's half-brother John, the "old Lord of Beirut," as he would later be known, the hero of Philip's chronicle and the uncle of the jurist of the same name, became regent of Jerusalem for Maria until Maria married the French count John of Brienne in 1210. In Cyprus, also in 1210, Amalric's son Hugh I married Henry of Champagne's daughter Alice. Queen Maria died in 1212, and John of Brienne ruled as regent for their daughter Isabella II until 1225, when she married Emperor Frederick II. When Hugh I died in 1218, Isabella's other half-brother Philip of Ibelin became regent of Cyprus for Hugh's son Henry I and for Henry's mother (and Philip's niece) Alice.<sup>553</sup>

According to Philip of Novara there was a small faction on Cyprus opposed to the Ibelin regency, led by Amaury (or Aimery) Barlais, Amaury de Bethsan, Gauvain de Chenchi (or de Rossi), William de Rivet, and Hugh de Gibelet. They were all related and had ties to the old mainland nobility of Jerusalem. Philip mentions in particular a dispute that lasted for four years and involved numerous accusations and challenges to duels. In 1225, there was a celebration after the knighting ceremony of the sons of the "old lord" John of Ibelin. During a joust, Amaury Barlais was wounded by a Tuscan knight, who was serving under John's brother, the regent Philip. The next day, Amaury attacked and seriously wounded the Tuscan knight, but John intervened to prevent further violence. Amaury fled Cyprus for Tripoli; John had him found and brought back to Cyprus, where his brother Philip pardoned him, although the Tuscan knight did not want to make peace.<sup>554</sup>

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<sup>553</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 40-49. Alice was more accurately Philip's "half-step-niece-in-law," if such a term exists, as her husband Hugh was the step-son of Philip's half-sister Isabella. They were not actually related by blood.

<sup>554</sup> Filippo da Novara, *Guerra di Federico II in Oriente (1223-1242)*, ed. and trans. Silvio Melani (Naples: Liguori Editore, 1994), 15(111)-18(114), pp. 72-74 [= *Gestes des Chiprois*, ed. Gaston Raynaud (Geneva: Jules-Gillaume Fick, 1887), 111-114, pp. 31-32].

Afterwards, Philip of Ibelin either stepped down or was removed by Queen Alice, who tried to replace him with Amaury, although the Ibelin-dominated court opposed him. Throughout the 1220s Amaury and his supporters were frequently at odds with the Ibelins, sometimes violently, and they looked for help from Emperor Frederick II, who had promised to come to the east on crusade.<sup>555</sup> Consequently, according to Philip of Novara, an Ibelin supporter named Anceau de Brie accused Amaury of treason. When Amaury heard this he fled again for Tripoli to wait for Emperor Frederick, whose arrival was supposedly imminent.<sup>556</sup>

### Judicial combats

Around the same time, there was a separate dispute between Gauvain and William de la Tour, another supporter of the Ibelins. William was attacked and accused Gauvain of treason in court. Gauvain denied it, and both requested trial by battle. Philip did not record the details, but Gauvain lost, and a peace agreement was negotiated between the two combatants. Gauvain, however, refused to follow the agreement, and left Cyprus for Europe to serve with Frederick.<sup>557</sup>

Gauvain returned to Cyprus in 1228 when Frederick was supposed to arrive, and because Amaury also thought Frederick was coming, he returned to Cyprus and challenged Anceau to a duel, assuming that Frederick would arrive within the forty days that could legally pass before the duel would have to be fought. Anceau agreed and the king assented to the challenge. Frederick did not arrive, and Anceau would not make peace when Amaury changed his mind, so the battle occurred as agreed. This time, Philip recorded the duel in great detail. As Anceau and Amaury were both knights, they fought on horseback with lances and swords. Anceau broke his

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<sup>555</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 50-51.

<sup>556</sup> *Guerra di Federico II in Oriente*, 19(115), pp. 74-76 [= *Gestes des Chiprois*, 115, pp. 32-33].

<sup>557</sup> *Guerra di Federico II in Oriente*, 21(117), pp. 77-78 [= *Gestes des Chiprois*, 117, pp. 33-34].

lance, so Amaury struck him in the face with his own. Anceau hit Amaury on the helmet with his sword, then grabbed Amaury's lance away. From the force of Anceau pulling him, Amaury fell over and was injured, and when he tried to get up and flee he was unable to remount his horse. Anceau would have killed him, but John of Ibelin stopped the fight. John and Philip of Ibelin mediated a peace agreement and Amaury had to pay humiliating fines, about which he and his four companions complained to the emperor.<sup>558</sup>

The details of all of these accusations and duels match up with the thirteenth-century legal treatises, which is unsurprising as the treatises were written not long afterwards. The process of making an accusation in court has already been examined in the case of Hugh II of Jaffa in the twelfth century, but Philip of Novara is much more informative than William of Tyre, and a comparison with the assizes is much easier. In each case the accusation of treason was made in the high court; Philip did not say whether the treason was supposed to be apparent or non-apparent, but based on the jurist John of Ibelin's definition of apparent treason (and Philip's, in his legal treatise) it must have been non-apparent.<sup>559</sup> It would seem that an accusation of treason could be somewhat frivolous, as William de la Tour was the victim of an assault, and this was only treasonous in the sense that he and Gauvain happened to be members of opposing political factions.

Unfortunately Philip did not describe William and Gauvain's duel, but the duel between Amaury Barlais and Anceau of Brie follows the description in the assizes almost exactly. After

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<sup>558</sup> *Guerra di Federico II in Oriente*, 22(117), pp. 78-82 [= *Gestes des Chiprois*, 122, pp. 35-37]. The same story appears in the fifteenth-century Venetian translation and expansion of Philip's chronicle known as the Chronicle of Amadi, but the expanded account of the duel does not add anything relevant for understanding the laws involved. René de Mas Latrie, ed., *Chroniques d'Amadi et Strambaldi*, vol. 1: *Chronique d'Amadi* (Paris: Imprimerie Nationale, 1891), pp. 121-123.

<sup>559</sup> *Livre des Assises*, 84, pp. 227-229; Philip of Novara, 14, p. 53 [= *Livre de Philippe de Navarre*, 14, p. 487].

Amaury offered his challenge, they had forty days to prepare, and they could have made peace in the meantime, although Anceau refused. They fought fully armed, on horseback, with lances and swords; John of Ibelin gave specific details about the kinds of armour that the combattants and their horses could wear, which generally matches Philip's description. John expected that the loser would be taken away and hanged, and his children would be disinherited and his fief confiscated by the king. He also noted that a peace agreement could be made at the end of the duel, so that no one would be killed, which is what happened here as well as after the duel between William and Gauvain.<sup>560</sup> This suggests that hanging the loser and disinheriting his children was not really the most common outcome. The threat of execution and disinheritance may have been a useful deterrent, but the combattants could probably always expect some sort of agreement to be made; in these disputes, at least, which were actually political in nature, neither side would want to lose a supporter and alienate any other families.

According to Philip neither Gauvain nor Amaury were happy with the peace agreements. If the assizes are taken literally, Gauvain and Amaury could have challenged every member of the high court to a duel. They would have to fight each person in turn, and anyone whom they defeated would be hanged, but if they lost they would also be hanged.<sup>561</sup> It goes without saying that this would have been extremely impractical, and "there is an air of unreality about it;" it was presumably meant as a deterrent, and knights would have had lawyers speaking on their behalf to avoid such circumstances.<sup>562</sup> Both Gauvain and Amaury instead took their chances with the emperor. Aside from this unusual assize, all of the other assizes about treason and judicial

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<sup>560</sup> *Livre des Assises*, 90, pp. 240-245. Philip's legal treatise simply says that knights should fight fully armed in any disputes other than murder, but does not list their equipment (12, p. 50 [= *Livre de Philippe de Navarre*, 12, p. 485]).

<sup>561</sup> *Livre des Assises*, 97, pp. 254-257. Philip says that the defeated challenger, and the last defeated member of the court, would have their heads cut off (69, pp. 165-166 [= *Livre de Philippe de Navarre*, 87, pp. 560-562]).

<sup>562</sup> Philip of Novara, p. 295, n. 272.

combat were obviously fully established by the 1220s. They may not have been written down for another two or three decades, but the duels in 1228 match the requirements in the assizes.

