Dignitas nunquam perit : *Alexander III (1159-1181)'s decretal* Quoniam abbas *and its consequences in canon and secular law*

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The " consequences " of this famous decretal include the growth of the theory of corporations, and much of the polemic about the respective merits of the monarchical form of church government or the conciliar form — topics not irrelevant to renaissance and modern political history. Put simply and summarily, *Quoniam abbas* encouraged the medieval canon and civil lawyers to assert that a legal power hitherto exercisable by a specific person could continue to exist and be exercised by others when the person originally entrusted with it could no longer do so. Although the texts presented in this paper are primarily canonical, it is important (out of respect for the colloquium's theme) not to ignore the secular equivalent, notably the exercise of certain regalian powers during an *interregnum*[1].

1. The classic work is E. H. KANTOROWICZ, *The King's Two Bodies. A Study in medieval political theology* Princeton, 1957, and French tr., Paris, 1989.

THE DECRETAL *QUONIAM ABBAS* AND THE GLOSS *DIGNITAS NON MORITUR*

Friedberg's source for his text of *Quoniam* abbas was the *Compilatio prima* of *Bernardus Papiensis*, 1.21.19[2] > X.1.29.13. The general title of *Comp Ia* tit. 21 and of X tit. 29 in Friedberg's editions is *de officio et potestate iudicis delegati*, that is delegation *facta personæ* and *facta dignitati.* Friedberg's rubric reads *Delegatio facta digitati, non expresso nomine proprio, transit ad successorem.*

Let us begin with the text of Alexander III's decretal as printed in Friedberg's *Corpus Iuris Canonici*, vol. 2, Decretals (X) 1.29.14 :

> [Alex. III *Abbati et Conventui maioris monasterii]*
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> *Quoniam abbas L[eicestriæ[3]], qui prius suscepto mandato nostro partibus diem ad agendum præfixit, præhabito consilio prudentum, abbatem V[incestriæ3] de novo substitutum iudici præmortuo, illi mandato nostro porrecto, quia sub expressis nominibus locorum et non personarum commissio literarum a nobis emanavit, sibi socium in causæ cognitione adiunxit, ideo nos sententiam illorum, sicut est iusta, ratam et firmam habemus.*

Damasus, who also wrote an *apparatus* on the canons of the IV Lateran Council[4], gl. ad *Quoniam abbas* as in X.1.29.14 : *quia dignitas nunquam perit, individua vero quotidie pereunt.* The phrase *dignitas [quae] nunquam perit* thereafter becomes commonplace. Lying behind this assertion of the continuity of the office despite the death of one of its holders was the Roman civil law doctrine that a corporation (*universitas)* continues to exist

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2. As reconstructed by E. FRIEDBERG in his *Quinque Compilationes Antiquæ*, Leipzig 1882, from Coll. Lipsiensis XXXV.23 (E. FRIEDBERG, *Canonessammlungen...*, Leipzig, 1897, p. 117), Coll Bamberg. tit. XXXIII.23 (*ibid.*, p. 104) and Coll. Casselana XLII.24 (*ibid.*, p. 133).

3. Friedberg notes that the names L and V are corrupt in the mss he cites. L is perhaps Lilleshull, a house of the Augustinian Canons Regular in Shropshire.

4. See A. GARCÍA Y GARCÍA, *Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum*, vol. 2, Rome, 1981, pp. 387-458 (Series *Monumenta Iuris Canonici/Corpus Glossatorum*).

beyond the lifetime of its members : Dig. (Ulp) 3.4.7[5]. Bernard of Parma's *Glossa Ordinaria* on the Decretals (*ca* 1245) offered an explanation : *[...] qui [prædecessor et successor] pro una persona intelliguntur : quia dignitas non moritur (Gl. Ord. X.1.29.14 v. substitutum*). Innocent IV expressed the same idea in his *apparatus* on the Decretals : *[...] finguntur eædem personæ cum prædecessoribus* (*App* on X.1.6.28, n. 5, f° 39).

