

Hubert Walter's Council of Westminster in 1200 and its use of Alexander III's 1179 Lateran Council

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Conciliar canons are one of the pillars of medieval canon law. Alongside the papal letters of judgement known as decretals, the vaguely attributed decreta of the popes, and the writings of the Church Fathers, they provided a majority of the legal contents of medieval canonical collections. During the twelfth century, these decrees also formed part of an ever-growing group of legal texts even as the councils themselves came more under the sway of the centralised papal monarchy and, arguably, became legislative assemblies in lieu of their earlier position as judicial meetings.¹ Most commentators, papal and scholarly alike, differentiated between general and particular councils, the former held with apostolic authority and the latter without.² While modern scholars have probed general councils for evidence of papal interference, exploring the idea that by the early-thirteenth century they were merely a rubberstamp for policies imposed from above, their earlier or more local counterparts fall into a gulf between local and central government that remains under-explored for the medieval church despite continued interest in ideas of centre and periphery.³ A short study can contribute

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¹ F. Schmale, 'Synodus – synodale concilium – concilium', *AHC*, 8 (1976), 80–102; R. Somerville, 'Papal General Councils in the Twelfth Century: Some Observations', *AHC*, 40/2 (2008), 281–88; for the analysis from the perspective of the papacy, see e.g. I. Robinson, *The Papacy, 1073–1198: Continuity and Innovation* (Cambridge, 1990), 121–45; and the literature cited below.

² The copious twelfth century commentary is summarized in H. Sieben, *Die Konzilsidee des lateinischen Mittelalters (847–1378)*, *Konziliengeschichte B* (Paderborn, 1984), 241 ff.; most canonists commented at least briefly on the relevant section of Gratian, DD.16–18, e.g. Rufinus, *Summa decretorum*, ed. H. Singer (Paderborn, 1902), 35–42; *Die Summa des Stephanus Tornacensis über das Decretum Gratiani* (Giessen, 1891), 24–28; *The Summa Parisiensis on the Decretum Gratiani*, ed. T. McLaughlin (Toronto, 1952), 14–18; the critical comment remains D.20 d.a.c.1, 'Papal decretals are equal in law to conciliar canons'.

³ In addition to the literature cited in n. 1 above, see also the debate surrounding Innocent III and the Fourth Lateran in 1215, summarised in A. Duggan, 'Conciliar Law, 1123–1215: The Legislation of the Fourth Lateran Councils', in *HMCL*, 343–44.

meagrely at best to such extensive and ancient debates, but this piece aims to analyse the use, in specific local councils in the later-twelfth century, of the decrees of papal general councils. To that end, my focus here is straightforward. It looks at the employment of a set of papal conciliar canons issued in Rome in 1179, particularly in areas connected to the contemporary Angevin realm. The main focus will be the first of these councils to repeat large sections of the 1179 canons, that held at Westminster in 1200, but three others at Westminster in 1175, Rouen in 1190 and York in 1195 are used in comparison and to provide context and texture. Lurking behind these comments, therefore, is the still-pertinent distinction identified by Richard Helmholz twenty-five years ago, between law which was universal or general, and law which was local or particular.⁴

Despite demonstrating his customary deep awareness of the problems and possibilities of legal history, Helmholz began his piece with the presumption that a set corpus of law existed, an idea made more problematic in recent years through scholarly reconsiderations of the idea that a set corpus of legal texts existed in the twelfth century. Despite the growing popularity of collections such as Gratian's *Decretum*, which survives in hundreds of manuscripts compiled after c.1140, for example, the surviving manuscripts demonstrate changes both great and small between individual copies.⁵ Although the first recension of the *Decretum* had at best a limited dissemination, the sporadic interpolation of the *paleae* makes it difficult to speak of a vulgate

⁴ R. Helmholz, 'The Universal and the Particular in Medieval Canon Law', in P. Landau and J. Müller (eds.), *Proceedings of the Seventh International Congress of Medieval Canon Law, Munich, 13–18 July 1992*, MIC C, 10 (Vatican City, 1997), 641–59.

⁵ The *Decretum* is no longer considered to have appeared fully-formed in c.1140: in addition to the discussion in the Introduction, see J. Wei, 'Gratian's *Decretum* in France and Halberstadt', in P. Carmassi and G. Drossbach (eds.), *Rechtshandschriften des deutschen Mittelalters: Produktionsorte und Importwege*, Wolfenbüttler Mittelalter-Studien, 29 (Wiesbaden, 2015), 363–83; idem, 'The Later Development of Gratian's *Decretum*', in J. Goering, S. Dusil and A. Thier (eds.), *Proceedings of the Fourteenth International Congress of Medieval Canon Law, Toronto, 5–11 August 2012*, MIC C, 15 (Vatican City, 2016), 149–61; on the *paleae*, see idem, 'The Later Development of Gratian's *Decretum*', 156–61, also R. Weigand, 'Zusätzliche Paleae in fünf Dekrethandschriften', *ZRG Kan. Abt.*, 78 (1992), 65–120; idem, 'Versuch einer neuen, differenzierten Liste der Paleae und Dubletten im Dekret Gratians', in P. Linehan (ed.), *Life, Law and Letters: Historical Studies in Honour of Antonio García y García*, *Studia Gratiana*, 29 (Rome, 1998), 883–99. For an introduction on *paleae*, see also P. Landau, 'Gratian and the *Decretum Gratiani*', in *HMCL*, 47–48 and the literature cited within.

before the end of the twelfth century, as John Wei has demonstrated.⁶ Moreover, while it remains a secure assumption that centres of government and learning, especially ones as influential as Reims, Canterbury and London, would have had access to multiple copies of the *Decretum* by c.1200, there is no guarantee that the same applied to smaller or less important houses.⁷ The relationship between general and particular law was further complicated by the dispersal of papal decretals which, as Anne Duggan has persuasively argued, were employed as general precedents despite their writers' intentions that they act only as judgements in particular cases.⁸ For Duggan, the general precedents emerged from papal councils, which she perceives as the traditional location for such papal law-making.

It is therefore becoming increasingly apparent that medieval canon law existed in a state of flux. In this narrative, and despite the growing awareness of the insecurity of the transmission, dissemination and acceptance of papal conciliar canons, those decrees provide the periodic foundations on which all else rested. What remains obscured, however, are both how far those papal councils engaged with local issues and the reverse: how local councils chose to implement or accept the statutes enacted at a papal level. Christopher Cheney, amongst others, assumed that all papal conciliar statutes emerged from cases or problems which were

⁶ Wei, 'The Later Development of Gratian's *Decretum*', passim and esp. 149, where he points to one benefit of the study of these later recensions as being to 'provide insight into the contrasting characteristics and approaches to legal study of different legal centres'.

