



# VERBUM E IUS

Predicazione e sistemi giuridici nell'Occidente medievale /  
Preaching and legal Frameworks in the Middle Ages

*a cura di*

Laura Gaffuri e Rosa Maria Parrinello



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# Juridical formulas in papal decretals of the twelfth and thirteenth centuries\*

by Carolina Gual Silva

A significant number of Pope Alexander III's decretal letters were incorporated into the *Liber Extra* becoming part of a cohesive juridical work that would remain as the principal source of Canon Law well into the Twentieth Century. If his direct association with the School of Bologna and Master Gratian is disputed (Noonan, 1977), the presence of juridical elements in his writings is undeniable. In face of the discussions surrounding Alexander III's background, the present text analyzes the use of juridical formulas and terms in some of the pope's decretals as well as his references to works of canon law, particularly to Gratian's Decretum.

Midde Ages; 12<sup>th</sup>-13<sup>th</sup> Century; Law and Religion; Christian West; Decretals; pope Alexander III; Canon law; Marriage; parish; tithes; preaching; sermon; law; *ius*; Gratian.

## 1. *Alexander III and decretal law*

The role of decretals, letters from the pope answering to demands and interrogations coming from outside the Holy See, in the formation and consolidation of Canon Law has been long discussed by historiography. One of the most important names in the development of what would later come to be called “new law”, as opposed to “old law” - represented by Gratian's Decretum and formed by patristic sources, the Holy Scripture, pope's letters and the canons of councils held prior to 1140 – was pope Alexander III, who was at the head of the Curia for more than twenty years (1159-1181). However, historians have frequently questioned whether the decretals can be seen as examples of an effort at juridical systematization or not<sup>1</sup>.

\* Many of the reflections developed in this text were improved by the debates raised during the symposium's sessions. I would particularly like to thank Professors Peter D. Clarke, Diego Quaglioni, Michel Lauwers, and Barbara Bombi for their thought-provoking questions. My deepest gratitude, as well, to Professors Rosa Maria Dessì and Laura Gaffuri who generously accepted my contribution.

<sup>1</sup> Many authors have dedicated their studies to this topic. Among these works we can highlight collections that bring together many articles and offer an overview of the main discussions

A decretal is not a law. It is not, in most cases, initiated by the papacy, but is rather a reaction to a request or question coming from outside the curia. In its original conception, the decretal has no intention of creating a precept of universal application. Its function is to deal with or solve a specific case in light of the known circumstances, even in the cases in which it is actually following pre-existing canons. According to Gérard Fransen, a decretal has nothing more than a decisive and constraining value to the case in question, even though it may come to create grounds for a jurisprudential precedent<sup>2</sup>. This view of decretals, along with documentary analysis that put in check the once-accepted theory that Alexander III had been a canon law professor in Bologna, have made scholars question the real weight of juridical elements in the pope's production.

The present text aims to bring this debate once more to light supporting the idea that, although Alexander III was probably not a canon law scholar, the production of the Holy See during his pontificate was guided by notions of law and fed upon the discussion of canonists from the twelfth century. In order to establish this point, it is imperative to recover some elements of the historiographical debate involving the identity of Pope Alexander III. Therefore, we will begin with an overview of the historiography concerning the notion of "lawyer pope" in Alexander III, followed by remarks from the pontiff's contemporaries regarding his abilities and practices. Finally, we propose an analysis of some elements in the decretals that could contribute to the discussion of the opposition (perhaps excessively unnatural) between legislator/jurist and theologian.

## 2. *The historiographical debate*

«There is no evidence that Alexander <III> ever studied law. By training he was a theologian, not a lawyer»<sup>3</sup>, Colin Morris wrote in 2001. The author was answering a long-standing tradition that associated Pope Alexander III, named *Rolandus*, to an unknown canonist, also named *Rolandus*, who had supposedly been a professor in Bologna alongside Gratian in the early twelfth century. This tradition, initiated in the mid-nineteenth century, helped to

such as Kuttner, *Studies*; Gaudemet, *La formation du droit canonique*; Fransen, *Canones et Quaestiones*; Duggan, *Decretals and the creation of "New Law"*, and Duggan, *Twelfth-century decretal collections*; Gilchrist, *Canon law; Bishops, texts, and the use of Canon*; Brundage, *Medieval Canon Law*; Blumenthal, *Papal Reform; The history of medieval canon law; Law as profession*. The discussion has recently widened to the forms of use of legal documents and the definitions of juridical action and systems. In this context, we highlight the ideas presented in the special number *Histoire et droit*, in «*Annales - Histoire, Sciences Sociales*», 57 (2002), 6; Gauvard et al., *Les normes, among others*.