BACKGROUND TEXTS IN GRATIAN'S *DECRETUM*

The idea which crystallised in *Quoniam abbas* can be discerned in the canonical *ius antiquum.* The list of texts which follows is not of course exhaustive, but attempts to present Gratian's chief citations on the extent to which a bishop's powers could or should be exercised by him with others, or by others in his name or on his behalf. In this earlier canon law, there were said to be four matters in which the bishop needed the co-operation of his clergy : when he acted as judge ; when conferring a benefice ; when granting a privilege ; or when intending to alienate church property or engage in similar business :

(a) Dist 23 c1, the decretal of Pope Nicolas II (Council of Rome, 1059) on papal elections (revised by Alexander III in 1159 : Conc Lat III c.1>X.1.6.5).

(b) Dist 24 c6 (from the collection of Carthaginian canons of 397/8 & 419 extant 429x442, during the Vandal invasions of north Africa), the rubric of which reads that a bishop is not to ordain *sine clericorum suorum consilio.*

(c) C10,q2,c1 (*Conc Agatensi*, a506) ; rubr, *res ecclesiæ aliquo modo alienare episcopis non licet.*

(d) C12,q2,c48 (from Quinisext c.35, a691) ; dict Gr ante : [...] *non solum de laicis [cf. c.47], verum etiam de metropolitanis et quibuslibet aliis clericis intelligendim est [...] res episcopi morientis metropolitano non licet invadere & cf.* cc. sqq.

(e) C15q7c6 (again from the so-called Council of Carthage, see (b) above) : *episcopus nullius causam audiat absque presentia suorum clericorum ; alioquin irrita erit sententia episcopi, nisi presentia clericorum firmetur.*

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5. See KANTOROWICZ, *The King's Two Bodies,* VI.2, pp. 302 sqq, *universitas non moritur* and VII.3, pp. 383 sqq, *Dignitas non moritur.*

Joannes Teutonicus' *Glossa Ordinaria* (1215x1217?) on the *Decretum* summarises the sense of these texts :

> *Requiritur ergo consensus canonicorum in ordinibus conferendis... item in causam diffinitionibus [...] in conferendis beneficiis [...] in privilegiis conferendis et aliis negotiis.*

THE DIOCESAN *ECCLESIA* AS A CORPORATION

The following texts treat the diocesan *ecclesia* as a corporation and how it functioned, including the powers of its members ; and whether vacancies affected the exercise of these powers.

Texts dealing with the limits to what can be done during the vacancy of a See

X.3.9 : *ne sede vacante aliquid innovetur* (3 cc, one of Innocent III & two from Honorius III). Thus in c.1 (Innocent III, 1206 to the Prior & Convent of Glastonbury, concerning the diocese of Bath & Wells with its two cathedrals, Glastonbury claiming that the creation of the latter resulted in grave losses for its revenues) :

> *[...] episcopali sede vacante, non debet super hoc aliquid innovari, quum non sit qui episcopale ius tueatur, maxime ne plus favisse personae quam ecclesiae videremur, si quod eo vivente concessimus post obitum eius subito mutaremus, petitionem vestram ex toto absque damno conscientiae ac periculo famae nequivimus exaudire.*

What is the context of this provision ? In post-Gratian texts & commentaries, the typical title in which such matters are treated is *de electione et electi potestate* or the like (but this is not exclusive) : see X.1.6 ; VI.1.6 ; Clem.1.3 ; Extrav. Jo. 22.1 ; Extrav Comm.1.3.

For example, consider the following texts in the Decretals :

X.1.6, *de electione et electi potestate,* e.g. c.9, the elect is not to confer benefices or do other administrative acts (stressing that

some powers are acquired by the confirmation of election,[6] but that others need episcopal consecration, that is, where the elect is not already in episcopal orders) : and see

X.1.6.15, expressly distinguishing episcopal powers derived from confirmation of election from those derived from consecration.

X.1.6.21, electoral pacts are prohibited (Innocent III, *ca* 1200), as indeed were papal electoral pacts. As a secular equivalent, it may be noted that in a remote country like Scotland, which long continued the practice of electing its kings, pacts between the electors and the chosen candidate were also prohibited (though frequently made and then repudiated by the King, just as they were made before papal elections and repudiated afterwards).

X.1.6.22, if the *maior et sanior pars* of chapter elect someone, the elect is to be confirmed unless mentally incompetent or under canonical age for episcopal election ; in such a case, the minority candidate is to be confirmed (& *cf.* cc.25sqq & c.53). *Cf.* also X.1.6.33 : in a chapter of 7, if 3 members elect a 4th and he consents, let him be confirmed.

