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Circumspect Agatis Revisted

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Circumspecte Agatis Revisited

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During the middle ages the church maintained a legal system largely independent of English secular justice. Its primary functions were to enforce canon law as it directed the spiritual welfare of all Christians and to regulate the institutions and personnel of the church. Thus, church courts prosecuted sinners and adjudicated disputes between individuals in which some sacramental matter, such as an oath, marriage or testament, was at stake. In addition, canon law governed appointments, powers and duties of ecclesiastical office holders and the juridical relations among various offices.[1]

While theoretically distinct, the law of the church intersected at several points with matters subject to royal justice. For most causes of action the jurisdictional rules were clear and largely uncontroversial. For example, marriage law was the concern of the church even though it involved important property rights. Likewise defamation, despite its tortious aspect, was a matter for spiritual courts. The king's law governed land tenure and violent crime, though the interests of ecclesiastical persons might be directly implicated in either area. In other areas of potential dispute the crown had mapped out the boundary lines by the middle of the thirteenth century, though not always in a manner satisfactory to the church.[2] Disputes about the enforcement of contracts, for example, were deemed to be outside the church's judicial authority, despite the sacramental aspect of the underlying promise.

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1. See generally G. le Bras, 'Canon Law,' in G. Crump and E. Jacobs, eds., *Legacy of the Middle Ages* 321 (New York, 1926); S. Kuttner, *Harmony from Dissonance* (Latrobe, 1960). For articles on specific subjects, see R. Naz, ed., *Dictionnaire de droit canonique* (Paris, 1935–62). A concise introduction to the operation of the church courts in medieval England is D. Owen, 'Ecclesiastical Jurisdiction in England, 1300–1500,' in D. Baker, ed., *Materials, Sources and Methods of Ecclesiastical History* 199 in *Studies in Church History* xi (1975); a full-scale study of a single diocese is B. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (London, 1952). For an analysis of litigation, see R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974); for court records and an extensive introduction, see N. Adams and C. Donahue, Jr., eds., *Select Cases from the Ecclesiastical Courts of the Province of Canterbury,* Selden Society 95 (1981).

2. The development of these rules is traced in detail in D. Millon, 'Common Law and Canon Law During the Reign of Edward I' (unpublished Ph.D. dissertation, Cornell, 1982). See also infra, notes 23–27.

Enforcement of common-law rules defining the scope of ecclesiastical jurisdiction was by means of the writ of prohibition.[3] A party sued in a church court could obtain a writ of prohibition from the royal chancery based on his *ex parte* allegation that the ecclesiastical cause was beyond the church's jurisdiction and instead pertained to the king's. If he chose not to seek a writ of prohibition, the ecclesiastical suit would proceed without royal interference. If the defendant did obtain a prohibition, which could be addressed to the ecclesiastical judge or suitor or both, and the writ was ignored, the church court defendant could then seek a writ of attachment, ordering the person to whom the prohibition was addressed to answer for his disobedience in a royal court. If that court found that the cause was legitimately spiritual, the parties would be dismissed to continue the ecclesiastical proceedings; the seeker of the prohibition and writ of attachment would then be fined by the king's justices for a false claim. But if the royal court found that the ecclesiastical court lacked jurisdiction, he could recover damages, and the ecclesiastical judge or suitor would be fined and ordered to proceed no further. If the initial writ of prohibition was obeyed but the cause was in fact legitimately spiritual, the so-called Statute of Consultation (1290) permitted the church court plaintiff to obtain a mandate from a royal justice ordering the ecclesiastical judge to proceed, prohibition notwithstanding.[4]

The key point is that enforcement of the jurisdictional rules depended entirely on the initiative of private suitors. The decision of the individual church court defendant determined whether a possible jurisdictional violation would come to the attention of the crown; and his decision whether to pursue a remedy determined whether the violation would be punished. The individual's discretion in these matters was absolute; his self-interest, taking into account all the possible consequences of challenging the church's

3. See generally G.B. Flahiff, 'The Writ of Prohibition to Court Christian in the Thirteenth Century, Part I' [hereafter 'Prohibition I'], *Mediaeval Studies* vi (1944) 261; G.B. Flahiff, 'The Writ of Prohibition to Court Christian, Part II' [hereafter 'Prohibition II'], *Mediaeval Studies* vii (1945) 229; G.B. Flahiff, 'The Use of Prohibitions by Clerics against Ecclesiastical Courts in England,' *Mediaeval Studies* iii (1941) 101; N. Adams, 'The Writ of Prohibition to Court Christian,' 20 *Minnesota Law Review* 272 (1936). R.H. Helmholz has suggested how the mode of proof in prohibition cases (typically wager of law) may have contributed to the writ's ineffective policing of the theoretically clear-cut jurisdictional boundaries. R.H. Helmholz, 'The Writ of Prohibition to Court Christian before 1500,' *Mediaeval Studies* xlii (1981) 297. For speculation on how wager of law might have functioned effectively, see Millon, 'Common Law and Canon Law,' supra note 2, ch. 2. For the use of ecclesiastical sanctions against parties obtaining writs of prohibition, see R.H. Helmholz, 'Writs of Prohibition and Ecclesiastical Sanctions in the English Courts Christian,' 60 *Minnesota Law Review* 1011 (1976).

4. See *Statutes of the Realm* (London, 1810) i, 108; F.M. Powicke and C. Cheney, eds., *Councils and Synods II* (Oxford, 1964) 1091. Bracton described a consultation procedure whereby the ecclesiastical judge might seek permission to proceed despite a prohibition. G. Woodbine, ed., S. Thorne, trans., *Bracton De Legibus et Consuetudinibus Angliae* [hereafter *Bracton*], 4 vols. (Cambridge, Mass., 1969-) iv, 262–64. The 1290 statute thus provided a different remedy. See Millon, 'Common Law and Canon Law,' supra note 2, 35–44.

authority over him, might discourage him from taking advantage of the protection available. Accordingly, the actual scope of ecclesiastical jurisdiction did not necessarily—and did not in fact—coincide with the legal limitations imposed upon it by the crown.[5]

A more consistent effort to enforce the jurisdictional rules would have required some sort of prosecutorial or inquisitorial procedure, by which royal officials actively sought out, investigated and punished violations. This paper argues that such a reform was in fact attempted—though half-heartedly and ultimately unsuccessfully—during the early years of the reign of Edward I. The announcement of this procedural reform, however, was mistaken by contemporaries to be a wide-ranging substantive redefinition of the church's jurisdiction. Historians have likewise focused on questions of substance rather than procedure. As a result, the potentially important attempt at procedural reform has been overlooked. And *Circumspecte agatis,* the royal ordinance that supplemented this supposed redefinition of jurisdictional boundaries, has been seen as a milestone in church-state relations. In fact, it was an entirely conservative restatement of established doctrine. It said nothing about the previously announced procedural reform, which remained in place but had no lasting impact.

This paper considers the significance of *Circumspecte agatis* and surrounding events as an attempt to reform procedure for enforcement of common-law jurisdictional rules. Its role regarding substantive law must also be reevaluated. This requires some attention to the content of the rules and their application. Though the real importance of these events had to do with reform of legal procedure, the lack of any long-range consequences or further efforts at reform allowed the church courts greater autonomy from secular interference than might otherwise have been the case. Knowledge of the common-law rules alone therefore yields an uncertain picture of the actual contours of the church's jurisdiction. Moreover, the reasons why people chose to resolve certain sorts of disputes in ecclesiastical tribunals rather than elsewhere remain mysterious.

I

Circumspecte agatis was issued in 1286 in the form of a writ to royal justices itinerant who were conducting an inquest into church court activities in Norfolk and Suffolk.[6] Soon thereafter it was cited as a statute in the royal

5. For example, the medieval church courts routinely heard suits to enforce contractual obligations, though such actions were subject to the writ of prohibition *'de catallis et debitis que non sunt de testamento vel matrimonio.'* See infra, note 27.

