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# An Earlier Recension of Hostiensis's Lectura on the Decretals

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## An earlier recension of Hostiensis's Lectura on the Decretals\*

After Martin Bertram provided me with a list of manuscripts containing Hostiensis's Lectura on the Decretals of Gregory IX, I noticed that the text in Oxford, New College 205 was a marginal gloss.<sup>1</sup> Curious how his massive commentary could have been fitted into the margins of a decretal manuscript, I examined it and discovered that the apparatus of glosses was a shorter version of Hostiensis's text as found in the printed editions. The Oxford text begins with his commentary on 'Firmiter credimus', leaving out his long discussion of 'Rex pacificus' and omitting many other glosses. The format of the Decretals of Gregory IX in the manuscript was obviously designed to accommodate a much larger apparatus than usual. The text of the decretals was written in oversized letters by an Italian scribe and occupies only a small portion of each folio, leaving unusually large margins. The apparatus is also written in a very small, but careful and clear Italian script. I would date the text and apparatus to the second half of the thirteenth century.<sup>2</sup>

Hostiensis's apparatus occupies folios 2r to 241r. It begins:

Firmiter credimus: bene dicit nam dubius in fide infidelis est, ut de con. di.ii. Reuera.

The entire commentary on 'Firmiter credimus' (X 1.1.1) is exactly the same as in the printed edition. The final glosses to 'Indignum' (X 5.41.11) differ from the printed text:

c. Indignum, etc. *alienum*: Ergo et a consuetudine — et c. Nolite. *homagium*: i.e. sacramentum fidelitatis quod non debet — supra de re iud. Cum inter uos, supra de iureiur. Nimis.

Explicit apparatus decretalium. Benedictus sit perfectior omnium qui incepit et perfecit, pater et filius et spiritus sanctus Amen. § ii. ad Tytum c. finali. Festina ad me uenire Nycopolim; ibi enim statui yemare (Titus 3.12).

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<sup>1</sup> For bibliography on Hostiensis (Henricus de Segusio) see 'A "Quaestio" of Henricus de Segusio and the textual tradition of his "Summa super decretalibus"', *BMCL* 16 (1986) 93 n. 8. Bertram will publish an analysis of the manuscripts and editions of Hostiensis's Lectura shortly.

<sup>2</sup> The back flyleaf (fol. 242) is the text of a commentary on X 1.3.32-1.3.37. Several glosses are signed Johannes Andreae.

The same quotation from Titus 3.12 is found at the end of his *Lectura* in London, Royal 10.E.vi. fol. 231r and Bamberg, Staatsbibl. Can. 56 IV, fol. 271v. The printed edition ends with Eccl. 12.13. Although his 'Prohemium' to 'Rex pacificus' is missing from the Oxford manuscript, from references to it in his commentary, it was a part of the original text.<sup>3</sup> However, if Oxford, New College had ever contained the 'Prohemium', it was already missing in the late Middle Ages. A fifteenth-century table of contents and index on the flyleaf at the front of the book lists his commentary on 'Firmiter credimus' as the beginning of the work.

At first glance one might assume that the apparatus was an abbreviation of his *Lectura*. Thomas Diplovatatus mentions an abbreviation in his life of Hostiensis,<sup>4</sup> and Samson de Calvomonte also shortened the *Lectura* in a work which survives in at least five manuscripts.<sup>5</sup> But a careful examination of the Oxford text leaves no doubt that this is an earlier version of his *Lectura*. The evidence is unambiguous and can be demonstrated by dating the apparatus and by comparing the apparatus in the Oxford manuscript with the printed text<sup>6</sup>.

First the date. Hostiensis finished the last version of his *Lectura* in the final year of his life. We know from his will that he took pains to insure that 'authentic' exemplars were supplied to the universities of Paris and Bologna.<sup>7</sup> Undoubtedly,

<sup>3</sup> X 1.2.1 v. *ab omnibus* Oxford, New College 205, fol. 4r and X 1.7.2 v. *vicarium*, fol. 34r.

<sup>4</sup> *De claris iuris consultis*, ed. F. Schulz, H. Kantorowicz, and G. Rabotti (SG 10; Bologna 1968) 144. I have not found a manuscript of this work.

<sup>5</sup> Mentioned by P.-J. Kessler, 'Untersuchungen über die Novellen-Gesetzgebung Papst Innocenz IV.', ZRG. Kan. Abt. 33 (1944) 71 n. 59 and 80; M. Bertram, 'Aus kanonistischen Handschriften der Periode 1234 bis 1298', *Proceedings Congr. Toronto* 43. Kessler, 71-72, discussed an anonymous abbreviation of Hostiensis's *Lectura* to the Novellae of Innocent IV in Leipzig Stadtbibl. 251 and Vienna, Nationalbibl. 2071.

<sup>6</sup> For this article I shall cite Hostiensis's *Lectura* in the Venice 1581 edition (reprinted Torino 1965), because it is widely available. It is, however, a far less reliable text than the Strasbourg 1512 edition. I have not seen the Paris 1512 edition, but from comparisons I have made with the texts edited in J. A. Watt, 'The use of the term "Plenitudo potestatis" by Hostiensis', *Proceedings Congr. Boston* 161-87, the Paris edition is very close in quality to the Strasbourg.