X.1.6.42 §1, the right to express a choice of candidate is personal to the elector, and no proctor of a canon is to vote in an election (& §2, secret elections are condemned, and the name of elect is to be published promptly).

X.1.6.55, the elect can take his reasonable expenses at once from the revenues of the prelacy.

X.1.6.56, in episcopal elections, no lay members of the chapter are to vote.

And see X.3.5 to .13 and to the end of X. 3 *passim :*

X.3.5 (cc 38) : *de praebendis et dignitatibus* (e.g. c.1 : *cf.* c.3 : church property does not devolve according to any secular law of succession ; being held by the church for common utility, it cannot be alienated – *cf.* mortmain.

X.3.7 (cc.7) : *de institutionibus* ; e.g. c.3, the right of institution to a benefice belongs to the bishop or his *officialis. Cf.*. VI.3.6.1 – but there may be a legal exception : X.3.7.6

X.3.8 (cc.16) : *de concessione praebendae et ecclesiae* ***non vacantis.***

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6. *Who* exactly confirms the election illustrates another power-struggle, particularly in provinces like Canterbury and York where the Crown came to assert this right.

X.3.9 (3 cc, 1 Inn III & 2 Hon III) : *ne sede vacante aliquid innovetur.*

X.3.10 (cc10) : *de his, quae fiunt a prelato sine consensu capituli.*

X.3.11 (cc.4) : *de his, quae fiunt a maiori parte capituli.* c.1 is Conc Lat III (1179) c.16, *Quum in cunctis ecclesiis.*

In titles X.10 & .11, words like *consilium, consensus* and *subscriptio* are all used to describe the participation of the chapter, though not with complete consistency.

X.3.13. *(de rebus ecclesiae alienandis vel non)* .5 (immovables) & .6, etc. : limiting and punishing the alienation etc. of church property ; & cf Gratian, Dist 96.

X.3.11 : *de his, quae fiunt a maiori parte capituli,* to which we now turn.

The chapter's *sanior (*or *senior) pars* and its *major pars*

In votes by the *ecclesia* comprising bishop & chapter, a distinction emerged opposing the *sanior/senior pars [ecclesiae]* to its *maior pars.* Depending on the subject-mater, the bishop's vote might be " weighted " as we now say, so that the votes of the bishop and one canon would constitute the " majority ", the *maior et sanior pars.* According to *Hostiensis*, there were several possibilities :

(1) Where for example the rights of the canons were under consideration, the bishop had a voice equal to that of a canon.

(2) If the canons were negligent, the bishop had full jurisdiction.

(3) In matters where he exercised his powers as bishop, the bishop and one canon constituted a majority.

(4) In matters affecting the state of the church (that is, the diocese), then the vote of the bishop and the *maior pars* of the chapter was necessary[7].

The bishop was a *duplex persona.* Some of his powers derived from election, even if he was not yet episcopally consecrated ; and these powers were in general exercisable by the chapter, *sede vacante.* He enjoyed other powers which derived

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7. See K. PENNINGTON in *Cambridge History of medieval political thought* ca *350*-ca *1450*, J.H. BURNS ed, p. 445 (French tr., Paris, 1993) ; B. TIERNEY, *Foundations of the Conciliar Theory,* Cambridge, 1955, pp. 122-127, with some texts.

from his consecration (ordination as bishop), but these did not devolve, though there are decretals which allowed chapters to exercise some of the powers normally so reserved during a vacancy : *cf.* X.5.7.9 of Lucius III (<Comp Ia, 5.6.11 of 1184), by which chapters could judge heretics *sede vacante.* Alanus went so far as to suggest that this meant that the Ordinary jurisdiction of the bishop could indeed devolve to the chapter when the See was vacant.

Episcopal and capitular jurisdiction

The *ecclesia* which consisted of bishop and chapter was a *universitas,* a corporation ; indeed, the origins of the theory of the corporation lie in this and parallel branches of medieval canon law. We must therefore ask the question, exactly where or in whom is *jurisdictio* to be found : in the *rector* of the corporation, or in the corporation acting by its *sanior/major pars* ? The question arises if for example there is a vacancy in the rectorship of the corporation, as when the bishop dies in office. In the 13th century, two views were opposed, illustrated by *Hostiensis* and Innocent IV. In his *Commentaria ad* X.1.2.8 (that is, on Innocent III's letter to the bishop of Trento in 1207, *Quum accessissent] v. sedis,* Innocent IV favoured the *rector,* following the monarchical Roman civil model (the emperor, not the *populus Romani,* has jurisdiction) :