<sup>2</sup> Fransen, *Les Décrétales et les Collections de Décrétales*. This idea is further corroborated in other works by Fransen, particularly in articles present in *Canones et Quaestiones*.

<sup>3</sup> Morris, *The Papal Monarchy: The Western Church*, p. 402.

shape the image of the pope and marked his association to the figure of a “lawyer pope”. The absence of information on Alexander’s life prior to his becoming pope and a series of misinterpretations helped to consolidate this theory.

The first element leading to the notion of lawyer pope was, evidently, the impressive production of “legal” documents during the pontificate of Alexander III and the incorporation of the majority of his known decretal letters into canonical collections<sup>4</sup>. Even more remarkable is this presence of Alexander’s decretals in the *Decretals of Gregory IX (Liber Extra)*. The collection compiled in 1234 deals with issues such as the Church’s organization and hierarchy, the administration of justice, clerics’ behavior and moral, marriage, properties, benefits, among others. It contains a total of 1971 canons of which 470 belong to Alexander III. The only pope that was more used is Innocent III (1198-1216) who is counted 685 times in the collection<sup>5</sup>. Clearly Alexander III’s contribution to the consolidation of a *rescriptum* system, in which normative determinations were given in response to petitions coming from outside the See is undeniable<sup>6</sup>.

This massive production of decretals and their subsequent incorporation to the collections led scholars to suppose that Alexander III must have had some kind of legal training. The problem was that there was virtually no information on his life prior to his joining of the papal See during the pontificate of Eugene III (around 1149), since his biographer, *Boso*, did not provide us with any information beyond his name, Roland, his birthplace, Siena, and his father’s name, *Rainulfus*. But in 1859, from the discovery of a manuscript entitled *Stroma*, which was a commentary on Gratian’s *Decretum*, Friedrich Maassen, supposed that the *Rolandus* to whom the text was attributed was the same who would become pope a few years later. In 1885, a new text by a certain *Rolandus* was also attributed by Heinrich Denifle to Alexander III, the *Sententiae*. From these two discoveries it was deduced that Alexander III had been a canon law professor in Bologna at around the same time as Gratian and that these works were his first compositions. This would explain the See’s predilection for legal matters and the extensive production of decretal letters. Marcel Pacaut in his studies about the pope, for example, based his

<sup>4</sup> The estimated total number of decretals produced during the pontificate of Alexander III is of 713, according to Duggan, *Decretals and the creation of “New Law”*, p. 107. The first works which compiled decretals from Alexander III can be dated to the end of his pontificate, for example with the *Appendix Concilii Lateranensis* whose approximate date of composition ranges from 1181-1185. Friedberg, *Die Canones-sammlungen zwischen Gratian und Bernhard von Pavia*. Many other so-called primitive collections include decretals from Alexander III which were not necessarily incorporated into the *Liber Extra*. Robert Sommerville offers a list of these collections in *Pope Alexander III and the Council of Tours*.

<sup>5</sup> These numbers are extremely relevant when we remember that the *Liber Extra*, incorporated into the *Corpus Iuris Canonici*, remained the main reference of Canon Law until the beginning of the twentieth century.

<sup>6</sup> See Morris, *The Papal Monarchy: The Western Church*, p. 212. The author uses the term «rescript government».

arguments on this notion in order to trace the path of Roland's educational background up to his ascendance to the Holy See in a continuous evolution of ideas in these texts<sup>7</sup>.

Until the second half of the 1970's, no author questioned the idea that the *magister Rolandus* and pope Alexander III were the same person. Circumstantial issues and even misinterpretations or mistakes in the transcriptions of different manuscripts were repeated by several authors who confirmed the two "Rolandus" as being one<sup>8</sup>.

It was only in 1977 that John T. Noonan conducted for the first time in little over a century a study on the manuscript evidence which the authors had used to come to the conclusion that Alexander III had been the author of the *Stroma* and the *Sententiae*. His conclusion was that the manuscripts did not support the thesis and that *magister Rolandus* had been another person who had possibly taught in Bologna, but who was not himself the pope Alexander III. Using some of the same arguments and adding other manuscript and textual evidence, Rudolf Weigand also claimed that the author of the *Summa* could not have been the pope<sup>9</sup>. Since then, a total revision of historiography has led authors to completely discard the thesis of the Bolognese background<sup>10</sup>.

