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THE CANON *SI QUIS SUADENTE*
AND EXCOMMUNICATION
IN MEDIEVAL ICELAND

Introduction

ÁRNA SAGA BISKUPS tells a story about a priest thrown off a ferry crossing the river Ölfusá in southwest Iceland in 1277. Two royal officials were carrying letters from the Norwegian king when they ejected the priest and his luggage.¹ When Árni Þorláksson, the Bishop of Skálholt in southern Iceland, later encountered the two officials, he was not pleased and gave them a serious warning: “You have brought a papal excommunication upon yourselves by your very act, and you are in no way absolved until you swear the oath that the laws of the church dictate and until you compensate the priest.”² Bishop Árni informed these men that they had brought a papal excommunication upon themselves by the very act, in Old Norse-Icelandic *afsjálfu verkinu*, of roughing up a priest. In this, Bishop Árni was following the doctrine set down by the canon *Si quis suadente*, which called for the automatic excommunication of those who laid violent hands on clerics.³

- 1 *Árna saga biskups*, ed. by Guðrún Ása Grímsdóttir, *Biskupa sögur vol. 3, Árna saga biskups, Lárentius saga biskups*, Íslensk fornrit 17 (Reykjavík: Hið íslenska fornritafélag, 1998), 70. I thank Anders Winroth and the anonymous reviewers for their comments and suggestions. Errors are mine alone.
- 2 *Árna saga biskups*, 70: “Sé ek eptir ykkrum flutningi at þið hafit fellt páfabann á ykkur af sjálfu verkinu, ok dugir með engu móti at þið séuð eigi leystir, ok eigi þið áðr sverja fyrir lausnina þann eið sem lög kirkjunnar bjóða en bæta prestinum rétt sinn.”
- 3 *Decretum magistri Gratiani*, C. 17 q. 4 c. 29 (second recension text). ed. *Corpus iuris canonici*, ed. by Emil Friedberg (Leipzig: Ex Officina Bernhardi Tauchnitz, 1879), 1.822. I follow the distinction between the first and second recensions of the *Decretum* as argued for by Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press), 197–227. The canon is associated with increasing papal claims to power and the so-called papal monarchy. See, Richard Helmholz, “‘Si quis suadente’ (C.17 q.4 c.29): Theory and practice,” *Proceedings of the Seventh International Congress of Medieval Canon Law, Cambridge, 23–27 July 1984*, edited by Peter Linehan (Vatican City: Biblioteca Apostolica Vaticana, 1988), 425; Elisabeth Vodola, *Excommunication in the Middle Ages* (Berkeley and Los Angeles: University of California Press, 1986), 28–29.

The bishop demanded that the officials swear an oath and compensate the priest in order to be released from the excommunication. When they would not, the bishop decided to absolve them anyway, lest they set sail excommunicated (and perhaps drown), but said that they owed the priest six marks.⁴ According to the saga, at least one of the offenders, Eindriði, was pleased with this solution and worked to reach the best agreements possible between Bishop Árni and King Magnús. All of the remedies offered by the bishop, however, differed from those set down in the original canon, which demanded that anyone excommunicated in this way must seek absolution from the pope, unless in peril of death.

This article focuses on the adoption of the canon *Si quis suadente* in Iceland from the twelfth through the fourteenth centuries. The canon codified key developments in the sanction of excommunication during the Middle Ages, introducing “automatic” excommunications that were incurred instantly upon doing forbidden actions. Tracing the adoption, translation, and interpretation of this canon allows us to assess in some detail the ways in which Icelandic bishops and clerics interpreted the teachings of canon law in their own dioceses and parishes, allowing us to assess what is increasingly referred to as “local canon law” in a remote set of dioceses.⁵

This article traces the legal developments of *Si quis suadente* as they were incorporated into Icelandic church law, particularly in light of the evidence provided by legal manuscripts of the fourteenth century. These manuscripts, of which there are a great number, have remained relatively understudied and unevenly catalogued, although this is beginning to change.⁶ In this article I focus in particular on manuscripts containing

4 *Árna saga biskups*, 70.