<sup>7</sup> A Paravicini Bagliani, *I testamenti dei cardinali del duecento* (Miscellanea della Società Romana di Storia Patria, 25; Rome 1980) 133-41 at 134: 'Tertio. Commentum meum super Decretalibus quod misi Bononiam conscribendum studio Bononiensi relinquo . . . Tertium volumen eiusdem Commenti de quo supra feci mentionem quod videlicet misi Parisius per Rostagnum, canonicum Venciensem, lego eidem Rostagno'. He instructed that another exemplar, given to the Church of Embrun, be taken to Paris where the copy sent there would be corrected: 'Aliud vero eiusdem Commenti volumen quod scripsit Molinarius scriptor, relinquo ecclesie Ebredunensi; ita tamen quod antequam reddatur ipsi ecclesie mittatur Parisius ad corrigendum illud quod ibidem misi'. These instructions would seem to indicate that Hostiensis knew the Parisian manuscript lacked material that the Bolognese exemplar did not. It would be tempting to assume that the Oxford manuscript might have been made from the uncorrected Parisian exemplar. However, since the Oxford manuscript is Italian, this

the manuscripts of the *Lectura* produced by the scriptoria at various university-centers derive from these copies. This version of his *Lectura* circulated after his death and is preserved in a large number of manuscripts. Many texts in the *Lectura* can be dated to the last years of his life, during the time he held the office of cardinal bishop of Ostia. He mentioned Pope Clement IV (1265-68) fairly frequently. All these glosses are missing from the Oxford manuscript. I have found no references in the Oxford manuscript's apparatus to events or persons after ca. 1265.

1. 1267 (or later). At X 2.22.10 he included a long discussion of a case involving the Royal Abbey of Notre Dame of Jouarre.<sup>8</sup> Pope Clement IV decided the case in an enregistered letter dated 19 December, 1267.<sup>9</sup> Hostiensis had this letter in front of him when he wrote a long commentary on the case v. *tantum venditio*.<sup>10</sup>
2. 1265-68. He mentioned a letter written by Clement IV concerning the monastery of Les Beaumes in the diocese of Besancon at X 1.43.10 v. *sublato*.<sup>11</sup> The letter is not in Clement's register.
3. 1265-68. He referred to an opinion of Clement IV that if someone renounced the world to enter a monastery but left within three days, he was not obligated to fulfill his monastic vow, at X 3.31.2 v. *per vim*.<sup>12</sup>
4. 1268. Mentioned Clement IV's (unsuccessful) translation of Bishop Mattheus from Viseu to Coimbra in a long gloss to X 2.25.5 v. *excommunicationis*.<sup>13</sup> The entire gloss is not in the Oxford manuscript;<sup>14</sup> no trace of this affair can be found in Clement's register.
5. 1268, after November 29th. He stated that Clement IV died at X 1.41.5 v. *denuo*.<sup>15</sup> The first part of this gloss is in the Oxford manuscript, but he added the second part, in which he mentioned Clement's death, beginning at 'arg. contra supra de elect. In causis § finali'<sup>16</sup> to the end of the gloss, to the second recension.
6. 1270-1271. The last datable gloss in his *Lectura* described his experiences in Viterbo during the papal election. He refers to the renunciation of his right to participate in the election on account of illness (June, 1270) in his gloss to

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seems unlikely. On the testament see S. Kuttner, 'Wer war der Dekretalist Abbas Antiquus?' ZRG Kan. Abt. 26 (1937) 486 n. 3.

<sup>8</sup> The ramifications of this case dragged on for years; see J. Queguiner, 'Jouarre au XII<sup>e</sup> et au XIII<sup>e</sup> siècles', *L'abbaye royale Notre-Dame de Jouarre* (Paris 1961) 89-107.

<sup>9</sup> *Registres de Clément IV (1265-1268)*, ed. E. Jordan (Paris 1893-1945) no. 558.

<sup>10</sup> Ed. 1581, vol. 2, fol. 118rb-118va. Oxford, New College 205, fol. 94v-95r.

<sup>11</sup> Ed. 1581, vol. 1, fol. 207vb-208ra. Oxford, New College 205, fol. 66r.

<sup>12</sup> Ed. 1581, vol. 3, fol. 108rb-108va, Oxford, New College 205, fol. 248r. In the Oxford this gloss originally read: 'parentibus uel ipsi filio illatam'. The long text from 'Puta, tracti et tonsurati fuerant' to the end of the gloss is a later addition.

<sup>13</sup> Eubel, *Series episcoporum* I 196, 531.

<sup>14</sup> Fol. 102r.

<sup>15</sup> Ed. 1581, vol. 1, fol. 198rb. Oxford, New College 205, fol. 63v.

<sup>16</sup> Fol. 198rb, at the top of the column.

X 1.9.10 v. *humiliter obedire*.<sup>17</sup> Since he died on 7 November, 1271, this gloss must be one of the last additions he made to his commentary.<sup>18</sup>

On the other hand, three glosses in the Oxford manuscript do help to establish, if only roughly, the terminus a quo for this recension of his commentary.

1. 1254. He referred to Innocent IV as being dead in a gloss to X 3.30.29 v. *tertiam uel quartam portionem*.<sup>19</sup>

2. 1250-1262. In a gloss to X 1.31.13 v. *per capitulum*, he made the following observation:<sup>20</sup>

Quomodo deuoluetur hec potestas ad episcopum, ut hic sequitur? Licet super hoc uerbo multa scripta sint, tamen hec questio soluitur in decretali ad consultationem capituli nostri, scilicet Ebredunensis, factam, infra de conces. preb. Postulastis.