### Duels as evidence for dating the assizes

The fact that these duels took place after 1215 is significant. Most kinds of ordeals happened to fall out of use in the middle of the crusading movement. As noted, there had long been opposition to the “natural” ordeals because they seemed to be tempting God for a particular response, and, especially in the case of ordeals of water, they actually expected an “unnatural” result. At the same time, canon and Roman laws were being rediscovered and codified, and they did not mention anything like trials by ordeal. In canon law, ordeals were simply forbidden, and in secular law, they quickly fell out of use everywhere in Europe.<sup>563</sup> Because of the increasing power of the church in the twelfth and thirteenth centuries, ordeals, which formerly required church blessing, ceased to be used when clerical participation in them was forbidden at the Fourth Lateran Council in 1215.<sup>564</sup>

According to Paul Hyams, ordeals of all kinds had already been declining throughout the twelfth century. In earlier centuries they were used in small rural communities, where cooperation was required to farm and defend the land, and to keep the peace when crimes were committed. For such communities, God's supernatural intervention in nature would not be seen as unusual, although it was an extreme last resort when trying to solve a crime.<sup>565</sup> By the twelfth century, communication became easier and royal power became more effective, so communities

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<sup>563</sup> Bartlett, pp. 83-86.

<sup>564</sup> Bartlett, p. 100. Ordeals were forbidden in canon 18 of the council, where it is noted that judicial battles had previously been forbidden; according to the *Liber Extra*, duels were forbidden by Celestine III in the late twelfth century, x.5.35.1, cols. 877-878

<sup>565</sup> Paul Hyams, “Trial by ordeal: The key to proof in the early common law,” in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, ed. Morris S. Arnold, Thomas A. Green, Sally A. Scully, and Stephen D. White (Chapel Hill: University of North Carolina Press, 1981), p. 95.

were not so isolated and the use of ordeals began to decline. They were still used, but as a deterrent rather than a method of proof, as hopefully the truth could be discovered before anyone would have to undergo a painful ordeal. After Fourth Lateran they were no longer respectable, at least at an official state level, although they may have survived much longer in remote rural areas.<sup>566</sup> Bartlett, however, argued that ordeals were always a tool of royal, not local justice, which is certainly true for Jerusalem, where ordeals could only be used by the royal courts.<sup>567</sup> Bartlett also believed ordeals were flourishing in the twelfth century, not declining.<sup>568</sup>

If the majority of the assizes were written after 1215, this could explain why ordeals of water and fire appear so rarely in them, but then the frequent appearance of duels would be difficult to explain. The presence of duels and other ordeals in the assizes has often been noted as unusual; Gibbon thought the duel was a “barbarous institution” but recognized that John of Ibelin considered duelling more a matter of honour than of superstition.<sup>569</sup> Beugnot also thought the ordeals, as well as mutilation and torture, reflected the “stamp of barbarism” from the Germanic legal codes.<sup>570</sup> Monnier could not believe that duelling was ever a part of the written assizes, as he was sure such ordeals were already obsolete by the eleventh century. John’s treatise mentioned them, he thought, only as unwritten customs that could be replaced by fines.<sup>571</sup> Grandclaude assumed that ordeals were part of the earliest laws, and were replaced by the swearing of oaths during the reign of Baldwin I,<sup>572</sup> although all the ordeals known from the sources date from after Baldwin I. Prawer thought the assizes, particularly the burgess assizes,

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<sup>566</sup> Hyams, pp. 100-101.

<sup>567</sup> Bartlett, p. 36.

<sup>568</sup> Bartlett, p. 42.

<sup>569</sup> Gibbon, p. 334.

<sup>570</sup> “le cachet de la barbarie,” Beugnot, *RHC Lois* II, introduction, p. lii.

<sup>571</sup> Monnier, p. 59.

<sup>572</sup> Grandclaude, “Liste des assises,” pp. 337-338.

were anachronistic or extremely conservative; the prohibition against duelling may have been followed in the east, but this was not reflected in the written assizes, which recorded earlier customs.<sup>573</sup>

As Bartlett noted, judicial battle is much older than the ordeals of fire and water, and is found in many Germanic law codes, including those of the Franks, Burgundians, Lombards, Frisians, and Saxons. It was most often used for cases of treason, which was “psychologically quite understandable” as the two parties in that case would likely be knights and would not want to have suffered the shame of refusing to defend their honour.<sup>574</sup> There was also a religious component to duelling (Gibbon’s “superstition”). The duel was supposed to show God’s favour for the combattant who was telling the truth. The Church opposed such duels because they did not want to support Christians fighting against other Christians; the Peace of God and Truce of God movements in the tenth and eleventh centuries developed for the same reason. The Church could not prevent duels from occurring even if they did forbid them, but in 1215 they prohibited clerical participation in them.<sup>575</sup>

It is possible that the assizes that mention ordeals of fire and water were written before 1215, and that the rest of the assizes do not mention these ordeals because they date from after 1215. Since there are no cases of ordeals by fire or water in the thirteenth-century sources, this could indicate that they disappeared in Jerusalem just as they did in Europe, although of course the absence of evidence is not conclusive proof. Aside from Usama, there are only two other mentions of ordeals in the crusade sources, in both cases trials by fire, and these took place

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<sup>573</sup> Prawer, *Crusader Institutions*, p. 368.

<sup>574</sup> Bartlett, pp. 103-106.

<sup>575</sup> Bartlett, pp. 115-118.

during the First Crusade before the kingdom was established. Guibert of Nogent thought, although he was not quite sure, that a certain monk who was caught with a woman was subjected to trial by fire, before being led through the camp and whipped.<sup>576</sup> This could be the same incident that Albert of Aachen mentioned, although he did not say anything about a trial by fire. In 1099, Peter Bartholomew, who had supposedly discovered the Holy Lance in Antioch, underwent trial by fire and died; this is the only time William of Tyre mentions such an ordeal, although his account was taken from Albert and the other chronicles of the First Crusade.<sup>577</sup> The thirteenth-century sources do not mention ordeals of fire and water, but does their silence mean these ordeals had completely disappeared? It is possible that they happened, but were not recorded in any of the surviving chronicles.

Judicial duels certainly did not disappear, despite being forbidden even in the twelfth century. The only aspect that should have changed after 1215 is the participation of clerics. Both the high court and burgess court assizes say that the combattants in a duel should swear on the Gospels, and this would presumably mean that clerics were involved. However, clerics are not mentioned in any of the surviving accounts of duels. Most of these accounts are very short, but even in the detailed descriptions by Usama and Philip, there are no clerics or Gospels. The only clerical participation that could be related to judicial combats is the mediation of the Patriarch of Jerusalem, in both the dispute between Hugh II and King Fulk and the duel between Amaury Barlais and Anceau of Brie; but in the first case there was no duel, and in the second, Philip does not say whether the patriarch or any other cleric was present at the duel itself.<sup>578</sup>

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<sup>576</sup> *Guiberti abbatis Sanctae Mariae Novigenti historia quae inscribitur Dei Gesta per Francos*, ed. R. B. C. Huygens, *Corpus Christianorum Continuatio Medievalis* 127A (Turnhout: Brepols, 1996), 4.15, p. 196.

<sup>577</sup> William of Tyre, 7.18, p. 367; Albert of Aachen, 5.32, pp. 378-379.

<sup>578</sup> *Guerra di Federico II in Oriente*, 22(117), p. 78 [= *Gestes des Chiprois*, 122, pp. 35-36].

The ideal conclusion would be that duels and other ordeals were used before 1215, complete with clerical participation, and that after 1215, the ordeals of water and fire fell out of use and clerics stopped participating in judicial duels. Unfortunately the evidence in the chronicles and the assizes do not bear this out. The assizes of the mid-thirteenth century expected that the combattants would swear on the Gospels, which could mean these particular assizes are a remnant of twelfth-century law (or the law prior to 1215) when clerical participation was not yet forbidden. The cases of Hugh II and the duel in Nablus show that the laws about challenges, and about the actual combat between non-knights, were the same in the twelfth century as they were in the thirteenth. On the other hand, the lack of clerics in the chronicles does not mean that they were not present at the duels. They might have been absent in the thirteenth century because they were forbidden, or they might have been overlooked or ignored because their overall role was not as important as the other details.