One of the consequences of this revision has resulted in statements such as the one from Colin Morris mentioned at the beginning of this section. Other authors have also adopted a much more reticent tone in ascribing any kind of juridical training to Alexander III. In the most recent volume published on Alexander III, Anne J. Duggan argues that

Alexander's decisions were issued only as a result of the growth of an appellate and consultative culture in which litigants appealed to the Holy See and bishops and their advisors consulted the Curia on problems and uncertainties as they arose; and the decretals acquired enduring legal force because they were collected and circulated and finally received into the compilations upon which academic lawyers found their teaching<sup>11</sup>.

Ms. Duggan goes on to state that: «Alexander thus emerges not as a papal legislator re-fashioning the substance and functioning of the canon law, but as the president of a committee of legists»<sup>12</sup>. But can we really separate the actions of the papal curia from those of the pope? And is the fact that the legal force of the decretals comes from later incorporation to collections enough to invalidate the notion of an effort to organize Church Law?

<sup>7</sup> Pacaut, *Alexandre III*.

<sup>8</sup> For more details on the development of this historiography and its misinterpretations, see Noonan, *Who was Rolandus*.

<sup>9</sup> Weigand, *Magister Rolandus und Papst Alexander III*.

<sup>10</sup> Although Pacaut still accepted the idea that Alexander III was the *Rolandus* from Bologna in a text from 1994 for the *Dictionnaire Historique de la Papauté* (2003).

<sup>11</sup> Duggan, *Master of the decretals*, p. 366.

<sup>12</sup> Duggan, *Twelfth-century decretal collections*, p. 387.

### 3. A “lawyer pope”?

In fact, calling Alexander III “lawyer pope” transfers to the twelfth century a contemporary notion of law which can obscure our understanding of how matters of the juridical sphere were viewed and decided on. Even knowing today that Alexander III was not the author of the *Stroma* or of the *Sententiae*, we cannot deny his contribution, through the works of the Papal See, to the formalization and structuring of canon law.

This contribution can be seen, for example, through the image created of the pope by his own contemporaries. The descriptions made by several authors corroborate the notion that the juridical knowledge was an important element of Alexander’s abilities as pontiff. Robert of Torigny, abbot of Mount Saint Michel, for example, wrote around 1182 that Alexander III had a reputation for having been a theology professor («in divina pagina preceptor maximus») and for having knowledge of the canons and of Roman Law («et in decretis et canonibus et Romanis legibus precipuus»). He also stated that the pope dealt with and solved very difficult legal matters («nam multas questiones difficillimas et graves in decretis et legibus absolvit et enucleavit»)<sup>13</sup>.

Boso, the author of Alexander III’s *vita*, characterized the pope as follows:

Erat enim vir eloquentissimus, in divinis atque humanis scripturis sufficienter instructus et in eorum sensibus subtilissima exercitatione probates; vir quoque scholasticus<sup>14</sup>.

In the sequence, the author describes Alexander III’s moral attributes:

vir siquidem prudens, benignus, patiens, misericors, mitis, sobrius, castus, et in elemosynarum largitione assiduus, atque aliis operibus Deo placitis semper intentus<sup>15</sup>.

A part of the description made by Boso is certainly due to rhetorical formulas that are repeated in the composing of other lives. Some moral characteristics such as patience, kindness, sobriety, mercifulness and the generosity in the giving of alms are constant *topoi* in the *vitae*. But two things are specific to Boso’s narrative of the life of Alexander III: first, the fact that he practically starts his story already listing the pope’s personal characteristics without even speaking about Roland’s early life (in the other lives written by Boso, he gives us elements about the childhood or adolescence of the popes, their religious background, and their family life). In Adrian IV’s (1154-1159) life, for example, the first four paragraphs describe Adrian’s trajectory from

<sup>13</sup> Robert de Torigny, *Chronica*, p. 298. Cited by Noonan, *Who was Rolandus*, p. 22.

<sup>14</sup> *Le «Liber Pontificalis»*. «Roland is a man of great eloquence, well enough learned in the writings both of human and divine authors, and skilled by careful practice in the understanding of them; moreover he is a man of the Schools»: translation by Ellis, *Boso’s life of Alexander III*, p. 43.