Pope Innocent III sent 'Postulastis' (X 3.8.15) to the cathedral chapter of Embrun in 1212. Most manuscripts of the Decretals of Gregory IX have 'idem' as inscription but Hostiensis may have known it had been sent to Embrun from the inscription in manuscripts of *Compilatio quarta* (4 Comp. 3.3.2).<sup>21</sup> Whatever the case, his reference to 'consultatio capituli nostri' very likely means that he was still archbishop of Embrun when he wrote this gloss. For the most part he distinguished quite carefully the present from the past in his commentary. When he added a comment to X 1.31.16 v. *onerentur* (not in the Oxford manuscript), in which he discussed a case that occurred while he had been bishop of Sisteron (1244-1250), he wrote: 'dum curam et administrationem Sistaricensis ecclesie teneremus' (see also the example at n. 26 below).<sup>22</sup>

3. 1262. In a gloss to X 2.22.6 v. *in annotatione indictionis*, he described how to calculate in which indiction a particular year was:<sup>23</sup>

Verbi gratia: Hodie currit annus domini M.cc.lxii. Adde tres habebis m.cc.lxv. Cum ergo m.cc.lx. diuisi sint per quindenias, et sic supersunt quinque tantum. Hodie est quinta indictio.

<sup>17</sup> Ed. 1581, vol. 1, fol. 91va-92rb. Oxford, New College 205, fol. 36v-37r. In Clm 28152, an Italian manuscript with 'pecia' markings that has been carefully corrected, the entire text is labeled 'additio'. At the beginning of the gloss (fol. 56r) is the notation: 'Additio pne [sive pue] <word is cut off by the trimming of the folio> incipit' and ends (fol. 57r) 'hic finita est additio'. However, the hand that made this notation is different from that which made corrections in the scriptorium.

<sup>18</sup> Paravicini Bagliani, *Testamenti* 19 n. 1.

<sup>19</sup> Ed. 1581, vol. 3, fol. 105ra, Oxford, New College 205, fol. 141r: 'coram felicis recordationis domino Innocentio quarto'.

<sup>20</sup> Ed. 1581, vol. 1, fol. 164vb, Oxford, New College 205, fol. 55r.

<sup>21</sup> Hostiensis listed three copies of 'decretales' in his testament; one of these could have been the *Compilationes antiquae*, cf. Paravicini Bagliani, *Testamenti* 135-36. Of course he might also have learned of the recipient's identity from the archives in Embrun.

<sup>22</sup> X 1.31.16 v. *onerentur*, Ed. 1581, vol. 1, fol. 167va, Oxford, New College 205, fol. 56v.

<sup>23</sup> Ed. 1581, vol. 2, fol. 114va, Oxford, New College 205, fol. 93v.

Obviously, one cannot be sure that he would have chosen the year in which he was writing this passage to use for his example, but I think it is probable that he would have. On the basis of these two texts, we may assume that he worked on the first draft of the *Lectura* fairly intensively while archbishop of Embrun (but since he was elevated to the cardinalate in May 1262, this passage might have been written after he received his cardinal's hat).

The date, then, of the recension of Hostiensis's commentary contained in the Oxford manuscript, or apparatus, if the Oxford colophon reflects his mind, could not have been written earlier than 1254 and not later than ca. 1265. I have found only one clear reference to this recension in other works. In a gloss to his *Decretum electionis* he referred to a passage in the Oxford manuscript.<sup>24</sup> One may assume that Hostiensis wrote this tract on elections after he became cardinal, but before the last year of his life. E. Vodola cited a possible reference to the Oxford recension in a canonical question dated 1270 from a Vatican manuscript.<sup>25</sup> But this reference is so late that I am not sure we can assume with certainty that it refers to the Oxford recension. In fact, the text of the Oxford manuscript may not be the first version of his commentary on the Decretals. We know from passages in his *Summa*<sup>26</sup> and a gloss to X 1.3.20 v. *dedissemus* that in the 1230's he lectured on the Decretals in Paris.<sup>27</sup> The glosses in the Oxford manuscript show some signs of having been expanded; for example, it has a few examples of the double glosses to the same word that is characteristic of the later recension.<sup>28</sup> However, since, to my knowledge, he never cited the *Lectura* in his *Summa* (finished in ca. 1253) or in his commentary on the *Novellae* of Innocent IV (before 1253), he wrote the bulk of the apparatus to the Decretals in the Oxford manuscript after 1254.

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<sup>24</sup> Clm 4111, fol. 42v, v. *ius habentium*: "ut plene no. extra. de elect. Quia propter § i. super uerbo 'qui debuerunt' <recte debent>." This gloss is in the Oxford manuscript and in the second recension. On the *Decretum electionis* of Hostiensis, see A. von Wretschko, 'Ein Traktat des Kardinals Hostiensis mit Glossen betreffend die Abfassung von Wahldekreten bei der Bischofswahl', *Deutsche Zeitschrift für Kirchenrecht*<sup>3</sup> 17 (1907) 73-88.

<sup>25</sup> 'Hostiensis (Henry of Susa)', *Dictionary of the Middle Ages* 6 (1985) 298.

<sup>26</sup> *Summa*, de electione v. *Et qualiter*, Florence, Laur. Fiesol. 118, fol. 27r, Clm 14006, fol. 15r, Clm 15707, fol. 21r: 'Hispanus quidam, qui uocabatur magister scholarum, et a me audiebat decretales Parisius, cui in scriptis casus tradideram sine concordantiis, supradictos uersus mihi remisit compositos, et sequentes'.

<sup>27</sup> The text of the gloss is not absolutely straightforward. In Oxford, New College 205, fol. 11r the gloss states he read the *Decretum*: 'Putat si impetratur contra P. archidiaconum Parisiensem, beneficiatum in Anglia atque Prouincia, legentem Parisius in decretis, de Secusia oriundum, is enim nullus est nisi ego'. He meant that if all the other facts were correct and only the initial of the first name was wrong, the impetration would still be valid. A scribe can easily confuse 'decretis' for 'decretalibus'. Clm 28152, fol. 12r and the printed editions have 'decretalibus' rather than 'decretis'.

<sup>28</sup> E.g. to X 3.8.4 v. *dispensare*, Ed. 1581, vol. 3, fol. 35ra-rb. Oxford, New College 205, fol. 128r.