6. E.B. Graves establishes the date and context of the document known as *Circumspecte agatis* in E.B. Graves, *'Circumspecte Agatis,' English Historical Review* xliii (1928) 1. In addition, he provides an accurate text replacing the old version published in the Record Commission's edition of the medieval statutes among statutes *'temporis incerti.' Statutes of the Realm,* supra note 4, i, 101–2. This version included an 'addition,' shown by Graves to have been a royal response to a clerical grievance issued in 1280. It is textually unrelated to *Circumspecte agatis.* See Graves, *'Circumspecte Agatis,'* supra, 11–15.

courts.[7] Graves describes *Circumspecte agatis* as 'a landmark defining the boundary between the royal and ecclesiastical jurisdictions.'[8] Other scholars see the writ as a definitive statement of hitherto vaguely articulated principles, implying that prior to 1286 vagueness resulted in arbitrary, ad hoc decisions by royal justices as to which cases were properly spiritual.[9] Historians who write that Edward I embarked on a policy of limitation of ecclesiastical jurisdiction over laymen solely to matters concerning testament or marriage interpret *Circumspecte agatis* as a retreat from this policy because it conceded broader authority to the church courts.[10] Thus, standard views of *Circumspecte agatis*'s purpose emphasize its importance in defining the substantive scope of church court jurisdiction. In fact, however, appreciation of common-law jurisdictional rules developed earlier in the thirteenth century and applied during the Norfolk inquest reveals that the boundaries were well established prior to 1286 and continued to be observed. *Circumspecte agatis* therefore represents neither innovation nor concession. Rather, the writ was issued in response to the clergy's mistaken concerns that restrictions on ecclesiastical jurisdiction were intended. As such, it merely restated existing jurisdictional rules.

The Easter Parliament of 1285 opened on May 4.[11] As in the past, the clergy presented grievances to the crown concerning jurisdictional and other matters.[12] Discussions with a committee of representatives of the king headed by the chancellor ensued. Royal responses to these complaints survive along with clerical criticisms and further royal responses.[13] In

7. See Public Records Office [hereafter P.R.O.], CP40/80 m.210 (1289) (defendants in prohibition plea argued that they sued in church court *'sicut eis bene licuit per statutum'*); CP40/109 m.27 (1295) (argument that *'statutum'* did not bind king); Y.BB. 33–35 Edw. I, A.J. Horwood, ed., Rolls Series, 31 pt. 5, 478–79.

8. Graves, '*Circumspecte Agatis*,' supra note 6, 1.

9. See, e.g., J.H. Baker, *Introduction to English Legal History*, 2d ed. (London, 1979) 112. Graves refers to 'the indeterminate boundary between the two jurisdictions, royal and ecclesiastical. Writs of prohibition sporadically checked the aggressions of ecclesiastical judges within this borderland; but it was not clear in what cases such writs of prohibition lay.' Graves, '*Circumspecte Agatis*,' supra note 6, 2. Powicke describes *Circumspecte agatis* as aimed at 'closer definition.' F.M. Powicke, *The Thirteenth Century*, 2d ed. (Oxford, 1962) 482. See also Adams and Donahue, *Select Canterbury Cases,* supra note 1, *101*; infra, text accompanying note 21.

10. See, e.g., W. Stubbs, *The Constitutional History of England*, 3 vols. (Oxford, 1877) ii, 119; Flahiff, 'Prohibition I,' supra note 3, 308, 309; W. Jones, 'Relations of the Two Jurisdictions,' *Studies in Medieval and Renaissance History* vii (1970) 164; W. Jones, 'Bishops, Politics, and the Two Laws,' *Speculum* xli (1966) 221.

11. For the following events, see D. Douie, *Archbishop Pecham* (Oxford, 1952) ch. 8. See also Graves, '*Circumspecte Agatis*,' supra note 6; H.G. Richardson and G. Sayles, 'The Clergy in the Easter Parliament, 1285,' *English Historical Review* lii (1937) 220–34; Powicke, *Thirteenth Century*, supra note 9, 481–83. The relevant documents are printed in Powicke and Cheney, *Councils and Synods,* supra note 4, 955–75.

12. Similar presentations were made on several occasions during the thirteenth and fourteenth centuries. See generally Jones, 'Bishops, Politics, and the Two Laws,' supra note 10.

13. For texts of all these complaints and responses, see Powicke and Cheney, *Councils and Synods*, supra note 4, 956–63.

addition, *gravamina* concerning selected chapters of the second statute of Westminster, published during this parliament on June 28, led to further replies and criticisms.[14]

Meanwhile, the crown issued an edict concerning the church's jurisdiction. Although this statement does not survive, other documents produced in parliament refer to it and enable us to infer its contents.[15] On July 1 a writ addressed to the clergy of Norwich diocese rehearsed a long list of pleas beyond the jurisdiction of the church courts. The writ declared that a royal commission of inquiry was to investigate complaints against infringements of royal jurisdiction since Edward's coronation and cite offenders to appear at Westminster.[16] In January 1286 the king replaced this commission with a general eyre possessing authority to try offenses against the crown's jurisdiction committed by ecclesiastical judges.[17] A further set of clerical grievances followed the July 1 writ, though its precise date is uncertain.[18] These complaints led directly to *Circumspecte agatis*, an executive order in the form of a writ issued in June or July 1286 by the king to the justices itinerant in Norfolk. It ordered them to 'proceed circumspectly' against the clergy of Norwich diocese. The justices were not to punish them for having heard legitimately spiritual causes, a list of which was included in the writ.[19]

The most detailed discussion of the relations between crown and clergy during the year leading up to the issue of *Circumspecte agatis* is D. Douie's account, in her biography of John Pecham, archbishop of Canterbury from 1279 to 1292.[20] From an analysis of the July 1 writ and the subsequent *gravamina*, she concludes that the lost edict was a 'wholesale and indiscriminate limitation of the church's jurisdiction to testamentary and matrimonial cases;' while previously the boundary between the jurisdictions had been vague, the new 'policy of limitation by definition' claimed certain 'borderline cases . . . entirely for the State.'[21] The clergy's complaints, however, led Edward to concede, through *Circumspecte agatis*, a return to the position at his coronation. This represented an abandonment of the lost edict's 'frontal attack on the Church courts;' in addition, *Circumspecte agatis* erected a barrier against further pursuit of 'the tactics of piecemeal encroachment,' employed successfully by the royal courts during Henry III's reign.[22]

14. Ibid. 964–67.
15. See infra, note 39.
16. Powicke and Cheney, *Councils and Synods*, supra note 4, 967–69.
17. Graves, '*Circumspecte Agatis*,' supra note 6, 4.
18. Powicke and Cheney, *Councils and Synods*, supra note 4, 969–72.
19. *Circumspecte agatis* was issued from Paris, where Edward was to do homage to the new French king, Phillip IV, and to resolve a dispute over lordship of certain French lands. Powicke, *Thirteenth Century*, supra note 9, 290–91.
20. See Douie, *Pecham*, supra note 11, ch. 8.
21. Ibid. 314.
22. Ibid. 318–19. See also Richardson and Sayles, 'Easter Parliament,' supra note 11, 222; Jones, 'Relations, Politics, and the Two Laws,' supra note 10, 95.

Douie offers her theory on Edward's policy toward the church courts without the benefit of a thorough study of common-law court records. Such a study is not germane to her biographical focus, but the result is a misunderstanding of royal policy. In fact, neither Edward I nor his father pursued a policy of 'piecemeal encroachment.' This is evident from analysis of common-law plea rolls, where changes in jurisdictional boundaries would have been recorded in adjudications of alleged violations of writs of prohibition addressed to church courts.

During the later twelfth century the crown ordained that pleas about feudal tenures ('lay fee')[23] and rights of ecclesiastical patronage ('advowson')[24] were not to be heard in the church courts. Similarly, the church was to refrain from deciding claims for money or goods not connected with

23. The Constitutions of Clarendon (1164) established that lay inquests *(assize utrum)* would determine whether land contested between layman and clerk was *libera elemosina* or *feodum laicum*. Disputes about the latter were beyond the church's jurisdiction. 'Constitutions of Clarendon,' in W. Stubbs, ed., *Select Charters*, 9th ed. (Oxford, 1921) ch. 9, 165–66. The distinction was between consecrated land, the endowment of a religious foundation, and land held by an ecclesiastical institution or individual by a particular mode of feudal tenure known as frankalmoin. See Woodbine, *Bracton,* supra note 4, iii, 128, iv, 265–66; A. Douglas, 'Frankalmoin and Jurisdictional Immunity,' *Speculum* liii (1978) 26. A writ of prohibition ordering an ecclesiastical judge to halt a plea *de laico feodo* and a writ of attachment to a church court suitor are included in G.D.G. Hall, ed., *The Treatise on the Laws and Customs of England commonly called Glanvill* [hereafter *Glanvill*] (London, 1965) 146–47. These were probably instituted in conjunction with the *assize utrum*. Flahiff, 'Prohibition I,' supra note 3, 270–71. For royal court cases from the earlier thirteenth century, see F. Maitland, ed., *Bracton's Note Book,* 3 vols. (London, 1887) ii, 424–25, 576–77, iii, 163–64. Pope Innocent III, in his decretal *Novit,* X 2.1.13, specifically exempted disputes concerning feudal tenures (*de feudo*) from the church's judicial authority.