> *Et est notandum quod rectores assumpti ab universitatibus habent iurisdictionem et non ipsae universitates. Aliqui tamen dicunt quod ipsae universitates deficientibus rectoribus possunt exercere iurisdictionem, sicut rectores, quod non credo.*

Hostiensis disagreed, locating the corporation's authority collectively in its head *and* members. In the world of 13th century practical politics, Innocent accepted that, for example, at the bishop's death the chapter would exercise the powers of the *ecclesia :*

> *episcopo enim mortiuo, potestas iurisdictionis transfertur in capitulum (Comm. ad* X.1.33.11)[8].

It is therefore clear that a distinction must be made between disputes over the composition of the *ecclesia* as a corporation (including the weight of the votes of its members), and disputes between the bishop on the one hand and the chapter on the other, since some texts suggest that many of a bishop's powers are

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8. See previous note.

exercisable only in co-operation with the chapter. (There are parallels in the relationship between the Master and the Fellows of an Oxford or Cambridge College, or between the Chancellor of a University and the body of Masters[9].) It seems clear that the canonists did not regard the chapter as the sole *auctoritas* which justified the exercise of these powers. In the 13th century, a variety of opinions emerged as to the relationship between bishop and chapter, and defining the chapter's powers *sede vacante.* We must now turn to these.

Disputes between bishop and chapter over the exercise of certain powers

The background appears to be the debate, not just on the extent of the powers of the diocesan *ecclesia,* but also over the rights of the *ecclesia* in dispute with one of its members : for example, the rights of a prebendary to receive the revenues of his particular prebend, rather than an *aliquot* part of the total revenues of the chapter.

Bernard of Parma in his *gl. ad* X.1.3.21 (on whether legal process should be addressed to the abbot, or to abbot & community) distinguished three kinds of corporate rights : those of the prelate or rector ; those of the chapter ; and those which belonged to both prelate & chapter. In the case of any dispute, Bernard suggested that a syndic or proctor be appointed :

> *ab ipso praelato de consensu capituli [...] et hoc cum negotium principaliter tangat praelatum... et si negoti principaliter tangant capitulum ab ipso capitulo constituatur de auctoritate praelati [...] et haec locum habent quando negotia capituli et praelati sunt discreta. [...]Si vero sunt communia, praelatus de consensu capituli constituit syndicum*

and see X.3.9 (& *cf.* Comp III.3.9, Comp.V.3.7) in the list above.

Later relevant texts in the Sext and Clementines, at the turn of the 13th /14th centuries, include the following :

(a) VI 1.6 (*de electione et electi potestate,* cc.47) ; 3.6 (*de institutionibus*) e.g. c.1, benefices which are expressly reserved to

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9. See *The Universities of Europe in the Middle Ages,* HASTINGS RASHDALL, F.M. POWICKE & A.B. EMDEN ed., vol. 3, Oxford, 1936, pp. 52 sqq., ch XII, esp. § 2 (reprinted, Oxford, 1987).

episcopal collation are not to be conferred by the chapter, *sede vacante ;* 3.8 (*ne s.v. aliquid innovetur*). The Sext also contains 10 extracts in books 1, 2 and 5 from Innocent IV's decretal *Romana ecclesia* (Lyon, 1245 or 1246 but extra-conciliar) on setting up the system of Officials[10].

(b) Clem. 1.3 (*de electione et electi potestate*) c.7 : *emolumentum ex iurisdictione, sigillo curiæ vel alias pertinens ad prelatum cathedralis ecclesiæ vel collegiatæ, ea vacante, non obstante consuetudine, deductis expensis reservandum est successori, nisi tunc certæ dignitati competat iurisdictio cum ipsius emolumento* (rubr Ioannes Andreæ)[11].

There is no space to discuss the growing intervention of the papacy during the 13th century in the appointment of bishops (which, if we ignore newly created or divided Sees, assumes a vacancy). The matter is fully discussed in works dealing with papal provision (which was not limited to episcopal appointments) : see Sext 1.6.16 *Cupientes* and h.t.17, *Fundamenta,* two decretals of Nicolas III. There are secular parallels in such practices as crowning an heir apparent during the ruling father's lifetime, to attempt to secure the succession to the throne, and other kinds of pre-election[12].