Hostiensis invested much effort in his expansion of the commentary of the Oxford manuscript. It is difficult to judge the amount of material he added to the final version of his commentary, but I would estimate that it is almost twice as large as the text in Oxford. His revisions uniformly took the form of additions to the earlier text (at least I have not found glosses that he eliminated). These additions range from sentences and phrases inserted into earlier glosses to entirely new glosses (sometimes creating doublets to some lemmata) to words of the text he had not commented on before. I have already mentioned the addition to X 1.9.10 (n. 6 supra). He not only wrote the gloss to v. *humiliter obedire*, but also added a long section to the gloss v. *deferre*. The earlier gloss read 'immo distinguendum . . . § Verum ver. Quippe'. He then added the section beginning 'Ad hoc autem, ut de hac materia plenam doctrinam habeas, distinguendum est — hec tota glossa'.<sup>29</sup>

Sometimes his editing left the seams of the older version bare. Just before the addition of the gloss (n. 1) discussing the case concerning the Abbey of Jouarre, he had written: 'tu dic, ut in sequenti glossa, ver. "ex utriusque" super verbo "confessione".' Later he added the gloss v. *tantum venditio*, detailing the facts of Jouarre. But "'ex utriusque" super verbo "confessione"' was no longer the following gloss and he had to add 'et adde quod not. in sequenti glossa' referring to *tantum venditio*.<sup>30</sup>

One could cite many examples to demonstrate the relationship of the two recensions. But perhaps the complexity of his revisions and the importance of the Oxford text for understanding Hostiensis's thought can best be shown by taking a single chapter, X 3.32.7 (Ex publico), and laying out the differences between the earlier and later texts. I have also chosen this text because it gave me particular difficulties when I wrote about it in an earlier work on Hostiensis's thought. If I had known about the Oxford manuscript then, I would have had far less trouble understanding it.

First an outline of what was added to the earlier recension.

1. 'ut hic dicitur in uxore matrimonium', a phrase added to the very end of the gloss v. *vel ad virum*.<sup>31</sup>
2. To the gloss v. *infra duo mensium*:<sup>32</sup>
  - i. dixit d.n. quod ex causa — tempus non fuit ordinarium.
  - ii. Sed et ex causa — et facta tenet
  - iii. Ad apostolicam et
  - iv. et cap. Statuimus respon. i. — Cum pro causa et c. Officii.
3. To the gloss v. *transierit*:
  - i. et procedit hec specialitas ex speciali ordinatione — § Nam et si matrimonium.

<sup>29</sup> Ed. 1581, vol. 1, fol. 91rb-91va, Oxford, New College 205, fol. 36v-37r.

<sup>30</sup> Ed. 1581, vol. 2, fol. 118ra-118va, Oxford, New College 205, fol. 94v-95r.

<sup>31</sup> Ed. 1581, vol. 3, fol. 118ra, top of column.

<sup>32</sup> Ed. 1581, vol. 3, fol. 118ra, Oxford, New College 205, fol. 151r.

4. To the gloss v. *sacri eloquii*:<sup>33</sup> cuius eloquium et sacrum est — in dubiis recurrendum est ad papam.
5. To the gloss v. *consummatum*.<sup>34</sup>
  - i. et circa consummatum — Gaudemus. Sed
  - ii. incarnatus esset et
  - iii. Quinimmo et si attendas subtiliter — nisi hec habuit, quia habuit.
  - iv. (fol. 118va, top of column) ad exemplum sanctorum — que et approbatur
  - v. Has autem auctoritates Ambr. et August. invenies
  - vi. Dominus Innocentius
  - vii. Et posset reddi ratio — in dissensu
  - viii. Sed et probabiliter dici potest — supra de transl. episc. c.i. respon. i. et c.ii. et iii.
  - ix. Ad quod etiam designandum — supra de transact. c. finali et infra de frigid. c. finali.

The text (viii.) Hostiensis inserted into the lemma 'consummatum' created particular difficulties of interpretation. In the following text, the indented portion is that added by Hostiensis in his last recension.

Hac etiam ratione considerata possent sponsi de presenti ante carnis copulam auctoritate pape se adinuicem absoluere, sicut legitur in sponsalibus de futuro, infra de spons. c.ii.

et posset reddi ratio quia ante carnis copulam utroque consentiente; in dissensu quia<sup>35</sup> contrarius actus congruus interuenire potest, arg. infra de reg. iuris, Omnes res, licet altero inuito hoc non posset, arg. C. de acc. et obl. Sicut. Sed post carnis copulam non posset hoc fieri, quia nec actus contrarius congruus interuenire posset, arg. ff. de pact. Ab emptione. Hoc autem intelligo de potestate absoluta, non de potestate ordinata, nisi alia causa subesset; non enim fit quod hic statuitur sine causa.

Set et probabiliter dici potest quod cum ecclesia circa impedimenta matrimonii restringenda uel laxanda potestatem habeat, ut patet in eo quod legi et not. Infra de consang. Non debet, statuere potuit et hoc, quod coniunx ante carnis copulam etiam inuito consorte posset religionem intrare, et alius in seculo remanens cum alia contrahere, impedimento hoc non obstante. Et hanc rationem reddidit mihi dominus Mattheus sancte Marie in Porticu diaconus cardinalis.<sup>36</sup> Et si queras unde procedit tanta potestas ecclesie, uide quod leg. et not. supra de transl. episc. c.i. respon. i. c.ii. et iii.