Duels were still being used on crusader Cyprus a century after Fourth Lateran, according to the Chronicle of Amadi. On May 12, 1314, the wife of Zaco Artude was killed, and her mother accused Zaco of murder. Zaco denied it, and his mother-in-law offered to provide a champion to fight him. The champion was John Pansan, one of the king's valets. The battle took place one month after the murder, on June 12. Zaco was defeated, and confessed that he had arranged for someone else to kill his wife.<sup>579</sup> Edbury thought this indicated that duels were actually rare at the time; otherwise the chronicler would not have mentioned it.<sup>580</sup> This may be true, but duelling does not seem to be too extraordinary in Philip of Novara's chronicle. Even if

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<sup>579</sup> *Chronique d'Amadi*, p. 396.

<sup>580</sup> *Livre des Assises*, introduction, p. 44.

duels were rare in 1314, it was still legally possible to fight one, long after they were supposed to have been forbidden.

### Other examples of treason

The civil war on Cyprus in the 1220s led to numerous other accusations of treason. Philip of Ibelin died around 1228 and was succeeded as regent by his brother John. As previously mentioned, Frederick had married Queen Isabella in 1225, but did not immediately go to the East as he promised he would do, and was excommunicated. Isabella died in 1226 while giving birth to Frederick's son Conrad, so Frederick legally became regent of Jerusalem for his infant son. Upon his arrival in the east in 1228, he claimed the regency of Cyprus for Henry I, as Frederick's father Emperor Henry VI had crowned Amalric of Lusignan king in 1197. He further demanded that John of Ibelin surrender both the regency of Cyprus and John's own lordship of Beirut. John refused, but Frederick was militarily and politically superior, and the emperor took direct control of Cyprus, allowing the quinquevirate of Amaury Barlais and his followers to govern for him. Frederick also recovered Jerusalem through a treaty with Egypt, but as he was still under excommunication, the Christians on the mainland would not support him, and in 1229 he was forced to return home.<sup>581</sup> As soon as he left, the Ibelins attacked the capital of Cyprus, Nicosia, and defeated Amaury's forces. In 1231 Frederick sent an army, which landed on the mainland and occupied John's lordship of Beirut, as well as Tyre. John recaptured Beirut in 1232, but was defeated at the Battle of Casal Imbert and could not recapture Tyre. While John and most of the Ibelin supporters were away on the mainland, Amaury took control of Cyprus, although at the same time King Henry reached the age of majority and legally should have been ruling on his

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<sup>581</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 51-59.

own. When John returned to Cyprus, the imperial army was defeated at the Battle of Agridi, and in 1233 the Ibelin faction captured the last imperial stronghold at Kyrenia.<sup>582</sup>

While still encamped outside Kyrenia, King Henry and the high court (that is, all the nobles who were partisans of Henry and the Ibelins, and who were present at the siege) convicted the quinquevirate of treason. The five were all disinherited and their fiefs were distributed to other nobles.<sup>583</sup> Afterwards, one of Amaury Barlais' supporters, Martin Rousseau, plotted an attack against the Ibelins, and specifically to kill Amaury's old enemy Anceau of Brie. The plot was discovered, and Martin and his co-conspirators were arrested by Philip of Novara, who delivered them to the army outside Kyrenia. The court, such as it was, convicted them of treason as well. Most of the traitors were drawn and hanged, but Martin was executed by being flung against the castle walls from a trebuchet.<sup>584</sup> La Monte thought it was unusual that Amaury and the others did not come to defend themselves in court, but recognized that in the case of Martin Rousseau, "the state of war and the conclusive evidence justified a more speedy decision."<sup>585</sup> However, according to Philip's account, it does not seem that Amaury was given a chance to defend himself.

In any case, although these accusations of treason could be linked to particular assizes, they have more in common with the accusation against Hugh II in 1134 and the incidents mentioned during the Third Crusade; on the one hand, the king could do whatever he could get away with doing, and on the other, they were in the middle of a difficult siege and, as La Monte

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<sup>582</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 60-65.

<sup>583</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 66. La Monte noted that this was not exactly legal, since siding with a rival claimant in a war was not, strictly speaking, treason; La Monte, *Feudal Monarchy*, appendix E, p. 279.

<sup>584</sup> *Guerra di Federico II in Oriente*, 199-200, pp. 196-198 [= *Gestes des Chiprois*, 199-200, pp. 108-110]. Anceau happened to be killed during the course of the siege, just after these events.

<sup>585</sup> La Monte, *Feudal Monarchy*, appendix E, pp. 279-280.

said, a quick decision was necessary. Unlike the Third Crusade, however, there was definitely an established legal system, which functioned as well as it could during a civil war.

## John of Joinville

Jerusalem was lost again in 1244, and a new crusade was launched by King Louis IX of France, who arrived in Egypt in 1249. This crusade, usually numbered the Seventh, was chronicled by another John, the lord of Joinville. John was born in 1225 and became seneschal of the County of Champagne in 1239; his lord Thibaut IV, Count of Champagne, was also King of Navarre and a noted crusader. In 1248 John joined Louis' crusade and he remained in the east with the king until 1254.<sup>586</sup> The crusade was initially successful, as the French army occupied the Egyptian port of Damietta in June 1249. Louis attempted to march south towards Cairo in November, but was stopped at Mansurah. The crusaders won a battle there in February 1250, but with heavy losses, and in April, while attempting to retreat to Damietta, Louis was taken prisoner by the Ayyubid sultan. At almost the same moment, the Ayyubid dynasty, established by Saladin, was overthrown by its Mamluk army, and the new Mamluk sultan released Louis for an enormous ransom. Louis departed Egypt for Acre, and spent the next four years rebuilding the remaining crusader possessions along the coast of the Mediterranean.<sup>587</sup>

John's *Vie de Saint Louis* was produced at the end of the thirteenth century at the request of Joan of Navarre, granddaughter of Thibaut IV and granddaughter-in-law of Louis IX. Joan wanted a hagiography of the king, who had been canonized only a few years earlier. The work was not completed until 1309, and John died in 1317.<sup>588</sup> Most of the *Vie* is actually about the

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<sup>586</sup> Caroline Smith, *Crusading in the Age of Joinville* (Aldershot: Ashgate, 2006), p. 47.

<sup>587</sup> Smith, pp. 4-5.

<sup>588</sup> Smith, pp. 47-48.

crusade, not the rest of Louis' life. According to Jacques Monfrin, the most recent editor of the work, John wrote the entire *Vie* in the first decade of the fourteenth century, and only at Joan's request. Other historians, including Gaston Paris in the nineteenth century, and John's most recent translator Caroline Smith, thought that John had already written the sections about the crusade, and simply added a beginning and ending for the work requested by Joan.<sup>589</sup>

John's text was a mixture of history and hagiography, and, as with William of Tyre and Usama ibn Munqidh, he was also influenced by literary themes. He borrowed from *exempla*, moral stories emphasizing proper behaviour, similar in function to Usama's *adab* literature; there are also borrowings from Old French romance literature and *chansons de geste*, for example when John describes battle scenes. If he did not write the crusade portion of the text soon after he returned to France, and the work was not started until the end of the thirteenth or the beginning of the fourteenth century, then, like Usama, John would have been in his seventies or eighties when he wrote.<sup>590</sup>

### John and the military orders

John remembered a number of legal cases that he saw in 1251 or 1252, when Louis was stationed at Caesarea. These cases were punished "according to the customs of the country."<sup>591</sup> One of the cases involved some of John's knights, who were attacked by a group of Hospitallers while hunting a gazelle. John noted that the master of the Hospital made his knights eat on the floor, sitting on their cloaks. John and the knights who had been attacked begged the master of the Hospital to absolve the men, and ate on the floor with them until the master acquiesced.

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<sup>589</sup> Smith, pp. 52-53.

<sup>590</sup> Smith, pp. 58-74.

<sup>591</sup> "selonc les usages du pais." Jean de Joinville, *Vie de Saint Louis*, ed. Jacques Monfrin (Paris: Dunod, 1995), 505-514, pp. 250-254 [=Jean de Joinville, *Histoire de Saint Louis*, ed. Natalis de Wailly (Paris: Hachette, 1865), 505-514, pp. 180-184].