⁷ Landau, 'Decretum and the *Decretum Gratiani*', 48, suggests around 160 surviving twelfth-century copies of the *Decretum*, of which some can be located with more precision; Wei, 'The Later Development of Gratian's *Decretum*', 149, points to 'over six hundred' for the Middle Ages more broadly. The earliest copy attested in England was that gifted to Lincoln in the 1150s, when John of Salisbury was also clearly using Gratian, but many of these manuscripts have since been lost: M. Brett, 'English Law and Centres of Law Studies in the Later Twelfth Century', in T. Iversen (ed.), *Archbishop Eystein as Legislator: The European Connection* (Trondheim, 2011), 89. Rochester acquired a copy 'soon after 1202', while the abbey at Bury St Edmund's owned a copy by the late-twelfth century: R. Thomson, 'The Library of Bury St Edmunds Abbey in the Eleventh and Twelfth Centuries', *Speculum*, 47 (1972), 617–45 at 641; I would also like to thank Martin Brett for his ever-perceptive comments and thoughts on library catalogues and individual manuscripts of twelfth-century canonical collections.

⁸ A. Duggan, 'De consultationibus tuis: The Role of Episcopal Consultation in the Shaping of Canon Law in the Twelfth Century', in B. Brasington and K. Cushing (eds.), *Bishops, Texts and the Use of Canon Law around 1100: Essays in Honour of Martin Brett* (Farnham-Burlington, 2008), 191–214; eadem, 'Conciliar Law', 318–66; eadem, 'Making Law or Not? The Function of Papal Decretals in the Twelfth Century', in P. Erdö and S. A. Szuromi (eds.), *Proceedings of the Thirteenth International Congress of Medieval Canon Law, Esztergom, 3–8 August 2008*, MIC C, 14 (Vatican City, 2010), 41–70.

repeatedly referred to papal attention; Mary Cheney, drawing on that idea, pointed to the overlap between legal cases and local councils.⁹ Both Cheneys, however, focussed on the process by which information reached the curia rather than investigating the use of central statutes locally after their general approval. Given that papal decretals are now seen as more responsive and less authoritarian, that opens up the question of how papal conciliar decrees were received and implemented locally before an authorised corpus of law existed. How did bishops understand conciliar canons? How did they know what they were? In other words, how did general law stand on its own, how did local bishops choose to use general law within the circumstances of provincial councils and who worked out what the general law was that they could employ?

The councils analysed here can be used to answer some of these questions. They have been selected for their reflection of papal law, although the vagaries of survival exert some influence. The papal council that provides the centrepiece was held by Alexander III at the Lateran Basilica in 1179 and became the first of the twelfth-century councils whose decrees were widely known as canons of a 'Lateran council', implying a certain authority.¹⁰ On the other hand, while England was not the only place in Latin Christendom to hold semi-frequent provincial assemblies, England and northern France represent important focal points for examinations into local synods.¹¹ This region of Europe also demonstrates as well as any other the renewed interest in provincial and regional synods that saw Innocent III reiterate mandatory

⁹ Amongst others, see C. Cheney, 'Some Aspects of Diocesan Legislation in England during the Thirteenth Century', rpt. in his *Medieval Texts and Studies* (Oxford, 1973); M. Cheney, 'The Council of Westminster 1175: New Light on an Old Source', *Studies in Church History*, 11 (1975), 61–68, pointed to overlap between papal decretals and the canons of a provincial synod at Westminster in 1175, discussed below.

¹⁰ First and most cogently argued by C. Cheney, 'The Numbering of the Lateran Councils of 1179 and 1215', rpt. in his *Medieval Texts and Studies* (Oxford, 1973), 203–08.

¹¹ O. Pontal, *Les conciles de la France capétienne, jusqu'en 1215* (Paris, 1995); e.g. G. Gresser, *Die Synoden und Konzilien in der Zeit des Reformpapsttums in Deutschland und Italien von Leo IX. bis Calixt II. 1049–1123* (Paderborn, 2005); P. Demouy, 'Synodes diocésains et conciles provinciaux à Reims et en Belgique seconde aux XIe–XIIIe siècles', in G. Clause, S. Guilbert and M. Vaisse (eds.), *La Champagne et ses administrations à travers le temps. Actes du colloque d'histoire régionale, Reims - Châlons-sur-Marne, 4–6 juin 1987* (Paris, 1990), 93–112.

annual provincial synods in 1215.¹² Investigations into English ecclesiastical government are equally long-standing and perceptive. What makes these four Angevin synods a truly worthy object for study, and the 1200 council of Westminster in particular, is the survival of the statutes issued at each of them and their relationship in some way or another to England, an area at the heart of change in medieval canon law.¹³ All of these confluences make them well-suited to the sort of detailed comparison that will be entertained here, which permits an investigation of legal practice in the context of local synods.

The two councils that provide the frame for this discussion are Lateran III in 1179 and Westminster in 1200. In late spring 1178, Alexander III sent the letter *Quoniam in Agro*, calling the clerics of Latin Christendom together in order to consult on matters great and small concerning the church.¹⁴ The assembled prelates celebrated the end of twenty years of schism.¹⁵ Convened by papal authority, the council took place at the Lateran Basilica in Rome, the seat of the bishop of Rome and a symbolic centre-point of Latin Christianity.¹⁶ As well as producing a set of around twenty-seven conciliar decrees, the council dealt with the Waldensians, the disputed election of the archbishop of Bremen, and a series of other cases often relegated to

¹² On Innocent III and provincial councils, see e.g. C. Cheney, *English Synodalia of the Thirteenth Century* (Oxford, 1941), 36–37; item, *From Becket to Langton: English Church Government, 1170–1213* (Manchester, 1956), 141–42 and the different path of the English Church; also the summary in Duggan, 'Conciliar Law', 346.

¹³ Rouen is at best imperfectly preserved, in *Concilia Rotomagensis provinciae*, ed. G. Bessin (Rouen, 1717), 94–100, and thus Mansi, vol. 22, col. 581–86, and see also the brief discussion in Duggan, 'Conciliar Law', 339 n. 109. For York, see *Councils & Synods, with other documents relating to the English Church, Vol. 1: A.D. 871–1204*, eds. C. Brooke, M. Brett, and D. Whitelock (Oxford, 1981), 1042–52.

¹⁴ *Quoniam in Agro* survives in five known copies, four addressed to provinces or churches and one to Conrad, archbishop of Salzburg and then Cardinal Bishop of S. Sabina: JL 13070, 13097–9; JL -- : PUF n.F., vol. 5, ed. J. Ramackers, no. 256, pp. 361–63. See G. Tangl, *Die Teilnehmer an den allgemeinen Konzilien des Mittelalters* (Weimar, 1922), 211 for a discussion; JL 13070, sent to Conrad of Salzburg on 30 May 1178, is often overlooked.