Potuit ergo papa circa non consummatum matrimonium hanc constitutionem facere etiam de potestate ordinata. Et est ratio quia cum per tale matrimonium caritas, que consistit in spiritu inter Deum et iustam animam tantum representetur, supra de bigam. Debitum. Nichil absurdum sequitur si talis possit religionem intrare, quia non dissoluitur, set potius augetur per hoc vinculum caritatis. Nec uidetur uoti uiolator, qui illud in melius commutauit, infra de vot. Scripture.

<sup>33</sup> Ed. 1581, vol. 3, fol. 118rb, Oxford, New College 205, fol. 151r.

<sup>34</sup> Ed. 1581, vol. 3, fol. 118rb-118va, Oxford, New College 205, fol. 151r.

<sup>35</sup> *om.* Ed. 1581.

<sup>36</sup> Matteo Rosso Orsini, Cardinal deacon 1262-1305; see P. Herde, *Cölestin V. (Peter von Morrone): Der Engelpapst (Päpste und Papsttum 16; Stuttgart 1981) 34-36.*



Once one understands how Hostiensis revised his *Lectura*, the rather startling statement at the beginning of the last paragraph ('Potuit ergo papa'), which seems to refer to the example immediately preceding it in the final recension, is not hard to understand. The pope's 'potestas ordinata' does not refer to the case of the unwilling spouse but to the entrance of spouse into a religious order when both are willing or 'alia causa subesset', as in the case discussed in the decretal. When an 'alia causa' is not present or one is unwilling, then the pope must exercise his 'potestas absoluta'.<sup>37</sup> In his revision, he added the case of a recalcitrant spouse to his earlier discussion and cited the opinion of Mattheo Rubeo Orsini, cardinal deacon of S. Maria in Porticu. He accepted the argument that the pope could dispense from the impediment created by the first marriage and elevated his concept of papal absolute power considerably. However, his additions were not very elegantly made and make the revised text very difficult to follow.

The Oxford manuscript reveals that Hostiensis changed his mind about some issues in the time between his first and last recension. His views on the legitimate dominium of infidels were debated by later jurists and have received extensive attention from modern historians.<sup>38</sup> However, he seems to have decided that the infidels did not possess just dominium late in life, perhaps reflecting renewed enthusiasm for crusades in the late 1260's and early 1270's. In the first recension, he wrote in a gloss to X 1.2.1 (Canonum):<sup>39</sup>

Aliis etiam quam subditis non potest lex imponi, ut C. de incest. nup. Neminem. <Cod. 5.5.2> et pagani et infideles non sunt subiecti, infra de diuort. Gaudemus, respon. i. <X 4.19.8> ideo nec par astringitur, ut infra de elect. Innotuit <X 1.6.20>, ff. de arbit. Nam magistratus. <Dig. 4.8.4>

The pope could not issue laws binding peoples who were not subject to him, and he specifically exempted pagans and infidels. Innocent III's decretal, 'Gaudemus', was a proof that infidels had their own law, which bound them even after they became Christians and even if their law violated canonical precepts. In his second recension, he wrote a long gloss to X 3.34.8 (Quod super hiis) v. *pro defensione* in which he argued that the pope had jurisdiction *de iure*, over all infidels. At the birth of Christ, all 'honor, principatus, dominium, et iurisdiction' was translated to Christians.<sup>40</sup> When he revised his commentary, Hostiensis did not change his

<sup>37</sup> I discussed this passage in *Pope and bishops: The papal monarchy in the twelfth and thirteenth centuries* (Philadelphia 1984) 65-66.

<sup>38</sup> J. Muldoon, "'Extra ecclesiam non est imperium": The canonists and the legitimacy of secular power', SG 9 (1966) 551-80 and *Popes, lawyers, and infidels: The Church and the non-Christian world* (Philadelphia 1979); K. Pennington, Bartolomé de Las Casas and the tradition of medieval law," *Church history* 39 (1970) 149-61; B. Kedar, *Crusade and mission: European approaches toward the Muslims* (Princeton 1984) 159-71.

<sup>39</sup> Hostiensis to X 1.2.1, v. *ab omnibus*, Clm 28152, fol. 4r, Paris, B.N. 3999, fol. 4v, Paris, B.N. 8927, fol. 4v, Oxford, New College 205, fol. 4r.

<sup>40</sup> (Venice 1581) vol. 3, fol. 128r-129r. Oxford, New College 205, fol. 154v has only: 'No. non dicit impugnatione, super quo uide quod no. in Summa eodem titulo § finali', to the phrase

comments on X 1.2.1 to agree with those at X 3.34.7.<sup>41</sup> The early manuscripts of his second recension of X 1.2.1 have the same wording as in the Oxford manuscript. Jurists noticed the discrepancy. In later manuscripts, and in the printed editions, the crucial passage in X 1.2.1 was revised to conform to his views expressed in X 3.34.7. The passage then read, with interpolations in italics:<sup>42</sup>

Et pagani et infideles non sunt subiecti *spiritualiter*, infra de diuort. Gaudemus, respon. i. <X 4.19.8> *nam temporaliter subsunt, quod dic ut plene not. infra de uoto. Quod super his § Rursus <X 3.34.8>. Aliis igitur quam subditis non potest quis legem imponere, ideo nec par astringitur, ut infra de elect. Innotuit <X 1.6.20>*

This example not only illustrates how complicated the textual tradition of Hostiensis's Commentary is in places, but also raises a methodological question for future scholarship. Historians of canon and Roman law have used the printed editions of the fifteenth and sixteenth centuries without much attention to the manuscript tradition of a work. We are becoming aware that we must investigate the manuscripts of these texts and compare them with the printed editions, especially for passages in which unusual or controversial views are expressed.<sup>43</sup> The early-modern editions are of varying quality, but even when well done, they are usually based on late medieval manuscripts. As the above passage demonstrates, even meticulous editors can be misled by the manuscripts they use. This is particularly true for Hostiensis. Most historians have consulted the Venice edition of his commentary because the reprint edition has made it widely available. However, it is poorer than the Paris or Strasbourg editions and should always be checked against the manuscripts.

