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NOTABLE ECCLESIASTICAL LAWYERS: X

John de Burgh (*fl* 1370–1398)

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Knowledge of the law of the church has always existed outside the world of practising lawyers, and the uses to which the canon law was put in earlier centuries were so varied that only casting a wide net can do justice to the subject's history. Of this there are few better examples than that of John de Burgh. The author of what his entry in the *Oxford Dictionary of National Biography* describes as 'a very influential work of pastoral theology entitled *Pupilla oculi*', Burgh knew his subject.[1] The description in the *ODNB* is not inaccurate. However, it does not do justice to the author's knowledge of the church's laws or to his place in securing the law's application. The *Pupilla oculi* digested complex and sometimes confusing legal texts, providing usable summaries of their meaning, adding learned authorities to support them and giving advice about how they could be employed. It was widely used.

The starting point for understanding the work's importance must be a recognition of the rudimentary nature of the formal education required of parochial clergy during the Middle Ages. 'Precious little' is how the foremost student of the subject summed up the quantity of learning that candidates were obliged to acquire before they were ordained.[2] No time spent at a university was necessary. No training in the law of the church was required. With Burgh's treatise in hand, however, the men charged with the administration of parochial life might still learn the basic rules of canon law and put them into practice. It was training on the job, no doubt. It may have slighted the law's nuances. But it was a vast improvement on ignorance, and that is the reason why Burgh's contribution counted for as much as it did.

1 J Goering, 'Burgh, John (*fl.* 1370–1398)' in *Oxford Dictionary of National Biography*, online edition, <http://www.oxforddnb.com/view/article/2912>, accessed 12 October 2015.

2 L Boyle, 'Aspects of clerical education in fourteenth-century England', (1977) 4 *ACTA* 19–32, reprinted in L Boyle, *Pastoral Care, Clerical Education and Canon Law, 1200–1400* (London, 1981), article IX, pp 19–32. See also J Shinners and W Dohar (eds), *Pastors and the Care of Souls in Medieval England* (Notre Dame, IN, 1998), pp 33–38; J Goering, 'The changing fact of the village parish: the thirteenth century' in J Raftis (ed), *Pathways to Medieval Peasants* (Toronto, 1981), pp 323–333.

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BURGH'S LIFE AND CAREER

Many aspects of Burgh's life remain unknown – even to the date of both his birth and his death. We know only a few things with any certainty.[3] A native of Lincolnshire, he entered the University of Cambridge and had proceeded MA by 1370. He then remained at the university for 18 years. Elected to the normal two-year term as chancellor of the university in 1384, by that year he had received a doctorate in theology.[4] Whether he studied the Roman and canon laws during that long time span is uncertain, but it would not have been unusual for a student in the arts or theological faculties to have done so, and this common practice may explain the familiarity that Burgh had acquired with the *ius commune* by the time he left the university in 1388.[5] Moreover, he himself would have witnessed legal skills being put to use: he served as proctor of the university in 1370 and as chancellor he would have presided over a court governed by the civil law. In these offices, Burgh would have had the opportunity to learn to use the legal texts and the works of commentators on them.

Burgh's move out of university circles was certainly something he desired. During the decade before he left he sought to obtain a benefice by petitioning Pope Gregory XI, and by 1388 he had become rector of Collingham in the Diocese of York.[6] Retaining that benefice, he added another ten years later when he became vicar of Newark in the same diocese. For all we know, he lived out his life as a country parson in the north of England. Even that conclusion, however, rests simply on assumptions based on the offices he held. We know nothing of his activities there, not even the circumstances or the place of his death. No known monument to him remains to us. What marks him out as worthy of attention is the composition of the *Pupilla oculi*, which took place before he left Cambridge.

THE PLACE OF THE *PUPILLA OCULI* IN THE LITERATURE OF THE *IUS COMMUNE*

Burgh's treatise belongs within the broad category of mediaeval pastoral manuals meant for use by the clergy.[7] They are sometimes described as

3 See Goering, 'Burgh, John'.
4 A Emden, *Biographical Register of the University of Cambridge to 1500* (Cambridge, 1963), p 107.
5 J Mullinger, *The University of Cambridge from The Earliest Times to the Royal Injunctions of 1535* (Cambridge, 1911, reprinted 1969), pp 140–143; D Leader, *History of the University of Cambridge, Vol 1: the university to 1546* (Cambridge, 1988), pp 200–201.
6 See entry in 'Notes on Cambridge clerks petitioning for benefices, 1370–1399', (1943–1945) 20 *Bulletin of the Institute of Historical Research* 75–96 at 83.
7 An instructive essay is J Goering, 'Leonard E. Boyle and the invention of *pastoralia*' in R Stansbury (ed), *Companion to Pastoral Care in the late Middle Ages (1200–1500)* (Leiden and Boston, MA, 2010), pp 7–20.

