

## **Recognising jurisdictions within the Church before the *Liber Extra***

Danica Summerlin, University of Sheffield, UK

Jessop West, 1, Upper Hanover Street

Sheffield

S3 7RA

United Kingdom

d.summerlin@sheffield.ac.uk

*<sup>a</sup>Department, University, City, Country*

Provide full correspondence details here including e-mail for the \*corresponding author

## Recognising jurisdictions within the Church before the *Liber Extra*

This paper investigates how local and papal jurisdictions were interpreted in the later-twelfth century church and its growing body of novel law. Focussing on the period before 1234, it uses a letter sent by Pope Alexander III in the 1160s to the bishop of Lincoln over a relatively minor matter as a case study. The letter responded to an issue of illicit ordination in the diocese but tangentially touched on questions of hierarchy and jurisdiction in the church, particularly the relationship between the ever-strengthening papal law and local episcopal jurisdictions. By tracing the route through which this letter became ‘law’ in the 1234 *Liber Extra*, this paper will once again emphasise the importance of local legal actors in shaping canon law in the period between 1140 and 1234, but look to how even tangential matters can put forward subtle arguments around the recognition of different jurisdictions within the church at the time by legal actors both at and away from the papal curia.

Keywords: papacy, canon law, bishops, decretals, clerical crime, Lincoln, Pope Alexander III

### I. Introduction

Over the course of the various workshops connected with the British Academy ‘Jurisdictions, legal community and political discourse, 1050-1250’ project, the institution of the medieval papacy and its role in the political, social, and legal life of Christendom frequently interfered with discussions. Even if not a bureaucracy in the Weberian sense,<sup>1</sup> the development of the Romano-canonical legal system, borrowing

---

<sup>1</sup> David d’Avray’s comments that the ‘papal monarchy’ was not a fully-fledged Weberian bureaucracy aside (David L. d’Avray, *The Power of Protocol: diplomatics and the dynamics of papal government*, Cambridge, 2023, 86-87), many studies demonstrate the development of papal institutions, albeit often erring into the thirteenth century, e.g. Jane E. Sayers, *Papal Judges Delegate in the province of Canterbury 1198-1254: a study in ecclesiastical jurisdiction and administration*, London, 1971, and more recently Harald Müller, *Päpstliche Delegationsgerichtsbarkeit in der Normandie (12. und frühes 13.*

from Roman law and especially the *Digest*;<sup>2</sup> the increasingly stark protestations of papal and ecclesiastical independence from secular interference; and the increasing focus, within the church hierarchy, on the papal office to make legal decisions on matters touching on his competency all contributed to the creation of a centralised system of government based on the curia and its institutions, and one which engaged directly with many of the secular legal systems discussed during the network meetings.<sup>3</sup> But while scholars working on ecclesiastical institutions and their practical existence – including the discussions surrounding the implementation of norms, laws, and rules, as discussed

---

*Jahrhundert*), Bonn, 1997; both use the more copious material post-dating 1198. For an earlier focus, see now Benedict Wiedemann, ‘Doorkeepers, the chamberlain and petitioning at the papal court, c. 1150-1200’, 91 *Historical Research* (2018), 409, and especially Patrick Zutshi such as his ‘Petitioners, popes, proctors: the development of curial institutions, 1150-1250’, in Giancarlo Andenna, ed., *Pensiero e sperimentazioni istituzionali nella societas Christiana (1046-1250): atti della sedicesima Settimana internazionale di studio, Mendola, 26-31 agosto 2004*, Milan, 2007, 265.

<sup>2</sup> For a recent overview, see Gero Dolezalek, ‘Roman Law: Symbiotic Companion and Servant of Canon Law’, in Anders Winroth and John Wei, eds, *The Cambridge History of Medieval Canon Law*, Cambridge, 2022 [=CHMCL], 230, at 231: ‘leading protagonists at the papal curia found Roman law useful’.

<sup>3</sup> Recent entry points include Atria A. Larson and Keith Sisson, eds., *A Companion to the Medieval Papacy: growth of an ideology and institution*, Boston, 2016; on the role of bishops, Anne J. Duggan, ‘*De consultationibus*: the role of episcopal consultation in the shaping of canon law in the twelfth century’, in Bruce C. Brasington and Kathleen G. Cushing, eds., *Bishops, Texts, and the Use of Canon Law around 1100: essays in honour of Martin Brett*, Aldershot, Hants., 2008, 191. Jeffrey Wayno has recently proposed a more flexible interpretation for the thirteenth century, that moves away from the strict bureaucracy often envisaged: Jeffrey Wayno, ‘Governing through influence at the thirteenth-century papal court’, 48 *Journal of Medieval History* (2022), 607, and esp. 609-611 on the limitations of the administrative interpretation.

elsewhere in this special issue<sup>4</sup> – have long stressed the depths and complexities inherent in relationships within the church,<sup>5</sup> many of the participants in the network had not been party to such discussions, making such assumptions novel propositions. In part, that reflects the peculiarities of the mid-twelfth century in legal history, and especially the historiographical siloisation of canon law after the appearance in around 1140 of the *Decretum* of Gratian;<sup>6</sup> equally, it shows the continued potency of the oversimplified narratives of papal monarchy that can still underpin broader understandings of the role of the church and its officers, despite Benedict Wiedemann’s recent book

---

<sup>4</sup> See for example: Thomas J. McSweeney and Atria Larson, “‘The laws of England, which had hitherto been used and approved’: Jurisdictional Understandings in the Thirteenth Century’, 46 *JLH* (2025), [start page]; Arnaud Fossier, ‘The Bishop’s Jurisdictional Boundaries: Proceedings, Legal Actors and Strategies from a Local Church Court (Pistoia, 1287-1301)’, 46 *JLH* (2025), [start page]; and Lidia Zanetti Domingues, ‘What Rights for Criminals Condemned to Death? Jurisdictional Dialogue and Clash Between Religious and Secular Authorities, c.1250–1320’, 46 *JLH* (2025), [start page].

<sup>5</sup> One example of this is presented by the various studies in Thomas W. Smith, ed., *Authority and Power in the Medieval Church, c.1000-c.1500*, Turnhout, 2020; equally, on communication see two special issues connected to Iben Fonnesberg-Schmidt’s ‘Papal communication and authority in the Central Middle Ages’ project: ‘The Papacy and Communication in the Central Middle Ages’, co-edited with William Kynan-Wilson and Gesine Oppitz-Trotmann, special issue 44 *Journal of Medieval History* (2018) 251-379, and ‘In dialogue with Rome. Responses to Papal Communication c. 1100-1400: Special issue of *Journal of Medieval History*’, ed. Iben Fonnesberg-Schmidt, Lars Kjær and William Kynan-Wilson, 49 *Journal of Medieval History* (2023), 291-325.