Since this recension of Hostiensis's *Lectura* survives, it seems, in a single manuscript, it must have had a limited circulation during his lifetime. But its existence may have accounted for the care with which he arranged to have the final recension of his commentary sent to Paris and Bologna in his will. We have the text of his will from a poor edition in the *Gallia Christiana*, which has a difficult sentence.<sup>44</sup> He ordered that the copy written by a certain Molinarius be sent to Paris

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'pro defensione'. By underlining the right of defense, as opposed to attack (*impugnatio*), Hostiensis's short, original gloss agreed with his comments to X 1.2.1.

<sup>41</sup> Clm 28152, fol. 4r, Paris, B.N. 3999, fol. 4v, Paris, B.N. 8927, fol. 4v.

<sup>42</sup> (Strasbourg 1512) vol. 1, fol. 6r, (Venice 1581), vol. 1, fol. 7v, Clm 13015, fol. 7r, Paris, Bibl. de l'Arsenal 1210, fol. 4r, Paris, B.N. lat. 3995, fol. 4r, Paris, B.N. lat. 3996, fol. 4v. The additions may have been added in stages. The Arsenal and lat. 3996 manuscripts omit '*spiritualiter*', but contain the second addition.

<sup>43</sup> B. Kedar's article, 'Canon law and the burning of the Talmud', *BMCL* 9 (1979) 79-82, is an excellent example for the textual problems in Innocent IV's *Apparatus*. See also, again for Innocent, his *Crusade and mission* 160 n. 3 and 217, Appendix 4e. S. Kuttner and D. Girsengsohn simultaneously discovered significant differences between the printed and manuscript versions of Francesco Zabarella's Commentary; see *BMCL* 16 (1986) 97-101.

<sup>44</sup> 3 (Paris 1725) 180-82.

where the copy there should be corrected. Then it should be returned to Embrun and kept perpetually in the church.<sup>45</sup>

et postea reddatur archiepiscopo et capitulo Ebredunensi per illum cui capitulum commiserit custodiendum perpetuo, ne aliquatenus alienetur nec in personam aliam transferatur, qui et teneantur de ipso copiam facere infra ecclesiam Ebredunensem et non extra, omnibus ibidem manentibus cum corrigenda sua sumpta uel aliena si qua forsan ibidem [et *add. Ed. male*] hac de causa duxerint deportanda.

The last sentence would be translated: 'all copies remaining at Embrun if they have reason to correct their copies or those of others, if perchance for this reason, they would carry the exemplars away'. It is striking that Hostiensis seems to have supposed that Embrun would have become a center for the distribution of his text. Located in the mountains at the far southeastern corner of France, Embrun was not near university centers or on major roads.

Oxford, New College 205 will be an indispensable text for those who wish to study Hostiensis's ideas, and it is fortunate that the manuscript is a carefully written and complete text. I have checked its readings in many passages, and they are most often as good or better than the best manuscripts we have of his second recension. With it we will be better able to understand his thought and trace its development.

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## APPENDIX I

There are a number of problematical texts in Hostiensis's *Lectura*. I had struggled with the following passage in his commentary on the famous decretal of Pope Innocent III, 'Per venerabilem' (X 4.17.13) v. *quod non solum* in an earlier article and at that time gave up hope of understanding the passage.<sup>1</sup> Since then I have checked in text in several manuscripts and Oxford New College 205 and have edited the passage. This text also demonstrates (line 6 of apparatus) how minor some of Hostiensis's changes were in the second recension. Innocent had written that 'quod non solum in ecclesiae patrimonio, super quo plenam in temporalibus gerimus potestatem, verum etiam in aliis regionibus, certis causis inspectis, temporalem iurisdictionem casualiter exercemus'. Tancred and Vincentius wrote that he could legitimate only in the Papal State. Hostiensis commented:

Text based on Oxford, New College 205, fol. 188r. Collated with: Florence, Laur. Fiesol. 117, fol. 181v = F, Vat. lat. 1446, fol. 207ra = Va, Vat. lat. 2546, fol. Clxxxvi ra = Vb, Vat. lat. 2547, fol. 40ra = Vc, Vienna, Nationalbibl. 2114, fol. 106r = W

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<sup>45</sup> Paravicini Bagliani, *Testamenti* 134-35.

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<sup>1</sup> 'Pope Innocent III's views on Church and State: A gloss to "Per venerabilem"', *Law, church, and society: Essays in honor of Stephan Kuttner*, ed. K. Pennington and R. Somerville (Philadelphia 1977) 67 n. 70.

Vt T. et Vin. dixerunt etiam postquam uiderunt hec uerba. Set salua reuerentia tantorum uirorum, puto quod nimis perfunctorie transierunt, unde et super hiis uerbis nichil aut modicum glossauerunt ipsi uel alii. Nescio si causa fuit quia forsitan nimis duri erant in opinionibus suis uel quia sicut quidam sensuales dicunt quando ad tallia ueniunt: 'De Deo loquitur, palea est, plana sunt, non est multum curandum'. Attamen ad minus nimis presumptuosum est glosam facere contra textum, et recalitrare tante imperio potestatis, ut patet infra de exces. prelat. Tanta est clauis.

2 unde om. VaVc      4 censuales VaVc      5 tallia scripsi: talia codd. sunt]  
omnia add. FVaVbVcW      6 est] in tali casu maxime add. FVaVbVcW  
7 recalitrare] uelle add. VaVbW

Even with an established text, the passage presents difficulties. Prof. Kuttner has suggested the emendation of 'talia' to 'tallia'; then he would translate the crucial sentence 'quidam sensuales — curandum' 'or because just as certain villeins talk when they come to pay their tallage: "By God," he says, "it's straw, these things are without much worth, it ought not to be troubled over".'