24. The first item of the Constitutions of Clarendon claimed pleas *'[d]e advocatione et praesentatione ecclesiarum'* for the king's courts. Stubbs, *Select Charters*, supra note 23, 164. Advowson was the patron's right to present a clerk of his choosing to a benefice in his gift. *Glanvill* included two forms of prohibition *de advocatione*. One was available to the patron of a clerk whose incumbency was the subject of an ecclesiastical suit brought against him by another clerk claiming to hold the same church at the presentation of another patron. Known as the *Indicavit* form, this writ was directed at possessory actions. See Hall, *Glanvill,* supra note 23, 52. See also Woodbine, *Bracton,* supra note 4, iv, 253. Because the church courts might also entertain a suit concerned directly with right, in which the patron himself was defendant, another prohibition was available to him. See Hall, *Glanvill,* supra note 23, 53. See also Woodbine, *Bracton,* supra note 4, iv, 252–53. A decretal of Pope Alexander III directed specifically to England challenged the king's claim to decide such questions, X 2.1.3, but the canonist Hostiensis noted that *'hanc decretalem non servat curia illustris regis Anglie: immo quicquid dicat papa, ipse cognoscit; vel is cui committit.'* Quoted in J.W. Gray, 'The *Jus Praesentandi* in England from the Constitutions of Clarendon to Bracton,' *English Historical Review* lxvii (1952) 487 n.3.

    While the lay courts decided disputes concerning patronage, the actual possession of the benefice was under the jurisdiction of the church; admission, rejection or deprivation of the patron's candidate was left to the authority of the local bishop. See Gray, *'Jus Praesentandi,'* supra.

marriage or testament.[25] Thus, as Bracton stated, prohibition did not lie against ecclesiastical suits based on testamentary bequests or marriage agreements.[26] But enforcement of contractual claims, such as sale or loan transactions, whether on account of the ecclesiastical status of the parties or because of breach of an oath (*fidei laesio*), was forbidden.[27]

Despite these common-law restrictions on the church's jurisdiction, ecclesiastical courts still enjoyed broad authority over laymen as well as ecclesiastics. Besides matters already mentioned, questions about the validity

25. The writ of prohibition to halt pleas *'de catallis et debitis que non sunt de testamento vel matrimonio'* does not appear in *Glanvill* but probably was routinely available at least from the 1220s. See Flahiff, 'Prohibition I,' supra note 3, 277.

26. Woodbine, *Bracton*, supra note 4, iv, 249–50, 267. For cases, see Flahiff, 'Prohibition II,' supra note 3, 242 n.78, 285–86; Maitland, *Bracton's Note Book*, supra note 23, ii, 353–54. According to custom in some localities, real property held by burgage tenure was devisable by will, contrary to the medieval common law's prohibition on wills of land. See M.H. Hemmeon, *Burgage Tenure in Medieval England* (Cambridge, 1914) 130–44; M. Sheehan, *The Will in Medieval England* (Toronto, 1963) 274–81. Claims for such gifts were therefore within the church's testamentary jurisdiction, prohibitions *de laico feodo* notwithstanding. Woodbine, *Bracton*, supra note 4, iv, 273–74. Questions about whether devisability was customary in particular towns were decided by the royal courts. See, e.g., G. Sayles, ed., *Select Cases in the Court of King's Bench under Edward I*, 3 vols., Selden Society 55 (1936), 57 (1938), 58 (1939) ii, 51–53.

    The common-law courts assumed jurisdiction over a particular aspect of the church's testamentary authority early in the reign of Edward I. Beginning in 1279, several entries in the Common Pleas rolls indicate that claims for debts sued by and against testamentary executors were now justiciable by common-law writ of debt. See P.R.O., CP40/28 m.47 (1279), CP40/31 m.10d (1279) (both suits by executors); CP40/28 m.50, CP40/31 mm.12d, 101 (suits against executors); CP40/28 m.72d (executors sue executors of another). According to clerical complaints from 1280 and 1285, the removal of testamentary debt claims from the church's jurisdiction was a novel development. See Powicke and Cheney, *Councils and Synods*, supra note 4, 875–76, 958. But a 1280 Common Pleas decision refused to extend common-law jurisdiction to ordinary claims for testamentary legacies. The plaintiff on a writ of debt stated that the deceased, whom the defendants represented as executors, *'legavit ei predictam pecuniam in testamento suo.'* The court, responding that this was an ecclesiastical matter, dismissed the action: *'Et quia huiusmodi placitum spectat ad forum ecclesiasticum, dictum est ei quod sequatur in foro ecclesiastico si voluerit.'* P.R.O., CP40/32 m.67d (1280).

27. According to the Constitutions of Clarendon, pleas *'de debitis'* were for the king's justice. Stubbs, *Select Charters,* supra note 23, 167. For an early case, see Maitland, *Bracton's Note Book*, supra note 23, iii, 335. See also Woodbine, *Bracton,* supra note 4, iv, 265. However, claims for annual money payments due from ecclesiastical corporations, such as parish churches or monasteries, were not subject to prohibition, because they originated *'in bonis dei et non alicuius hominis privati vel singularis personae.'* As such, the proper forum for their recovery was the spiritual. Ibid. iii, 60 (explaining why no common-law remedy to enforce corrody obligations). But this rule did not apply if the debt was based on a sale of tithes, which by the fact of sale became lay chattels. Ibid. iv, 282. See also Maitland, *Bracton's Note Book,* supra note 23, ii, 244–45, iii, 518–19. The common-law writ of annuity was available solely for enforcement of unsecured, personal (as opposed to real) obligations. See F. Pollock and F. Maitland, *History of English Law*, 2d ed., 2 vols. (Cambridge, 1898; reprint, 1968) ii, 133–34.

    Common-law rules notwithstanding, church courts continued to hear large numbers of contractual cases throughout the middle ages without interference from prohibitions. See R.H. Helmholz, 'Assumpsit and *Fidei Laesio*,' 91 *Law Quarterly Review* 406

of wills[28] and marriages,[29] wrongs committed against ecclesiastical personnel and property,[30] and allegations of defamation[31] were justiciable in church courts. Failure to pay tithes[32] and other customary religious obligations[33]

(1975); Woodcock, *Medieval Ecclesiastical Courts,* supra note 1, 89–90. This was also true of testamentary debt claims. R.H. Helmholz, 'Debt Claims and Probate Jurisdiction in Historical Perspective,' *American Journal of Legal History* 23 (1979) 68; Woodcock, *Medieval Ecclesiastical Courts,* supra note 1, 85. For the canonical authority for the church's jurisdiction, see C.22 q.5 c.12; X 1.35.3; Sext 2.2.3.

28. See Sheehan, *Will in Medieval England*, supra note 26.

29. See Helmholz, *Marriage Litigation,* supra note 1.

30. Writs of prohibition concerning *'placita de transgressione contra pacem domini Regis'* enforced the exclusivity of royal jurisdiction over trespass *vi et armis*. But violence against clerks and ecclesiastical property, which constituted sacrilege, was punishable by the church. See Woodbine, *Bracton,* supra note 4, iv, 266. For cases, see Maitland, *Bracton's Note Book,* supra note 23, iii, 470; P.R.O., KB27/121 m.26d (1289) (in prohibition plea, defendants pleaded that they were clerks and sued the plaintiffs in church court *'de verberationibus');* CP40/113 m.58 (1296) (ecclesiastical suit alleged theft of oblations from chapel).

31. See, e.g., a Common Pleas judgment accepting the defendants' assertion that their defamation suit *'mere spectat ad curiam christianitatis.'* P.R.O., CP40/96 m.198d (1292). See generally R.H. Helmholz, 'Canonical Defamation in Medieval England,' *American Journal of Legal History* 15 (1971) 255.

32. Failure to pay tithes was spoliation, a wrong punishable by excommunication. X 3.30.5, 6. According to Bracton, ecclesiastical actions based on spoliation of tithes were not subject to prohibition. Woodbine, *Bracton,* supra note 4, iv, 269. For cases, see Maitland, *Bracton's Note Book,* supra note 23, ii, 170–71, 679–80. During the reign of Edward I, common-law courts continued to allow pleas in defense of prohibition suits *de catallis et debitis* based on this principle. See, e.g., P.R.O., CP40/38 m.21 (1281); CP40/80 m.27d (1289); CP40/91 m.136d (1291); JUST1/1089 m.17 (York, 1293). Money claims for arrears in tithe payments were allowed the church courts. See Powicke and Cheney, *Councils and Synods*, supra note 4, 875, 1209. See also P.R.O., CP40/51 m.85 (1283); JUST1/575 m.105 (Norfolk, 1286) Appendix, case 10.