<sup>15</sup> *Ibidem*: «thoughtful, kind, patient, merciful, gentle, sober, chaste, assiduous in the bestowing of alms, and ever intent on performing all the other good works that please God».

adolescence to his election as pope before making a description of his characteristics. In the case of Alexander's life, the characteristics appear already in the first paragraph, indicating perhaps the importance of the pope's "scholar" knowledge. On top of this, Boso also includes in his narrative the canons of the Council of Tours in 1163, breaking the sequence of the text. A possible interpretation for the author's choice is the political need (in face of the context of the schism) to show Alexander III as a pope who was a legislator and who could help structure the Church and normalize its power.

Beyond the image created by twelfth-century writers, Alexander's work itself provides plenty of examples of his use of Canon Law knowledge. In the composition of the decretals we can find numerous indications that the pope (or those working under his orders in the papal curia) knew Gratian's work with some depth. In many of his decisions regarding marriage, for example, Alexander III makes explicit references to the *Decretum*, indicating that, even though he was not a commentator of Gratian, the pope was familiar with and used the canonist's work. Discussing the ties of consanguinity that prevent marriage, Alexander III states that the seven degrees of separation must be respected: «Aeque enim, ut canones dicunt, abstinendum est a consanguineis uxoris, ut propriis, usque ad septimum gradum», reproducing the content of Gratian's text: «Usque ad septimam generationem nullus de sua cognatione ducat uxorem»<sup>16</sup>. On spiritual affinity and co-parentage, the decretal even comments on differences between the texts presented by Gratian:

canones secundum diversorum locorum consuetudines contrarii inveniuntur. Et licet primus canon exinde editus natos post compaternitatem adinvicem copulari prohibeat, alter tamen canon posterius editus primum videtur corrigere, per quem statuitur, ut, sive ante sive post compaternitatem geniti sunt, simul possint coniungi, excepta illa persona duntaxat, per quam ad compaternitatem venit<sup>17</sup>.

In another moment, discussing the matter of whether to believe the husband or the wife, Alexander refers again to Gratian, declaring that

quum in decretis habeatur expressum, quod, si vir dixerit quod uxorem suam cognoverit, et mulier negaverit, viri standum est veritati, unde praefato viro, qui dicit, se mulierem ipsam cognovisse, fides est adhibenda, si id firmaverit iuramento<sup>18</sup>.

<sup>16</sup> X,4,14,1 («as the canons say, one must abstain from those consanguineous to one's wife, as from one's own blood relations to the seventh degree»). The citation is a reference to Gratian, C. 35, q. 2-3, c. 1 («No one may take a wife related to him within the seventh degree»). The *Liber Extra* and Gratian's *Decretum* are being used here from the 1582 Roman edition of the *Corpus Iuris Canonici*.

<sup>17</sup> X,4,11,1 («the canons and customs of different places contradict each another. The first canon included on this forbids those born after co-parentage arose to marry. Another canon, included after the first, seems to correct this; it provides that those born either before or after co-parentage arose may marry, unless they are the person through whom it arose»). Citation of Gratian, C. 30 q. 3 c. 4 e 5.

<sup>18</sup> X,4,2,6 («*Decretum* says explicitly that, if a husband claims to have known his wife, and his wife denies it, the man is presumed to be telling the truth»). Reference is to Gratian C. 33, q. 1, c. 3: «Si quis accepit uxorem et habuit eam aliquot tempore, et ipsa femina dicit quod nunquam



This series of elements points to a reinforcement of the idea that the Holy See under Alexander III was indeed deeply involved in legal matters. Are there also elements, then, to support Morris's argument of a theologian pope?

An interesting topic to investigate the presence of theological arguments in Alexander's writings regards the payment and collection of tithes, since the first main justification for this mandatory tax is associated to its very ancient practice already mentioned in the Old Testament, which constitutes one of the aspects of divine law. A theological knowledge was, therefore, essential for building an argument for the payment of tithes. Alexander III's contribution to this matter is highly significant and has a great impact in all of the development of the juridical discussions surrounding tithes.

The title of the *Liber Extra* dedicated to tithes (X, III, XXX), *De decimis, primitiis et oblationibus*, contains 35 chapters, of which 15 belong indisputably to Alexander III (chapters 5-19). There are also two chapters attributed to Adrian IV (chapters 3 and 4) but classified as being Alexander's in the *Regesta Pontificum* – both addressed to Thomas Becket. But even if they were written by Adrian IV, it is important to remember that Alexander III was canceller of the papal curia during the pontificate of Adrian IV. Therefore, Alexander III's decretals represent the majority of the title, since the second most used pope is, once again, Innocent III, with eleven chapters<sup>19</sup>.