<sup>6</sup> The exact date when the *Decretum* appeared remains hazy; the most recent overview, by Anders Winroth, reinforces his earliest suggestion of c.1140: Anders Winroth, ‘Canon Law in a time of renewal, 1130-1234’, in Winroth and Wei, eds, *CHMCL*, 96, at 97-100; see also Melodie H. Eichbauer, ‘Gratian’s *Decretum* and the changing historiographical landscape’, 12 *History Compass* (2013), 1111, for a then-current overview. The occasionally sharp scholarly debate on the origins of Gratian has, in recent years, dwindled.

seeking to reframe those discussions around the idea of a papal duty of care to petitioners.<sup>7</sup>

This paper, therefore, was intended to do three things within the broader project, and in the context of the other papers included in this special issue. It draws the papacy and its relationship with the wider church into the analysis where it would otherwise be lacking, something odd given the institution's continuing centrality in discussions of legal change. As such, it complements the articles by Arnaud Fossier, which thinks about the role of the episcopal court, and Lidia Zanetti Domingues, which considers the relationship between the papacy and secular rulers. It provides that entry point by thinking through the process by which the individual legal letters known as decretals became 'law', using a case study that could have been – but, critically, was not – interpreted as making a jurisdictional statement on relative authorities within the church. Lastly, in so doing, it emphasises how ideas concerning jurisdictions, responsibility, and legal hierarchy within the church emerged from and in the context of a fertile yet uncertain time for canon law, before the formalisation of the twelfth and thirteenth centuries, and moreover that these ideas were defined by legal actors often hundreds of miles away as much as the curia and its cadre of trained lawyers.<sup>8</sup> These

---

<sup>7</sup> The outline of the 'papal monarchy' is by now well-worn. In English, the two most recent broad studies remain I.S. Robinson, *The Papacy, 1073-1198: continuity and innovation*, Cambridge, 1990, and Colin Morris, *The Papal Monarchy: the Western Church from 1050 to 1250*, Oxford, 1989; a brief but useful introduction to questions around the nature of papal government can be found in Benedict Wiedemann, *Papal overlordship and European princes*, Oxford, 2022, 3-12, and Duggan, 'De consultationibus', remains critical.

<sup>8</sup> The importance of non-curial actors in the collection and circulation of canonical collections in general, and those of the late-twelfth century in particular, is now well-established: e.g. Anne Duggan, 'Making law or not? The function of papal decretals in the twelfth century',

conclusions are not surprising, given the depth of scholarship on the development of canon law in the later-twelfth century and the long-recognised importance of legal actors within that. But they do add nuance to other discussions about the practical recognition of jurisdiction seen elsewhere in this special issue.

## II. WH1065, *Veniens P. lator*.

At the core of this paper is a letter sent by Pope Alexander III to R., bishop of Lincoln, which survives in seventeen late-twelfth century canonical collections and is referred to here through its Walther Holtzmann-Nummer, WH1065.<sup>9</sup> The letter tells a simple tale. A deacon, P., had received his office through deception, having been ‘led astray by the craftiness of the ancient enemy [i.e. the devil]’.<sup>10</sup> P. requested absolution for that deception, and Alexander’s letter laid out the next steps for the bishop to take.

---

in Peter Erdö and Sz. Anzelm Suromi, eds., *Proceedings of the thirteenth international Congress of Medieval Canon Law: Esztergom, 3-8 August 2008* (Monumenta Iuris Canonici Series C: Subsidia 14), Vatican City, 2010, 41.

<sup>9</sup> Walther Holtzmann, whose work in twelfth-century decretals was foundational, created an alphabetical list of decretals incorporated into the twelfth-century post-Gratian collections; the accompanying card file drew on his considerable unpublished researches and is now available online via the Stephan Kuttner Institute. The card file relating to WH1065 can be found at <<http://www.kuttner-institute.jura.uni-muenchen.de/kartei/whr1196.gif>> and <<http://www.kuttner-institute.jura.uni-muenchen.de/kartei/whv1196.gif>> (last accessed 6 June 2023). This letter, also as is traditional known by its incipit, was included in the second edition of Jaffé’s *Regesta Pontificum Romanorum* as JL13988 (Philipp Jaffé, ed., Paul Ewald, Ferdinand Kaltenbrunner, and Samuel Loewenfeld, rev., *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum 1198*, Leipzig, 1885-1888 [=JL]) and is now published in Walther Holtzmann and Eric Kemp, eds., *Papal Decretals relating to the Diocese of Lincoln in the twelfth century* (Lincoln Record Society 41) (1955), 2-3.

<sup>10</sup> Holtzmann/Kemp, *Papal Decretals*, 2, trans. 3; with additional notes and occasional alterations by C.R. Cheney and myself.

Specifically, Alexander wrote:

if the ordination had not been forbidden by you or any of your archdeacons or prelates, you may yourself, if you wish, and if there be no other impediment, impose a suitable penance and dispense him so that he may be raised to the priesthood. If however, the threat of anathema was laid upon this action, you shall admonish him, as we also have done, that he is to take the habit of a regular in some monastery or house of canons. If he acts according to your admonition you may, after he has conducted himself praiseworthily in that dress for some time, make merciful provision for him.<sup>11</sup>

Tonally, the letter is imbued with the language of overarching papal authority expected from the late-twelfth century papacy. R. [the bishop] ‘*shall* admonish [P.], as we also have done’ (emphasis mine), while a series of actions are laid out for Bishop R., detailing how he can proceed according to the circumstances that present themselves. The language suggests that Alexander is responding to a direct appeal for his judgement, thus speaking to R. in the latter’s role as diocesan bishop rather than as a judge-delegate. Yet, despite that tone, R.’s initial decision provided the key to P.’s fate, rather than any decision of Alexander’s: if the ordination had been forbidden on pain of anathema, then P. could not be elevated and had to prove his worthiness. If R., his archdeacons or other prelates had *not* forbidden the ordination, then P. would have an easier option of penance, if R. approved and assuming that no other impediment could be found.

On first glance, this seems characteristic of papal claims to overarching jurisdiction in the church in the central Middle Ages, most clearly articulated by Gregory VII in the previous century, or those enunciated by Innocent III some fifty years later. Ultimately, after all, the pope is deciding what P.’s fate would be. When

---

<sup>11</sup> Holtzmann/Kemp, *Papal Decretals*, 3: as n. 10 above.

thinking about the idea of jurisdiction as the action of speaking or deciding law, however, that is only one of two possible interpretations here. A second interpretation, by contrast, could emphasize instead the centrality of the initial local choices: decisions made by local courts and dignitaries, be it the bishop or one of his officers, whether to permit the ordination as deacon or not. After all, despite the weight of papal authority behind this decretal, those initial local decisions were the decisive element in determining the *practical* outcome of the case for P. While Alexander explained the courses of action that could be taken and puts forward the options, he recognised the potential incompleteness of his information, and thus required that local ordinaries use their own knowledge to interpret his decision in the context of their own.