5 For discussion of the concept see Anthony Perron, “Local Knowledge of Canon Law, ca. 1150–1250,” *Cambridge History of Medieval Canon Law*, edited by John C. Wei and Anders Winroth (Cambridge: Cambridge University Press, forthcoming); Richard Helmholz, “Were the English Ecclesiastical Tribunals Courts of Law?” *Law and Private Life in the Middle Ages: Proceedings of the Sixth Carlsberg Academy Conference on Medieval Legal History 2009* edited by Per Andersen, Mia Münster-Swendsen and Helle Vogt (Copenhagen, DJØF Publishing 2011), 23–27; Anders Winroth, “The Canon Law of Emergency Baptism and of Marriage in Iceland and Europe,” *Gripla* 29 (2018): 204–11, 221–22; and Eldbjørg Haug, “Concordats, Statute and Conflict in *Árna saga biskups*,” *Collegium Medievale* 28 (2015): 95.

6 Kristoffer Vadum, for instance, provides a more thorough identification of the many

Kristinréttir Árna, the “new” Christian laws accepted in Iceland in 1275.⁷ These manuscripts often contain additional texts that further detail how *Si quis suadente* was understood in Iceland, including both prescriptive lists and formulas for oaths like the one proposed by Bishop Árni to the king’s officials. These sources allow us to understand how an important aspect of canon law was interpreted in Iceland during the later Middle Ages.

Although recent scholarship has increasingly studied the role of Latin canon law in vernacular laws (both secular and ecclesiastical) in Scandinavia, there still remains much work to be done within the field, particularly with regard to the Latin sources for vernacular ecclesiastical laws.⁸ This article evaluates the manuscripts in detail to illuminate the his-

excerpts from canonical works in the manuscript AM 671 4to in his doctoral thesis, “Bruk av kanonistisk litteratur i Nidarosprovinzen ca. 1250–1340,” (Ph.D. Dissertation, The University of Oslo, 2015).

- 7 There are 50 surviving medieval manuscripts that contain at least a portion of Kristinréttir Árna. For further discussion of these manuscripts see, Magnús Lyngdal Magnússon, “Kátt er þeim af kristinrétti, kærur vilja margar læra: Af kristinrétti Árna, setning hans og valdsviði,” *Gripla* 15 (2004): 43–90. *Árna saga*, 48–49 narrates how the law was composed and accepted at the Alþing.
- 8 Recent research on canon law in a Nordic context and on the influences of European law on the north includes: Agnes S. Arnórsdóttir, “Two Models of Marriage? Canon Law and Icelandic Marriage Practice in the Late Middle Ages,” *Nordic Perspectives on Medieval Canon Law*, edited by Mia Korpiola (Helsinki: Matthias Calonius Society, 1999), 79–92; Agnes S. Arnórsdóttir, *Property and Virginité: The Christianization of Marriage in Medieval Iceland 1200–1600* (Aarhus: Aarhus University Press, 2010); Joel Anderson, “Disseminating and Dispensing Canon Law in Medieval Iceland,” *Arkiv för nordisk filologi* 128 (2013): 79–95; Per Andersen, Kirsi Salonen, Helle I. M. Sigh, and Helle Vogt (eds.) *How Nordic Are the Nordic Medieval Laws? Ten Years After; Proceedings of the Tenth Carlsberg Academy Conference on Medieval Legal History 2013* (Copenhagen: DJØF Publishing, 2014); Per Andersen, Ditlev Tamm and Helle Vogt (eds.) *How Nordic are the Nordic Medieval Laws?: Proceedings from the first Carlsberg Conference on Medieval Legal History*, 2nd. ed. (Copenhagen: DJØF Publishing, 2011). Lára Magnúsardóttir, *Bannfæring og kirkjuvald á Íslandi 1275–1550: Lög og rannsóknarforsendur*, (Reykjavík: Háskólaútgáfan, 2007); Lára Magnúsardóttir, “Icelandic Church Law in the Vernacular 1275–1550,” *Bulletin of Medieval Canon Law* 23 (2015): 127–43; Torgeir Landro, “Kristenrett og kyrkjerett: Borgartingskristenretten i eit komparativt perspektiv,” (Ph.D. diss., The University of Bergen, 2010); Bertil Nilsson, *De sepulchris. Gravrätten i Corpus iuris canonici och i medeltida nordisk lagstiftning* (Stockholm: Almqvist & Wiksell International, 1993); Vadum, “Bruk av kanonistisk litteratur;” Kristoffer Vadum, “Canon Law and Politics in Grímr Hólmsteinsson’s *Jóns Saga Baptista II*” trans. by Alan Crozier. *Intellectual Culture in Medieval Scandinavia, c. 1100–1350*. ed. by Stefka Georgieva Eriksen, *Disput* 28 (Turnhout: Brepols, 2016), 175–209; Sigurður Líndal, “Um þekkingu Íslendinga á rómverskum og kanónískum rétti frá 12. öld til miðrar 16. aldar,” *Úlfjótur* 50 (1997): 241–273; Anders Winroth, “Canon Law in the Arctic,” *Texts and Contexts in*