Following the traditional justification of tithes through the Old Testament, the title begins with an extract from Jerome's commentary on Ezekiel (45), concerning the offering of premises by the Levites. The second chapter, by Paschal II again uses the Levites, in order to attach the payment of tithes to God's law. Alexander III also uses the argument of the divine institution of tithes, in chapter 14, when he states that tithes are instituted to the profit of God and not of men («Quum decimae non ab homine, sed ab ipso Domino sint institutae»). The idea that tithes are instituted by God since the beginnings of time and that their mention in the Old Testament proves their appurtenance to divine law, though not explicitly mentioned in the other decretals by Alexander present in the title, explains, for example, the penalties imposed by the pope, particularly in cases of the usurpation or misuse of tithes by laymen.

In chapter 7, for example, the pope recommends a condemnation to anathema in the case of laymen who calculate the value of their donation after extracting their expenses instead of doing so immediately after the reaping of the crop. According to chapter 19, which is an extract from the fourteenth canon from the Third Lateran Council, lay men who hold tithes and transfer

coisset cum ea, et ille, vir dicit, quod sic fecit, in veritate viri constat: quia vir caput est mulieris».

<sup>19</sup> Throughout the thirteenth century, with the increasing number of legal texts and studies, the *Liber Extra* will remain the base reference for the decretalists, such as Henry of Suse. The disputes over the payment or exemption of payment from tithes occupied was a fruitful field for canonists, both in the solving of practical cases and in the elaboration of hypothetical cases to further elaborate juridical concepts. Alexander III and Innocent III, as the popes with the greatest production of legal sources via the decretals, were constantly referred to in the many works.

them to other laymen without rendering them to the Church should be denied a Christian burial. The most radical sentence, excommunication, is suggested twice, first in chapter 5 for those who refuse altogether to pay tithes for the product of mills, fishing, and wool and again in chapter 15 for those who pretend to have a hereditary right over the collection of tithes.

Despite these examples of theological knowledge, when we analyze Alexander III's prescriptions regarding tithes, it is not exactly the biblical element that stands out, but a strong juridical tone with an awareness perhaps of the possibility of creating a type of legislation, or definition, for the Church's *dominium*<sup>20</sup>.

The classic formula, «per apostolica scripta mandamus» (we order by apostolic decree), which is recurrent in the decretals, appears in six different cases (chapters 4, 5, 6, 7, 9, and 12), emphasizing the legislative tone of Alexander III's prescription. The different forms of the verb *compellere* and *compellare* (as compel or appeal to, respectively) appear seven times. Other verbal forms, usually in the first person plural in the present, serve a similar purpose, such as: *mandamus*, *statuimus*, *prohibemus*, *dedimus*, *diligimus*. Thus we have the pope, using a plural form to indicate that he is the representative of the Holy See (or of the Church as whole), prescribing actions to be taken by those requesting assistance and indicating the punishment which may be given in the case that these prescriptions are not followed.

The possession, the use, the transfer and the mode of payment of tithes by laymen is clearly on top of Alexander's concerns. We see then that the main focus in the fifteen decrees written by the pope and present in title 30 of the *Liber Extra* is not to define the nature of tithes or even to justify their collection on the basis of a divine prescription, but to ensure a realm of power, or a *dominium*, that is exclusive of the Church. In order to establish this control, it was necessary to turn to more juridical and legal formulas that could ensure the force of the prescription. The theological element clearly cannot be overlooked as it is an essential and mandatory part of the pope's formulations and he uses it – even if only in an underlying way – when it seems to be the most effective means of making his point<sup>21</sup>. But we cannot deny either that the legal aspect, including the intention of legislating, is also of fundamental importance in view of the political and religious context of the mid-twelfth century. This does not make Alexander III necessarily a “lawyer pope”, but it does seem to indicate a preponderance of a normative impulse and an influence of Canon Law over theology in this specific form of communication, the decretal letters, by the Holy See at this period.

At the end of the brief study presented here – and which is far from being

<sup>20</sup> We refer here to the concept as proposed by Guerreau, *Le féodalisme, un horizon théorique*.