The discussion here does not, therefore, reflect conflict, either between different legal systems or within them. Instead, it shows routine communication about and understanding of responsibilities, including who possessed the ability to decide what law was within a system, in such a way that the different actors within a legal hierarchy were recognised, their decisions respected, and the relative jurisdictions within that system, according to the definition used within this special issue, were formalised and even reinforced. As such, it fits firmly within the current general interpretation of the medieval papacy as a responsive institution. Moreover, it speaks to the particular element of this collection that looks at jurisdictional conversations, rather than necessarily conflicts: places where there is recognition of alternative competencies, such as in deciding the legitimacy of birth as discussed by Larson and McSweeney.<sup>12</sup> Although easier to see across different legal orders – between secular law and canon

---

<sup>12</sup> See McSweeney and Larson, “The laws of England, which had hitherto been used and approved”, [pages].

law, for example, or Roman law and canon law – WH1065 shows how those conversations could equally exist within a pre-existing hierarchy.

### **III. Alexander III, Robert de Chesney, and episcopal jurisdiction**

Although definite identification is tricky, ‘R.’ in this instance is probably Robert de Chesney, bishop of Lincoln from 1148 until his death in December 1166.<sup>13</sup> As bishop of the vast Lincoln diocese, Robert was prolific: over two hundred *acta* survive, mostly confirmations of monastic property although unfortunately not including the outcome of this case.<sup>14</sup> More importantly, Robert was representative of the approach to legal learning embraced by many, although by no means all, twelfth-century clerics. Trained in Paris or possibly Oxford, he first appeared in the early 1140s with the title of *magister* before his election to Lincoln later in the decade.<sup>15</sup> Two relatives – Gilbert and Robert Foliot – also entered the English episcopate; a letter of Gilbert, then bishop of Hereford, records that Robert’s clerk Ambrose – reportedly an Italian *iurisperitus* – travelled to Hereford in 1153 with orders to gloss and correct a copy of the *Digest*, although there is no indication that Robert knew the *Digest* himself.<sup>16</sup> In Lincoln,

---

<sup>13</sup> For an overview of Robert’s life, see Dorothy M. Owen, ‘Chesney, Robert de, d. 1166’, *Oxford Dictionary of National Biography*, Oxford, 2004, accessed online 27 August 2024: <https://doi.org/10.1093/ref:odnb/5232>; see also David M. Smith, ed., *English Episcopal Acta, I: Lincoln, 1067-1185* [=EEA I], London, 1980, xxxv-xxxvi.

<sup>14</sup> Smith, ed., *EEA I*, 43-176 (nos.66-284). For Roger of Worcester, bishop for 15 years, 85 *acta* are listed; for Bartholomew of Exeter, bishop for 23 years, 67 survive, although both Worcester and Exeter were smaller than Lincoln.

<sup>15</sup> Owen, ‘Chesney, Robert de, d. 1166’.

<sup>16</sup> Martin Brett, ‘English law studies and centres of law in the later twelfth century’, in Tore Iversen, ed., *Archbishop Eystein as legislator. The European Connection*, Trondheim, 2011, 94; see also Adrian Morey and C.N.L. Brooke, eds., *The letters and charters*

Robert certainly surrounded himself with learned men, some of whom were connected to key early canonical collections in England: Owen noted that the witness lists to his *acta* included up to five or six *magistri*, showing the importance of that training to him, while Smith commented that Robert was ‘much more of an administrator than a scholar or statesman’; both see him as preoccupied with diocesan affairs, and Martin Brett suggested that he ‘showed no other special interest in law’, beyond requesting the updated copy of the *Digest*.<sup>17</sup>

More broadly, the extent to which mid-twelfth-century Lincoln was a scholarly centre is hotly debated. In the 1150s, the same decade that Robert sent Ambrose to correct the *Digest*, Lincoln was given a copy of Gratian by Hugh Barre, archdeacon of Leicester, while the library catalogue begun in around 1160 lists a copy of the *Decretum* of Ivo of Chartres and a *Collectio Lanfranci*.<sup>18</sup> Whether these holdings were sufficient to mark it out as a centre of contemporary learning, as argued by Mark Clark, remains uncertain.<sup>19</sup> It is certainly true that for an English centre, the combination of Ivo and the

---

*of Gilbert Foliot, Abbot of Gloucester (1139-48), Bishop of Hereford (1148-63) and London (1163-87)*, Cambridge, 1967, 145, no.106.

<sup>17</sup> Owen, ‘Chesney, Robert de, d. 1166’; Smith, *EEA I*, xxxv-xxxvi. He nevertheless listed a *familia* including four known *magistri* (five if the physician Master Ralph is included) on xlv-xlv; Brett, ‘English law studies’, 99.

<sup>18</sup> Brett, ‘English law studies’, 88; the twelfth/thirteenth century catalogue was published in R.M. Woolley, *Catalogue of the manuscripts of Lincoln Cathedral Library*, Oxford, 1927, v-ix.

<sup>19</sup> Mark J. Clark, ‘Hereford and Lincoln cathedral libraries during the High Middle Ages’, 71 *Journal of Ecclesiastical History* (2020), 502, at 525, although Clark focusses on manuscripts of theological works; he argues against Rodney Thomson’s comment that Lincoln was ‘never a great library, either qualitatively or quantitatively’, at 504, citing R. M. Thomson, *Catalogue of the Manuscripts of Lincoln Cathedral Chapter Library*, Woodbridge, 1989, xiii. Peter Landau has identified Lincoln as an important centre for the changing canon law thanks to the modern presence of an intriguing version of the

*Lanfranci* would present a reasonable, if not extensive, selection from which to work, especially if the focus of the library was the quotidian administration of a diocese. It would not, however, represent the most up-to-date legal scholarship directly from the schools themselves, provided instead through the copy of Gratian, although from the evidence we have it is impossible to tell which version of the *Decretum* was present, and the extent of its glosses or commentaries.

Identifying the bishop involved as Robert de Chesney also helps date the letter.<sup>20</sup> Alexander III acceded to the papal throne in September 1159; following a disputed election on 7 September, Alexander was formally consecrated almost a fortnight later, on 20 September. Robert's death was sometime in late 1166, probably on

---

*Appendix Concilii Lateranensis* in Lincoln, Cathedral Chapter Library MS 121 and the potential importance of Walter of Coutances, Robert's successor, in that collection's compilation, but, as Martin Brett has argued, there is no evidence for the manuscript in the library before the late thirteenth century, making the identification problematic: Peter Landau, 'Walter von Coutances und die Anfänge der anglo-normannischen Rechtswissenschaft', in Orazio Condorelli, ed., *Panta Rei: Studi dedicati a Manlio Bellomo*, Rome, 2004, 3.183, at 196-203, and Brett, 'English law studies', 99-102.