    In contrast to spoliation claims, which were possessory, prohibitions *de advocatione* were available to halt claims of right to receive tithes. Because tithes might comprise virtually the entire revenue of a parish church, loss of a significant portion could seriously injure the value of the patron's right to present a clerk to the living. But the rule against ecclesiastical determination of tithe suits affecting advowson was not absolute. In 1280, an authoritative statement allowed church courts to hear suits involving up to a third of the church's annual income. Powicke and Cheney, *Councils and Synods,* supra note 4, 875. Bracton wrote earlier that claims of 'one-sixth, one-fifth, or one-fourth' should be heard at common law and gave an example of a writ of prohibition in which the amount was only one-sixth. Woodbine, *Bracton,* supra note 4, iv, 254.

33. Mortuaries, animals due to rectors from the estates of deceased parishioners, could be claimed in church courts if due according to local custom. See, e.g., a consultation authorizing further ecclesiastical proceedings: *'Licitum est iudicibus ecclesiasticis congnoscere in foro ecclesiastico de mortuariis defunctorum si de consuetudine patrie approbata debeantur.'* Printed in Adams and Donahue, *Select Canterbury Cases,* supra note 1, 421. Disputes about what local custom was were for the royal courts. See Y.B. 21–22 Edw. I, A.J. Horwood, ed., Rolls Series, 31 pt. 2, 588–91; Y.B. 30–31 Edw. I, A.J. Horwood, ed., Rolls Series, 31 pt. 3, 440–47. Other customary payments—oblations and obventions—were subject to the same jurisdictional arrangement. For cases, see Flahiff, 'Prohibition II,' supra note 3, 261 n.85, 288–89.

subjected one to ecclesiastical prosecution. Moreover, the church could assign penance for correction of any sin, including breach of faith.[34]

All of this was well settled by 1285.[35] The royal courts under Edward I continued to apply jurisdictional rules developed during the late twelfth and early thirteenth centuries; the sole exception was the assumption of testamentary debt claims in 1279. The grievances presented in Easter Parliament prior to the July 1 writ, the writ itself, the complaints presented after the writ, and the records of the Norfolk inquest all provide evidence of the likely content of the lost edict. Taken together, this evidence reveals no redefinition of substantive boundaries. The lost edict did not launch a 'frontal attack' on the church's judicial competence. Instead, its significance was probably only procedural. But uncertainty as to its meaning led to the clerical grievances that in turn prompted restatement of traditional jurisdictional rules in *Circumspecte agatis.*

The tenth item in the initial list of grievances requested that 'laymen litigating in ecclesiastical courts should not be bothered (*graventur*) on account of this until a prohibition has been produced and it has been determined whether the cause pertains to the ecclesiastical forum.'[36] Usual prohibition procedure did not operate in this way; there was no interference with ecclesiastical suits unless the church court defendant himself obtained a prohibition. The grievance suggests that this had changed: laymen who brought nonspiritual pleas in church courts were subject to prosecution by the state even if no prohibition were produced against them. The royal response makes this clear, though specifying that this general prohibition applied only to suits outside the church's jurisdiction. A brief record of further discussions also states that the king henceforth would not allow the church to hear any case pertaining to his court, whether before prohibition or after; all offenders would be punished.[37]

The royal response to the grievance also suggests that the substantive sphere of the church's jurisdiction had been narrowed: 'The king's court maintains that the prelates know well that they may take cognizance only of pleas concerning marriage and testament.'[38] The lost edict, which was probably published or at least discussed during the Easter Parliament,

34. The church's authority here was subject only to the common-law rule that no pecuniary penance could be exacted involuntarily. If it were, a prohibition *de catallis et debitis* would lie. See, e.g., Maitland, *Bracton's Note Book,* supra note 23, ii, 585–86, 679. In 1280, the crown restated this rule in response to a clerical grievance, but with the proviso that, if the guilty party willingly agreed to substitute a money fine for corporal penance, prosecution to collect it would not be subject to prohibition. Powicke and Cheney, *Councils and Synods*, supra note 4, 875.

35. This conclusion is developed at length in Millon, 'Common Law and Canon Law,' supra note 2, which is based on a thorough search of common-law case records from the first thirty years of Edward I's reign. For a comprehensive analysis of *curia regis* records from the reign of Henry III, see Flahiff, 'Prohibition I and II,' supra note 3.

36. Powicke and Cheney, *Councils and Synods*, supra note 4, 958.

37. Ibid. 963.

38. Ibid. 958.

therefore appears to have directed that ecclesiastical cognizance of all cases besides testamentary and matrimonial ones was forbidden regardless of whether a prohibition was produced. Offenders would be punished by 'criminal' prosecution rather than the ordinary 'civil' procedure of attachment available to the church court defendant only if he initiated it himself. The edict thus apparently had two aspects, one procedural, the other substantive.[39]

The text of the July 1 writ provides further clues to the contents of the lost edict and allows us to evaluate it in terms of the two aspects that emerge from clerical grievances and royal responses. The writ opened with a lengthy and comprehensive catalogue of pleas that were beyond the church's jurisdiction and prohibited ecclesiastical determination of them. It then ordered Richard de Boyland and the sheriffs of Norfolk and Suffolk to announce this general prohibition on the king's behalf and to 'inquire who has been holding and suing pleas listed above in church courts contrary to the aforesaid prohibition, and cite them to answer before the king's justices at Westminster.'[40] The writ thus stipulated in detail those causes that pertained to the crown and mandated prosecution of offenders of the general prohibition regardless of whether the litigants in such cases had attempted to halt them by means of prohibition. This writ therefore sought to implement the procedural innovation described in the *gravamina* as having been announced in the edict.

Yet despite the clergy's characterization of the edict, it is unlikely that the edict also sought to restrict the church courts' authority over laymen solely to testamentary and matrimonial causes. The July 1 writ listed about two dozen items pertaining to the royal courts. These included pleas concerning feudal tenures and liberties, distraints, trespasses against the king's peace, contracts *(conventionibus)*, advowsons and pecuniary matters. The writ was a positive description of the scope of royal jurisdiction, not specifying causes which were legitimately ecclesiastical. There is no direct statement that the church's jurisdiction over laymen was henceforth purely testamentary and matrimonial. Perhaps this was to be inferred from the inclusion of pleas concerning 'other chattels and debts not related to testament or marriage' among the list of matters subject to the crown's jurisdiction. If so, this was a surprisingly oblique means for a general prohibition on prosecutions to collect tithes, mortuaries, and other religious payments, as well as fines

39. The first of the grievances presented after the July 1 writ referred to both aspects in terms similar to the earlier complaint: *'Inprimis, cum a tempore cuius memoria non existit fuerit ecclesia in possessione pacifica cognoscendi de omnibus causis spiritualibus et pluribus civilibus donec inhibitio regia porrigeretur iudici vel prelato, hiis temporibus ministri regie magestatis inhibent ordinariis generali edicto ne cognoscant de aliquibus causis, nisi tantum de matrimonio vel testamento; et sic est ecclesia libertate pristina spoliata.'* Ibid. 969. This was not the only specific reference to the 'general edict.' The clergy's replies to the crown's responses to their original set of *gravamina* objected to a 'public edict' (*'cum sit edicto puplico promulgatum ut prelati cognoscant tantum de causis testamentariis et matrimonialibus . . .'*). Ibid. 959–60. This reference, prior to July 1, makes it clear that the lost edict was not the writ issued on that date.

40. Ibid. 967–69.

voluntarily assumed for correction of sin. Further, the clause had no bearing on ecclesiastical jurisdiction not involving personal property, such as correction of sin through corporal penance or questions about the validity of a marriage irrespective of property claims.

If the crown did intend to implement such a radically restrictive policy, one would expect either an explicit statement denying the church's judicial authority over specific matters or at least that previously ecclesiastical causes would be included among the long list of pleas exclusively for the royal courts. Instead, the July 1 writ appears merely to list those matters traditionally beyond the church's jurisdiction, including, in the words of the standard writ of prohibition, pleas *'de catallis et debitis que non sunt de testamento vel matrimonio.'* But that writ, as we have seen,[41] was not intended to prevent ecclesiastical cognizance of suits for such matters as spoliation of tithes or voluntarily undertaken pecuniary penance.

If the writ designed to implement the edict is unconvincing evidence of a 'frontal attack,' the records of the Norfolk inquest indicate clearly that no such policy was enforced. These records, bound with the rolls for the 1286 general eyre of Norfolk,[42] include several allegations of noncompliance with writs of prohibition, all similar in form and substance to those found in the Common Pleas rolls.[43] In addition, there are many instances on each membrane of alleged violations of royal jurisdiction that contain no reference to disobedience of prohibitions. These cases, tried by juries, are examples of the new procedure mandated by the lost edict and the July 1 writ, whereby ecclesiastical adjudication of matters outside the church's authority was declared to be a punishable offense even in the absence of a writ of prohibition.