<sup>21</sup> In fact, the studies of these two disciplines were intertwined, one fed on the other in order to produce the best argumentation. Elsa Marmursztejn shows how closely related law and theology were in scholastic discussions of the late twelfth to mid-thirteenth centuries: Marmursztejn, *Débats scholastiques sur la dîme au XIII<sup>e</sup> siècle*.

considered finished – we can summarize some of the major developments in the evolution of the research on Pope Alexander III. As is commonplace with many medieval characters, very little concrete biographical information was available to truly determine the educational background of *Rolandus*, the future Alexander III. Based on the discovery of manuscripts containing commentaries on Gratian's *Decretum* and a new legal text entitled *Sententiae*, scholars Friedrich Maassen and Heinrich Denifle seemed to have found the first works of this prolific writer, from before his ascension to the Throne of Saint Peter. For almost a century these assumptions went unquestioned and, in fact, guided the work of many scholars that followed. These writings supposedly shed light into Alexander's juridical influences, but they also brought about doubts and questions regarding apparent contradictions in the works from the two different periods.

But the recognition of contradicting points of view between *Rolandus*, student of Law in Bologna, and *Rolandus*, the pope, did not imply in a questioning of the real authorship or of the scientific methodology used by Maassen and Denifle. Not even the clear speculative nature of the findings seemed to be a problem in the eyes of other nineteenth and even early twentieth century scholars. As historiographical interests changed<sup>22</sup>, researchers dropped the discussion, Alexander III was relegated to a secondary role (always in the shadow of Innocent III), and no more thought was given to the matter. This until John T. Noonan and Rudolf Weigand set about to demonstrate the flaws in the initial hypothesis of Alexander's identity and conclude that, in fact, the writer (or writers) of the *Stroma* and the *Sententiae* was not the same person as Pope Alexander III. If at first this discovery did not seem to have caused great impact, with time medievalists began to revise the most accepted notions about Alexander's educational background and the nature of his writings.

As we have seen, this new vision about Alexander III along with a renewed interest for legal history made many historians question the juridical nature of the pope and of his writings. Could we consider the decretals a form of legislation? Did they have the force of law? Was Alexander III in fact a jurist?

It has been our main goal in this article to support the juridical nature of Alexander's decretals and the normative drive of his pontificate, even if we concede that it may be inappropriate to label him the "lawyer pope". But it is equally important to suggest ways in which we can deal with the difficulties presented by the sometimes lacking, sometimes biased documents, particularly in the case of the so-called "legal" or juridical sources. In light of the specific case which we presented – the papal decretals from the twelfth century –

<sup>22</sup> From the mid-nineteenth century onwards, religious and Church history tended to be regarded as a form of institutional history which carried specific political interests and obscured the understanding of society itself. New historiographical approaches shifted and the focus of researchers changed. The study of the papacy, for example, was in many cases relinquished. For more on the relationship between political ideologies and the study of religious and Church history, refer to Michel Lauwers's article *L'Église dans l'Occident Médiéval*.

it is imperative to take a different approach in order to better understand the motivations for the production and the effects of this kind of text in medieval society. Therefore, it is our belief that we may further explore the impact of Alexander's decretals by thinking about them not as completed bodies of law, but as law under construction.

The relevance of the decretals comes from the fact that they were compiled and incorporated into collections and used as manuals and guides to later canonists, legislators, and jurists. An important element in the development of both law and theology in the twelfth century is the dependence on the written text, something that Michael Hoeflich and Jasonne M. Grabher call a «text-based study»<sup>23</sup>. Therefore knowledge developed through a small number of texts considered authorities and which were exhaustively studied and glossed. The texts were thus chosen for their pertinence and contribution to dealing with a certain point of law, for example, and the weight of their authority came from their inclusion in the collections.

We can also change the focus from law to jurisprudence. Fransen, in saying that the decretals were not legislative but jurisprudential work, put two juridical systems in a scale of values. He stated that «*les collections de décrétales* ne sont rien d'autre que des recueils de jurisprudence choisie»<sup>24</sup>. But the nature of the study and development of Law in the twelfth and thirteenth centuries depended on jurisprudence so this does not invalidate the role of decretals in the formation of Canon Law<sup>25</sup>.

This element of jurisprudence can also be seen as part of the development of the studies of Canon Law at the schools, as a practical need to apply theoretical precepts. The decretals were compiled and organized in order to make the texts more accessible and useful for the resolution of practical problems. They reflect something that is part of the nature of medieval law which is a tension between the need to prepare for the practice and the need of an approach fully based on the authority of texts. So, even if Alexander III did not create a cohesive body of law throughout his pontificate, the production of the papal curia must be seen in its duplicity: initially fruit of a practical need, motivated by interests coming from outside the See, the decretals eventually become – through the compilations – symbol of authority, normative texts that legislated over and also created new situations<sup>26</sup>.

<sup>23</sup> Hoeflich, Grabher, *The Establishment of Normative Legal Texts*.