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Summae confessorum because of their utility in the internal forum of auricular confession.[8] Most of them (as Burgh's work did) sought to summarise the church's penitential and sacramental laws so that they could be understood and applied in practice.[9] The utility of these works was not limited to confession, however. They were used to good advantage, for example, in preparing sermons,[10] and they provided instructions for the clergy on how to live up to legal standards. It would not be off the mark to describe them as vehicles by which the mediaeval church's doctrines and laws were taken from the schools and brought into parishes. Their authors mostly eschewed the juristic speculation and debates that were familiar (and appropriate) parts of university education. Whenever Burgh did allude to disagreements found in the texts or to debates among the commentators, he did so briefly and also stated his own view of which was the better opinion.

The title of Burgh's work – an odd one today, though no stranger to the literature coming out of the European schools – meant 'apple of the eye', as in 'He kept him as the apple of his eye' (Deut 32:10). Its title made a connection with the earlier work which provided Burgh's starting point: the *Oculus sacerdotis* of William Paull (or William Pagula, as he was called by the scholar who had the most to do with bringing Paull's work to the attention of modern historians, Leonard Boyle).[11] Boyle downplayed the contributions made by Burgh's text, apparently regarding it as a derivative work – and perhaps a needless one at that.[12] However, the view of most scholars (and mine) is that the *Pupilla oculi* is a distinct improvement on its predecessor.[13] The topics are more economically arranged; they are easier to find; their exposition is clearer: and the work's statements of the church's law are better established by textual references. Whether either of the two men would have regarded the other as a rival or as a co-worker, we can only speculate, since they did not meet: Paull died in 1332. However, the verdict of the marketplace supports Burgh's higher reputation. Although both

8 Examples, with discussion, are found in A Van Hove, *Prolegomena ad codicem iuris canonici* (Mechelen and Rome, 1945), pp 512–517.

9 The most recent and complete treatment related to Burgh is H Kelly, 'Penitential theology and law at the turn of the fifteenth century', in A Firey (ed), *A New History of Penance* (Leiden and Boston, MA, 2008), pp 239–317.

10 See eg S Wenzel (ed and trans), *Fasciculus Morum: a fourteenth-century preacher's handbook* (University Park, PA, 1989).

11 See L Boyle, 'The *Oculus sacerdotis* and some other works of William of Pagula', (1955) 5th series 5 *Transactions of the Royal Historical Society* 81–110, reprinted in Boyle, *Pastoral Care*, article IV. See also J Baker, 'William Paull' in *Monuments of Endlesse Labours: English Canonists and their Work 1300–1900* (London and Rio Grande, OH, 1998), pp 9–15.

12 For Boyle's views, see Boyle, '*Oculus sacerdotis*', pp 84–87. His opinion was also shared by Cardinal Gasquet: see F Gasquet, *Old English Bible and Other Essays* (London, 1897), pp 195–198.

13 See H Davis, 'The canon law in England', (1914) 34 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 344–363 at 349–350; W Pantin, *The English Church in the Fourteenth Century* (Notre Dame, IN, 1962), pp 213–214; J Hughes, *Pastors and Visionaries: religion and secular life in late medieval Yorkshire* (Woodbridge, 1998), pp 193–194; Kelly, 'Penitential theology', pp 243–244.

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works are found in many manuscript copies from the Middle Ages, including a handsome 'showpiece' manuscript of Burgh's work, only the *Pupilla oculi* reached print.[14] Paull's treatise did not. Burgh's work was printed several times in the first quarter of the sixteenth century, including editions published both in England and on the Continent (Paris, Rouen and Strasbourg).[15]

In common with Paull's treatise, the conclusions in Burgh's text rested on recognised authorities. He cited legal sources for every topic he covered, though without the accumulation of authorities found in many of the canonical treatises from the later Middle Ages. Normally, the *Pupilla oculi* provided only one relevant text for each conclusion. They came from a range of sources. The Bible and works by theologians appeared often; also Church fathers such as St Augustine and more recent theologians such as Thomas Aquinas. Burgh also cited Roman law texts occasionally, though the religious nature of his subject discouraged frequent reference to them.[16] The majority of his references were to the *Corpus iuris canonici* – from Gratian's *Decretum* to the *Extravagantes* – and also to the best known of the commentaries on them. He referred repeatedly to the works of Hostiensis, Innocent IV, Joannes Andreae and Raymund of Peñaforte. He also did not neglect the provincial constitutions of the province of Canterbury. These had an immediate impact on parochial life in England and he was right to refer to them.

THE CONTENTS OF THE *PUPILLA OCULI*

Burgh divided his work into ten parts of unequal length.[17] They were: I) The sacraments in general; II) Baptism; III) Confirmation; IV) The Eucharist; V) Penitence and sentences of excommunication; VI) Extreme unction; VII) Holy orders; VIII) Marriage and matrimonial causes; IX) Tithes, sanctuary, last wills and testaments, clerical residence, and similar matters; and X) Practical theology, including the Ten Commandments, the seven deadly sins, and works of mercy. Each part was then divided into separate chapters; within each chapter, separate letters were assigned to subject as they were discussed. Thus, in the copy printed in Paris in 1521, the treatment of the rules regulating clerical residence with women is found in part VII, chapter 10, letter L. A serviceable index in this edition also helped an uninstructed clerical reader to find the specific subjects he required.