¹⁵ The fullest accounts of the schism can be found in J. Laudage, *Alexander III. und Friedrich Barbarossa*, *Forschungen zur Kaiser- und Papstgeschichte des Mittelalters*, 16 (Cologne, 1997), and in the selection of articles gathered in P. Clarke and A. Duggan (eds.), *Pope Alexander III (1159–81): The Art of Survival* (Farnham-Burlington, 2012).

¹⁶ The two fullest accounts of the council remain those of Roger of Howden, which stretches to a paragraph: Roger of Howden, *Chronica*, ed. W. Stubbs, *Chronica Magistri Rogeri de Houedene*, Rolls Series, 51 (4 vols, London, 1868–71), vol. 2, 171; see also now Bernardo Marragone, as identified and analysed in R. Engl and A. Larson, 'Ein unbeachtetes Zeugnis zum dritten Laterankonzil: Bernardo Maragones Annales Pisani', *ZRG Kan. Abt.*, 97 (2011), 357–75; *Gli annales Pisani de Bernardo Maragone*, ed. M. Gentile, *Rerum Italicarum Scriptores*, 6.2 (Bologna, 1936), 68.

the murky edges of local studies including a tithe dispute between the Cistercians and the archbishops of Reims and Rouen, while a judge-delegate was appointed to hear a case between the bishop of Calahorra and the archbishop of Tarragona over a couple of monasteries.¹⁷ 289 bishops and representatives of 69 abbeys are known to have attended, including the bishops of Hereford, Bath, Norwich, St Asaph and St David's, all from the province of Canterbury.¹⁸ These southern bishops were joined by Hugh de Puiset, bishop of Durham.¹⁹ The canons themselves covered a variety of issues, most relating to ecclesiastical matters; these ranged from a lengthy canon limiting episcopal excesses and stipulating the appropriate numbers of horses permitted on visitation to the by-then standard prohibitions of clerical marriage and lay investiture. Their widespread dissemination is evidenced through their survival in well over fifty manuscripts of which most, if not all, were canonical collections and their inclusion in early-thirteenth century canonical collections including, critically, the *Liber Extra* of Raymond of Peñafort.²⁰

Westminster, by contrast, was a provincial council called by Archbishop Hubert Walter for the bishops of the province of Canterbury.²¹ No bishops or clerics of the archdiocese of

¹⁷ The best overall account of the council can be found in: K. Héféle, *Histoire des Conciles d'après les documents originaux*, rev. and trans. H. Leclercq (11 vols, Paris, 1907–49), vol. 5, 1086–1112; R. Foreville, *Latran I, II, III et Latran IV* (Paris, 1965), 135–54; Duggan, 'Conciliar Law', 333–41; the council is mentioned in passing several times Clarke and Duggan (eds.), *Pope Alexander III*, esp. A. Duggan, 'Master of the Decretals: A Reassessment of Alexander III's Contribution to Canon Law', 411–17; on the issues listed here, see JL 13452 (tithe dispute concerning the Cistercians); Arnold of Lübeck, *Chronica Slavorum*, ed. J. Lappenberg, MGH, SS rer. Germ., 14 (Hannover, 1868), 46–47, *Annales Stadenses*, ed. G. Pertz, MGH, Scriptores, 16 (Hannover, 1859), 348–49, and S. Kuttner, 'Bertram of Metz', *Traditio*, 13 (1957), 504 concerning the election of the archbishop of Bremen; Walter Map, *De nugis curialium: Courtier's Trifles*, ed. and trans. M. R. James, rev. C. Brooke and R. Mynors (Oxford, 1983), 124–27 on the Waldensians; PUS, vol. 2, no. 166, p. 513 on the dispute between Tarragona and Calahorra: this is a later letter referring back to the conciliar decision.

¹⁸ Four attendance lists for the council survive in manuscripts, three of which are in Paris and one in London. For the list here, see Paris, BnF, lat. 14938, fol. 266va, and for a commentary on the list in general Tangl, *Die Teilnehmer an den allgemeinen Konzilien des Mittelalters*, 212–14 and Foreville, *Latran I, II, III et Latran IV*, 387–90.

¹⁹ Paris, BnF, lat. 14938, fol. 266va.

²⁰ S. Kuttner, 'Concerning the Canons of the Third Lateran Council', *Traditio*, 13 (1957), 505–06; the fullest analysis of the canons remains W. Herold, 'Die Canones des 3. Laterankonzils', Inauguraldissertation (Bonn, 1952), for the text see now COGD, vol. 2, 127–47.

²¹ For convenience and to distinguish him from Walter of Coutances, archbishop of Rouen, Hubert Walter is referred to as 'Hubert' throughout. The best analysis of the Westminster synod remains that found in C. Cheney, *Hubert Walter* (London, 1967), 64–68, though see also his 'Legislation of the Medieval English Church: Part II', *EHR*, 50 (1935): 385–417.

York were present, Hubert's legatine commission having lapsed with the death of Celestine III two years earlier.²² *Councils & Synods* provides the best cumulative overview of events at the 1200 council and noted its influence on later English provincial councils and statutes, including those of 1213.²³ Although the volume editors for 1200 were Brooke, Brett and Whitelock, the influence of Christopher Cheney is unmistakable in the commentary.²⁴ *Councils & Synods* points to three surviving copies of the decrees issued in 1200, accompanied by narratives of varying length found in Diceto, Gervase of Canterbury, Roger of Howden and the Dunstable Annals. Two of the three copies survive in manuscripts of Howden's *Chronica*, with the third in a thirteenth-century miscellany that at one point in its life spent time in Smithfield. Howden's details are fairly scant; normally a reliable witness, his comments are vague and references to Geoffrey FitzPeter, then justiciar, condemning the synod are unclear. Instead, Diceto's account gives the most detail: he lists the presence of nine bishops, many abbots including the prior of Canterbury, and the bishop-elect of Hereford, Giles de Braose. Giles' consecration at the council is also recorded by Gervase of Canterbury, and both accounts note the consecration of John de Gray to the bishopric of Norwich.

Both the 1179 and 1200 decrees survive in the works of Roger of Howden, in line with his tendency to copy or quote official documents into his narrative.²⁵ Nevertheless, he provides a critical witness for the later council, listing the statutes as separated into sixteen sections, each of which was preceded by a rubric, and explicitly stating that 'the archbishop issued the decrees written below, establishing that they should be inviolably observed by all his

²² Cheney, *From Becket to Langton*, 33.

²³ See *Councils & Synods*, eds. Brooke et al., vol. 1, 1055–60; *Councils & Synods, with other documents relating to the English Church, Vol. 2: A.D. 1205–1313*, eds. C. Cheney and F. Powicke (Oxford, 1964), 23–36 which also observes overlap with the 1213 council. By the time of Langton's next provincial council in 1222, Lateran IV was employed instead.

²⁴ *Councils & Synods*, eds. Brooke et al., vol. 1, 1055–60 for narratives and commentary concerning the 1200 council.