<sup>20</sup> Ascertaining a recipient from twelfth-century decretal collections is complex: many scribes were unaware of diocesan names outside their locality, and English names in particular were often corrupted accidentally in copying. In this instance, both the *Compilatio Prima* (ca. 1190) and the *Liber Extra* (1234) give the recipient as 'Lingon. episcopo', i.e. Langres, just north of Dijon: for the former see Bamberg, Staatsbibliothek Can.19 fo.72ra (Λ-group) and Brussels, Bibliothèque Royale de Belgique, MS 1407-9, fo.85rb (Σ-group), and the *Decretales* of Gregory IX (the *Liber Extra*) at 5.30.1. While the letter features in no French collections, it is present in English collections of the late-twelfth century, which suggests an English recipient: *Alcobacensis I* and *Bridlingtonensis* give the addressee as 'Lincoln. Ep.'; yet another early collection, *Cantuariensis I*, uses 'R. Circel.', a place-name that is quite clearly nonsense. Full details of these collections can be found in nn.30-32 below. 'Cantuariensi archiepiscopo' can be found in the *Collectio Cheltenhamensis*: see n.35 below.

27 December; at the time, Alexander was in Italy, meaning that news could have taken weeks, if not months, to reach him, and giving a date for the letter between late 1159 and early 1167. Much work has investigated how the *Decretum Gratiani* emerged and became embedded in scholarly curricula and practical use,<sup>21</sup> but Robert's episcopacy fell very early in this new era of canon law. Although the request for a glossed *Digest* and the fact that a copy of Peter Lombard's *Sentences* was included in the volumes Robert left to Lincoln's library suggest that Robert remained up-to-date with trends from the schools,<sup>22</sup> the most formative period of his education would have taken place in France or England before Gratian, at least, was widely available. As such, his understanding of canon law and the extent of papal and episcopal power and authority cannot have been shaped by its process and tuition, or the new precepts and precedents enunciated in recent papal decretals. Nevertheless, at least some of his *familia* and clerks, such as Ambrose, clearly were familiar with the new methods and curricula, and both strands of thought emerged from similar, albeit not identical, intellectual places.

While Robert may have been, to quote Dorothy Owen, 'a conscientious and hard-working bishop', he was also, for the twelfth century at least, a 'normal' bishop: focussed on his diocese, the recipient of learning, and an administrator above all else.<sup>23</sup> The decision taken here therefore is one that demonstrates the complications of working within a legal system where papal juridical authority was paramount, but not unchallenged or always accepted at its fullest extent. The case was contemporary with

---

<sup>21</sup> The most recent contribution is that of John Burden, 'Mixed recensions in the early manuscripts of Gratian's "Decretum"', 76 *Deutsches Archiv für Erforschung des Mittelalters* (2020), 533; as already mentioned, this study assumes that the *Decretum* appeared in the years around 1140.

<sup>22</sup> Discussed in Owen, 'Chesney, Robert de'.

<sup>23</sup> Owen, 'Chesney, Robert de'.

the Alexandrine schism, which saw swathes of Latin Christendom recognise alternative popes to Alexander III: Victor IV until 1164, followed by Paschal III until 1167.<sup>24</sup>

Moreover, the independence of local ecclesiastical dignitaries and their determination to protect their own position, and that of their office, is well established. One of the many injustices against which Thomas Becket would later rail was the 1170 coronation of the Young King at Westminster by Roger of Pont l'Évêque, archbishop of York, alongside Gilbert Foliot and Jocelin de Bohun, bishops of London and Salisbury, undermining the rights and liberties of the church at Canterbury.<sup>25</sup> Beyond provincial matters, as Pennington showed with the case of Simon of Meaux, bishops could, and would, still dispute specific principles put forward by the papacy even through the decrees of papal councils;<sup>26</sup> more recently, Rowan Dorin has demonstrated the importance to bishops of their local statutes being recognised as their law, rather than their being seen as local

---

<sup>24</sup> The Alexandrine Schism continues to be analysed mostly from the perspective of the Empire, and predominantly through German-language material. There has recently been a shift, especially in the work of Jochen Johrendt, e.g. (in English) his 'The Empire and the Schism', in Anne J. Duggan and Peter D. Clarke, eds, *Pope Alexander III (1159-81): the Art of Survival*, 99 and (in German) 'Cum universo clero ac populo eis subiecto, id ipsum eodem modo fecerunt: Die Anerkennung Alexanders III. in Italien aus der Perspektive der Papsturkundenempfänger', 84 *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* (2004), 38, but the best overviews of the schism remain in works focussed on Frederick Barbarossa.

<sup>25</sup> Anne J. Duggan, *Thomas Becket*, London, 2004, 181-2; Thomas Becket, *The Correspondence of Thomas Becket, Archbishop of Canterbury*, ed. and trans. Anne J. Duggan, Oxford, 2000, 1215-25.

<sup>26</sup> Kenneth Pennington discussed one clash between a bishop (Simon of Meaux) and pope (Alexander III) over the granting of benefices in his *Popes and Bishops*, Philadelphia, 1984, 117-120; see also Danica Summerlin, *The Canons of the Third Lateran Council of 1179: their origins and reception*, Cambridge, 2019, 194-199, 207-210 on use and interpretation of conciliar acts by popes and by local bishops.

pawns repeating the strictures of a distant papacy.<sup>27</sup> Alexander's response, therefore, enhances and supports that form of local decision-making or judgement, even as it is shaped and phrased through papal authority and recognises the role and importance of the papacy as the court of appeal. Furthermore, even the pope must have recognised that Robert was, in many ways, perfectly ordinary in performing his diocesan duties.

#### **IV. Canonical collections and legal actors**

Yet WH1065 was not seen by late twelfth-century clerics as reflecting any interest in establishing or sustaining the ecclesiastical legal hierarchy, but instead as commentary on clerical sins. In part, that relates to its use across the different canonical collections compiled by contemporaries, and subsequently its interpretation. Between around 1170 and 1190, these compilations – often referred to as decretal collections, reflecting the larger proportion of recent papal letters and conciliar canons that they contained in comparison to earlier material – changed from short, twelve-item collections to behemoths containing hundreds.<sup>28</sup> WH1065 appears in seventeen of the surviving late-

---

<sup>27</sup> Rowan Dorin, 'The Bishop as Lawmaker in late Medieval Europe', 253 *Past & Present* (2021), 45.