Yet none of these cases provides any indication that the crown modified the jurisdictional rules circumscribing the activities of the church courts. Rather, they involve standard complaints. For example, there are ecclesiastical suits for the enforcement of promises, including claims for goods or money based on commercial agreements[44] or other obligations to pay sums of money.[45] Allegations of suits for unspecified lay debts or chattels not

41. Supra, text accompanying notes 32–34.

42. The fullest record is Boyland's roll, P.R.O., JUST1/575. The complaints against ecclesiastical judges begin at m.101, headed *'Inquisitiones capte coram R. de Boylund et W. de Royng' vicecomite, de transgressionibus factis laycis et comitatui Norwic' dioc' per clericos totius dioc',* 'and continue through m.109d. Boyland's roll for the Suffolk eyre of that year includes only one membrane headed '*Rotulus de querelis conquerentis de clericis in Com' Suff'.*' See P.R.O., JUST1/829 m.58. Evidently the inquest was not pursued in that county. For selections from JUST1/575, see infra, Appendix.

43. See P.R.O., JUST1/575 mm.102–105d passim for examples.

44. Ibid. m.101d, Appendix, case 5; m.109d (complaint of Alexander le Bucher, sued in church court *'pro quodam contractu inter eos habito pro quodam vitulo quod non fuit de testamento vel matrimonio'*); m.104 (complaint of William But).

45. Ibid. m.101, Appendix, case 2; m.101d (*'Cum idem magister Henricus mutuo tradidisset predictis Rogero et Simoni* [complainants] *x marcas, idem magister Henricus citari fecit ipsos coram commissario Episcopi Norwic'*"); m.103d (complaint of John Lamberd).

concerned with marriage or testament probably refer to similar contractual actions.[46] Complainants accused ecclesiastical judges of hearing claims for debts owed by deceased persons,[47] and there is a case in which the defendant admitted that he had heard a claim for an 'annual rent' that pertained to royal jurisdiction.[48] Many of the complaints are accusations of pecuniary exactions for correction of sins, including fornication,[49] adultery,[50] sabbath and feast-day offenses,[51] usury[52] and violence against a clerk.[53] One layman alleged that a church court entertained an action against him for battery,[54] and another complained of being cited to answer for a land plea.[55]

None of these cases indicates an alteration of standard jurisdictional boundaries. Each of these matters—contract and debt, fines for sin, trespass, lay fee—was by 1286 long since established as beyond the scope of the church's judicial authority. There were no instances during the Norfolk eyre of prosecution for church court actions previously recognized as spiritual. The wrong alleged in every one of the sin cases was the exaction of money fines; there were no suggestions that the king's justices were willing to consider the unreasonableness of the grounds for the ecclesiastical suits, even though some seem to have been excessively harsh.[56] Likewise, the various contract and debt cases, based on the common law's objection to

46. Ibid. m.101 (complaint of Margaret Man); m.101d (complaints of John le Redeprest, William Isonde, Walter Kyde, Edmund de Swatfend); m.103 (complaint of William Brimman); m.105d (complaints of Simon fitz Thomas and Benedict Gentil).

47. Ibid. m.103, Appendix, case 8; m.102 (*'Convictum est per Juratam in quam Alicia Colyn de Swanton querens et Walterus clericus se posuerunt quod idem Walterus citari fecit ipsam Aliciam coram Johanne de Fereby ad exigenda eadem tria quarteria ordei precii xii solidorum de debito Nicholi Colyn quondam viri sui ipsius Alicie et quod quidem debitum non fuit de testamento vel matrimonio'*); m.105d (complaint of John Lamberd).

48. Ibid. m.103, Appendix, case 7.

49. Ibid. m.105d, Appendix, case 12; m.101 (complaint of William Pangeford).

50. Ibid. m.101, Appendix, case 4; m.102d (Beatrix widow of Richard de Bradenham complained that she was prosecuted in church court for 40*s* due from her husband on account of an earlier conviction for adultery).

51. Ibid. m.101, Appendix, case 3; m.105d (exaction of 3 *s* from Theobald le Tayllur *'pro halidayeswerk iniuste et per extorsionem'*); m.101d (several complaints against John subdeacon of Norwich).

52. Ibid. m.107 (complaint of Lucia widow of Adam de Silvestre).

53. Ibid. m.102 (complaint of John Baldewyne).

54. Ibid. m.106d (conviction of Richard Maile for suing in church court *'de mahem et bateria;'* no indication that he was a clerk).

55. Ibid. m.103d (complaint of Thomas de Feltewell).

56. Ibid. m.101d (Richard atte Dam fined half mark *'eo quod predicta Margar' non potuit concipere de predicto Ricardo viro suo infantem'*); m.104 (subdeacon of Norwich *'cepit et extorsit de laicis catallis suis* [i.e., of the complainants] *vi denarios eo quod predictus Galfridus calefecerit aquam per diem festinum'*). For examples of abusive conduct by Gregory de Pontefracto, who seems to have been a particular villain, see ibid. m.105, Appendix, cases 9, 11.

ecclesiastical settlement of such disputes, reveal no signs of intrusion upon the church's penitential authority over the sin of perjury. Given the alacrity with which complainants stepped forward, a new ruling restricting the church courts solely to testamentary and matrimonial causes would doubtless have resulted in a chorus of denunciation of collections of ecclesiastical payments and dues. Yet the justices explicitly affirmed the church's jurisdiction over spoliation of tithes,[57] and no one alleged that a mortuary, obvention or oblation had been unjustly collected.[58] Clearly the Norfolk inquest of 1286 was not the occasion for the enforcement of a new policy of limitation directed against the church courts.

II

If the crown intended a procedural reform rather than a redefinition of the substantive rules governing the boundary between the two jurisdictions, we must consider why the clergy interpreted the edict as a restriction of its judicial competence. The clergy's reaction was likely based on a misunderstanding, perhaps due to imprecise drafting of the edict. The literal wording of the prohibition *de catallis et debitis* forbade all ecclesiastical suits concerning chattels or debts unless they were '*de testamento vel matrimonio.*' In fact, the royal courts throughout the thirteenth century recognized that the church's jurisdiction included other claims for chattels, notably tithes and other customary religious obligations, and for money, such as arrears of tithes or voluntarily assumed fines, prohibitions *de catallis et debitis* notwithstanding. If the lost edict's aim was to declare ecclesiastical cognizance of nonspiritual causes a punishable offense regardless of whether a writ of prohibition was produced and the edict sought to incorporate existing jurisdictional rules as expressed in the standard phrases of writs of prohibition (therefore not specifying long-standing qualifications observed

57. Ibid. m.105, Appendix, case 10. See also m.102d, Appendix, case 6, where the court convicted a clerk of disobeying a prohibition, although his suit was for spoliation of tithes. The jury's statement revealed that, contrary to the clerk's claim, the church court defendant had paid his minor tithes (*decimas minutas*) and according to local custom was not obliged to scythe his wheat *ad opus* the clerk. It seems the clerk's offense was his vexatious use of ecclesiastical process to compel his parishioner to scythe wheat designated as tithe when it was in fact his own responsibility to do so. The royal courts viewed questions of local custom governing tithe collection as secular ones. See P.R.O., CP40/98 m.94 (1293) (concerning local custom for tithing hay). See also supra note 33. Also on the Norfolk roll is a similar complaint against a clerk, alleging abusive use of spiritual sanctions for refusal to perform unwarranted labor. See P.R.O., JUST1/575 m.101 (subdeacon of Norwich prosecuted John de Rollisby *'eo quod idem Johannes quadam die fenationis negavit ad cariandum fenum ipsius decani et ad acommodandam cartatam suam'*).

58. The court did, however, rule that tolls collected by the dean of Norwich on merchandise brought into the town on feast days (*'quidam consuetudo que vocatur haliday toll'*) were illegal, after consultation with the King's Council. The dean made no attempt to justify these exactions as spiritual; they may have been in the nature of penitential fines for commercial activity on holy days, but the judgment forbidding them suggests a market toll. See ibid. m.101 (first entry). See also ibid. m.101; Appendix, case 1.

in practice), it might have appeared to be a substantive, as well as a procedural, innovation. As we have seen, the July 1 writ stated that the king claimed jurisdiction over pleas '*de catallis et debitis que non sunt de testamento vel matrimonio*,' though the actual inquest continued to apply the standard qualifications developed earlier in the century. Perhaps the writ actually reiterated the language of the edict. This would explain why the clergy reacted as it did.