tory of the adoption of an important canon at a local level. Icelandic clerics adopted and adapted a fairly narrow range of standard texts and commentaries in their treatment of *Si quis suadente*, but the surviving manuscript sources show that the canon and its consequences continued to be points of discussion and pastoral administration for Icelandic churchmen long after they were first promulgated and translated into Old Norse-Icelandic. Lists of actions that led to automatic excommunication were common in fourteenth-century legal manuscripts, and many episcopal statutes warn about such excommunications and discuss how people thus excommunicated should be dealt with.

The Canon

Si quis suadente (C. 17 q. 4 c. 29) is an oft-discussed canon that first saw wide circulation in the second recension of Gratian's *Decretum* (ca. 1150).⁹ The basic premise of *Si quis suadente* was that clerics should be absolutely protected from violence. The canon enforced this with automatic excommunication ("ipso facto") for anyone who violated it. Moreover, this particular type of excommunication, in the original wording of the canon, could only be absolved by the pope except in cases of urgent mortal peril. This canon was the origin of a new type of excommunication in the medieval church, excommunication *latae sententiae*, or by an already passed sentence. This type of excommunication did not require a formal warning or even that a bishop speak the sentence over a person. Performing a forbidden action was enough to automatically bring down the sentence; hence such excommunications are sometimes referred to as excommunications *de jure* or *ipso facto*.¹⁰ In Old Norse-Icelandic this is translated as *bann af*

Medieval Legal History: Essays in Honor of Charles Donahue, edited by Sara McDougall, Anna di Robilant and John Witte Jr. (Berkeley, Calif.: Robbins Collection, 2016), 301–309; Winroth, "The Canon Law of Emergency Baptism," 203–229; and Anders Winroth, "Goffredus och Västgötalagen," *Kyrkohistorisk årsskrift* 1:119 (2019): 183–88.

9 The full text of the canon reads: "Si quis suadente diabolo huius sacrilegii uicium incurrerit, quod in clericum vel monachum uiolentas manus iniecerit, anathematis uinculo subiaceat, et nullus episcoporum illum presumat absoluere, nisi mortis urgente periculo, donec apostolico conspectui presentetur, et eius mandatum suscipiat." *Decretum magistri Gratiani*, C. 17 q. 4 c. 29, 1.822

10 Vodola, *Excommunication*, 34–35 note 27.

sjálfu verkinu “excommunication by the deed itself” and is also sometimes referred to as *páfans bann* “papal excommunication.”¹¹

The innovations introduced by *Si quis suadente* changed the way excommunication functioned in church law, adding to the older type of excommunication, which could only be handed down by a bishop and required at least one warning that a person cease their offending behavior before it could be pronounced.¹² It was a contested canon and the subject of significant comment and glossing by later interpreters.¹³ Many also wrote directly to the pope asking for clarification of the canon’s reach.¹⁴ By the late Middle Ages it had spawned a genre of fairly standardized petitions sent to a branch of the papacy specifically formed to process such requests.¹⁵