Although the Hospitallers were not subject to the assizes of the kingdom, John correctly described a Hospitaller punishment for violence between knights, according to the rule of the Order.<sup>592</sup>

Another case involved a Templar who independently made a treaty with the sultan of Damascus without Louis' knowledge. Louis forced him to undo the treaty and to leave the kingdom. This was not so much a crime as a personal insult to Louis, who reacted in what was presumably the only politically expedient way. The Templars still had the same independent spirit they had in the twelfth century, and still got themselves into trouble because of it. Louis had already had similar disputes with them in Egypt. This time he may have preferred to negotiate an alliance with Damascus, which was still ruled by the Ayyubid dynasty, in order to help retrieve the many crusaders who were still prisoners of the Mamluks in Egypt; he could have also negotiated with the Mamluks against Damascus, but either way the separate Templar treaty interfered with his plans.<sup>593</sup> Like the Hospitallers, the Templars were also not subject to the assizes, but there are some assizes that are similar to this case. For example, if a vassal alienated a fief without the permission of his lord, the lord could disinherit him and his children.<sup>594</sup> This source also similar to the assizes about a vassal who broke his feudal vows; according to John of Ibelin, this could happen in numerous ways, and the vassal was then at the mercy of his lord, although John is rather vague on the specific details.<sup>595</sup> Louis could have reacted the same way that Amalric I did against the Templars a century before, but perhaps, unlike Amalric, he did not think he would be able to get away with execution. Expulsion was

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<sup>592</sup> Delaville Le Roulx, 70, p. 65.

<sup>593</sup> Barber, *The New Knighthood*, pp. 154-155.

<sup>594</sup> *Livre des Assises*, 129, p. 311.

<sup>595</sup> *Livre des Assises*, 180, pp. 460-461.

one of the punishments for serious crimes in the Templar rule,<sup>596</sup> but unlike the Hospitaller, the Templar in question had not done anything against the rules of the Order, and the Templar master intervened on his behalf.

### Assault on John's knight

Two of the four cases are related to the assizes of Jerusalem. The first of the two follows the assizes almost exactly: a sergeant in King Louis' service assaulted one of John's knights, and offered to let John, or the assaulted knight, cut off his hand. It is not clear if John literally meant that the sergeant offered himself up for punishment, or if this was the punishment assigned to him by a court, but in any case John refused his offer and ordered his knight to forgive the man. Otherwise John's description of the events is the same as in the legal treatises. The *Livre au Roi* says that when a knight is assaulted by a non-knight, the attacker should have his hand cut off.<sup>597</sup> Philip of Novara described the original twelfth-century *assise de cop aparant* and the changes that were made to it, but in the thirteenth century cutting off a hand remained the punishment for a non-knight who assaulted a knight.<sup>598</sup> A similar law is found in the burgess court assizes, though not, of course, involving knights.<sup>599</sup> Although John and Louis debated the severity of the assault, if Louis' sergeant caused a noticeable wound, then John was correct that this punishment was the custom of Jerusalem.

### Prostitution

The second of these two cases is more difficult to explain. A French knight was caught in a brothel, and was given the option of forfeiting his horse and armour and being expelled from the

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<sup>596</sup> Barber, *The New Knighthood*, p. 219.

<sup>597</sup> *Livre au Roi*, 17, pp. 185-186

<sup>598</sup> Philip of Novara, 60, pp. 148-149 [= *Livre de Philippe de Navarre*, 75, p. 546].

<sup>599</sup> Kausler, 263, pp. 319-321 [= *RHC Lois II*, 269, p. 204].

camp, or being led around the camp by the prostitute with a rope tied to his penis. He chose expulsion, although John was more concerned with who would receive the knight's equipment, which led to an argument with the king. This case is harder to reconcile with the assizes. Giving up one's horse and armour, usually collectively referred to as the "harness," was a common punishment for a knight in certain circumstances; in the *Livre au Roi*, a knight who strikes a burgess should lose his equipment,<sup>600</sup> and a mercenary knight who hits another knight should lose his equipment and be exiled from the country.<sup>601</sup> John of Ibelin also gives this as a punishment for *cop aparant*,<sup>602</sup> as well as for a mercenary who defaults on the terms of his service.<sup>603</sup> But the rest of the story is unusual. Prostitution is not mentioned in the assizes of the high court. It is mentioned rarely in the burgess assizes, which do not say that prostitution is illegal, only that it should be confined to a designated area away from respectable neighbourhoods.<sup>604</sup> This was also true in Europe, where prostitution was seen as immoral but sometimes also necessary for the maintenance of social order.<sup>605</sup>

There were brothels and prostitutes in the cities of the Kingdom of Jerusalem, which were frequented by visiting crusaders, although the native sources of the kingdom never mention them. During the Third Crusade, the English soldiers were surrounded by food, wine, and women after Acre was recaptured, and did not want to leave the city when King Richard commanded them to march out. He had to order all the women, presumably prostitutes, to stay

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<sup>600</sup> *Livre au Roi*, 19, pp. 190-191.

<sup>601</sup> *Livre au Roi*, 40, pp. 251-252. He should also lose his right hand if he causes a serious wound.

<sup>602</sup> *Livre des Assises*, 101, p. 269.

<sup>603</sup> *Livre des Assises*, 123, p. 303.

<sup>604</sup> Kausler, 93, pp. 116-117 [= *RHC Lois* II, 95, p. 71].

<sup>605</sup> James Brundage, "Prostitution in the medieval canon law," *Signs* 1 (1976), p. 830.

behind.<sup>606</sup> The French and English marched south to refortify Jaffa, but they were distracted by the prostitutes who, despite Richard's order, had joined them from Acre.<sup>607</sup> In 1192 the French also wasted time drinking and visiting brothels in Tyre.<sup>608</sup> James of Vitry later complained in 1216 that, among its many other vices, Acre was "full of prostitutes."<sup>609</sup> John of Joinville wrote that Louis IX was horrified to learn there were prostitutes just outside his own tent when the crusaders were encamped in Egypt.<sup>610</sup>

But none of these sources mention any punishment for the prostitutes or for the men who frequented them. The monk and the woman on the First Crusade, mentioned by Guibert of Nogent and Albert of Aix, were whipped publicly, but it is not clear that the woman was a prostitute. Public rituals of humiliation and shaming were a common form of punishment in medieval law; in the *Liber Albus*, a fifteenth-century book of common law for London, men who visited prostitutes would have their heads shaved and they would be pilloried. If caught a second time they would be jailed for ten days, and a third time they would be exiled from the city. The prostitutes would also have their heads shaved and be paraded around the city.<sup>611</sup> In Italy there were shaming rituals that were similar to the one described by John of Joinville. In Siena, a man being punished for sodomy would be suspended by the genitals in the marketplace for a day, and in Treviso the punishment was to be tied to a pole by the penis and then to be burned at the stake.<sup>612</sup> In various places in southern France adulterers could be punished by being forced to

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<sup>606</sup> *Itinerarium Peregrinorum*, 4.9, p. 248.

<sup>607</sup> *Itinerarium Peregrinorum*, 4.26-27, pp. 284-286.

<sup>608</sup> *Itinerarium Peregrinorum*, 5.20, pp. 330-331.

<sup>609</sup> "prostibulis passim repleta civitas," *Lettres de Jacques de Vitry*, 2.201-205, p. 87.

<sup>610</sup> *Vie de Saint Louis*, ed. Monfrin, 36, p. 84 [= *Histoire de Saint Louis*, ed. de Wailly, 36, p. 60].

<sup>611</sup> Barbara A. Hanawalt, *'Of Good and Ill Repute': Gender and Social Control in Medieval England* (Oxford: Oxford University Press, 1998), pp. 24-26.

<sup>612</sup> Trevor Dean, *Crime in Medieval Europe, 1200-1550* (New York: Longman, 2001), p. 61.

run naked through the town.<sup>613</sup> The burgess assizes of Jerusalem also contain a ritual of humiliation for a man who attempted to take back gifts that he had given to a prostitute: a Muslim should come to the man's house and sodomize him with a piece of penis-shaped wood.<sup>614</sup>

Although there is no specific law, in Jerusalem or elsewhere, that exactly matches the description given by John, it is clearly a form of public humiliation and is certainly a plausible form of punishment. The specific details could be an innovation from Jerusalem, or perhaps they were based on a Muslim custom. A similar act was inflicted upon the dead body of Ibn al-Attar, vizier for the Abbasid caliph al-Mustadi. When al-Mustadi died in Baghdad in 1180, Ibn al-Attar ensured the smooth succession of al-Mustadi's son an-Nasir, but was then arrested and killed in secret. When his body was brought out to be buried, a crowd "tied a rope to his penis and dragged him about the city."<sup>615</sup> This was not, of course, a punishment for visiting prostitutes, but perhaps the crusaders had seen something like this done before.