14 K Harris, 'The patronage and dating of Longleat House MS 24, a prestige copy of the *Pupilla oculi* illuminated by the master of the *Troilus* frontispiece' in F Riddy (ed), *Prestige, Authority and Power in Late-medieval Manuscripts and Texts*' (York, 2000), pp 35–54.

15 The entry in the *ODNB* states that it was printed at least four times before 1500, but I think that this must be a slip. See eg *British Museum General Catalogue of Printed Books*, vol 30 (London 1955), p 98, listing editions published in 1510, 1514, 1516, 1518 and 1521; the last edition to which I have seen a reference was published in London in 1590.

16 Eg J de Burgh, *Pupilla oculi*, pt VIII, ch 15, lit B (citation of Dig 25.4.1).

17 For example, part VI contains only 2 chapters, whereas part VIII has 18.

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What most immediately strikes a modern reader of Burgh's treatment of his subjects is the economy and clarity of his exposition. Compare, for example, his handling of the prohibition mentioned against clerics living together with women with the fuller coverage in the *Decretals*. Burgh's text gives a reason for the rule (avoidance of the temptation to commit the sin of adultery) and a statement of one of its exceptions (women related to a cleric in close degrees of consanguinity). But that is about all. The same subject was dealt with at great length in the formal texts of the canon law and Burgh provided a reference to two of them in his own treatment of the subject (Dist 37 c 27 and X 3.2.9). However, he did not go into detail. It was not a classroom exercise, nor was it a preparation for litigation. It was an exposition of the basic law on the subject and a plain statement of the reasons supporting it.

Burgh's treatment of clandestine marriages contains a good example of his normal approach. Under mediaeval canon law, an agreement made by words of present consent was a full and indissoluble marriage. A secret marriage, even if entered into without ceremony or witnesses, bound the contracting parties in conscience. Without doubt, it was an awkward law in practice – 'no masterpiece of human wisdom' was how Maitland once described it.[18] Here, however, is what Burgh told his clerical readers: make an investigation of your own; if the spousals were not celebrated *in facie ecclesie* but were contracted publicly before others, they cannot be dissolved by the mutual agreement of the parties but the matter must be referred to a court for decision. If, however, they were contracted entirely secretly, they can be dissolved without a judgment of the church.[19] Practical advice, one might call it, although Burgh supported it only by a reference to one commentator on Peter Lombard's *Sentences*.

Among the matters covered by Burgh's treatise is a lengthy treatment of Magna Carta.[20] Inclusion of the Charter in a religious treatise may seem surprising today, but in the context of its own times it fitted. Led by Archbishop Stephen Langton, the bishops had taken a hand in its formulation in 1215, though just how strong a hand it was remains a matter of uncertainty. Successive archbishops had later issued sentences of excommunication against any person who infringed the Charter's provisions.[21] Among those subjected to these sentences were all persons who acted against Clause One's promise of the freedom for the English Church. The sanction was not limited to them,

18 F Pollock and F Maitland, *History of English Law* (second edition reissued, Cambridge, 1968), vol 2, p 368.

19 Burgh, *Pupilla oculi*, pt VIII, ch 2, lit L: '*Si autem secrete contracta fuerint sine iudicio ecclesie dissolvi possunt secundum Richardum super iiii, dist. xxvii*'.

20 Ibid, pt V, ch 22, is devoted to it.

21 Eg D Wilkins, *Concilia Magnae Britanniae et Hiberniae* (London, 1737), vol 2, pp 240–242: '*Sententia excommunicationis per Robertum Cantuariensem archiepiscopum lata contra … infringentes articulos chartarum, scilicet Magnae Cartae*' (1298); see also D Carpenter, *Magna Carta* (London, 2015), pp 422–423.

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however, but extended to all. As Professor Cheney put it, by the start of the fourteenth century, 'Magna Carta had come to stay, and the English hierarchy was committed to safeguarding it.'[22]

CONCLUSION

'Neither English university produced a lawyer of international reputation during the Middle Ages.'[23] That has been the verdict of most historians of the canon law, and the example of John de Burgh does not disprove it. No mention of *Pupilla oculi* appears in today's standard works on the history of the canon law.[24] However, what Burgh sought to accomplish he achieved. His work provided the means by which basic rules of law for the administration of a mediaeval parish and the conduct of a Christian life could be found and put to use – no mean accomplishment.

22 C Cheney, 'The Church and Magna Carta', (1965) 65 *Theology* 265–272 at 272.
23 Leader, *History of the University of Cambridge*, p 199.
24 He is mentioned only in H Hurter, *Nomenclator literarius theologiae catholicae theologos* (Innsbruck, 1903–1913), vol 2, pp 714–715.

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