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10. It is *extravagans* – see FRIEDBERG'S note (a) in *Corpus Juris Canonici,* vol. 2, col. 971. Text in A. POTTHAST, *Regesta pontificum Romanorum (1198-1304),* 2 vol., Berlin, 1874-1875, no. 11751). See generally P. FOURNIER, *Les officialités au moyen âge. Étude sur l'organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France de 1180 à 1328,* Paris, 1880, repr. Aalen, 1984.

11. See also *Extrav Io* XXII 5 (see below, "some brief references...") ; and *Extrav Ioann* 1.2 (= *Extrav Comm* 3.3) : division of revenues during vacancy (1317).

12. See C. MORRIS, *The Papal Monarchy : the Western church from 1050 to 1250,* Oxford, 1989, c. 21, " The structure of government " pp. 527 sqq, e.g. p. 529 on the grounds for papal intervention (Series : Oxford History of the Christian Church) ; G. BARRACLOUGH, *Papal provisions : aspects of church history constitutional, legal and administrative in the later Middle Ages,* Oxford, 1935.

BRIEF REFERENCES TO VACANCIES IN THE PROVINCE OF CANTERBURY

In an appendix to this paper I have noted, by way of illustration, the vacancies in the See of Canterbury from the time of the Norman Conquest in 1066 until the death of Pope Alexander III in 1181. Such vacancies affected both the business of the diocese of Canterbury and of the Province, the archbishop being Metropolitan, often *legatus natus* (that is, papal legate by virtue of his office and not by special appointment[13]) and Primate – eventually being styled Primate of all England (a curious title, the " all " distinguishing him from the archbishop of York, who was styled " Primate of England "). Leaving aside the six year exile of Thomas Becket after his quarrel with Henry II, the time during which there were vacancies following the death of archbishops amounts to some 15 years. Much of the material for studying the exercise of episcopal power during these vacancies is missing, but what has been preserved and published is referred to in Irene Churchill's magisterial work, *Canterbury Administration*[14].

The provincial courts of Canterbury

In order to understand what powers were exercisable during a vacancy in the See of Canterbury and by whom, it is necessary to sketch the system of provincial courts. There were three (that is, ignoring the diocesan consistory court, which was presided over, not as might be expected by the archbishop's Official, but by his Commissary-General) : (1) the *Court of Canterbury* or *Court of Arches,* the provincial court proper, presided over by the *officialis curiae Cantuariensis* (later and still styled the " Dean of Arches " from the place where the court sat, *Sancta Maria in Arcubus* that is,

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13. But appointed papal legates were also sent to the Provinces of Canterbury and York, like those of Otto and Ottobuono Fieschi, (later Pope Hadrian V) in Henry III's reign, both of whom promulgated collections of constitutions in the course of their visitations. See texts in *Councils and synods with other documents relating to the English Church,* F. M. POWICKE, C. A. R. CHENEY (eds), vol. 2, *1205-1311*, Oxford, 1964.

14. 2 vols, 1933. For the Province of York, see R. BRENTANO, *York Metropolitan Jurisdiction & Papal Judges-Delegate 1279-7296*, Berkeley, 1959. See also E. F. JACOBS, *The medieval registers of Canterbury & York – some points of comparison*, York, 1953 (Borthwick Institute of Historical Research, University of York).

St Mary-at-Bow in the City of London, a " peculiar " of Canterbury and thus not in the jurisdiction of the bishop of London. Its pre-1666 records largely perished in the Great Fire of London of that year. (2) The peripatetic *Court of Audience.* (3) The *Prerogative Court of Canterbury,* which had jurisdiction over the estates of those leaving *bona notabilia,* that is goods worth £20 or more within the province.

The Court of Arches continued to function during vacancies in the See. For examples, see the cases in Adams & Donahue's *Select Canterbury Cases* during the vacancies of 1240-1245 from the death of Edmund Rich to the consecration of Boniface of Savoy, pp. 12-14 ; between 1270 and 1273 from Boniface's death until the appointment of the Dominican Robert Kilwardby ; and from 1278 (when Robert was made Cardinal bishop of Porto) to the appointment of the Franciscan John Pecham.