Several of the complaints presented after the July 1 writ support this interpretation. They are specific claims for ecclesiastical authority over cases involving debts and chattels not testamentary or matrimonial, such as tithes, customary obligations to maintain the fabric of local churches and spiritual annuities, on the ground that these were customarily settled in church courts.[59] In addition, the clergy complained that it would be unable to correct sins such as violence against clerks, defamation and breach of faith.[60] This was evidently a reference either to the church's ability to collect fines voluntarily undertaken by convicted sinners, or perhaps reflected concern that sacramental jurisdiction was to be limited only to testament or marriage. Clearly, these grievances were not based on the conduct of the Norfolk inquest, which did not challenge the church's authority over any matters traditionally within its jurisdiction. Instead, they must have been prompted by the misleadingly broad language of the edict and July 1 writ.

Circumspecte agatis was a direct response to several of the grievances presented after the July 1 writ, an attempt to clear up the misunderstanding caused by the edict and writ. It recognized the spiritual nature of correction of mortal sins such as fornication and adultery, and admitted that in certain cases the church courts might collect pecuniary penance, especially if the convicted sinner were a free person. Exaction of money for the maintenance of church property was also licit, as were claims for tithes and mortuaries brought against parishioners. Questions of right to tithe contested by two rectors, however, were for the royal courts if the income at stake amounted to a fourth or more of the value of the church in possession.[61] In what was probably a reference to a common feature of appropriation arrangements, *Circumspecte agatis* endorsed the right of a 'prelate' who was patron of a church to bring an ecclesiastical action for a pension due to him from the 'rector' (i.e., vicar) of the church. As for violence against clerks and defamation, the writ stated that these had already been conceded to the church courts as long as correction of sin rather than monetary compensation was the object of the suit. (The reference here was evidently to the lengthy royal response to a clerical *gravamen* presented and answered in 1280.[62] The tone of the passage in *Circumspecte agatis* suggests that rehearsal of this fact was felt to be unnecessary, that is, that there had been no change in the

59. Powicke and Cheney, *Councils and Synods*, supra note 4, 970–72.

60. Ibid. 970.

61. Cf. supra note 32 regarding the fraction.

62. Powicke and Cheney, *Councils and Synods*, supra note 4, 874–75.

crown's position since then.) Likewise, the church could hear breach of faith actions aimed at correction of sin.

Because it responded solely to issues raised in the clerical grievances following the July 1 writ, *Circumspecte agatis* was by no means a comprehensive description of ecclesiastical jurisdiction or even of those areas that conflicted with the common law. It said nothing about the scope of prohibitions *de laico feodo*. Ecclesiastical patronage was mentioned only in relation to tithe disputes. Nor did *Circumspecte agatis* refer to the church's extensive testamentary or matrimonial authority. What the writ did provide was a catalogue of all causes concerning goods or money that were justiciable in church courts despite the apparent applicability of prohibitions *de catallis et debitis*. Every clause related to an ecclesiastical action for goods or money, whether tithes, for example, or pecuniary penance, and each recognized the church's jurisdiction *'non obstante regia prohibitione.'* This *'regia prohibitio'* must have been the one *de catallis et debitis*, whether the writ itself or the lost edict's incorporation of its language. *Circumspecte agatis* would not then have mentioned that ecclesiastical suits for testamentary legacies or marriage portions were licit, because the writ so related. Nor was there any reference to the church's jurisdiction over other matters potentially subject to other forms of prohibition, such as disputes about elemosinary land or the suitability of clerks presented to benefices, because the scope of those writs was not at issue. Thus, *Circumspecte agatis* could only have been an attempt at clarification of confusion prompted by the use of language taken from the prohibition *de catallis et debitis,* lost edict and July 1 writ.

Neither the lost edict nor the July 1 writ suggests a policy of 'frontal attack.' The records of the inquest set in motion by these pronouncements reveal no signs of battle. *Circumspecte agatis* therefore did not concede to the church jurisdiction over matters newly claimed by the crown, because no such innovations had occurred in 1285 or 1286. Nor did *Circumspecte agatis* clarify previously indistinct boundaries. Lines sharply defined prior to 1286 had continued to be observed during the Norfolk inquest. In this respect, *Circumspecte agatis* was a purely conservative document.

III

The misplaced emphasis on the substantive importance of the lost edict and *Circumspecte agatis* has resulted in failure to appreciate the true significance of Edward's policy during 1285 and 1286. The edict and July 1 writ announced a new enforcement procedure for ecclesiastical infringement of royal jurisdiction. A prosecutorial process based on lay inquests was to replace the older system of writs of prohibition enforceable by civil actions dependent on the discretionary initiative of individual complainants.

Yet it would appear that the new inquisitorial procedure was of no further significance in church-state jurisdictional relations during the reign of Edward I. It was not implemented thoughout the country and was used only sporadically after 1286. The grievances presented after the July 1 writ made

no specific reference to Norfolk (concerned instead generally with 'wrongs committed against the churches of Canterbury province'[63]) and another copy of the July 1 writ annnouncing the Norfolk inquest was addressed to the clergy of Somerset and Dorset.[64] The policy implemented in Norfolk therefore may have been intended to be of more than purely local significance, but there is no evidence of an actual inquest into jurisdictional offenses in those counties or any others.[65] Eyres were conducted in several counties within a few years of 1285, including one in Dorset in 1287, but the records of the proceedings against ecclesiastical judges included in the Norfolk eyre rolls are unique.[66]

Later in the reign of Edward I there is very little evidence of the procedure announced in 1285. An eyre roll from Kent, dated 1292, includes an entry in which an executor complained that a clerk had impleaded him in a church court concerning a nonspiritual matter. The case was argued and decided without reference to any writ of prohibition, suggesting that the prosecution of the ecclesiastical suit was treated as a wrong in itself even absent an allegation of refusal to honor a prohibition.[67] A King's Bench case from 1298 includes an allegation that a royal bailiff went before an 'auditor of complaints against clerks' in Suffolk (*'adivit inquisitorem et auditorem querelarum conquerentium de clericis'*) and falsely accused a clerk of excommunicating him unjustly.[68] The reference suggests a formal procedure similar to that mandated in 1285. Another King's Bench case, heard in 1297, includes a reference to an inquiry at a sheriff's tourn into ecclesiastical suits contrary to prohibition. This may have been an 'indictment' pro-

63. Ibid. 969.

64. Graves, *'Circumspecte Agatis,'* supra note 6, 2 n. 3.

65. In an unpublished paper delivered at the 6th International Congress of Medieval Canon Law at Berkeley, California in July 1980, Dr. Hyams has suggested that the relations between clergy and laity in the Norwich diocese may have been particularly difficult. If that were so, it might explain why the extensive inquest into church court activities was not duplicated elsewhere. I am grateful to Professor Donahue for this reference.

66. Bartholomew Cotton's *Historia Anglicana* includes this passage: *'Eo anno [1286] fecit inquiri rex qui clerici implacitaverant quoscumque de feodo seu laicis catallis in curia Christianitatis, et de praelatis, qui graviter punierant excessus laicorum pecuniariter; et clericos, praelatos, et eorum ministros de hujusmodi [culpa] convictos graviter vinxit et incarceravit.'* H.R. Luard, ed., *Historia Anglicana Bartholomaei de Cotton,* Rolls Series, 1859, 166–67. Although this statement may seem general enough to suggest a broad campaign, its context and the author's parochial perspective (a Norwich monk, whose original contributions to the history concerned mainly Norwich and Yarmouth) indicate that the reference was probably to Norfolk alone. Note that the jurisdictional offenses mentioned were well established, without indication of a newly restrictive policy.

67. P.R.O., JUST1/375 m.81 (Kent, 1293).

68. P.R.O., KB27/156 m.25 (1298). This case was from Suffolk and therefore could have been referring to the 1286 inquest. There is no notation of the events alleged in the 1298 complaint among the 1286 records, however.

cedure.[69] Because I have found no further evidence of similar practices during Edward's reign,[70] there is no reason to believe that a prosecutorial procedure was implemented generally after the Norfolk eyre of 1286.

IV

If the purpose of the lost edict of 1285 was to establish a new procedure for policing the boundaries between the two jurisdictions, we must consider why it was not pursued after 1286. The eyres, the omnicompetent tribunals that visited each county at least once every decade during the thirteenth century and the vehicle by which the procedure was implemented in Norfolk, collapsed during the 1290s under the weight of a greatly increased workload.[71] This does not explain why the crown did not devise some other method for hearing complaints against the church courts on a local level. But it may suggest that the institutional resources or competence for a comprehensive enforcement program were unavailable.