## Decline and fall of the second kingdom

The last mention of crimes and punishments in Jerusalem occurred in 1259, when Geoffrey of Sergines became *bailli* or regent in Acre. The succession to the thrones of Cyprus and Jerusalem was no less complicated at this time, after the departure of Frederick II. Queen Alice of Cyprus died in 1246 and was succeeded as regent of Jerusalem by King Henry I; Frederick and Isabella's son Conrad never came to the East to claim his kingdom. The jurist John of Ibelin and his

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<sup>613</sup> Dean, p. 130; Leah Otis-Cour, "*De jure novo*: Dealing with adultery in the fifteenth-century Toulousaine" (*Speculum* 84 (2009)), pp. 352-353.

<sup>614</sup> Kausler, 217, p. 242 [= *RHC Lois* II, 220, p.151].

<sup>615</sup> Ibn al-Athir, trans. Richards, vol. 2, p. 267 [=Ibn al-Athir, *al-Kamil fi'l-ta'rikh*, vol. 11, pp. 459-460. This is also in volume 9 of the 1997 edition which I was unable to consult].

relatives served as *baillis* for Henry on the mainland until Henry died in 1253.<sup>616</sup> Conrad died in 1254 and was succeeded, at least legally, by his son Conradin, who likewise never appeared in the East. Conradin's closest relative was Henry I's infant son, Hugh II, who was now king of Cyprus with his mother Plaisance as regent. John of Arsuf, another member of the Ibelin family, ruled as *bailli* in Acre for Plaisance. In 1258 it was decided that Plaisance should be regent in both Cyprus and Acre, with John of Arsuf as *bailli* in Acre. John died in 1258 and was replaced with Geoffrey.<sup>617</sup>

The term *bailli* was usually used in this sense of a regent ruling on behalf of a king in Acre.<sup>618</sup> However, as with the official in charge of the maritime court, it could also mean an official with any judicial and administrative powers, and the thirteenth-century assizes sometimes use "*bailli*" and viscount interchangeably.<sup>619</sup> Geoffrey seems to have had both duties: he hanged numerous criminals during his tenure, including a knight who had killed a bishop in Famagusta. The knight fled to the Pisan quarter in Acre and escaped from the police force that came to arrest him, but the Pisans handed him over to Geoffrey.<sup>620</sup> This agrees with the assizes of both the burgess court and high court, and it shows that there was a police force responsible for arresting criminals, as is described in the fourteenth-century *Abrégé* (and which may have already existed in the mid-twelfth century, according to Usama).

Plaisance died in 1261, and Hugh II in 1267, still underaged. His cousin, Hugh of Antioch-Lusignan, had claimed the regency in Acre during Hugh II's minority, and now

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<sup>616</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 81-84.

<sup>617</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 85-87.

<sup>618</sup> Riley-Smith, *Feudal Monarchy*, p. 185.

<sup>619</sup> Riley-Smith, *Feudal Monarchy*, p. 59; Kausler, 3-4, pp. 45-46 [=RHC *Lois* II, 3-4, pp. 45-48].

<sup>620</sup> *Gestes des Chiprois*, 297-298, p. 160.

succeeded to the throne of Cyprus as Hugh III. He also inherited Jerusalem in 1269 when Conradin was executed in Sicily, leaving no heirs behind. Meanwhile the Ayyubids and Mamluks were busy fighting the Mongols. The crusader cities were too weak to have any meaningful involvement in the war, and the Mamluk sultan Baibars took advantage of this by conquering the remaining cities along the coast, including Jaffa and Antioch in 1268.<sup>621</sup>

Louis IX prepared another crusade in 1270, but ended up in Tunis, where he died. Only a small force led by the future Edward I of England arrived in the East in 1271.<sup>622</sup> Another dispute over the succession to the throne of Jerusalem arose when Maria of Antioch, the granddaughter of Queen Isabella I, claimed to be Conradin's rightful heir, and sold her claim to the kingdom to Charles of Anjou, king of Sicily and a brother of Louis IX (and also the one responsible for the execution of Conradin). Hugh III died in 1284, and Charles in 1285. Hugh was succeeded by his son John of Lusignan, who also died in 1285, and then by his brother, Henry II. The Mamluks captured Tripoli in 1289 and Acre in 1291, and the few remaining Christian castles and settlements quickly fell as well.<sup>623</sup> Unlike Jerusalem in 1187, Acre was destroyed and its population killed or enslaved. The legal documents and court registers that had been archived from at least 1251, and perhaps earlier, were now lost.<sup>624</sup>

The Lusignan dynasty continued to rule Cyprus until the end of the fifteenth century, when the island passed to the Venetians.

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<sup>621</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 85-90.

<sup>622</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, p. 92.

<sup>623</sup> Edbury, *The Kingdom of Cyprus and the Crusades*, pp. 93-99.

<sup>624</sup> Prawer, "Social classes: The Franks," p. 174.

## Conclusions

The sources for the thirteenth century sometimes show what the legal system was like in Jerusalem and Cyprus, but almost exclusively for the upper classes, the nobility and the royal dynasties. There is unfortunately no source like Usama ibn Munqidh for the thirteenth century, depicting the non-noble world of the burgesses and peasants. There were still burgesses and burgess courts, and the cities had many lower-class Christians and Muslims, but the sources are for the most part not concerned with them, at least from the perspective of criminal law. There are nevertheless many descriptions showing the workings of the legal system, although the best-recorded examples all pertain to the inter-related chain of events in the 1220s and 1230s.

The one obvious theme that runs throughout the thirteenth century, which also reaches back to the twelfth century and forward to the fourteenth, is the judicial duel. The duel, as described by Philip of Novara and John of Ibelin, was firmly established by the 1220s, lasted until at least 1314 on Cyprus, and was very likely already in use in 1134. Philip was an important jurist and all the duels from the 1220s are mentioned in his chronicle, which was written around the same time he wrote his legal treatise. He certainly should have known how duels were supposed to be fought, so presumably he was describing both how duels should occur, and how they actually did occur, according to the laws of the kingdom.

On the other hand it may be indicative that there are no records of these duels by anyone other than an Ibelin or an Ibelin supporter, and that the only recorded duels took place between supporters of the Ibelins and supporters of their chief enemy Amaury Barlais. Is it conceivable that in each case the combattant from the Ibelin side won and the loser refused to accept the peace agreement? Could Philip have been romanticizing the dispute, and providing the details from the assizes, whether they were actually used or not? As Geoffrey Bromiley pointed out,

Philip “was quite prepared to neglect his responsibilities as historian and yield to his aesthetic inclinations.”<sup>625</sup> He also wrote numerous poems, inspired by the *Roman de Renard*, and placed Amaury Barlais himself in the role of the fox Renard, so there is a precedent for Philip inserting historical people into fictional roles.<sup>626</sup>

Despite this uncertainty, the duels appear to be factual. Neither Anceau nor Amaury are depicted as particularly brave or heroic in their duel, and like Usama’s anecdote, Philip’s description contains many mundane details that do not seem to be romanticized or idealized. Philip was a friend and vassal of the people he was writing about, and they or their descendants would have known if his stories were untrue. But even if there were no duels, Philip, and apparently also his audience, did not think it was unusual for duels to occur after 1215 when they were supposed to have been forbidden in canon law.

It is unlikely that the crusader jurists would have invented new laws about judicial duels in the middle of the thirteenth century, long after duels were forbidden. The challenge of 1134 is similar to the assizes recorded by Philip and John. The duel of 1139, even though it was under the jurisdiction of the burgess court, is almost exactly the same as the laws about duels in the thirteenth-century burgess assizes, which are the same as those of the high court, aside from the required weapons and armour. These laws certainly existed in the twelfth century. This situation must mean that judicial combat did not change much, if at all, between the twelfth and thirteenth centuries. It may also mean that the prohibition against dueling in 1215 did not have much effect in the East.

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<sup>625</sup> Geoffrey N. Bromiley, “Philip of Novara’s account of the war between Frederick II of Hohenstaufen and the Ibelins” (*Journal of Medieval History* 3 (1977)), p. 328.