There were two kinds of appeal. First there might be appeals against canonical decisions on a wide variety of grounds, directly to the Court of Canterbury : for example from the consistory courts of the Provinces' dioceses. In rare cases this might include appeals from the so-called definitive sentences of lower ecclesiastical courts (rarely, because of the widespread practice of composition or settlement before any " definitive " sentence was pronounced[15]). More important was the " tuitorial appeal ", *ad tuitionem ad archiepiscopum Cantuariensis.* This was an appeal to Rome which was then sent back, not to a judge-delegate but to Canterbury, seeking the *tuitio* or protection of the appellant's rights which he fears to lose if the case proceeded otherwise[16]. This procedure was

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15. For vacancy compositions and agreements see I. J CHURCHILL, *Canterbury Administration,* vol. 1, pp. 161-240 & vol. 2, pp. 41-118. Miss Churchill states that the provincial (in contrast with diocesan) registers of the Archbishops of Canterbury and York are important for "the records noting the administration of vacant bishoprics by the archiepiscopal officials. In most cases in the middle ages the exercise of jurisdiction in vacant dioceses was regulated by formal agreements and compositions." [end of her note 12]. See also R. BRENTANO, "Late medieval changes in the administration of vacant suffragan dioceses : the Province of York" in *Yorkshire Archæological Journal,* vol. 38, 1952-1955, pp. 496-503.

16. According to Hostiensis (Henry of Segusa, Card. bp of Ostia) this procedure was peculiar to the province of Canterbury : see his comm. on X.2, cited in N. ADAMS, Ch. DONAHUE, *Select Cases from the Ecclesiastical Courts of the Province of Canterbury,* ca *1200-1301,* London, 1981 (Series Selden Society, vol. 95 for 1978-9), at italic p. 65, nn. 1 & 2,

customary, though said to be based on a decretal of Alexander III, *Cum teneamur* (X.2.28.17<Comp.I.2.20.23) which was concerned with an appellant who has been disturbed in his possession of property ; in other words, it belongs to that important group of canonical provisions on spoliation and the remedies available to the dispossessed. Hostiensis' commentary says *fundatur tuicio pro maiori parte super iure non scripto et in multis contra ius scriptum, et potest esse racio quia non tractatur in ea de finali preiudicio ; per ius melius fundatur, extra appellationem (i.e. de appellationibus)* " Cum teneamur "[17].

The *pallium* and powers of a primate

Primacy, metropolitan jurisdiction, came to be associated with the pope's " gift " of the *pallium* to the archbishop[18]. Its possession conferred powers exercisable during the vacancy of the diocesan Sees of the province, and in the province of Canterbury (and widely elsewhere[19]), possession of the pallium included the following rights exercisable throughout the province :

(1) The administration of the spiritualities in vacant Sees. Note however that the temporalities of such vacant Sees in the province of Canterbury had by the late 12th century passed to the King, with the exception of St Asaph in north east Wales and Rochester, a

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acknowledging references from S Kuttner. In fact the practice was found in the province of York as well : *ibid.*, italic p. 66 n. 2.

17. Cited ADAMS & DONAHUE, *op. cit.*, italic p. 64 n. 4 ; for an example see *ibid.*, case C.18 at pp. 265-336, e.g. at page 267 : *ad sedem apostolicam et ad tuitionem sedis Cantuariensis appello.* The concept of *tutela* was widely applied after the Reception of Roman law to limit the exercise of the powers of rulership so as to keep them consonant with the true interests of the governed, as well as justifying intervention during the minority, incapacity or absence – and thus vacancy – of a ruler : see the comments of W. ULLMANN and his references in *Law & Politics in the Middle* Ages : an introduction to the sources of medieval political ideas, Cambridge, 1975, index s. vv. *tutela ;* tutorial function (Series Sources of History-studies in the use of historical evidence).

18. See GRATIAN, *Corpus Juris Canonici.* Dist. 100 ; Decretals 1.8 *de auctoritate et usu palii,* a series of 7 canons from Clement III, 1187-1191 to Honorius III, 1216-1227 ; and *Extrav. Comm.* 1.4, John XXII, 1316-1334.

19. D.M. SMITH, *Guide to Bishops' Registers in England & Wales [recte, in the Provinces of Canterbury & York],* vol. 11, London, 1981, pp. X-XI n. 12 (RHistS Guides & Handbooks series).

subordinate and particular suffragan of Canterbury, lying between the diocese of Canterbury and London and in which lay a number of Canterbury peculiars, e.g. palaces where the archbishop could stay on his journeys to the capital to his palace at Lambeth.