<sup>28</sup> Charles Duggan, 'Decretal collections from Gratian's *Decretum* to the *Compilationes antiquae*: the making of the new case law', in Kenneth Pennington and Wilfried Hartmann, eds., *The History of Medieval Canon Law in the Classical Period, 1140-1234: from Gratian to the Decretals of Pope Gregory IX*, Washington, D.C., 2008, [=HMCL], 246-292; Anders Winroth, 'Canon Law in a time of renewal', 103-106; Gisela Drossbach, 'Decretals and law-making' in Winroth and Wei, eds., *CHMCL*, 208. The most recent intervention in the debate is Gisela Drossbach, 'Regesta decretalium et extravagantes. The Use of Papal Decretals around 1200', 109 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* (2023), 73-105. For a critique of 'decretal collections', see Danica Summerlin, 'Using the "old law" in twelfth-century decretal

twelfth century collections, as well as the 1234 Gregorian *Decretales*, also known as the *Liber Extra*. The collections containing WH1065 can be split into five broad groupings:<sup>29</sup>

(1) *Alcobacensis I*,<sup>30</sup> *Cantuariensis I*,<sup>31</sup> and *Bridlingtonensis*,<sup>32</sup> all ‘primitive’

collections, which showed little or no signs of deliberate thematic structuring in

---

collections’, in Christof Rolker, ed., *New Discourses in Medieval Canon Law Research: challenging the Master Narrative*, Leiden, 2019, 145, at 161-8.

<sup>29</sup> Holtzmann’s classification as modified by Duggan is used here: Duggan, ‘Decretal collections’, 251-253. As a general rule, systematic collections built on their ‘primitive’ counterparts and appeared later, but the terminology should not be seen as reflecting strict chronological breaks or progressions: while some ‘semi-systematic’ collections mentioned below, such as *Wigorniensis*, pre-date Bernard’s *Breviarium*, others, such as *Cottoniana* and *Petrihusensis*, do not; the same is true of the relationship between ‘primitive’ and ‘semi-systematic’ collections where, for example, *Bridlingtonensis* survives in an early thirteenth century manuscript. Tracing letters and ideas through these collections is also at best an imprecise art, given the number which have been lost, even Holtzmann himself ‘laid increasing stress on the difficulty of reconstructing the precise filiation of the surviving decretal collections of the twelfth century’: Walther Holtzmann, ed. and rev. Christopher R. Cheney and Mary G. Cheney, *Studies in the collections of twelfth-century decretals*, (Monumenta Iuris Canonici Series B: Corpus Collectionum 3), Rome, 1979, xiii. The purpose of the current investigation is therefore to show, in general, how this letter came to be used, and it should not be read as a precise demonstration of compilers’ use of other collections in their own work.

<sup>30</sup> *Alcobacensis I*, 125 = Lisbon, Biblioteca Nacional, Alcobaça 144, fo.39: Duggan, ‘Decretal Collections’, 263, 264-265, suggests that *Alcobacensis I* was copied in Iberia from a core of English material.

<sup>31</sup> *Cantuariensis I*, 25 = London, British Library, Royal MS 10.B.iv, fo.49rb. Unlike some other extracts, it is un glossed. The fullest analysis of the collection remains Charles Duggan, *Twelfth century decretal collections and their importance in English history*, London, 1963, 162-171, but also see now Duggan, ‘Decretal Collections’, 258-259.

<sup>32</sup> *Bridlingtonensis*, 173 = Oxford, Bodleian Library MS Bodley 357, fos.80-133v (not seen). Almost certainly later in origin than the other two collections, *Bridlingtonensis* is usually

their contents. All three are standalone canonical collections, unattached to, for example, Gratian's *Decretum*, although the *Cantuariensis* manuscript contains a range of other legal and canonical works including an early *ordo iudiciarius*.<sup>33</sup> That suggests a legal environment, at least in that case, but maybe not one entirely dependent on Gratian.

- (2) the 'semi-systematic' *Wigorniensis*,<sup>34</sup> *Cheltenhamensis*,<sup>35</sup> and the connected *Cottoniana* and *Petrihusensis*<sup>36</sup> collections, which saw broad themes used to shape their contents but do not possess the precision in separation or in thematic structure of more complicated systematic collections.
- (3) the systematic collections which form the backbone of decretal collection in the late twelfth century, i.e. the connected 'Bamberg' and *Appendix Concilii Lateranensis* groups of collections and their descendants, which account for

---

dated to the mid-1180s, after or at the same time as some of the 'systematic' collections discussed below, while the surviving manuscript seems to be early thirteenth century.

<sup>33</sup> The fullest analysis of *Cantuariensis* remains in Duggan, *Twelfth century decretal collections* 162-171, but also see now Duggan, 'Decretal Collections', 258-259; *Bridlingtonensis* now falls in the same volume as a copy of William of Malmesbury's *Gesta Pontificum Anglorum*.

<sup>34</sup> *Wigorniensis*, 3.26 = London, British Library, Royal MS 10.A.ii, fo.25vb; an analysis of the collection can be found in Hans-Eberhard Lohmann, 'Die *Collectio Wigorniensis* (*Collectio Londoniensis Regia*): Ein Beitrag zur Quellengeschichte des kanonischen Rechts im 12. Jahrhundert', 22 *ZRG Kan. Abt.* (1933), 36.

<sup>35</sup> *Cheltenhamensis*, 16.25 = London, British Library, Egerton MS 2819 fo.86rb; see also Gisela Drossbach, ed., *Die Collectio Cheltenhamensis: eine englische Decretalensammlung. Analyse beruhend auf Vorarbeiten von Walther Holtzmann* (Monumenta Iuris Canonici, Series B: Corpus Collectionum 10) Vatican City, 2014, 206-207 for WH1065, which she puts in the sixteenth title (195) and 16-18 for her discussion on the number of titles.

<sup>36</sup> *Cottoniana* 5.45 = London, British Library, Cotton MS Vitellius E.xiii fo.260ra; *Petrihusensis* (not seen), 4.20.

most survivals of the letter: from the Bamberg group *Bambergensis*,<sup>37</sup> *Compendiensis*,<sup>38</sup> *Erlangensis*,<sup>39</sup> *Cassellana* in both its manuscripts,<sup>40</sup> and *Lipsiensis*;<sup>41</sup> for *Appendix* the main collection in its printed form for which the manuscript has been lost, as well as the versions now in Leipzig and Vienna<sup>42</sup> and its early descendant the *Collectio Tanner*.<sup>43</sup>

- (4) Unlike the limited circulation of most of these collections, the letter made it into two widely-disseminated collections containing letters of Alexander III: Bernard of Pavia's *Breviarium Extravagantium*,<sup>44</sup> later known as the *Compilatio Prima* and compiled around 1190, and Raymond of Peñafort's *Decretales*, or the *Liber Extra*, promulgated by Gregory IX in 1234.<sup>45</sup> Both the *Breviarium* and the *Liber*

---

<sup>37</sup> *Bambergensis*, 11.9 = Bamberg, Staatsbibliothek, Msc.Can.17, fo.7va.

<sup>38</sup> *Compendiensis*, 11.9 = Paris, Bibliothèque nationale de France, lat.17971, fo.159ra.

<sup>39</sup> *Erlangensis*, 11.9 = Erlangen, Universitätsbibliothek 342 fo.294va.