Judging from the clergy's reaction to the lost edict, the new procedure if generally implemented would have met with sustained, vocal protest. Thus, politics may have been a significant factor. Or perhaps the commitment to reform was simply insufficient to overcome the power of customary patterns of interaction between the ecclesiastical and secular legal systems.[72]

The existence of a well-developed process—writs of prohibition and attachment actions—that at least theoretically policed the boundaries may have mitigated any reformist zeal. Abandonment of the reform did not mean giving up on enforcement altogether. Finally, it may be that circumstances in Norfolk had made the need for reform especially compelling, while the older procedure was felt to be sufficiently reliable elsewhere.[73] Once that situation had been resolved, and the culprits made examples of, reform might more readily have been set aside.

The result of the demise of the procedural reform was return to the purely private enforcement procedure by means of writs of prohibition. The

69. '[*A*]*d turnum suum* [the sheriff] *liberavit eis* [i.e., the jurors] *quosdam articulos in scriptis ad quos respondere debuerunt et inter articulos illos fuit ille articulus: quod ipsi inquirerent si aliquis esset in patria qui aliquem in curia christianitatis inplacitavit contra prohibitionem seu defensionem domini regis.*' P.R.O., KB27/150 m.24 (1297). This case came from Norfolk, so perhaps the inquiry was a survival of the 1286 inquest.

70. The eyre of London of 1321 included an indictment procedure for the prosecution of jurisdictional complaints against ecclesiastical judges, but this too was apparently exceptional. See Y.B. Eyre of London, 1321, H. Cam, ed., Selden Society 85 (1968) i, 38.

71. There was a significant increase in trespass actions in particular. The eyres were replaced by specialized commissions of limited authority and, later, by local justices of the peace. See A. Harding, *A Social History of English Law* (Gloucester, Mass., 1966) 67–73.

72. Compare the incomplete success of Edward's ambitious *quo warranto* campaign, also intended to be implemented through the eyre system. See D. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I* (Oxford, 1963).

73. See supra note 65.

massive inquest into the conduct of ecclesiastical officials in Norfolk, productive of such dramatic results, was never repeated. Individual litigants rather than central authority determined what cases would be decided in the church courts. Communal values and attitudes rather than externally imposed norms therefore played a broader role in ordering relations among parishioners and their clergy. All sorts of routine contractual claims, for example, were typically litigated before ecclesiastical judges, though in theory subject to prohibition.[74] Other sorts of 'secular' matters may have been as well, though how much so is less clear.[75] It is clear, however, that the community was the arbiter of whether particular jurisdictional rules could legitimately be enforced. Of course, such values always shape the ways in which legal rules are applied. But the procedural system for policing the limits of ecclesiastical judicial authority allowed greater autonomy of decision as to whether particular common-law rules should function or not.[76]

Thus, communal attitudes about the proper forum in which to enforce certain obligations or redress certain wrongs or about the propriety of invoking the king's power against the church's in a particular case could render the availability of a common-law remedy unimportant. We may be tempted to doubt whether such attitudes would deter at least some defendants from resorting to prohibitions as 'last ditch' efforts to avoid costly judgments. In fact, this happened rarely, at least in contractual disputes. We should be careful not to underestimate the power of extra-legal standards to define what sort of behavior is possible in particular situations. Community opinion must have been an especially potent force in a society in which the individual was likely to live among the same neighbors all his life and to be subject to a higher degree of scrutiny from them than could possibly be the case in our society. Calculations of self-interest thus presented a different set of practical problems. The presentation of the king's writ of prohibition to halt a case otherwise believed to be legitimately before the local church court must have had a meaning very different than we can readily imagine today.

Societal attitudes about the legitimacy of ecclesiastical jurisdiction over certain matters may therefore best explain the crown's unwillingness—or inability—to pursue vigorously a program capable of restraining the church

74. See supra note 27.

75. Compare C. Donahue, Jr., 'Roman Canon Law in the Medieval English Church,' 72 *Michigan Law Review* 647, 661–67 (1974), with Millon, 'Common Law and Canon Law,' supra note 2, 263–66 (questioning evidence that church courts heard numerous cases subject to prohibition in addition to contractual cases). I develop this argument further in an article forthcoming in the *University of Illinois Law Review*.

76. Professor Green has discussed the relation between community norms and values and common-law rules in a different context. The local community's responsibility as fact-finder in homicide cases allowed it to circumvent unacceptable common-law rules. T.A. Green, 'The Jury and the English Law of Homicide, 1200–1600,' 74 *Michigan Law Review* 414 (1976). In the area of rules governing the availability of prohibition, the procedural framework allowed violations of the rules to escape royal notice altogether.

courts within the bounds set by the jurisdictional rules. *Circumspecte agatis* was part of a potentially significant effort to reform the procedure for enforcement of those rules. But the innovation died almost as soon as it was announced. Perhaps the situation in Norfolk was exceptional, more a matter of curbing official abuses than of removing 'secular' matters from ecclesiastical authority. Elsewhere, an inquisitorial procedure might not have yielded much in the way of complaints about church court activities. Perhaps the quiet abandonment of the reform effort was a recognition of this fact. In the final analysis, the medieval monarchy was probably ill-equipped to insist upon rules not generally acceptable, regardless of the procedure selected for their enforcement. We can attempt to analyze the legal meaning of *Circumspecte agatis* and the events surrounding it as well as how legal choices may have made a difference. But the social dimension, the interrelationship between legal phenomena and actual human existence, remains far more speculative.

Appendix

Selections from P.R.O., JUST1/575 (Norfolk, 1286)[77]

1. **m.101.**

Jurata presentat quod iidem [i.e., Henricus Sampson decanus Norwic' et Johannes de Berstrete subdecanus suus] capiunt de portantibus aucas, gallinas, et alia volatilia vendendos in civitate predicta per dies festinos ad estimationem x solidos.
Et predicti magister Henricus et Johannes dicunt [quod] ipsi nucquam [sic] aliquid ceperunt nec caperi fecerunt de huiusmodi portantibus vel vendentibus aucas, gallinas, vel aliqua alia volotilia [sic] ut predictum est. Et de hoc ponunt se super patriam.
Et juratores ad hoc electi dicunt super sacramentum suum quod predictus Johannes subdecanus ipsius magistri Henrici summoneri fecit coram eo omnes pollitarios civitatis qui aliqua volatilia emerint vel vendenderint [sic] per dies festinos et eos amerciari fecit coram eo, quosdam ad ij solidos per annum et quosdam ad plus et ad minus. Sed bene dicunt quod de forinsecis volatilia vendendibus nullum sciunt. Et dicunt quod numquam aliqui coacti fuerunt ad huiusmodi theoloneum prestandum infra civitatem istam nisi per predictos magistrum Henricum et Johannem subdecanum suum. Ideo loquendum cum domino Rege etc.
Postea per dominum Regem et per eius consilium provisum est et ordinatum quod, quia huiusmodi consuetudines injuriose sunt et ad nocumentum totius populi et detrimentum, quod [sic] decetero aliquod huiusmodi theoloneum ut predictum est decetero non capiatur nec aliquis cogetur ad huiusmodi teoloneum vel consuetudinem prestandum. Et preceptum est vicecomiti quod proclamari faciat per totum episcopatum Norwic' quod nullus decetero huiusmodi teoloneum vel consuetudinem capiat etc.

2. **m.101.**

Walterus de Daleby et Cassandra [uxor] eius querentur de predicto Johanne subdecano de hoc quod idem Johannes maliciose summoneri fecit ipsos coram eo et ipsos traxit in placitum in Curia Christianitatis de catallis et debitis que non fuerunt de testamento vel matrimonio et de eiis [sic] levari fecit iiii solidos ad opus Willelmi de Wells et quos iidem Walterus et Cassandra alias coram eo probaverunt eidem Willelmo soluisse et ipsos excommunicavit de die in diem quousque iterato soluisset predictos iiii solidos et quousque finem cum ipso Johanne fecissent per v solidos quos cepit ab eiis [sic] per [sic] sentencia illa remittenda. Unde dicunt quod deteriorati sunt et dampnum habent ad valenciam xx solidorum.
Et Johannes bene cognoscit quod ipse conveniri fecit eos coram eo et pro

77. The actual entries contain many abbreviations. These I have expanded without comment. I have also supplied capitalization and punctuation. Idiosyncratic spelling (e.g., consistent use of the 'e' for classical 'ae') has been retained and no effort has been made to edit the clerks' grammar according to classical or modern standards.

fidei datione cepit predictos v solidos et quod tenuit placitum inter eos ut predictum est. Et ideo consideratum est quod predictus Johannes satisfecerit predictis Waltero et Cassandre de predictis v solidis et de dampnis suis que taxantur ad iiii solidos. Et idem Johannes custodiatur.