(2) The collation of benefices during such vacancies, where collation would otherwise have been in the hands of the diocesan bishop.

(3) Receiving the profession of canonical obedience of new diocesan bishops within the province before the spiritualities of their Sees were released to them.

(4) Visitatorial jurisdiction, though some places might claim exemption under papal privilege.

(5) Presidency of any Provincial Council or Synod.

(6) Appellate jurisdiction from the consistory courts of his suffragans, quite distinct from his exercise of direct legatine jurisdiction where the archbishop was a papal legate.

(7) Testamentary jurisdiction over the estates of deceased persons who had held *bona notabilia* in more than one diocese of the province. A related right may have been carrying out the will expressed in legal form *(arbitrium)* of Pope or other absent prelate, e.g. as executors of a papal provision : see an example in SS 95 case D.16 pp. 602/603 *(Sutton c. St John).*

BRIEF REFERENCE TO SOME SECULAR CONSEQUENCES OF *QUONIAM ABBAS*

This deserves fuller treatment than can be attempted here, but fortunately we have Kantorowicz's *The King's Two Bodies* to tell the tale. The canon in *Extrav. Ioann.* 5.1 (1317), *ne sede [imperiali] vacante aliquid innovetur* went so far as to claim imperial jurisdiction for the pope during an imperial vacancy, adding that no *vicarius imperatoris* or other official was to exercise imperial powers at such a time, on pain of excommunication. For a secular equivalent to the canonical titles *de electione et electi potestate,* we could consider the Golden Bull of 1356 (Charles IV & the *Reichstag)* confirming the decisions of the imperial Diet of 1338, namely :

(1) that the person chosen by the seven imperial Electors be deemed *unanimously* elected emperor, even if in fact he had been

elected by a majority. This was to circumvent papal scrutiny of the election and of the rival candidates ; and

(2) that the person so elected is entitled to exercise full imperial rights from the moment of election, not from the later date of any confirmation or coronation[20].

CONCLUSION

In legal theory and practice, these texts contributed signally to the evolution of the idea of corporate personality, both private and public. The *Realpolitik* was, of course, characterised by evasions and disregard for merely canonical rules, prolonging confirmation of the *electus* so that the *temporalia* including the revenues of vacant sees might be appropriated by secular rulers.

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20. G. BARRACLOUGH, *Origins of Modern Germany*, 2nd ed, Oxford, 1947, pp. 316 & 320 sqq.

APPENDIX

Vacancies in the See and Province of Canterbury from the Norman Conquest to the death of Pope Alexnder III

• STIGAND, a Saxon, translated from Winchester 1052 but continued to hold it with Canterbury ;
deposed 11 April 1070 ;
died 21 or 22 February 1072 ;
vacancy : 4 months.

• LANFRANC
nominated 15 August 1070 ;
consecrated 29 August 1070 ;
died 28 May 1089 ;
vacancy 3 years 9 months.

• ANSELM
nominated 6 March 1093 ;
temporalities restored to him before 25 September 1093[21] ;
consecrated 4 December 1093 ;
died 21 April 1109 ;
vacancy 5 years.

• RALPH D'ESCURES
translated from Rochester ;
elected 26 April 1114 ;
died 20 October 1122 ;
vacancy 32 months.

• WILLIAM OF CORBEIL
elected 2 or 4 February 1123 ;
consecrated 18 February 1123 ;
died 21 November 1136 ;
vacancy 2 years 1 month.

• THEOBALD
elected 24 December 1138 ;
consecrated 8 January 1139 ;
died 18 April 1161 ;
vacancy 1 year 1 month.

• THOMAS BECKET
elected 23 May 1162 ;
consecrated 3 June 1162 ;

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21. See the E. B. FRYDE, D. E. GREENWAY, S. PORTER, I. ROY, *Handbook of British Chronology*, 3rd ed., London, 1986, by p. 226 for the writ *de intendendo* employed to restore temporalities.

in exile November 1164-December 1170 (but Papal Legate for part of this time) ;
murdered 29 December 1170 ;
vacancy 2 years 6 months.

• RICHARD OF DOVER
elected 3 June 1173 ;
consecrated 7 April 1173 (Death of Pope Alexander III in 1181) ;
died 16 February 1184.

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