<sup>40</sup> *Cassellana*, 21.14, see J.H. Böhmer, ed., *Corpus iuris canonici: Gregorii XIII pontif. max. auctoritate post emendationem absolutam editum, in duos tomos diuisum et appendice nouo auctum cum necessariis indicibus*, 2 vols., Magdeburg, 1747, vol.2, 223.

<sup>41</sup> *Lipsiensis*, 11.9 = Leipzig, Universitätsbibliothek MS 975, but also Emil Friedberg, ed., *Die Fünf Compilationes Antiquae necnon Collectio Canonum Lipsiensis* Leipzig, 1882; repr. Graz, 1956, 192-193.

<sup>42</sup> *Appendix Concilii Lateranensis*, 26.9 = Giovanni Domenico Mansi, *Sacrorum conciliorum nova et amplissima collectio*, Venice, 1778, vol.22, cols.368-369; Leipzig, Universitätsbibliothek MS 1242, fo.99ra; Vienna, Österreichisches Nationalbibliothek MS 2172, fo.37va.

<sup>43</sup> *Collectio Tanner*, 2.15.9 = Oxford, Bodleian Library, Tanner MS 8, 617b; on the connections between Tanner and the 'Bamberg' family, see Duggan, 'Decretal Collections', 286.

<sup>44</sup> *Brev. 5.25.un* = Friedberg, ed., *Quinque Compilationes* 1, at 61, with manuscript references as in n.20 above.

<sup>45</sup> X 5.30.1 = Emil Friedberg, ed., *Corpus Iuris Canonici*, 2 vols., Leipzig, 1879; repr. Graz, 1959, vol.2, 1. For short, recent treatments of both the *Breviarium* and the *Liber Extra*, see Drossbach, 'Decretals and law-making', 223-224 and 226-227; Winroth, 'Canon Law,

*Extra* survive in well over a hundred manuscripts, attesting a diffuse and, in the case of the latter, long-lasting transmission of the letter.

- (5) the outliers from this main tradition: the isolated collections or dead-ends that reflect the intellectual environment of the time, and may have been responsible for some of it, but where there is no clear, direct link through the genealogy of collections that led ultimately to the *Quinque Compilationes* and the *Liber Extra*. Two of these collections, *Brugensis*<sup>46</sup> and *Francofurtana*,<sup>47</sup> contain the letter. Both are northern-French, both survive in multiple manuscripts (three and four respectively), and while both existed outside the main lines of transmission that resulted in the *Breviarium*, neither collection was completely isolated from them.<sup>48</sup> In both cases, moreover, the letter is included in a title or section that makes explicit reference to its focus on illicit ordinations.

---

1130-1234', 97-100, 104-106, and more extensively in Kenneth Pennington, 'Decretal Collections, 1190-1234', in *HMCL*, 297, at 317.

<sup>46</sup> *Brugensis* 11.5: the title is numbered in Vatican City, Biblioteca Apostolica Vaticana, MS Ottob. Lat. 3027 fo.21; the letter itself falls on fo.21v. See also Emil Friedberg, ed., *Die Canones-Sammlungen zwischen Gratian und Bernhard von Pavia*, Leipzig, 1897; repr. Graz, 1958, 144-145.

<sup>47</sup> The letter is *Francofurtana* 11.5, and in manuscripts is found with the rubric 'Cum eo qui in ordinate ad ordines surrepsit non indistincte dispensari potest': Frankfurt am Main, Universitätsbibliothek, MS Barth. 60 fo.18rb-va as 'Exposuit nobis P.'; London, British Library, Egerton MS 2901 fo.21. See also Gisela Drossbach and Peter Landau, eds., *Die Collectio Francofurtana: eine französische Decretalensammlung. Analyse beruhend auf den Vorarbeiten von Walther Holtzmann* (Monumenta Iuris Canonici Series B: Corpus Collectionum 9), Vatican City, 2007, 96. Drossbach gives the overall section title as 'Quo tempore ordines fieri debeant', referring to the first letter: 92.

<sup>48</sup> Peter Landau, 'Die Entstehung der systematischen Dekretalensammlungen und die europäische Kanonistik des 12. Jahrhunderts', 65 *ZRG Kan. Abt.* (1979), 125; see Gisela Drossbach, 'Die Collectio Francofurtana und die fünf Bücher der Compilatio prima', in

Working out the relationships between decretal collections is complicated, especially given that many intermediary collections have been lost over time, that many collections survive in seemingly later manuscripts, and that as a result drawing a clear chronological timeline is at best a complex task, but some key points can nevertheless be drawn out. Firstly, the letter entered into the tradition of late-twelfth century canonical collections via compilations with a probable English provenance, or at the very least a strong English connection: *Alcobacensis I*, *Cantuariensis*, and *Bridlingtonensis*.<sup>49</sup> Initially, its diffusion was limited, especially compared to statements such as *Memimus nos*, the multi-part *responsum* of Alexander III covering a variety of issues from appeals and the work of judges-delegate to marriages, which circulated widely, and quickly.<sup>50</sup> Instead, the principal transmission of the letter occurred later, with the systematic collections and particularly those of the ‘Worcester’ and ‘Bamberg’ groups from the 1180s on, by which WH1065 firstly crossed the English Channel and then, by virtue of the *Lipsiensis* collection or a near-relative, entered into the probably

---

Vincenzo Colli and Emanuele Conte, eds., *Iuris Historia: liber amicorum Gero Dolezalek*, Berkeley, 2008, 145, at 151 for a discussion of the relationship between the *Francofurtana* and Bernard’s *Breviarium*.

<sup>49</sup> Drossbach has recently suggested that France, and especially the Paris basin, was of prime importance for decretal collection at the time: ‘*Regesta decretalium et extravagantium*’, 101-105. Her argument is complex and thoughtful, relying on the use of decretals in *summae* and other canonical works to make a broad conclusion about *Dekretalistik* as a genre; however, this letter sits somewhat outside that analysis: two of the three collections possess as secure an English origin as is possible when discussing the provenance of canonical collections, while the third, *Alcobacensis I*, does seem to have English material at its core.

<sup>50</sup> See e.g. Mary G. Cheney, ‘JL13162, “Memimus nos”: one letter or two?’, 4 *Bulletin of Medieval Canon Law, new series* (1974), 66, who noted (at 67) that ‘there is hardly a decretal collection of c. 1170 x 1234 in which it does not occur’.