11 Lára Magnúsdóttir, *Bannfæring*, 78–104.

12 The history of excommunication in the medieval church is long and complex and cannot be fully addressed here. Key works include: F. Donald Logan, *Excommunication and the Secular Arm in Medieval England: A Study in Legal Procedure from the Thirteenth to the Sixteenth Century* (Toronto: University of Toronto Press, 1968); F. Donald Logan “Excommunication,” *Dictionary of the Middle Ages*, ed. Joseph R. Strayer (New York: Charles Scribner’s Sons, 1984), 4.536–38. Vodola, *Excommunication in the Middle Ages*; Paul Hinschius, *System des katholischen Kirchenrechts* (Berlin, 1869–1897, reprinted Graz, 1959), 4.698–705, 799–806; Alexander Murray, *Excommunication and Conscience in the Middle Ages: The John Coffin Memorial Lecture, 13 February 1991* (London: The University of London, 1991); Richard H. Helmholz, “Excommunication as a Legal Sanction: The Attitudes of the Medieval Canonists,” *Zeitschrift Der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt.* 68 (1982): 202–18; Richard H. Helmholz, “Excommunication in Twelfth Century England,” *Journal of Law and Religion* 11 (1995): 235–53; Richard H. Helmholz, *The Spirit of Classical Canon Law* (Athens, Ga.: University of Georgia Press, 1996), 366–93; Rosalind Hill, “The Theory and Practice of Excommunication in Medieval England,” *History* 42 (1957): 1–11; Rosalind Hill, “Public Penance: Some Problems of a Thirteenth-Century Bishop,” *History* 36 (1951): 213–226; Vodola, *Excommunication*; Lára Magnúsdóttir, *Bannfæring*; Torstein Jørgensen, “Excommunication – an act of expulsion from heaven and earth,” *The Creation of Medieval Northern Europe: Christianisation, Social Transformations, and Historiography, Essays in Honour of Sverre Bagge*, edited by Leidulf Melve and Sigbjørn Sønnesyn (Oslo: Dreyers forlag, 2012), 58–69.

13 Innocent IV, *In V libros Decretalium commentaria* (Venice 1570), 546–547. Raymond of Penyafort, *Summa de paenitentia*, edited by Xaverio Ochoa and Aloisio Diez (Rome: Commentarium pro religiosis, 1976), 3.33.10–11; Gottofredo da Trani (Goffredus Transensis), *Summa super titulum decretalium* (Lyon 1519; reprint 1968), 241; Hostiensis, *Summa aurea* (Venice 1574), 5.1880–84.

14 It is often the case that the pope’s response to a query survives while the letter bearing the question does not.

15 Some of these petitions are preserved in the Vatican archives, although almost none survive from before the mid-fifteenth century, see Torstein Jørgensen (ed.), *Synder og pavemakt: Botsbrev fra Den Norske Kirkeprovins og Suderøylene til Pavestolen 1438–1531*,

Si quis suadente quickly grew in importance within canon law. What was originally a sanction only concerning violence against clerics quickly came to include a number of other offenses. In lists from thirteenth century canonical commentaries there are 16–32 actions that incurred automatic excommunication, for example forging a papal letter or setting fire to a church.¹⁶ These lists tended to expand rather than contract, with one French list reaching over one hundred potential offenses by the end of the thirteenth century.¹⁷ Excommunication of this type also became a standard threat connected to papal orders and other documents.¹⁸

Alongside expanding lists of offenses that led to automatic excommunication was an expansion in the number of exceptions to *Si quis suadente* that did not need to be absolved by the pope. These involved mitigating circumstances such as ignorance of a person's clerical status or finding a cleric in a compromising position with one's wife, daughter, or sister.¹⁹ Some interpreters further asserted that the need for papal absolution only applied to the most serious crimes, not minor blows that did not lead to death or serious harm.²⁰ From very soon after its acceptance into law, popes often delegated the authority to absolve *de jure* excommunications, although the canon remained under the so-called reserve delicts that were

Diplomatarium Poenitentiarie Norvegicum (Stavanger: Misjonshøgskolens forlag, 2004). The papal penitentiary dealt not only with *Si quis suadente* cases but also marriage within the prohibited degrees of kinship and those in orders who wanted to advance despite illegitimacy. For an excellent introduction to this material see Kirsi Salonen and Ludwig Schmutge, *A Sip from the "Well of Grace": Medieval Texts from the Apostolic Penitentiary* (Washington, D.C.: Catholic University of America Press, 2009).