<sup>626</sup> Bromiley, p. 330.

Other details from the thirteenth-century accounts of crimes and punishments show that the assizes were true law books, used by the courts, and not just private treatises full of hypothetical examples. John of Joinville correctly described punishments for knights and sergeants, almost as if he was copying from the assizes as he was writing. While Philip could have been making up stories based on his knowledge of the law, it is unlikely that John of Joinville, a foreigner, could have done so. The thirteenth-century chronicles also show that thieves were among the criminals punished by the *bailli* Geoffrey of Sergines. The brief description of Geoffrey's actions also shows that the courts in Acre had a police force, just as the fourteenth-century *Abrégé* said it did. It could also be evidence that, because the *bailli* was the equivalent of a viscount, the viscount of Nablus in the twelfth century had similar functions, which certainly seems to be the case from Usama's story.

There is some continuity between the laws of the twelfth and thirteenth centuries. The descriptions of laws from the thirteenth-century, while almost always dealing with the high court and usually associated with a political dispute, show that the assizes were in use before or during the period in which they were written, and similarities with twelfth-century descriptions mean that at least some of them were already in use, even if they were not yet written down. However, it is also clear that the assizes were not always followed to the letter. The defeated parties in judicial duels were not necessarily disinherited and exiled, or executed, as the assizes require; it was possible to arrange a peace agreement, even if the loser was not pleased with it. In John of Joinville's account of the knight caught in a brothel, the possible punishments fit the spirit of the laws, although there is no assize outlining the specific punishment John described. The assizes, therefore, could have been guidelines, sometimes followed to the letter when necessary, but not always in every case.

## Chapter 5

### Conclusion

In the preceding chapters, I have collected as many references to criminal law in the Kingdoms of Jerusalem and Cyprus as I could find for the twelfth and thirteenth centuries. Wherever possible I have examined the prosecution and punishment of these crimes such as theft, murder, homicide, and treason, and, on the few occasions where detailed accounts exist, I have compared eyewitness records to the legal treatises of the thirteenth century. I have followed in the footsteps of Maurice Grandclaude and Joshua Prawer by reconstructing the laws of twelfth-century Jerusalem, and I have found sufficient evidence to conclude that at least some of the thirteenth-century assizes were already in use in the twelfth.

There are three historiographical problems that have hindered our understanding of crusader law. The first is credulity. Historians have often been too willing to believe the statements of the thirteenth-century jurists, even though, as Edbury, for example, has pointed out, there are many logical and factual errors that make such statements difficult to believe. Most importantly, the story of the *Letres dou Sepulchre* can no longer be taken as fact, even though there were a few laws established in the early years of the kingdom. The second problem is that historians have focused on the assizes' depiction of Jerusalem as a perfect feudal state, which is no more accurate than the *Letres* story. In doing so, they have often ignored criminal law, the laws that applied to the burgesses, and any other kinds of non-feudal law. The third problem is a lack of sources and evidence for the workings of the crusader legal system. The vast majority of the assizes discuss feudal property, so it is understandable that historians have studied feudal law

almost exclusively. I have shown, however, that there are many other sources that discuss crusader law.

Nevertheless, even these sources are sparse and sometimes difficult to interpret. For the first few decades of the twelfth century there are almost no references to any criminal laws that are comparable to the few mentioned in the thirteenth-century assizes. There were offenses during the First Crusade, and there were thieves along the roads outside Jerusalem who may or may not have been punished, but there are no descriptions of specific crimes, trials, or punishments. Does that mean there were none? Is it possible that during its first thirty years, there was no crime, and no legal system to punish criminals? Were the crusaders too busy occupying land and battling the Muslims to set up a legal system?

In 1929, Grandclaude compiled a list of assizes that probably dated to the twelfth century. These include assizes about dismemberment of fiefs, possession of property for a year and a day, murder, assault, and disputes that could lead to a judicial battle. If these all truly date from the twelfth century, then the crusaders were probably more concerned with feudal property laws than with crimes, although a few criminal laws were also created. Some assizes could be misattributed to twelfth-century kings; for example, an assize about lost falcons is attributed to King Fulk, but this is a suspicious coincidence based on the similarity of “Fulk” and “falcon.”<sup>627</sup> Could other assizes also be misattributed, especially those ascribed to an un-numbered King Baldwin? Modern historians have variously assigned these laws to Baldwins I through IV, with little evidence to point to any of them. Perhaps the compilers of the thirteenth-century treatises wanted to claim that a particular assize was very old, and used the name Baldwin to place it in

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<sup>627</sup> Similarly, there is a painting of a falcon which may signify Fulk in the *Melisende Psalter*, a hymn-book probably produced for Queen Melisende during Fulk’s reign. Jaroslav Folda, *The Art of the Crusaders in the Holy Land, 1098-1187* (Cambridge, Cambridge University Press, 1995), p. 154.

the twelfth century, without having to narrow the date down to any particular ruler; this could either mean that the specific date was unknown, or that the assizes were not from the twelfth century at all.

The laws and cases that are most helpful for solving this problem are those dealing with judicial battles. Based on the thirteenth-century assizes it would seem that, in the early kingdom, disputes often ended up in judicial duels and, since this was an undesirable result, one of the Baldwins either replaced duels with fines, or introduced fines as an alternative to battle. The earliest reference to a duel is from 1134, so duels were not completely replaced after the reigns of the first two Baldwins (although this particular duel did not actually occur). A few years later, around 1139, a duel did take place in Nablus. Since no other duels are recorded by twelfth-century sources, this could support Prawer's suggestion that the duels were replaced by fines by Baldwin III, who ruled from 1143 to 1162. Of course, duels could have occurred without being recorded, or they might not have been recorded because they never took place, although either of these possibilities would be unprovable.

Prawer thought that, if he was correct about Baldwin III, the replacement of duels with fines was due to the influence of French customs introduced during the Second Crusade in 1148; as he said, “this is not impossible but hardly demonstrable.”<sup>628</sup> I am not so certain that there was any influence from the Second Crusade. The similarities between the duels of the twelfth, thirteenth, and fourteenth centuries, as recorded by William, Usama, Philip of Novara, and the Chronicle of Amadi, and the similarities between those duels and the laws about judicial battle in the assizes, must mean that the assizes about battles were already in place as early as 1134, and

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<sup>628</sup> Prawer, *Crusader Institutions*, pp. 428-429.

that they had not changed significantly as late as 1314. None of the sources mention any instances where fines were imposed in place of a duel. If fines were introduced by Baldwin III, or by anyone else for that matter, they obviously did not replace duels entirely.

If court records from Jerusalem existed, we would probably have an abundance of evidence that cases that were settled by fines or other agreements. It is easy to understand that such occasions would not have been very interesting to record in a chronicle. However, Prawer's mention of the Second Crusade is interesting. If we attempted to link any random law from Jerusalem with a law or custom from France, we could come up with an extremely complicated list of supposed borrowings. Beugnot's introductions to the two volumes of assizes are full of this sort of speculation, which is impressive, but not very helpful. Prawer at least tried to link new laws to a specific date, which inspires me to do the same. The event that seems most likely to have affected the crusader legal system is the marriage of Fulk V of Anjou to Baldwin II's daughter Melisende in 1129, and their accession to the throne in 1131.

The revolt of Hugh II of Jaffa was an extreme reaction to Fulk's accession, but other nobles opposed him as well, and this was known throughout Europe. According to the English chronicler Orderic Vitalis, Fulk removed the old, established nobility from positions of power, and replaced them with his own family and followers from Anjou.<sup>629</sup> Fulk seems to have wanted to make the kingdom entirely Angevin, which led the nobles to claim allegiance to Melisende; she was the legal heiress of the kingdom and Fulk technically ruled only as her consort. While William of Tyre simplistically claimed that the conflict between Fulk and Hugh was based on jealousy and rumours, Hans Mayer has depicted the dispute as one between Angevins and

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<sup>629</sup> *The Ecclesiastical History of Orderic Vitalis*, ed. Marjorie Chibnall, vol. 6 (Oxford: Oxford University Press, 1980), 12.48, pp. 390-393.