Italian orbit of Bernard of Pavia and his *Breviarium Extravagantium*.<sup>51</sup>

Organisation into thematic titles was a central part of that process of transmission, and throughout the 1180s and 1190s the topic that the letter was seen to represent became more focussed. While the earliest thematic title, found in *Wigorniensis*, saw the letter placed under the very general theme of ‘on the standing of clerics’, by the time of the Bamberg and *Appendix* groups, that had narrowed to the title ‘De depositione clericorum et dispensatione circa eosdem’, roughly translated as ‘concerning the degradation of clerics and the dispensation of the same’.<sup>52</sup> It nevertheless remains a broad title, containing eighteen texts in both the *Appendix* in Leipzig, Universitätsbibliothek MS 1242 and in *Compendiensis*, and in *Bambergensis* nineteen texts, *Erlangensis* twenty, *Cassellana* thirty, and *Lipsiensis* thirty-two.<sup>53</sup> These distinctions are clearly both appropriate and useful: the letter does concern clerical

---

<sup>51</sup> There is no recent study of the relationship between the *Lipsiensis* and the *Breviarium*, nor is it certain that Bernard’s formative education was in an Italian milieu. John Wei and others have recently suggested, instead, that he had some Parisian training: John C. Wei, ‘Later Development of Gratian’s *Decretum*’, in Joseph Goering, Stephan Dusil, and Andreas Thier, eds., *Proceedings of the Fourteenth International Congress of Medieval Canon Law: Toronto, 5-11 August 2012* (Monumenta Iuris Canonici C: Subsidia 15), Vatican City, 2016, 155-156 and the literature cited there.

<sup>52</sup> In all but *Cassellana* the letter is 11.9; for it in full see Bamberg, Staatsbibliothek, Msc.Can.17, fo.7va and Erlangen, Universitätsbibliothek MS 342 fo.294va, and for a published version in Cassellana, see Böhmer, ed., *Corpus iuris canonici*, vol.2, 223.

<sup>53</sup> *Appendix*: Leipzig, Universitätsbibliothek MS 1242, fos.98v-99; *Compendiensis*: Paris, Bibliothèque nationale de France, lat. 17971 fos.158va-159vb; *Bambergensis*: Bamberg, Staatsbibliothek, Msc.Can.17, fos.7ra-8va; *Erlangensis*: Erlangen, Universitätsbibliothek 342 fo.294rb; *Lipsiensis*: ed. Friedberg, *Quinque Compilationes*, 192-3; *Cassellana*: Böhmer, ed., *Corpus iuris canonici*, 2.218-228; a progression which incidentally mirrors their probable development and age.

status and how and when clerics could be stripped, or not, of their office, as part of the broader discussion around the ordination.

The critical distinction came when seeing the letter as reflecting very specifically the idea of illicit ordinations, rather than forming part of a general discussion around clerical orders. The clearest example of that came around 1190 in the *Compilatio Prima* (or *Breviarium*), and thus the later *Liber Extra*, where the letter is found in a title with the rubric ‘concerning those, who secretly received [X - accepted] ordination’, placing the letter in the broad category of clerical offences: similar nearby titles included clerics who hunted or undertook their duties while excommunicate, and clerical excesses.<sup>54</sup> The *Breviarium* was not, however, the first place where that distinction was drawn. In the collection known as *Cheltenhamensis*,<sup>55</sup> the letter appears in a broad-based title whose rubric mentions a range of issues including tithes; that Jews were not to have Christian slaves; and the question of deacons receiving ‘furtive’ ordination—the topic of our letter.<sup>56</sup>

---

<sup>54</sup> *Brev.* 5.22, ‘De clerico venatore’; *Brev.* 5.23, ‘De clerico excommunicato vel deposito ministrante’; *Brev.* 5.26, ‘De excessibus prelatorum in subditos vel econtra’.

<sup>55</sup> While *Cheltenhamensis* is conventionally split into eighteen titles, Gisela Drossbach suggested that it was initially nineteen; equally, the title rubrics are in a later and different ink than the individual letter inscriptions. As the titles often incorporate multiple topics it is less than clear who divided the collection into themes, and why and how. On the issue of titles, see the comments in Uta-Renate Blumenthal, ‘*Die Collectio Cheltenhamensis: eine englische Decretalensammlung. Analyse beruhend auf Vorarbeitung von Walther Holtzmann*, ed. by Gisela Drossbach (review)’, 102 *The Catholic Historical Review* (2016), 599. I accept Drossbach’s numbering of the titles: Gisela Drossbach, ed., *Die Collectio Cheltenhamensis: eine englische Decretalensammlung. Analyse beruhend auf Vorarbeiten von Walther Holtzmann* (Monumenta Iuris Canonici Series B: Corpus Collectionum 10) Vatican City, 2014, 16-18.

<sup>56</sup> London, BL Egerton MS 2819 fo.86rb; see also Drossbach, ed., *Die Collectio Cheltenhamensis*, 206-207 for WH1065, which she puts in the sixteenth title (at 195).

Moreover, in the collections of the fifth type listed above, WH1065 survives in such a way as to demonstrate that by the 1180s additional clerics were drawing out the letter's focus on illicit ordinations. *Brugensis* and *Francofurtana* present most of their material quite differently, but in both cases WH1065 is considered in a similar fashion. *Brugensis*, probably connected to the schools at Reims during the late 1180s, placed the letter in the title 'Concerning the licit or illicit ordination of clerics, and who is prohibited from promotion [to the clergy] and who is permitted'.<sup>57</sup> Its potential ancestry in the 'Worcester' group can be discerned, even if the similarities are deeply hidden, as is the slight connection with the 'Bamberg' collections: most of the material from that family's eleventh title, including WH1065, appears in *Brugensis*' eleventh and twelfth titles, suggesting a connection somewhere in their ancestries. *Francofurtana* is more confusing: although now commonly separated into titles, in at least one manuscript it deploys individual chapter rubrics. Unlike in *Brugensis*, material common to the 'Bamberg' collections' eleventh title is dispersed widely: WH1065 falls in the section concerning the ordination of clerics, with the chapter rubric focussing on someone sneaking into orders, and the implications thereof.<sup>58</sup> In this, both mimic, in the years around ca. 1185-1187, the *Breviarium*'s identification of the letter with that issue. Regardless of the extent of any connections between the *Francofurtana*, *Brugensis*, and the *Breviarium*, at the very least the overlap shows the compilers of these collections recognising that the letter spoke to the same issue. In turn, that suggests some form of shared understanding of its contents between northern France and northern Italy, despite

---

<sup>57</sup> See n.46 above, and Friedberg, ed., *Die Canones-Sammlungen* 144-145: the title contains sixteen excerpts, mostly from letters, although one presents itself as being a conciliar canon from Tours in 1163.

<sup>58</sup> See n.47 above.

their often being seen as fundamentally different intellectual environments in the twelfth century.