²⁵ J. Gillingham, 'The Travels of Roger of Howden and his Views of the Irish, Scots and Welsh', in his *The English in the Twelfth Century* (Woodbridge, 2000), 71.

subjects'.²⁶ Although there is some uncertainty of the origins of the rubrics, where they appear they are informative: that to c.5, for example, states that it concerns 'how the archbishop and bishop and their officials ought to be lodged with their subjects', while c.6 is preceded by the comment 'that no one is to be ordained without a definite title'.²⁷ The presence of a precise rubric does not prevent the canon itself going somewhat off-message at times. In c.10, a rubric condemning clerical incontinence precedes a canon concerned with a variety of extra issues, including drunkenness and visits to taverns on the part of clerics, and stipulating that they should always wear ecclesiastical habits and be tonsured.²⁸

To the three manuscript previously recognised copies of the 1200 decrees can be added a fourth, now in the library of New College, Oxford.²⁹ The manuscript contains a copy of the abbreviation of Gratian's *Decretum* known as *Quoniam Egestas*.³⁰ The final three folios of the New College manuscript comprise a set of additional legal excerpts including the canons of the 1200 council, albeit in a slightly different form to those in Howden and the Smithfield manuscript.³¹ Each canon is written in a single hand, but the same hand is not responsible for

²⁶ *Councils & Synods*, eds. Brooke et al., vol. 1, 1060.

²⁷ *Ibid.*, 1063: 'Quomodo archiepiscopus et episcopus et eorum officialies debeant hospitari cum subiectis'; *Ibid.*, 1064: 'Ne quis ordinetur sine certo titulo'. The rubrics appear as variants in the London manuscript: *ibid.*, 1056-7.

²⁸ *Ibid.*, 1067.

²⁹ New College, Oxford, MS 220, fols. 92v-94v.

³⁰ Previously analysed by Rudolf Weigand, the work survives in six other manuscripts. He suggested that the Paris, Oxford and Voralms manuscripts contained the second recension of the abbreviation. *Quoniam Egestas* holds further interest for legal historians, with the Prague manuscript in particular providing a link to the revitalisation of Roman Law in Provence via marginal commentaries to the civilian *Exceptiones Petri*. As with other contemporary canonical material, however, manuscripts of *Quoniam Egestas* do at times contain additional material: the Parisian manuscript, for example, incorporates a short additional collection of the type seen appended to copies and abbreviations of the *Decretum* elsewhere. See R. Weigand, 'Die Dekretabbreviatio "Quoniam egestas" und ihre Glossen', in W. Aymans, A. Egler and J. Listl (eds.), *Fides et Ius: Festschrift für Georg May zum 65. Geburtstag* (Regensburg, 1991), 249-65; S. Kuttner, *Repertorium der Kanonistik (1140-1234)*, Studi e Testi, 71 (Vatican City, 1937), 263-64; Leipzig, Universitätsbibliothek, 1012; Paris, BnF, lat. 15001; Prague, Metropolitankapitel, J.LXXIV; St Gallen, Stiftsbibliothek, 711; Voralms, Stiftsbibliothek, 184, and Worcester, Cathedral and Chapter Library, Q.43. On the Provençal connection, see U.-R. Blumenthal, 'The Revival of Roman Law: The *Exceptiones Petri*', *Haskins Society Journal*, 21 (2009), 113-23; vs A. Gouron, 'Sur le patrie et la datation du "Livre de Tubingue" et des "Exceptiones Petri"', *RIDC*, 14 (2003), 32-37. Paris, BnF, lat. 15001, fols. 121v-26r includes a variety of canonical material. The selection is in keeping with the early versions of the so-called *Dekretanhänge* detailed in Kuttner, *Repertorium der Kanonistik*, 273-76 and in e.g. R. Weigand, 'Die Dekretanhänge in den Handschriften Heiligenkreuz 44, Pommersfelden 142 und München 28175', *BMCL*, 13 (1983), 1-25.

³¹ Oxford, New College, MS 220, fol. 92v-94v.

all the canons. Equally, although there are clear line breaks at the end of decrees, as in Howden's version printed in *Councils & Synods*, *paragraphus* marks within the text suggest that those were divided further.³² The rubrics are lacking entirely, although each section ends with the 'Salvo etc.' characteristic of the 1200 decrees elsewhere. Finally, the order of the canons is different to both Howden and the London manuscript as outlined in *Councils & Synods*.³³ These details are not unsurprising: they conform to the haphazard way in which most sets of conciliar *acta* were disseminated at the time, reinforcing the idea that the statutes issued in councils and synods were as reliant on local re-use as they were on the issuing authority which underpinned them.

Across the four surviving manuscripts of its decrees, the 1200 council nevertheless presents clear evidence of the extensive employment of papal statutes as part of provincial ecclesiastical government.³⁴ Howden's sixteen canons covered a range of issues of interest to the English church. To sample a few, they instituted that priests must clearly state the words of the service, that all services were to be public rather than secret, and that all clerics were to refrain from public drunkenness and wear a habit and be tonsured at all times. The rationale behind this decree is made explicit: it was considered unfair for clerics were guilty of misconduct to be treated more leniently than the laity who unwittingly caused harm yet were required to visit the papal curia seeking forgiveness.³⁵ To a canon on archiepiscopal visitations were added stipulations on tithes, on leper colonies, and on the practical elements of suspension and excommunication. The final canons concerned monastic privileges and exemptions, referring to Templars, Hospitallers and both 'black' and 'white' monks, meaning that a range of

³² E.g. Oxford, New College, MS 220, fol. 94r: 'vite possit habere. ¶[Idem in subdiaconi ordinatione statuimus...]

³³ cc.1, 2, 3, 4, 9, ?, 10, 11, 12, 13, ?, 15, 5 [frag.], 6, 14, 8, 5 [frag.], 7.

³⁴ For a summary, see Cheney, *Hubert Walter*, 120–21; R. Stacey, 'Hubert Walter', *Oxford Dictionary of National Biography* (Oxford, 2004), <http://www.oxforddnb.com/view/article/28633> (accessed 23 June 2017); the canons are in *Councils & Synods*, eds. Brooke et al., vol. 1, 1060–70, with an appendix on 1070–74.

³⁵ As stipulated in *Si quis suadente*: R. Helmholz, 'Si quis suadente: Theory and Practice', in P. Linehan (ed.), *Proceedings of the Seventh International Congress of Medieval Canon Law, Cambridge, 23–27 July 1984*, MIC C, 8 (Vatican City, 1988), 425–38; K. Christensen, 'The "Lost" Papal Gloss on *Si quis suadente* (C.17 q.4 c.29): John of Salisbury and the Canonical Tradition in the Twelfth Century', *BMCL*, 18 (1988), 1–11.

ecclesiastical experiences were included, although there does seem to be an episcopal slant to the issues included.