<sup>24</sup> Fransen, *Les Décrétales*, p. 35.

<sup>25</sup> For a discussion on the development of *ius commune* and jurisprudence, refer to: Hartmann, Pennington, *Acknowledgements*.

<sup>26</sup> Pierre Bourdieu proposes that we look at the juridical field as a dialogue/conflict between different forces: «il faut prendre en compte *l'ensemble des relations objectives* entre le champ juridique, lieu des relations complexes et obéissant à une logique relativement autonome, et le champ du pouvoir et, à travers lui, le champ social dans son ensemble. C'est à l'intérieur de cet univers de relations que se définissent les moyens, les fins et les effets spécifiques qui sont assignés à l'action juridique»: Bourdieu, *La force du droit*, p. 14. If we think about this combination of fields, the variations that appear in the decretals can be seen not as an inconsistency of thought, but as a process typical and necessary for the creation of Law.

One example of this kind of behavior can be seen again in the dealing with tithes. Alexander III was aware of the repetition of certain questions posed to the Holy See and of the differences in responses, for example in the case of payment of tithes. In trying to solve the matter of whether one should pay tithes to the parish to which they are associated or to that where the lands are actually located, he states that

quaestio temporibus praedecessorum nostrorum saepius mota fuerit, nec ab aliquo terminata, aliis intuitu territorii, aliis personarum obtentu asserentibus debere persolvi<sup>27</sup>.

The solution proposed was to follow local custom depending on whether we were talking about one or two different episcopates. Mathieu Arnoux has interpreted this decretal as being an indication of how reticent the Church was to judge over matters related to the payment of tithes, never really elaborating a true legislation on the subject<sup>28</sup>. But we can also see this as an effort at normalization by the papacy through mechanisms of negotiation among the different legal spheres existing in society, in a jurisprudential practice.

Alexander III established a precise limit to accepting customs in the case of payment of tithes: the territory of the dioceses. Custom could only interfere where there was no precision or definition in patristic, Biblical or other legal authorities. The pope made it clear that there was no consensus among the different authorities regarding the location of payment of tithes. So, in this case, the most effective way to create the necessary normalization was through custom, as long as it did not overpower the authority of the parishes and dioceses. The acceptance of custom seems to be, then, not necessarily a sign of the disinterest in legislating, as Arnoux proposed, but it was, in fact, a strategy of ordination in a context that accepted a series of different legal, juridical, theological, and customary sources.

Alexander III's decretals specifically, and Canon Law in general, must be understood as multiple constructions imbued with a normative syncretism<sup>29</sup>. Therefore, the fact that we can find elements to support the thesis that Alexander III was both a jurist and a theologian does not indicate any contradiction, but is in reality in perfect alignment with the characteristics of the developing study and creation of medieval Law. Religious thought was jurisdicized and at the same time religion offered a new legitimacy to a normative model in accordance with the divine plan.

However, despite the presence of the theological knowledge in Alexander III's work, we must recognize that the choice to compile decretals and use them in the formation of normative codes such as the *Liber Extra* comes, ev-

<sup>27</sup> X,3,30,18 («this question has been frequently asked over time to our predecessors and never resolved, some saying that it should be paid according to the territory and others saying that it should be done according to the person»).

<sup>28</sup> Arnoux, *Pour une économie historique de la dîme*.

<sup>29</sup> Mayali, *De la raison à la foi*, p. 482.

idently, from the presence of legal and juridical terms, formulas, and theories in them. We must, then, look at Alexander III's decretals not as a rigid code of unchangeable laws, but as a living law under construction – as all law should always be. Was Alexander III a “lawyer pope”? Probably not, but during his pontificate the Curia produced a massive number of documents which found in legal works – as well as in theological ones – the basis for their argumentation and that would later be responsible for the establishment of a cohesive *corpus* of Canon Law.