- 16 Hostiensis, *Summa aurea*, 5.1880–84 (lists 32 actions); Raymond of Penyafort, *Summa de paenitentia*, 3.33.10 (lists 16–17 actions, depending on the manuscript); Gottofredo da Trani, *Summa super titulus decretalium*, 241 (lists 18 actions). For further lists of excommunication *latae sententiae* see, Vodola, *Excommunication*, 34–35 note 27.
- 17 Vodola, *Excommunication*, 34–35 note 27.
- 18 Logan, "Excommunication," 536: *latae sententiae* excommunication "became the coercive edge to even routine decrees."
- 19 Raymond of Penyafort, *Summa de paenitentia*, 3.33.11 (lists 7 exceptions); Gottofredo da Trani (Goffredus Tranensis), *Summa super titulus decretalium*, 241 (lists 12 exceptions).
- 20 Hostiensis believed that some cases of excommunication were so "trivial" that they could be absolved by bishops alone. Figueira, "Papal Reserved Powers," 198. A letter from Pope Clement III to the Norwegian archbishop granted the archbishop power to absolve *de jure* excommunications if they did not result in death or grievous bodily harm. See, Eirik Vandvik (ed.), *Latinske Dokument til Norsk Historie* (Oslo: Det Norske Samlaget, 1959), 92.

officially under direct papal authority.²¹ Robert Figueira has argued that in practice, the authority to absolve such excommunications was so frequently delegated to papal legates in the late twelfth and early thirteenth centuries that their right to absolve this type of excommunication was accepted as a custom by canonists such as Bernard of Parma and Hostiensis.²²

In the remainder of this article I will demonstrate how Icelandic bishops engaged with the canon *Si quis suadente* and incorporated it into their understanding of how to minister to and discipline their flocks, as well as how they understood their own authority within the legal system. No Icelandic bishops were papal legates, but they nevertheless took responsibility for regulating *ipso facto* excommunications. What stands out about evidence from Iceland is not the tendency for bishops to default to local solutions in cases of violence against clerics rather than the pope – this was common²³ – but rather the nature of these local solutions, which, as far as the evidence will allow us to see, involved bishops positioning themselves as interpreters of *guðs lög* “God’s laws,” which in this context refers to canon law works such as the *Decretum* and the *Liber extra* but also commentaries like those by Goffredus of Trano or Raymond of Penyafort.

The Reach of Canon Law: Sources and their Dissemination in Iceland

Despite the geographic distance between the papal curia in Rome (or Avignon) and the schools of canon law in Bologna and Iceland, *Si quis suadente* and other developments in canon law were quick to reach the province of Niðaróss, of which Iceland was a part (from its founding in 1152/1153). The Archbishops of Niðaróss corresponded with the pope, and archbishop Jón rauði attended the Second Council of Lyon in 1274.²⁴ Icelandic bishops visited Norway regularly and, especially in the fourteenth

21 Figueira, “Papal Reserved Powers,” 191–211.

22 Figueira, “Papal Reserved Powers,” 193. See also Helmholz, “English Ecclesiastical Tribunals,” 23.

23 Richard Helmholz, for example, found that only two of ca. 150 cases invoking *Si quis suadente* that he examined from English court books mentioned recourse to the pope, “*Si quis suadente*,” 435. Helmholz, “English Ecclesiastical Tribunals,” 23–27.

24 “Annales regii,” *Íslandskæ Annaler indtil 1578*, edited by Gustav Storm (Christiania: Grøndahl, 1888 [reprinted Oslo: 1977]), 139.

century, several Icelandic bishops were either Norwegian or educated in Norway.²⁵ Moreover, Icelandic churchmen traveled to Norway and beyond, and Norse churchmen were sometimes educated in the European schools. Bishop Jón Halldórsson of Skálaholt (1322–1339), for example, studied at the universities in both Paris and Bologna, the centers of canon law scholarship in the Middle Ages.²⁶

By the fourteenth century, expertise in Latin and canon law were extolled as important traits for a bishop, at least within the elite clerical culture that produced many of the sagas of bishops.²⁷ Although the majority of Latin legal works once extant in Iceland no longer survive, indirect evidence such as church inventories as well as surviving fragmentary texts point to a range of standard works of and commentaries on canon law being available and in use in all centers of church power in Niðaróss episcopal province.²⁸

Sources for Iceland: Letters

The earliest sources from Niðaróss province that address *Si quis suadente* are found in letters. These early letters clarify the basic interpretation of the canon, concerning who can absolve from what and in some cases whether or not a person should be considered a cleric for the purposes of the canon. In one letter from Pope Clement III to the Bishop elect of Oslo, dated to 1190–1191, the pope answers a specific question in connection

25 Erika Sigurdsson, *The Church in Fourteenth-Century Iceland: The Formation of an Elite Clerical Identity* (London and Boston: Brill, 2016), 85–92.