Scholars have long accepted that the 1200 synod used and restated earlier statutes, referring especially to the councils of 1179 and 1190. *Councils & Synods* comments that the 1200 decrees demonstrated 'much dependence on the Lateran Council of 1179', although they did not replicate them entirely.³⁶ The 1190 Rouen provincial synod called by Walter of Coutances, noted as an ancestor, overlapped with the 1200 decrees, although not strongly. Despite a citation to a Rouen council within the 1200 Westminster decrees and the presence of some thematic overlap between the two, it is far from obvious; in any case, the Rouen citation may reflect a council there in 650 rather than that of 1190.³⁷

The 1179 council nevertheless presents an explicit source for the 1200 decrees and a number were repeated more-or-less verbatim in Hubert's text.³⁸ These covered visitation rights and responsibilities; absolute ordination, so the process by which a cleric was ordained without a benefice to support him; appeals; simony writ both large and small; the imposition of new exactions; the promising of benefices before they fell vacant; a protection for leper colonies, allowing them to possess their own cemeteries and receive an exemption on certain tithes; and, finally, two of the canons concerning monks, that which limited the Templars and Hospitallers to their privileges, and that which stipulated against entry gifts into monasteries. The connections are sign-posted in the text by introductory references to statutes introduced 'at the most renowned Lateran Council by the modern fathers' or, in a further example, reference to

³⁶ *Councils & Synods*, eds. Brooke et al., vol. 1, 1056.

³⁷ Westminster (1200) c.9, 'Detentores vero decimarum iuxta Rothomagensis concilii constitutum' = *Councils & Synods*, eds. Brooke et al., vol. 1, 1066 and at n. 4, possibly referring to Rouen (650) but quoting directly from Rouen (1190); on the Rouen synod see also below.

³⁸ Westminster (1200) c.5 = 3 Lat. (1179) c.4; Westminster (1200) c.6 = 3 Lat. (1179) c.5; Westminster (1200) c.7 = 3 Lat. (1179) c.6; Westminster (1200) c.8 = 3 Lat. (1179) cc.7 + 8 (verbatim) + gist of c.18; Westminster (1200) c.10 = 3 Lat. (1179) c.11; Westminster (1200) c.13 = 3 Lat. (1179) c.23; Westminster (1200) c.14 = 3 Lat. (1179) c.9; Westminster (1200) c.15 = 3 Lat. (1179) c.10.

the decrees 'respectfully embracing the statutes of the Lateran Council'.³⁹ In addition to these overt borrowings is one more veiled reference to the 1179 decrees. Canon 8, amongst other offerings, stipulates against charging for the licence to celebrate divine office or to teach, which incorporates the spirit, if not the exact wordings, of 1179 c.18. In numerical terms, eight of the sixteen canons issued in 1200 relied in large part on the 1179 conciliar decrees.

Deliberate repetition of the earlier canons therefore seems part of Hubert's plan for the council at Westminster. What remains unexplored are his rationales and the more intriguing question of his source. To confront the question of Hubert's motivations first, there are hints that Alexander III ordered his conciliar decrees repeated locally. While canon law made no provision for papal or general councils, diocesan repetition of provincial synodal decrees had been long accepted and was explicitly promoted in Gratian's *Decretum*.⁴⁰ Equally, Robert Somerville has pointed to the repetition and evolution of a 'programme' of reform via the series of Innocentine councils of the 1130s.⁴¹ For the 1179 council, the principal witness to such repetition are a narrative concerning congregations of the Vallombrosan Order in 1179, which has survived in a manuscript now in the Biblioteca Medicea Laurenziana.⁴² The manuscript notes how the head of the Vallombrosan congregation had gone, alongside other abbots, to the general council 'the lord Pope' had held in Rome. He returned with an order from said pope to call together his venerable brothers and then repeat the holy institutes promulgated in the council. A direct parallel can be found in the Dunstable Annals, a narrative source to the 1200

³⁹ Westminster (1200) c.5 = *Councils & Synods*, eds. Brooke et al., vol. 1, 1062: 'Cum inter ea que statuta sunt a modernis patribus Lateranense concilium celeberrimum sit et omnimodus observacione dignissimum...'; Westminster (1200), c.10 = *Ibid.*, 1067: 'Statuta eciam Lateranensis concilii reverenter amplectantes'.

⁴⁰ Gratian, *Decretum*, ed. Friedberg, D.18 c.17, taken from the Sixteenth Council of Toledo, which provides for bishops to gather together the abbots, priests, deacons and clerics of their dioceses within six months of a provincial council and spread its acts.

⁴¹ The most recent of a series of pieces also gives an excellent summary of Somerville's other findings: idem and M. Brett, 'The Transmission of the Councils from 1130 to 1139', in J. Doran and D. Smith (eds.), *Pope Innocent II (1130–43): The World vs the City* (New York-London, 2016), 226–71.

⁴² Florence, Biblioteca Medicea Laurenziana, S. Marco 599, fol. 47r, with sections repeated in 1188 on fol. 48v but lacking the explicit reference; see also G. Fransen, 'Latran III et les canonistes', in J. Longère (ed.), *Le troisième concile de Latran: sa place dans l'histoire* (Paris, 1982), 39–40.

synod, albeit a brief one, which stated that Walter 'strongly ordered that the Lateran council be observed'.⁴³ Combined, these reports suggest a deliberate edge to the replication.

The idea that such repetition of the decrees was papally-instituted should, however, be resisted. Despite the *Annals'* comment, the 1200 council did not repeat all of the 1179 conciliar canons. Seventeen of the twenty-seven-odd decrees issued in Rome were missing, covering a range of issues including heresy, usury, lay investiture, papal elections, decisions reached in chapter, and the Peace and Truce of God.⁴⁴ Instead of the blind repetition of decrees, however, the implication is that the decrees repeated were chosen, presumably because of their relevance for the province at a given time. To take one example, the 1180s and 1190s had seen at least one protracted dispute over the rights allowed to leper colonies: this case, over the tithes payable by the leper colony at Maiden Bradley, was finally ended in 1202 by papal legates.⁴⁵ Equally, the canon on due process in excommunication quite clearly demonstrates the continued reverberations of the tit-for-tat excommunications that plagued the English church in the 1160s during the Becket conflict. Such selective reproduction has parallels elsewhere, both for Alexander's Lateran council through the mysterious council apparently held at Montpellier in 1195, which repeated a selection of decrees with additions, and also for earlier general councils, particularly Innocent II's 1139 Lateran gathering.⁴⁶ Furthermore, the Florentine narrative, while suggesting the repetition of the 1179 decrees was promoted by Alexander, then goes on to mention the reissue of only two, both of which directly concerned matters relevant to the Vallombrosans: c.10 and c.25, the former of which laid down

⁴³ 'Eodem anno Hubertus Cantuariensis apud Wemust concilium celebravit, et Lateranum concilium iussit firmiter observari', *Councils & Synods*, eds. Brooke et al., vol. 1, 1059.

⁴⁴ COD, 211–25, and the literature cited above.