## Works cited

- M. Arnoux, *Pour une économie historique de la dîme*, in *La dîme dans l'Europe médiévale et moderne*, éd. R. Viader, Toulouse 2010, pp. 145-159.
- Bishops, Texts and the Use of Canon Law around 1100. Essays in Honour of Martin Brett*, eds. B.C. Brasington, K.G. Cushing, Ashgate 2008.
- U.-R. Blumenthal, *Papal Reform and Canon Law in the 11<sup>th</sup> and 12<sup>th</sup> Centuries*, Ashgate 1998.
- P. Bourdieu, *La force du droit: éléments pour une sociologie du champ juridique*, in «Actes de la Recherche en Sciences Sociales», 64 (1986), pp. 3-19.
- J. Brundage, *Medieval Canon Law*, New York 2013 (1<sup>st</sup> ed., London & New York 1995).
- Dictionnaire Historique de la Papauté*, Paris 1994.
- A.J. Duggan, *Master of the decretals: a reassessment of Alexander III's contribution to canon law*, in *Pope Alexander III (1159-81): the art of survival*, eds. P.D. Clarke and A.J. Duggan, Surrey-Burlington 2012, pp. 365-417.
- C. Duggan, *Twelfth-century decretal collections and their importance in English history*, London 1963.
- C. Duggan, *Decretals and the creation of "New Law" in the Twelfth century*, Aldershot 1998, pp. 87-151.
- G.M. Ellis, *Boso's life of Alexander III*, Oxford 1973.
- G. Fransen, *Les Décrétales et les Collections de Décrétales*, Turnhout 1972.
- G. Fransen, *Canones et Quaestiones. Evolution des doctrines et système du droit canonique*, 2 voll., Goldbach 2002.
- E. Friedberg, *Die Canones-sammlungen zwischen Gratian und Bernhard von Pavia*, Graz 1958.
- J. Gaudemet, *La formation du droit canonique medieval*, London 1980.
- C. Gauvard et al., *Les normes*, in *Les tendances actuelles de l'histoire du Moyen Âge en France et en Allemagne*, eds. J.-C. Schmitt, O.G. Oexle, Paris 2002, pp. 461-482.
- J.-T. Gilchrist, *Canon law in the Age of Reform, 11<sup>th</sup>-12<sup>th</sup> Centuries*, Ashgate 1993.
- A. Guerreau, *Le féodalisme, un horizon théorique*, Paris 1980.
- W. Hartmann, K. Pennington, *Acknowledgements*, in *The History of Medieval Canon Law in the Classic Period, 1140-1234. From Gratian to the Decretals of Pope Gregory IX*, eds. W. Hartmann and K. Pennington, Washington D.C. 2008, pp. VII-VIII.
- M.H. Hoeflich, J.M. Grabher, *The Establishment of Normative Legal Texts. The Beginnings of the "Ius commune"*, in *The History of Medieval Canon Law in the Classic Period, 1140-1234. From Gratian to the Decretals of Pope Gregory IX*, eds. W. Hartmann and K. Pennington, Washington D.C. 2008, pp. 1-21.
- S. Kuttner, *Studies in the History of Medieval Canon Law*, London 1990.
- M. Lauwers, *L'Église dans l'Occident Médiéval: histoire religieuse ou histoire de la société? Quelques jalons pour un panorama de la recherche en France et en Italie au XX<sup>e</sup> siècle*, in «Mélanges de l'École française de Rome. Moyen Âge», 121 (2009), 2, pp. 267-290.
- Law, Church, and Society: essays in honor of Stephan Kuttner*, eds. K. Pennington and R.E. Sommerville, Philadelphia 1977.
- Law as profession and practice in medieval Europe: essays in honour of James A. Brundage*, eds. K. Pennington and M.H. Eichbauer, Ashgate 2011.
- Le «Liber Pontificalis». Texte introduction et commentaire*, éd. L. Duchesne, Paris 1892 (1981, 3 tomes).
- E. Marmursztejn, *Débats scholastiques sur la dîme au XIII<sup>e</sup> siècle*, in *La dîme, l'Église et la société féodale*, ed. M. Lauwers, Turnhout 2012, pp. 507-526.
- L. Mayali, *De la raison à la foi: l'entrée du droit en religion*, in «Revue de l'histoire des religions», 228 (2011), 4, pp. 475-482.
- C. Morris, *The Papal Monarchy: The Western Church from 1050 to 1250*, Oxford 2001.
- J.-T. Noonan, *Who was Rolandus*, in *Law, Church, and Society: essays in honor of Stephan Kuttner*, eds. K. Pennington and R.E. Sommerville, Philadelphia 1977, pp. 21-48.
- M. Pacaut, *Alexandre III: étude sur la conception du pouvoir pontifical dans sa pensée et dans son œuvre*, Paris 1956.
- Robert de Torigny, *Chronica*, ed. R. Howler, London 1889.
- R.E. Sommerville, *Pope Alexander III and the Council of Tours*, Los Angeles 1977.
- R. Weigand, *Magister Rolandus und Papst Alexander III*, «Archiv für katholisches Kirchenrecht», 149 (1980), pp. 3-44.

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