### **V: Understanding and discussing jurisdiction in the late-twelfth century collections**

All of which shows that for the compilers of these collections, this letter was thought to belong more broadly in the category of clerical offences, rather than making a novel statement on relative jurisdictions within the ecclesiastical hierarchy. One practical reason for this could have been the absence of obvious place for discussions of local jurisdiction to fall: there is, in the late-twelfth century collections, precious little discussion focussing specifically on the role of metropolitans, for example. Yet many of the systematic collections do possess a title concerning the role of the ‘ordinary’ judge, which they clearly understood to be prelates. *Bambergensis*, for example, framed that as ‘concerning the office and powers of the prelate and ordinary judge’, which was carried over into the *Breviarium*;<sup>59</sup> while the four texts deployed in *Brugensis*’ title 35, ‘On the office of the ordinary judge’, are all different from those in the relevant chapter of the *Breviarium*, the title itself was used in the *Liber extra*.<sup>60</sup> Both the *Breviarium* and the *Liber Extra* included this title in their first book, on judges and their roles.<sup>61</sup> The question of relative roles within the church therefore clearly continued to be of interest in canonical circles, even if the *Liber Extra* reflects the understanding of jurisdiction at

---

<sup>59</sup> *Bambergensis*, title 32 = Friedberg, ed., *Die Canones-Sammlungen*, 102-103; Bamberg, Staatsbibliothek, Msc.Can.17, fo.18ra.

<sup>60</sup> *Brug.* 35: Friedberg, ed., *Die Canones-Sammlungen*, 150.

<sup>61</sup> *Brev.* 1.23, in Friedberg, ed., *Quinque Compilationes*, 9-10; X 1.31, ‘De officiis iudicis ordinarii’. X 1.31 begins with a synodal canon, then includes one letter purportedly of Eugenius III and three of Alexander III; *Brev.* contains three additional chapters.

the time of formalisation in the mid-thirteenth century rather than at the time of the letter's writing in the mid-twelfth, with all the accompanying issues noted in the introduction to this special issue: only the first five chapters of twenty dated to the time of Alexander III or earlier, making it an imperfect, if published, witness to ideas in the 1160s and 1170s.<sup>62</sup>

Yet the inclusion in the collections was only the first step in a letter's life in the learned law. In certain late-twelfth century collections, WH1065 was glossed, allowing an insight into its interpretation and interpolation into the broader canonistic worldview. These glosses could take on a variety of forms, including explanations, arguments, and cross-references to other canonical works that allow deeper understanding of how a text was interpreted within the vast web of legal texts deployed both in the schools and more broadly. In collections of the *Bambergensis* group, such as in *Lipsiensis* and *Erlangensis*, the cross-references were simple, pointing to sections of Gratian's *Decretum*. One reference, to D.72 c.1, concerned the relationship between the bishop and clerics; the other, to D.24 c.7, asked questions of the procedures that needed to be undergone before ordination could take place, and especially the question of whether priests and deacons should submit themselves for examination, and by whom.<sup>63</sup> *Bambergensis* too possesses simple references, albeit in a greater number and to different sections of Gratian's *Decretum*.<sup>64</sup> Elsewhere, the glosses were more discursive: in a *Francofurtana* manuscript now in London, the question of anathema in

---

<sup>62</sup> For a discussion of the issues around formalisation, see p. ^ above.

<sup>63</sup> Leipzig, Universitätsbibliothek MS 975, fo.123va; Erlangen, Universitätsbibliothek 342 fo. 294va.

<sup>64</sup> Bamberg, Staatsbibliothek, Msc.Can.17 fo.7va: although the margins have been significantly pruned, enough survives to suggest the allegations, all of which are general.

this instance was considered alongside and in comparison to the question of whether marriage could be contracted in similar circumstances;<sup>65</sup> in the cross-references, moreover, this manuscript also noted D.50 c.22, which firmly placed responsibility on the bishop for ascertaining whether a priest or a deacon had committed some sort of infraction which either prevented his elevation, or permitted the bishop to in some way punish him.<sup>66</sup> Meanwhile, glosses to the *Breviarium* manuscript now in Brussels, for example, go beyond even these comments, considering the relative role of the pope and bishop in the decision-making process but noting contrary opinions as to who was allowed to provide the dispensation.<sup>67</sup> These may be later, and lack the references to the *Decretum* seen elsewhere. All these serve to demonstrate how the letter became embedded, not only in the collections, but in the scholarly conversations that accompanied them. Lastly, in the canon law context, the glosses demonstrate once again the continued importance to scholars and teachers of the *Decretum* of Gratian and the framework that it provided for contemporaries. Even if the *Decretum* is idiosyncratic at best, with those precedents spread across its constituent elements, it remained central in the late twelfth century. The compilers of and commentators on the collections – the legal actors, in the phrasing of this special issue, even if many are anonymous – recognised that continued importance, and their work reflected it.

## VI. Conclusions

WH1065 presents a minor, routine, case study where the transmission of twelfth-

---

<sup>65</sup> BL Egerton MS 2901, fo.21r, v.*anathematis*.

<sup>66</sup> BL Egerton MS 2901, fo.21r, v.*pro tuo arbitrio*, which also cites D.74 c.9 as a *contra* authority.

<sup>67</sup> Brussels, Bibliothèque royale de Belgique, MS 1407-9, fo.85rb.

century decretals, and the process by which they were formalised into canon law, can be seen. It touches on questions of jurisdiction within the church – specifically, the question as to how far local decisions were able to shape the outcome of legal cases even when those cases were taken to the papal curia. As such, it engages with the question of how different authorities and jurisdictions were recognised by contemporaries. Such an interpretation of jurisdiction is not always associated with the burgeoning judicial apparatus of the church, where discussions focus more often on questions of clash and conflict, between either ‘church’ and ‘state’, or between bishops and popes. WH1065 shows why that remains the case: contemporaries clearly saw the interest and novelty of WH1065 in its explanation of process in specific circumstances relating to illicit ordination. Other, better, precedents provided the framework for issues concerning hierarchy and jurisdiction, as can be seen from the glosses which accompanied the letter in later collections.

Moreover, there are three sets of actors engaged in turning the initial letter, sent in response to an appeal, into something which in 1234 became part of a legal codification created at the behest of Gregory IX. The first two are obvious: the cleric whose actions in securing an illicit ordination had led to the case in the first place, and the various judges involved, be that the papacy or the local ordinaries, including the bishop of Lincoln. They were actively involved in the case; Alexander – or whoever wrote his decision, which may not have been the pope himself – played a particularly critical role in recognising episcopal jurisdiction when providing R. with his next steps. The third set of actors, however, are the canonists who included the letter in their collections or who glossed and commented on it. Not a party to the case itself, most are anonymous, but their actions transformed the letter from a request for help to an accepted legal case study, in the process moulding it into a precedent speaking to illicit

ordinations rather than providing a novel commentary on questions of jurisdiction within the church, even as the commentaries emphasise the broader relevance of the implicit recognition of episcopal jurisdiction.

#### Acknowledgements

In addition to my deep thanks to all members of the network, particular thanks are due to Alice Taylor as well as Helle Vogt and Jason Taliadoros, and to the anonymous peer reviewers whose comments were most helpful in refining this piece.