⁴⁵ C. Cheney and E. John (eds.), *English Episcopal Acta, Vol. 3: Canterbury, 1193–1205* (London, 1986), no. 560, pp. 214–15.

⁴⁶ On Montpellier, see: Duggan, 'Conciliar Law', 339; on the selective repetition of specific decrees by Innocent II at Pisa and later the Lateran, see PUP, 199–202, and the commentary in Brett and Somerville, 'The Transmission of the Council from 1130 to 1139', 244.

regulations for monasteries, including prohibiting the payment of an entry price, while the latter prohibited usury.⁴⁷

Hubert's motivations are elucidated further by comparison with the other surviving later-twelfth century English conciliar canons, and their principal Norman counterpart. As well as the Westminster decrees considered here, canons survive from a provincial legatine synod held by Hubert's predecessor Richard of Dover in 1175 and for Hubert's own legatine council held at York in 1195.⁴⁸ Richard's synod is particularly well-evidenced, with three surviving manuscripts of the decrees and narratives in chronicles including, as with the 1200 synod in the same location, Ralph of Diceto and Howden. Again, the latter included a set of conciliar decrees alongside his narrative, but the most interesting source for the council remains the set of 'propositions' found in a British Library manuscript and identified by Mary Cheney as a list of issues to be discussed or emended.⁴⁹ Howden also acts as both a narrative and legislative source for the 1195 council at York.

These councils present easily distinguishable approaches to the drafting of conciliar canons, any of which Hubert could have employed in drafting the decrees of his 1200 synod. Westminster (1175), with its set of propositions, suggests interaction with prelates prior to the synod. Its decrees are legally precise; while in all but three the source of the regulation is cited, they are new drafts and do not extensively copy the source material. One decree on the metal appropriate for the chalice at Mass, for example, used a council of Reims as authority; another, on the qualities required by those being ordained is introduced wonderfully as 'from various decrees of Urban, Innocent and the councils of Chalcedon and Carthage' and is an intricately formulated response to a set of problems.⁵⁰ In other cases, the authorities are provided by papal

⁴⁷ Florence, Biblioteca Medicea Laurenziana, S. Marco 599, fol. 47r.

⁴⁸ Westminster (1175): *Councils & Synods*, eds. Brooke et al., vol. 1, 965–93; York (1195): *Ibid.*, 1042–52.

⁴⁹ *Ibid.*, 978–81; see also Cheney, 'The Council of Westminster 1175', 61–68.

⁵⁰ Westminster (1175) c.17 = *Councils & Synods*, eds. Brooke et al., vol. 1, 990; Westminster (1175) c.5 = *Ibid.*, 985.

statements or letters; given the centrality of English material in the emergence of the decretal collections in the later-twelfth century, it is intriguing to note that papal authorities are often referred to in the text as 'decrees', i.e. *decreta*. For c.12, where the decree was 'sent to the bishop of Norwich', implying that a letter of some form was the source, the use of this term suggests either inaccuracy on the part of the copyist or, more likely given that c.1 is expressly stated to be from 'a decretal letter of Pope Alexander III to Roger, bishop of Worcester', instead reflects the slippery nature of the vocabulary at the time.⁵¹ In total, only three of the nineteen synodal canons were not based on earlier precedents, with two un-footnoted and one intriguingly referred to as a 'new decree'.⁵² For the most part and excepting the three Alexandrine letters, the authorities can easily be found in the *Decretum* of Gratian. It seems likely that a trained lawyer was involved in the drafting of these decrees, and Anne Duggan has suggested that Gérard Pucelle, lawyer, cleric and teacher, was involved in some manner.⁵³ Gérard was highly learned and would have been familiar with the contents of the *Decretum*, involved as he was with the 'Cologne' school of lawyers as well as teaching in England.

The growing number of *magistri* in episcopal *familiae* is well-attested, but Gérard's help in drafting the 1175 canons was not matched at either of Hubert Walter's councils. At York, attended by clerics of the northern archdiocese and possibly a few more besides, Hubert instituted a set of conciliar decrees in 1195.⁵⁴ While the synodal canons from York do overlap in some cases obviously with those of Westminster in 1200, again the 1179 council is cited only once where it is used as an authority prohibiting the institution of new exactions by bishops, or the increase of existing charges. Critically, that reference, and its accompanying clause, is absent from one of the main witnesses to the conciliar canons: the two manuscripts

⁵¹ Westminster (1175) c.12 = *Ibid.*, 988.

⁵² Westminster (1175) cc.6, 9, 14 = *Ibid.*, 986–87, 989.

⁵³ Duggan, 'Making Law or Not?', 43–55; on Gérard, see also P. Landau, 'Die Kölner Kanonistik des 12. Jahrhunderts: Ein Höhepunkt der europäischen Rechtswissenschaft', *Rheinischen Vereins für Rechtsgeschichte e.V. zu Köln* (Badenweiler, 2008), 8–11.

⁵⁴ *Councils & Synods*, eds. Brooke et al., vol. 1, 1042–52.

of Roger of Howden's *Chronica* which also contain the 1200 decrees.⁵⁵ Howden's copy of the canons contains several mis-readings, but the absence of any reference to the 1179 council is nevertheless marked and interesting. It implies that the reference was not foundational to the text, or that Howden was using an unformed or altered version. As a whole, in fact, the 1195 canons are less legally precise than their counterparts in 1175. They appear to borrow from a smaller number of texts, and in particular they have none of the 1175 council's detailed reference to a mixture of alternative sources. The implication is that York in 1195 was not drafted by, or in the presence of, a lawyer of the skill and expertise of Gérard.

So far, it seems as though the 1175 synod represents an outlier, an idea reinforced by the 1190 provincial and legatine council held at Rouen. Despite being in Normandy, Rouen had close connections with the English Church. Not only was the cross-channel 'Angevin Empire' in full sway, but its archbishop, Walter of Coutances, had previously been bishop-elect at Lincoln. According to Peter Landau, Walter was learned in law and may have been responsible for the creation of a law school in Lincoln.⁵⁶ The idea of a law school in Lincoln was in large part founded on the presence there of a copy of a particularly important canonical collection known as the *Appendix Concilii Lateranensis*; Landau even hints at Walter's engagement with that school.⁵⁷ If Walter was a trained lawyer, however, that was not obvious

⁵⁵ York (1195) c.12 = *Ibid.*, 1050: 'Nec ecclesiarum augeant pensiones, cum in Lateranensi concilio sit statutum ut nec episcopis nec abbatibus liceat veteres census augere vel novas imponere', present only in L.