Normans. In France, the Duchy of Normandy bordered Anjou to the north, and Fulk and his ancestors had traditionally been enemies of the Normans, so the conflict was transferred to Jerusalem when Fulk became king.<sup>630</sup>

Fulk appointed Angevins as viscount and chancellor of Jerusalem, offices which were formerly held by Normans.<sup>631</sup> It is surely significant that these offices had legal duties. As shown above, the viscount was the head of the burgess court, and possibly had a police force responsible for apprehending criminals. The chancellor was in charge of the royal chancery and the production of charters. Could Fulk have introduced new, Angevin laws to the kingdom, and was this another reason for the opposition by the established nobility? Perhaps Fulk introduced the judicial duel, which is why Hugh II refused to fight; there is no indication that judicial battles were resorted to in Jerusalem before 1134, although other ordeals were known and used. I am not the first to suggest this, but as far as I am aware, only Kugler in 1880 claimed something similar; he thought Fulk created the first assizes, because his sons were supposed to have been legislators, and his father-in-law was responsible for the Council of Nablus.<sup>632</sup> This is an interesting possibility, because Fulk's grandson through his first marriage, Henry II of England, was also an active legislator. Fulk's ancestors in Anjou also had an interest in the law, especially Roman law, along with anything else that reminded them of ancient Rome.<sup>633</sup> It is possible, then, that among the changes introduced by Fulk, new laws were also enacted.

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<sup>630</sup> Hans E. Mayer, "Angevins versus Normans: the new men of King Fulk of Jerusalem." *Proceedings of the American Philosophical Society* 133 (1989), repr. in *Kings and Lords in the Latin Kingdom of Jerusalem* (Aldershot: Ashgate, Variorum Collected Studies Series, 1994), p. 22. Mayer notes that the Normans in Jerusalem were mostly from Sicily and southern Italy, not Normandy, but this did not seem to matter to Fulk.

<sup>631</sup> Mayer, "Angevins versus Normans," pp. 19-20.

<sup>632</sup> Kugler, pp. 122-124.

<sup>633</sup> Bernard S. Bachrach, *Fulk Nerra, the Neo-Roman Consul, 987-1040: A Political Biography of the Angevin Count* (Berkeley: University of California Press, 1993), pp. 46-47.

This hypothesis also has its problems. William of Tyre says that the duel was a “Frankish” custom, although not specifically an Angevin one, and if the Angevins were interested in all things Roman, the duel could not have been one of them. Hugh’s revolt is the first time duels are mentioned, but William does not seem to think they were newly-introduced by Fulk, and he does mention an earlier one fought by Godfrey of Bouillon in Germany before the First Crusade. William does not say what the dispute was about, only that it involved a large amount of property, and the court called for battle even though Godfrey’s fellow nobles disapproved (as did William himself, probably lending his own opinion to the nobles). Naturally, the heroic Godfrey won the duel.<sup>634</sup> The story may be legendary, along with many of William’s other anecdotes about Godfrey’s early career, but it could indicate that duels were brought to the kingdom by the original crusaders. Unfortunately there is no evidence either way; all that can be said is that a duel was fought in the kingdom for the first time, as far as the sources tell us, during the reign of King Fulk, who is known to have replaced judicial officers with members of his Angevin retinue.

If this Angevin hypothesis is correct, it would also affect Praver’s belief that the burgess assizes were derived from the Provençal *Lo Codi*. *Lo Codi* was written sometime in the 1140s and translated into numerous languages throughout the twelfth century, and, according to Praver, some of the burgess assizes were copied from them in the mid-thirteenth century. While this may be true for the specific assizes pointed out by Praver, for example laws about marriage and contracts, I do not think *Lo Codi* could have had an influence on any of the criminal assizes. If some of the assizes were already in use in the 1130s, before *Lo Codi* was written, and, at least in the case of duels, did not change significantly for the next two hundred years, then *Lo Codi*

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<sup>634</sup> William of Tyre, 9.7, pp. 428-429.

could not have influenced them. Prawer's argument may be useful for the origin of some laws, and maybe as a source for the assizes as a literary composition, but it is not helpful for determining the origin of earlier, criminal laws.

In the midst of all this, the Council of Nablus still stands out as unusual. Kedar's linking of the canons to Byzantine law makes the most sense, especially as Baldwin II had spent the previous eighteen years as count of Edessa, in Armenian territory where contacts with Byzantium were much stronger. However, I do not think that the canons, even the criminal canons at the end, became the law of the entire kingdom until being displaced by the assizes, whenever that may have been. The council was not called in an attempt to create a legal code for the whole kingdom. Similar laws in the assizes are either coincidental, or not derived specifically from Nablus. The canons were probably in use only until the crusaders felt the crises that had led to the council had passed, or until they had more pressing concerns later in the decade; or, alternately, they may have been a local code used only in Nablus or the royal domain, just as there were other local law codes, for example in Lydda or Bethgibelin. But less than twenty years later, Usama ibn Munqidh's description of events in Nablus show that the assizes, or an early form of them, were already being used there, and probably elsewhere in the royal domain. If the canons were in use even only in Nabus, it was clearly for a very short period of time.

In summary, the chain of events for the early twelfth century would be as follows. The crusaders were eager to punish crimes such as theft and adultery, and probably many others, during the First Crusade, presumably using whatever common laws and punishments seemed fairest for such a diverse group of people. After conquering Jerusalem, they probably did not have time to set down written legal codes, when the survival of the kingdom itself was not yet

certain; the story of the *Letres* imagines that Jerusalem was more stable than it actually was, and makes Godfrey into a legendary hero. Undoubtedly there were a few laws created when necessary, such as those about possessing and inheriting property, but there is a large gap before any other laws can be assigned a specific date. Baldwin II established a few criminal laws at Nablus in 1120, but these were probably of local concern, and do not seem to have been used for very long. Other settlements were developing their own customary laws at the same time, which suggests that there was not yet a single code of laws, although there may have been one that applied to territories held directly by the king. There were many opportunities in this early period for foreign laws to be introduced. Baldwin I and II, both formerly counts of Edessa, could have introduced Byzantine or Armenian laws, and Baldwin I was married to the dowager queen of Sicily, who could have introduced Sicilian laws. The accession of Fulk of Anjou as king in 1131 caused many other problems, and it is possible that he tried to introduce new laws as well. Other major and minor expeditions from Europe, possibly including the Second Crusade, could have influenced crusader law, as the thirteenth-century jurists claimed they did. By the middle of the century, Baldwin III and Amalric I were known as legislators, and laws about assault, murder, theft, and shipwrecks appear in the narrative sources, so the kingdom was well on its way to developing a legal code if one did not already exist. Whatever laws existed, written or not, could have fallen out of use after 1187 when Jerusalem was lost, but the laws either survived the collapse of the kingdom or were created anew in the thirteenth century, because the thirteenth-century sources show that laws were being followed almost exactly as described in the assizes, with some leeway for political manoeuvring. The legal system was definitely fully developed at the time the assizes were written in the mid-thirteenth century.

These conclusions are admittedly just as vague and unsatisfying as those of Beugnot, Grandclaude, or Prawer. There is much other research that could still be done. It would be

difficult, but not impossible, to find the specific source of crusader laws, whether in French customs, Germanic law, or Roman law, as long as we avoid the confusion of pointing to any similar laws that have no other obvious connection to Jerusalem. The number of medieval French law books is large, but not infinite. Was there any influence from the older Germanic codes? What role did Roman law have in the development of crusader law? What about Roman law as practised in Byzantium? Did Roman law survive among the Christian population of Muslim Syria and Palestine, and did this have any effect on the crusaders? Was Beirut still a centre of Roman law, as it had been in late antiquity?<sup>635</sup> Is it a coincidence that John of Ibelin, the author of the largest of the crusader legal treatises, was also lord of Beirut? Was there any influence from native Christian laws and customs that were not based on Roman law? What influence did Islamic law have? The crusaders adopted numerous Islamic administrative positions, including some legal and judicial offices. Some of the crusaders who were born and raised in the east in the twelfth and thirteenth centuries were familiar with Arabic language and literature; what did they know about the law? At the lowest levels, the Muslim and native Christian inhabitants were permitted to govern themselves, so Islamic and native law was certainly still in use to some extent.

Prawer noted that *Lo Codi* might have been a literary influence, rather than a strictly legal one, on the composition of the burgess assizes. More research can certainly be done on the relationship between the legal treatises and literature; it is well-known that “literature and law were subject to strong, reciprocal influences.”<sup>636</sup> Throughout this thesis I have pointed out literary influences wherever I was able to discern them, from classical Roman historians like

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<sup>635</sup> Linda Jones Hall, *Roman Berytus: Beirut in Late Antiquity* (London: Routledge, 2004), p. 195ff.