3. **m.101.**

Convictum est per juratam in quam Gilbertus Hakun querens et predictus Johannes subdecanus se posuerunt quod predictus Johannes summoneri fecit ipsum et duos filios suos coram eo quod vendiderunt victualia messoribus et aliis operariis in autumpnum per diem festinum et ipse vexavit de capitulo ad capitulum quousque finem cum eo fecissent per v solidos quos cepit ab eiis [sic] injuste et contra voluntatem suam. Et ideo consideratum est quod Johannes satisfaciat eis de predictis v solidis et de dampnis suis que taxantur ad v solidos. Et idem Johannes custodiatur.

4. **m.101.**

Convictum est per juratam in quam Gilbertus filius Warini querens et predictus Johannes subdecanus se posuerunt quod predictus Johannes maliciose inposuit ei commisisse adulterum cum in nullo deliquisset et summoneri fecit ipsum de capitulo in capitulum quousque finem cum eo fecisset per xii denarios quos ab eo cepit injuste. Et ideo consideratum [est] quod predictus Gilbertus recuperet predictos xij denarios et dampna sua que taxantur ad xij denarios. Et Johannes custodiatur.

5. **m.101d.**

Convictum est per juratam in quam Matilda uxor Henrici le Gaunter querens et Benedictus de Brakne se posuerunt quod cum idem Benedictus mutuasset predicte Matilde sex quarteria ordei pretii xxiiij solidorum et cum terminus predicti debiti advenisset idem Benedictus exigebat a predicta Matilda xl solidos pro blado predicto et quia eadem Matilda termino predicto predictos xl solidos solvere non potuit, ipse postmodum in anno sequente exigebat ad ea vj marcas et coegit eam ad faciendas ei tallias et scripta de vj marcis et postmodum ipsam citari fecit coram ordinario et vexavit eam in Curia Christianitatis quousque soluisset ei iiij libras predictas, ad dampnum ipsius Matilde xx solidorum. Et ideo consideratum est quod predicta Matilda recuperet predictum debitum exceptis xxiiij solidis de principale debito ei allocatis et predicta dampna sua, unde summa totius est lxxvj solidi. Et Benedictus committatur gayol. Postea venit predictus Benedictus et finem fecit per plegios Gervasium le Gaunt et Adam le Clerc de Norwico.

6. **m.102d.**

Convictum est per juratam in quam Robertus de Bethalle querens et magister Nicholus de Capella se posuerunt quod predictus magister Nicholus ipsum Robertum implacitavit in Curia Christianitatis ipsum citando per litteras apostolicas coram decano de Lenn ibidem et deinde citari fecit ipsum usque Eye in comitatu Suff' et postea apud Gipp' coram commissario predicti decani de Lenn inponendo ei quod injuste quasdam

minutas decimas suas detinuit et quod noluit decimas bladi sui in campo de Weleby crescencii metere ad opus ipsius magistri Nicholi, cum minutas decimas suas fideliter persoluisset et cum ad ipsum magistrum Nicholum pertinere predictum bladum metere postquam decimatum fuerit et non ad ipsum Robertum et hoc secundum consuetudinem ipsius ville. Et similiter quod, cum predictus Robertus eidem magistro Nicholo detulisset regiam prohibitionem ne predictum placitum ulterius sequeretur in Curia Christianitatis, quod [sic] non obstante regia prohibitione predictum placitum ulterius secutus fuit ipsum citando et vexando de loco in locum ut prius, videlicet coram Priore de Hassedpenerel in comitatu Essex et alibi, ad dampnum ipsius Roberti quinque marcarum. Et ideo consideratum est quod predictus Robertus recuperet predicta dampna sua v marcarum versus predictum magistrum. Et magister Nicholus custodiatur.

7. **m.103.**

Petrus Lefstan de Dallyng queritur de magistro Gregorio de Pontefracto quod idem Gregorius per sectam Priorisse de Blakeberwe tenuit placitum in Curia Christianitatis de quodam annuo redditu ij solidorum quod placitum ad coronam domini Regis pertinet et ipsum super hoc vexavit, ad dampnum ipsius Petri i marce. Et magister Gregorius venit et hoc non potest dedicare. Ideo consideratum est quod predictus Petrus recuperet predictam marcam versus predictum Gregorium. Et Gregorius custodiatur.

8. **m.103.**

Convictum est per juratam in quam Adam de Bosco querens et Johannes filius Reginaldi de Pokedich se posuerunt quod cum quidam Johannes de Bosco pater predicti Adam qui obiit dum viveret teneretur predicto Johanni in xxxvj solidis et pepigisset cum eo ad solvendum ei xxiiij cumbas ordei pro predictis xxxvj solidis de quo debito eidem Johanni in vita sua non satisfecit, predictus Johannes filius Reginaldi post mortem ipsius Johannis de Bosco ipsum Adam implacitavit in Curia Christianitatis de debito predicto tanquam heredem ipsius Johannis de Bosco exigendo ab eodem lxxij solidos pro predictis xxxvj solidis et ipsum vexavit quousque cepisset ab eo predictos lxxij solidos. Et ideo consideratum est quod predictus Adam recuperet predictos lxxij solidos versus predictum Johannem filium Reginaldi et dampna sua que taxantur ad xx solidos per juratam. Et Johannes filius Reginaldi custodiatur.

9. **m.105.**

Convictum est per juratam in quam Johannes Lambard querens et magister Gregorius de Pontefracto se posuerunt quod cum idem Johannes distrinxisset quemdam Eborardum tenentem suum pro quodam annuo redditu in quo ei tenebatur et ipse districtionem illam deliberare noluisset antequam satisfactum fuisset ei de predicto redditu, quod [sic] predictus magister Gregorius ad querimoniam ipsius Eborardi traxit ipsum Johannem in placitum in Curia Christianitatis et maliciose vexavit eum coram eo et quod cum regia prohibitio ei delata fuisset ipse prohibitionem predictam projecit contra parietem et nichilominus ulterius tenuit placitum predictum

in contemptum domini Regis, ad dampnum predicti Johannis xl solidorum. Et ideo consideratum est quod predictus Johannes recuperet dampna sua predicta versus eundem magistrum Gregorium. Et Gregorius custodiatur.

10. **m.105.**

Rogerus de Well in misericordia pro falso clamore versus magistrum Gregorium de Pontefracto eo quod injuste questus fuit ab eo de hoc quod ipsum implacitavit in Curia Christianitatis de sex marcis cum per propriam confessionem predicti Rogeri compertum sit quod predicte sex marce fuerint de arreragio decimarum ecclesie Wynelodesham et quod quidem placitum spectat ad Curiam Christianitatis.

11. **m.105.**

Convictum est per juratam in quam Stephanus de Wygenhal cappellanus querens et magister Gregorius de Pontefracto se posuerunt quod cum idem Stephanus et quidam Willelmus Helle inplacitati fuerunt in Curia Christianitatis coram ipso magistro Gregorio de quodam laico contractu et idem Willelmus Helle detulisset eidem Gregorio regiam prohibitionem per quod placitum predictum cessavit, idem magister Gregorius iterato traxit predictum Stephanum capellanum in placitum coram eo inponendo ei quod ipse impetravit prohibitionem predictam cum clericus esset et ipsum vexavit injuste quousque cepisset ab eo xx solidos et turbas ad valenciam dimidie marce, cum paratus esset se purgare quod regia prohibitio per ipsum impetrata non fuisset nec eidem Gregorio obtenta. Et similiter quod magister Gregorius postmodum procuravit magistrum Johannem de Feryby ipsum inplacitare pro predicto facto maliciose et ipsum vexavit quousque cepisset ab eo xx solidos. Et ideo consideratum est quod predictus Stephanus recuperet predictos xx solidos et dimidiam marcam et dampna sua que taxantur ad dimidiam marcam versus predictum magistrum Gregorium. Et Gregorius in misericordia.

12. **m.105d.**

Convictum est per juratam in quam Roland Hose querens et magister Gregorius de Pontefracto se posuerunt quod idem magister Gregorius ipsum Roland citari fecit coram eo inponendo ei carnalem copulam cum quadam muliere habuisse et cum predictus Roland purgare se voluisset idem Gregorius purgationem suam noluit admittere sed ipsum vexavit de die in diem quousque cepisset ab eo x solidos per extorsionem. Et ideo consideratum est quod predictus Roland recuperet predictos x solidos et dampna sua que taxantur ad ij solidos. Et Gregorius custodiatur.