⁵⁶ P. Landau, 'Walter von Coutances und die Anfänge der Anglo-Normannischen Rechtswissenschaft', in O. Condorelli (ed.), *Panta Rei: Studi dedicati a Manlio Bellomo* (5 vols, Rome, 2004), vol. 3, 203–04; Turner's suggestion that Walter's learning originated in Paris means very little now that a northern-French school of law is well-established amongst scholars: R. Turner, 'Walter of Coutances', *Oxford Dictionary of National Biography* (Oxford, 2004), <http://www.oxforddnb.com/view/article/6467> (accessed 23 June 2017); see also now the brief note by Peter Landau suggesting that Kuttner and Gouron also saw Walter as a learned *magister* amongst the canon law schools, 'Stephan Kuttner's Last Discovery on Walter of Coutances: A Commemoration 110 Years after Kuttner's Birthday (a note)', *BMCL*, 33 (2016), 229–30.

⁵⁷ On *Appendix*, see C. Duggan, *Twelfth-Century Decretal Collections and their Importance in English History* (London, 1965), 51–57; idem, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes Antiquae*: The Making of the New Case Law', in *HMCL*, 277–80; idem, 'English Canonists and the *Appendix Concilii Lateranensis* with an analysis of Saint John's College, Cambridge, MS 148', *Traditio*, 18 (1962), 459–68; P. Landau, 'Studien zur *Appendix* und den Glossen in frühen systematischen Dekretalensammlungen', *BMCL*, 9 (1979), 1–22; the collection appeared first in *Conciliarum omnium tam generalium quam particularium*, ed. P. Crabbe (2nd edn, 2 vols, Cologne, 1551) but the printed version most easily accessible falls in Mansi, vol. 22, col. 274–454. The surviving manuscript, Lincoln, Cathedral and Chapter Library, MS 121, has been identified

through his conciliar decrees. By contrast to the 1175 decrees from Westminster, the thirty-two decrees promulgated at Rouen tend to brusque, terse commands.⁵⁸ The range of topics is extensive. One prohibited clerical fornication; another, the sons of priests acceding to an ordained role.⁵⁹ Forged seals and arson were also forbidden, and any found guilty of contumacy or of celebrating divine office against the prohibition of their bishop were excommunicated.⁶⁰ The 1179 Lateran council is directly cited only once, even though some of its ideas were repeated.⁶¹ The decree where it appears specified that archdeacons were only to ride six or seven horses in their archdeaconries, and provided three Angevin solidii in compensation for poor houses who housed archdeacons while on visitation.⁶² Of these elements, the former was taken from Alexander's council, where it formed part of a canon against episcopal exactions.⁶³ While the latter was not included in the Lateran canons themselves, it does replicate their spirit, taking it further with specific compensation. Overall, the Rouen canons demonstrate less precision and fewer explicit references to precedents than the 1175 decrees, suggesting that their composition may have been driven less by concern for those legal elements.

Given the alternatives, it seems that the Westminster (1200) decrees witness the deliberate but partial repetition of the decrees of an earlier general council. The partial element of that repetition emerged, most likely, as a result of only certain canons having a deep local relevance at the time, with the overlap with the leprosy case at Maiden Bradley providing the

by Landau as a critical source: 'The Origins of Legal Science in England in the Twelfth Century: Lincoln, Oxford, and the Career of Vacarius', in M. Brett and K. Cushing (eds.), *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl* (Farnham-Burlington, 2009), 175–78, but see the dissenting arguments put forward by Brett, who points to the manuscript's absence from a booklist compiled between 1160 and 1220, dating the manuscript's arrival in Lincoln to after 1220: 'English Law and Centres of Law Studies in the Later Twelfth Century', 101.

⁵⁸ Mansi, vol. 22, col. 581–86; *Concilia Rotomagensis*, ed. Bessin, 94–100; R. Foreville, 'The Synod of the Province of Rouen in the Eleventh and Twelfth Centuries', in C. Brooke et al. (eds.), *Church and Government in the Middle Ages: Essays Presented to Christopher Cheney on the Occasion of his Seventieth Birthday* (Cambridge, 1976), 19–39.

⁵⁹ Rouen (1190) cc.4, 6 = Mansi, vol. 22, col. 582.

⁶⁰ Rouen (1190) cc.28–30 = *Ibid.*, col. 586.

⁶¹ Though cf. J. Peltzer, *Canon Law, Careers and Conquest: Episcopal Elections in Normandy and Greater Anjou* (Cambridge, 2008), 66–67, suggesting a strong connection between Rouen and the 1179 Lateran council.

⁶² Rouen (1190), c.12 = Mansi, vol. 22, col. 583.

⁶³ Lateran (1179) c.4 = COD, 213.

strongest evidence of such choice. In this, and in Hubert's expansion upon certain decrees, there is a clear and strong connection with the repetition of a selection of Innocent II's 1139 canons at a provincial, legatine council in Valladolid in 1143.⁶⁴ Unlike at Rouen in 1190 and Vallombrosa in 1179, at Valladolid in 1143, Montpellier in 1195 and Westminster in 1200 councils repeat extensive sections of the papal decrees verbatim. The critical difference between these latter three stems from Hubert's lapsed legatine commission. Guy, Cardinal-deacon of SS Cosma e Damiano convened the Valladolid council, while Montpellier was presided over by a papal legate called Michael, about whom little else is known.⁶⁵ The 1200 council at Westminster was not the first to copy extensive extracts from papal canons into its text, but it was possibly the first to do so under the authority of a local archbishop rather than a legate of the papal curia.

Of equal interest is the source for the conciliar canons which were so extensively replicated in 1200. Copies of the 1179 decrees are known to survive in England, although no mandate for taking copies back to provinces, seen in 1215, survives. English bishops did attend the council, alongside clerics from lesser orders; there is a chance, albeit a slim one, that Howden too attended.⁶⁶ It is unthinkable that none of these attendees brought the 1179 decrees back to England, and English copies survive from the 1180s via a canonical collection which can be linked to Canterbury with a degree of certainty.⁶⁷ Moreover, four chronicles written in England contain the 1179 canons in full, and a further two contain references to the statutes.⁶⁸

⁶⁴ PUP, 199–202; Brett and Somerville, 'The Transmission of the Councils', 244.

⁶⁵ Very little is known concerning Montpellier, but see Duggan, 'Conciliar Law', 339. The canons can be found in Mansi, vol. 22, col. 667–71.

⁶⁶ *Councils and Synods*, eds. Brooke et al., vol. 1, 1012.

⁶⁷ *Cantuariensis*: London, BL Royal, 10.B.iv, fols. 42r–65v; Duggan, *Twelfth-Century Decretal Collections*, 75–76; idem, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*', 258–59, where he expressly comments that 'the Canterbury collection is appropriately so named, in respect of its contents and provenance'. A sister-collection, known as 'Roffensis', may also have initially had some connection to Canterbury: Duggan, *Twelfth-Century Decretal Collections*, 76–79; Duggan, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*', 259.

⁶⁸ The four chronicles are Gervase of Canterbury; William of Newburgh; and the two chronicles of Roger of Howden; the two containing variations are Ralph Diceto, who reproduces only two decrees but in their entirety, and Roger of Wendover, who lists titles.