<sup>636</sup> Hanawalt and Wallace, ed., *Medieval Crime and Social Control*, introduction, p. x.

Livy, to Old French romances, to events like the murder of Thomas Becket affecting William of Tyre's recollection of an earlier crime. I am not a specialist in medieval literature, but other pertinent literary references are sure to exist. It is also likely that religious literature, certainly the Bible and possibly also the Qur'an, had a significant influence. Could there be any other influence from Islamic literature, either directly, or indirectly through crusader nobles who spoke Arabic, such as Balian of Sidon, who also happened to be a jurist and was a mentor of Philip of Novara? The literary influence on crusader legal history should be a fruitful area for further research.

It would also be useful to compare other legal treatises written under similar circumstances. The most obvious areas for comparison are Spain and Sicily, where there were Christian states with large Muslim populations; Sicily also had close connections with Jerusalem throughout the twelfth and thirteenth centuries. The law codes of Spain and Sicily may not have any direct relation with those of Jerusalem, but the assizes of Jerusalem did influence the creation of law books in the other crusader states in the East. The Assizes of Romania, written for the Latin Empire of Constantinople in the thirteenth century, actually claim to be derived from the Jerusalem assizes, and also include an account of the *Letres dou Sepulcre*.<sup>637</sup> Armenia and Antioch also had their own laws, which may be related to those of Jerusalem. Kedar noted the Byzantine influence on the Council of Nablus, but there could have been other influences on the assizes. Baldwin III and Amalric I, both known as legislators, were married to Byzantine princesses, and Amalric allied with Byzantium against Egypt. Amalric's widow also married into the Ibelin family, and was the grandmother of the jurist John of Ibelin.

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<sup>637</sup> Peter W. Topping, trans., *Feudal Institutions as Revealed in the Assizes of Romania, the Law Code of Frankish Greece* (Philadelphia: University of Pennsylvania Press, 1949), ch. 1, pp. 17-20.

There may also be similarities with the composition of the Germanic law codes hundreds of years earlier. The Germanic tribes conquered the more advanced Roman civilization, adopted its laws, institutions, and culture, and were inspired to record their own laws, just as the Romans had already done. It has often been argued that something similar happened in Jerusalem. Did the crusaders write down their own laws because they were confronted with a more advanced civilization? Or was it necessary to write down the laws that differed most from the laws that existed among their subjects, as it may have been necessary for the Germanic tribes to do?

Lastly, I believe it would be useful to re-edit the burgess assizes, the only major legal treatise without a modern critical edition. Beugnot's edition is considered very poor, and although Kausler's edition is the better of the two, it has no introduction and a sparse apparatus, and, rather than a true edition, it is actually a transcription of two of the manuscripts. The book is available online, but it is difficult to obtain a physical copy. It is also 170 years old, and thanks to the more recent work of Grandclaude, Prawer, and Nader, our current understanding of the burgess assizes is far greater than Kausler's or Beugnot's. Coureas published an English translation of the Greek version, and Nader has written about burgess property law, but as far as I am aware, neither they nor anyone else is working on an edition of the Old French manuscripts. There are only a few manuscripts, of which the two most useful are in Munich and Venice, and according to Grandclaude the Munich manuscript is the earliest and most correct of the two. A new analysis and edition of the burgess assizes will be my next project.

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## Appendix 1

### Online resources

Many of the books cited above have been digitized online. Google Books, the Internet Archive, and the Gallica project of the Bibliothèque nationale de France are especially active in digitizing old, out-of-copyright and hard-to-find books. Some of the books on Google and the Internet Archive have been digitized by the University of Toronto's Robarts Library (such books on the Internet Archive have "uoft" at the end of their links). Using the Internet to read books that might otherwise be difficult to obtain was a great help in writing this thesis, and reading the books digitized by Robarts often saved me a trip to the library. I have listed here all the digitized books that I used that can be viewed in full.

Google also has other, more recent books that are partially digitized. Other books are not visible at all, but in both cases Google usually allows the text to be searched in full. Even when the pages cannot be viewed, this function can be used for digging up information and references, which makes it easier to use the physical book. Almost any book can be viewed this way, and I have not listed them all here. (The legality of this on Google's part is also dubious, but it did save a lot of time and effort.)

Through JSTOR and similar digitization projects, journal articles are much easier to find online, and I have also not included them in the list.

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### *Other resources*

There is an online concordance for William of Tyre's chronicle, using the edition printed by Migne in the *Patrologia Latina*, which is itself a reprint of the 1611 edition by Bongars. It is no substitute for the concordance provided by the *Corpus Christianorum* for Huygens' 1986 edition, but it is a handy resource when doing a quick search.

[http://www.intratext.com/IXT/LAT0901/\\_INDEX.HTM](http://www.intratext.com/IXT/LAT0901/_INDEX.HTM)

The entire collection of the Palestine Pilgrim's Text Society can be found on the Internet Archive, e.g. Theoderich of Wurzburg in vol. 5,

<http://www.archive.org/details/libraryofpalesti05paleuoft>

Gallica has the entire *Recueil des historiens des croisades*, except the two volumes of *Lois*. For example, Abu Shama in RHC Or 4,

<http://gallica.bnf.fr/ark:/12148/bpt6k51581f>

Much of the *Monumenta Germaniae Historica* has been digitized as well, except for the most recent publications. The sections of the MGH used in this thesis are available online.

<http://www.mgh.de/dmgh/>

Likewise, the entire *Patrologia Latina* is available online.

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## Appendix 2

### Glossary of Arabic terms

This is a glossary of Arabic terms that have appeared in the text, alphabetized according to their English transliteration. Translations are generally taken from Edward Lane's *Lexicon*, the *Encyclopaedia of Islam* (2<sup>nd</sup> ed.), or other appropriate works on the crusades.

adab	ادب	good manners, excellence, rules of discipline, an educational style of literature
‘adl	عدل	equity, justice, the ideal, absolute distinction between good and bad; justice before the law
anṣafa	انصف	to grant justice
dhimmī	ذمي	“people of the covenant,” i.e. Christians and Jews
fiqh	فقه	science of the law, jurisprudence
ḥājib	حاجب	chamberlain, chief officer
ḥakama	حكم	judge, give judgement, pass sentence
ḥarāmī	حرامي	a thief, someone who deprives another person of a thing
ḥashshāshīyyin	حشّاشين	derogatory name for Nizari sect of Shi’ite Isma’ilis, the “Assassins”
ḥukm	حكم	judgement, especially in litigation
i‘tibār	اعتبار	stories that show correct attitudes and behaviour, and cause the reader or listener to reflect on what they have read or heard
iqṭā‘	اقطاع	an administrative grant of land, the revenue from

		which went to the grantee
jizya	جزية	a poll tax paid by dhimmīs
kharāj	خراج	a tax on land
laṣṣ or liṣṣ	لصّ	a thief, robber
mazālim	مظالم	courts to examine claims of wrongdoing, appeals for justice, bureaucratic disputes
muḥākama	محكمة	judicial proceeding, trial, prosecution
muḥtasib	محتسب	inspector of markets and weights and measures
muqṭaʿ	مقطع	the holder of an iqṭaʿ
qaḍāʿ	قضاء	judgement, sentence, judicial decision, court ruling, administration of the law
qāḍī	قاضي	a judge, especially for shariʿa law
qāḍī al-quḍāt	قاضي القضاة	chief judge
raʿīs	رئيس	head, chief, commander, authority
raʿy	رأي	judgement based on individual opinion
rasm	رسم	prescription, custom
ṣāḥib	صاحب	a companion, friend; a master, lord, owner
ṣāḥib ash-shurṭa	صاحب الشرطة	commander of the police force
saraqā	سرق	to steal, especially secretly
sarqa	سرقة	theft, stealing

shari‘a	شرع	road, path, divine way of religion, by extension religious law
shaykh	شيخ	an old man, leader, holy man
shihna or shahna	شحنة	military administrator of a province; used as a synonym of “amir”, a viceroy, prefect, police chief
shihnakiyya	شحنكية	the office of the shihna
shurṭa	شرط	the bodyguard or attendants of a sultan; by extension, a police force
wālī	والي	prefect, governor, ruler