## APPENDIX II

Hostiensis's *Lectura* in the Oxford manuscript also contains his commentary on three 'decretales extravagantes' of Pope Gregory IX, later included in his final recension. I had noted his commentary on two of the decretals in an earlier article,<sup>1</sup> but discovered that he had glossed a third decretal while examining the Oxford manuscript. Each 'extravagans' was added to the margin of the manuscript by the same hand which had written the main text.

None of these decretals has been found in Gregory's registers. The first two, 'Nullum eorum' and 'Mediatores' display the characteristics of 'statutory law' that marks a significant portion of Gregory IX's legislation included in his collection.<sup>2</sup> When Hostiensis glossed these decretals, he noted that they were to be found in some books but not in others. I have examined many manuscripts of the Decretals of Gregory IX hoping to find these 'extravagantes', but to date the Oxford manuscript is the only Gregoriana in which I have found them. They are commonly found with the *Novellae* of Innocent IV, sometimes, as P.-J. Kessler has noted, inserted into the *Gregoriana* with the *Novellae*,<sup>3</sup> or, rarely, separately. The texts transmitted with the *Novellae* are particularly poor. This is especially true for 'Gravi nobis'. The case is very interesting, but most earlier printings have been based on poor manuscript copies that have obscured Gregory's original purpose. Gregory ordered the Dominicans of Pisa to stop encouraging clergy and laymen to withhold tithes from the churches of Pisa. This decretal is addressed to the cathe-

<sup>1</sup> 'The French recension of *Compilatio tertia*', *BMCL* 5 (1975) 70-71.

<sup>2</sup> See S. Kuttner, 'Raymond of Penafort as editor: The "decretales" and "constitutiones" of Gregory IX', *BMCL* 12 (1982) 65-80.

<sup>3</sup> 'Untersuchungen' 31 (1942) 282-85, lists two manuscripts of the *Gregoriana* in which these 'extravagantes' were inserted with the *Novellae*: Königsberg 1760 and Mainz 490.

dral chapter in the Oxford manuscript. P. Tronci printed a copy of this letter dated 7 May, 1230.<sup>4</sup> It is of particular significance that this letter, which predated Raymond of Pennafort's compilation, was, nevertheless, included in some manuscripts of the Gregoriana.

Forty-five years ago, Kessler observed, as Schulte had already done 70 years earlier, that the textual tradition of these decretals would be important for establishing the sources of Boniface VIII's *Liber Sextus*,<sup>5</sup> and a glance at 'Gravi nobis' edited below makes clear how far removed an original can be from a text incorporated into the Sext. Although I have noted the variants in the Sext for 'Mediatores', the editors made such radical changes in the short section of 'Gravi nobis' they included that constructing an apparatus is of no value. I have transcribed the decretals from the Oxford manuscript and collated them with other decretal manuscripts available to me. I have not noted any variants supported by a single manuscript (except in a few cases).

### 1. Nullum, de temporibus ordinationum<sup>6</sup> <VI —>:<sup>7</sup>

Clm 12602, fol. 198r = Ma Clm 3202, fol. 307v = Mb Clm 22229, vol. 261v = Mc Clm 23556a, fol. 300v = Mg Prague, Nat. Mus. XVII.A.15 (from Schulte) = P Vienna, Nat.-Bibl. 2084, fol. 219r = W

Gregorius ix.

Nullum eorum quorum unus, set quis eorum nescitur, homicidium perpetraverit, si forte ad ordines presententur credimus repellendum, quamvis indeterminate monendus et contestandus sit qui culpabilis fuerit, ne in periculum conscientie sue ordinari presumat.

*inscript.* Innocentius iiiii. Mb, Idem Mg, *om.* MaMcP, Idem de eodem W

1 eorum nescitur *om.* MbW 1-2 perpetraverit] perpetravit MbMcMgW, omnino nescitur *add.* MbW 2 presententur MaMbMg, presentatur P 3 mouendus MaMb, remouendus Mc 3-4 conscientie] anime MbPW 4 presumat] presumant Mg, et hoc de hiis qui minime percusserunt *add.* MbW, qui minime percusserunt *add.* MC

<sup>4</sup> Noted by Potthast, Po. 8546a-26204. P. Tronci, *Memorie istoriche della città di Pisa* (Livorno 1682) 231-32. Tronci took his text from an original of the letter still preserved in the Cathedral Chapter Library of Pisa. My thanks to Wolfgang Müller of checking the text in Tronci and to S. Kuttner for drawing my attention to the citation in Potthast.

<sup>5</sup> See the list of 'extravagantes' in Kessler, 'Untersuchungen' 31 (1942) 282-85.

<sup>6</sup> 'de homicidio' MbMc.

<sup>7</sup> Oxford, New College 205, fol. 40r. Ed. 1581, vol. 1, fol. 103r-v. This decretal was printed by J. F. Schulte, 'Die Dekretalen zwischen den "Decretales Gregorii IX." und "Liber VI. Bonifacii VIII."', ihre Sammlung und Verarbeitung ausserhalb des Liber VI. und im Liber VI.: Nach Handschriften, besonders Prager, dargestellt: Ein Beitrag zur Geschichte des Liber VI.', *Sb. Akad. Vienna* 55 (1867) 730, from Prague, Nat. Mus. XVII.A.15 (formerly I.B.4). Schulte noted, however, pp. 724-25, that the Prague manuscript was very poor. Hostiensis mentioned that this decretal was controversial; Pennington, 'French recension' 70.