When this hard evidence of the canons' survival and transmission in English manuscripts is combined with the more-or-less verbatim quotation of large sections of the Lateran III decrees at Westminster, the resultant textual comparison points to local copies of the canons being used by Hubert in 1200.

Of the ten decrees included in the Westminster acts, one allows a detailed comparison. Canon 5 of the 1200 decrees sits, in Howden, under the rubric of 'In what manner the archbishop and bishop and their officials ought to be granted hospitality with their subjects'.⁶⁹ It contains a significant section of c.4 of the 1179 council, which had also provided the basis for the canon promulgated by Walter of Coutances at Rouen in 1190.⁷⁰ For the current discussion, the focal point is a clause reading: 'Let them not set out with hunting dogs and birds, but they should proceed there so that they are seen not to seek their own things, but those of Jesus Christ'. At first glance innocuous, this section of the Lateran decree exists in four variants across the manuscript tradition.⁷¹ One of the alternative formulations does not exist in English manuscripts; of the other three, one rather mangled version exists only in Howden. The other two survive mostly in canonical collections. The clause prohibiting sumptuous meals appears in the *Breviarium Extravagantium* of Bernard of Pavia, the collection compiled in c.1190 in northern Italy that would later become the first decretal collection to be taught and commented on in the Bolognese law schools, as well as a small group of English collections known as the 'Worcester' group and their dependents.⁷² Most traditions, however, lack the extra clause concerning sumptuous meals, including the Anglo-Norman *Appendix Concilii Lateranensis*

⁶⁹ Westminster (1200) c.5 = *Councils & Synods*, eds. Brooke et al., vol. 1, 1062: 'Quo modo archiepiscopus et episcopus et eorum officiales debeant hospitari cum subiectis'.

⁷⁰ Lateran (1179) c.4 = COD, 213; translation adapted from N. Tanner, *Decrees of the Ecumenical Councils, Vol. 1: Nicaea to Lateran V* (Washington, D.C., 1990), 213.

⁷¹ For a full discussion of c.4 and its manuscript forms, see D. Summerlin, 'The Reception and Authority of Conciliar Canons in the Later Twelfth Century: Alexander III's 1179 Lateran Canons and their Manuscript Context', *ZRG Kan. Abt.*, 131 (2014), 125–30.

⁷² Cambridge, St John's College, F.11, fols. 69v–70r; for *Breviarium* see e.g. Sigüenza, Biblioteca del Cabildo, 10, fol. 80rb.

tradition.⁷³ This final version, lacking the extra clause, was the one used to compile Hubert's 1200 conciliar canons.⁷⁴

The absence of the clause from the 1200 canons therefore sheds some light on Hubert's source. It reinforces the value of Howden as an independent witness who copied material into his narratives: there can be no cross-pollination between the two sets of conciliar decrees he used. It also strengthens the connection between locally circulating copies of the 1179 canons and Hubert's 1200 decrees: rather than the Bolognese *Breviarium*, the implication remains that the *Appendix* itself was Hubert's most likely source of the conciliar canons. That suggestion is strengthened, albeit circumstantially, by the sequence of the 1200 decrees, which mimics the version of the 1179 decrees found in the *Appendix* group. Despite the well-attested contemporary importance of the *Breviarium*, therefore, it had not burrowed itself deeply enough to be employed in the *familia* of the archbishop of Canterbury in 1200.

England has long been presented as one of the key locations for the development of canon law in the twelfth century, with Duggan and others pointing to the importance of English canonists and collections in the history of decretals and of papal law.⁷⁵ Archiepiscopal *familia* in Canterbury in the 1160s, 1170s and 1180s often included learned lawyers such as Gérard Pucelle and Vacarius, and papal letters sent to English bishops form a substantial proportion of the surviving corpus of decretals.⁷⁶ Hubert, too, would eventually call on a range of trained lawyers to act on his behalf, although Cheney once sensibly swatted aside suggestions that Hubert had spent time himself as a student in Bologna.⁷⁷ Nevertheless, he employed canonists including Simon of Sywell and John of Tynemouth, both of whom contributed to glosses on

⁷³ See *Appendix*, as preserved in *Conciliarum omnium tam generalium quam particularium*, ed. Crabbe, vol. 2, 838.

⁷⁴ *Councils & Synods*, eds. Brooke et al., vol. 1, 1063, 'Nec cum canibus venatoriis aut avibus proficiscuntur set ita procedant ut non que sua sunt set que Iesu Christi querere videantur. Prohibemus eciam ne subditos suos talliis et exactionibus episcopi gravare presumant'; Oxford, New College, MS 220, fol. 94v, though note that the first section of this canon appears in mangled form on fol. 94r lacking this section.

⁷⁵ Duggan, *Twelfth-Century Decretal Collections*, passim; see also the literature cited above.

⁷⁶ Cheney and John (eds.), *English Episcopal Acta*, vol. 3, xxviii.

⁷⁷ Cheney, *Hubert Walter*, 18.

Gratian, as well as possibly Ricardus Anglicus, an Englishman who taught canon law in Bologna during the 1190s and then returned to his homeland later. The earliest that these men can be attested in the Canterbury *familia*, however, is after the 1200 council; it may be that whoever Hubert called on in 1200 had a different form of learning to the Bolognese-educated *magistri*. In any case, he or they almost certainly employed a locally-compiled collection rather than the one which emerged from Bologna in the 1190s. The use of that collection re-emphasises how important local copies of papal statutes and texts were. It was still Hubert's choice to repeat Alexander's 1179 decrees, and while his earlier council in 1195 had drawn on similar inspiration to those decrees, it had not repeated them explicitly. By 1200, the archbishop of Canterbury or his advisors made the choice to do so, but equally chose to replicate only a selection. While the general rules provided a framework, the interpretation and use of those general rules locally remained particularly important for both their longevity and their use locally.

The differences between the synods opens an interesting point. If the repetition of papal conciliar canons reflects the growth in papal authority over the course of the twelfth century, then it could also crush the innovative legal culture which had led to the growth of the schools in the first place. The imaginative use of earlier authorities in the 1175 council at Westminster, for example, could not be replicated when repeating papal conciliar statutes, no matter how far those papal decrees were grounded in canonistic learning. In an additional twist, the man responsible for that repetition, in England at least, was closely connected with royal power throughout his time as prelate and spent much time acting as an intermediary between pope and king despite bending the canonical regulations forbidding him from holding secular office. A link between the decretal collections and England's nascent common law has often been dismissed, but it could well be that the ever-fruitful relationships between men whose careers spanned both secular and ecclesiastical spheres were a driving force behind the centralisation

of authority in practice, as well as in theory. Representing as they do only a single instance of the repetition of papal conciliar canons, the 1200 statutes present an intriguing example of yet another occasion in twelfth-century ecclesiastical government and canon law where, it seems, the greatest innovations took place away from the papal curia.