2. Mediatores, de testibus <VI 2.10.1>:<sup>8</sup>

Clm 12062, fol. 199v = Ma Clm 3202, fol. 300r = Mb Clm 6903, fol. 199v = Mf Clm 23556a, fol. 300v = Mg Frankfurt, Stadt-Univ. Bibl. Barth. 120, fol. 74v = F

Gregorius ix.

Mediatores per quos scelus symonie plerumque committitur ad testimonium contra sceleris eiusdem actores in detestationem tanti criminis admittuntur, si non agatur criminaliter, set ciuiliter, et emolumentum non fuerint exinde consecuti.

*inscript.* Idem in eodem <i.e. Innoc. iv. in conc. Lug.> Ma, Idem FMfMg, *om.* Mb  
1 plerumque *om.* FMaMbMf 2 auctores FMb Ed. Rom., auctores Mg<sup>pc</sup>, actoris  
Mf tanti *om.* Ed. Rom. admittantur FMaMbMf 3 et] uel FMaMf  
3-4 inde (exinde Mg Ed. Rom.) non fuerint assecuti (consecuti Mg Ed. Rom.)  
FMaMbMfMg Ed. Rom.

3. Graui nobis, de decimis <VI 3.13.1, ibi 'Discretioni uestre':<sup>9</sup>

Clm 12602, fol. 204r = Ma Clm 3202, fol. 305v = Mb Clm 22229, fol. 260r-v =  
Mc Clm 17737, fol. 202r = Md Clm 23, fol. 304r = Me Prague, Nat. Mus.  
XVII.A.15 (from Schulte) = P Vienna, Nat.-Bibl. 2084, fol. 217v-218r = W

Extra volumen hoc. Gregorius nonus fratribus predicatoribus.

- Graui nobis dilecti filii capitulum Pisanum conquestione monstrauerunt quod uos in predicationibus uestris et aliis, quod uix credimus, coram clericis et laicis publice asserendo proponitis, quod nemo tenetur decimas ex precepto persoluere, propter quod laicorum qui erant primo in earum solutione remissi,  
5 tanto plus refriguit caritas quod uix aut numquam in ciuitate Pisana aliquid soluitur nomine decimarum, sicque deuotione fidelium mutata insurgunt errores proueniunt animarum pericula, et ecclesiis quibus debentur decime detrimentum non modium generatur. Cum igitur uestram non deceat honestatem  
10 talia proferre, propter que mentes fidelium a bonis operibus retrahantur, et unde debent fructum diuini operis reportare, detrimentum afferant animarum, discretioni uestre mandamus districtius inhiabentes ne talia uel hiis similia que animos audientium corrumpant proponere de cetero presumatis, immo in bono opere informetis, ut ad solutionem decimarum et aliarum rerum que ecclesiis debentur proprie uoluntatis animo sint attententi.

*inscript.* Innocentius iiii. fratribus predicatoribus Ma, Gregorius X. fratribus predicatoribus P, Idem fratribus predicatoribus Me, Idem MdW, *om.* MbMc 1 Graui . . . conquestione Oxon. et Ed.: Grauem (Graue Md) . . . conquestionem (questionem MaMb) *cell.* dilecti filii capitulum Pisanum] dilecti filii canonici Pisani Ma, et J. dilecti filii archiepiscopis

<sup>8</sup> Oxford, New College 205, fol. 92r. Ed. 1581, vol. 2, fol. 107v.

<sup>9</sup> Oxford, New College 205, fol. 148r. Ed. 1581, vol. 3, fol. 107v-108r. Friedberg printed this decretal in his notes to VI 3.13.1 from Clm 23, Leipzig, and Schulte's text, 'Dekretalen' 740-41, from the Prague manuscript.

copus et capitulum Pysanum Mb, dilecti filii archiepiscopus et capitulum Pisante Mc,  
 uen. f n. H. archiepiscopus et capitulum Pisanum Md, dil. filiis noster H. archiepiscopus  
 et Me, uen. frater noster archiepiscopus Pisanus et capitulum Pisanum P, dilectus filius  
 archidiaconus et capitulum Pisanum W monstrarunt MdMeW, monstrauit Mc in om.  
 McW 3 asserentes MbMcMePW 3-4 ex precepto decimas soluere Md,  
 soluere ex precepto tr. MeP 4 laicorum] laici eorum Mb, in laicis Mc, laici P primo  
 om. MaMbMdW earum om. MaP 5 refrigescit MbW, restrigitur Ma, refriges-  
 sit P aliquod Mc, quod MbW, quid Md 6 fidelium deuotione tr. MaMcMdMe,  
 fidelium om. W minuta MaMbMcMdMeP, muncta W 6-7 errores proueniunt]  
 maiores Provincie Mb, errores peruenerunt Mc, proueniunt om. P 7 eccle-  
 siis] ecclesias Mb, ecclesiarum McMe 8 igitur] itaque MbMcW, ergo P  
 9 proferre talia tr. MaMbMcMdMePW propter] per MaMbMcMdMePW  
 10 diuini operis] de bonis operibus MaMb, boni operis McMeP fructum boni  
 debent operis Md 11 mandamus] per apostolica scripta mandamus quatinus uobis  
 (uobis om. W) add. MbW, mandantes Ma, om. McMe, uobis add. P, quatinus add. Md  
 12 in bono] uerbo et MaMcMdMePW, uerbo Mb 13 informetis] eosdem add.  
 MaMbMcMdMePW solutionem] tam add. MaMbMcMePW, praem. Md  
 et aliarum rerum] quam etiam aliorum MaMbMdPW, quam et aliorum Mc  
 ecclesiis] Deo MaMbMcMdMePW 14 proprie] prouide MaMbMcPW, prompte MdMe