26 Alfred Jakobsen, “Jóns þátr biskups Halldórssonar,” *Medieval Scandinavia: An Encyclopedia*, edited by Phillip Pulsiano and Kirsten Wolf (New York and London: Garland, 1993), 346. See also, Sverre Bagge, “Nordic Students at Foreign Universities until 1660,” *Scandinavian Journal of History* 9 (1984): 1–29.

27 Sigurdsson, *The Church in Fourteenth-Century Iceland*, 96–175.

28 Evidence about which texts were available to clerics in Niðaróss province is of three types, sources mentioned in inventories, wills, or sagas; preserved translations (usually of short excerpts); or fragments of Latin texts. There seems to be one surviving manuscript of an entire canonical commentary that was known to be in Niðaróss province in the Middle Ages, a copy of Goffredus of Trano’s *Summa*. This manuscript was probably owned by the Bishop of Bergen but is now preserved in Uppsala as Cod. Upsal. C 564. For more detailed discussion of these sources see, Sveinbjörn Rafnsson, “Skriftaboð Þorláks biskups,” *Gripla* 5 (1982), 97; Sigurður Lindal, “Um þekkingu Íslendinga á rómverskum og kanónískum rétti.” A number of Latin fragments connected with canon law survive in the Norwegian national archives. Vadum lists them in, “Canon law and politics,” 178 note 10.

with the canon: can an abbot absolve a monk who killed a cleric before he took orders? The pope answers no “because the excommunication preceded his becoming a monk, he is not able to obtain absolution except through the Roman pontiff or his delegate. However, by our dispensation you have the power to grant him absolution and impose a fitting punishment.”²⁹ Here the pope asserts that the case is reserved to him and then in the next breath grants the questioner the authority to absolve the individual concerned. The question revolves around violence done to a cleric and who can absolve the excommunication that the killer automatically incurred, the core of the original canon. In this letter the pope takes a clear stand for his own authority but is also prepared to delegate the actual absolution.

In another early letter, Clement III, writing to the Archbishop of Niðaróss, probably sometime between 1187–1191, explained that clerics who acted in disregard of their status, involved themselves in lay conflicts (specifically the efforts of the priest Sverrir Sigurðarson to claim the Norwegian crown), and were killed, did not fall under the canon.³⁰ Leaving aside the political implications of this letter, it is clear that the pope and his correspondent are both fully aware of the canon and only a detail of interpretation is under discussion. Here the pope decides that these particular clerics have betrayed their vows to the point that they are no longer protected by the canon, though they were not formally deposed or excommunicated at the time they were killed. He calls for a penance for the killers only a little more severe than if the slain clerics in question had been laymen.³¹

The earliest letter in this context directly addressing Iceland is dated to 1173, from a similar period to the papal letters discussed above although it is preserved in a late manuscript (AM 186 4to Hvanneyrarbók from the fifteenth century). It is a letter written by the archbishop to the bishops in both Skálholt and Hólar and reminds them that it is forbidden to lay

29 Vandvik (ed.), *Latinske Dokument*, 86: “quod ubi precessit talis excommunicatio monachatum, non nisi per Romanum pontificem vel mandato ipsius absolutionem poterit optinere. Ex dispensatione tamen ei poteris auctoritate nostra munus absolutionis impendere et pro excessu penitentiam iniungere congruentem.”

30 Vandvik, *Latinske Dokument*, 90: “canone late sententie laici minime coartentur.” This letter is sometimes attributed to Pope Celestine III, although this does not significantly affect the dating of the document. *Ibid.*, 189.

31 *Ibid.*, 90.

a violent hand on clerics and that that no killer of a cleric or a monk can be absolved, except by the pope.³² If the dating of this letter is accurate, it is probably the earliest attestation of the canon in Old Norse-Icelandic. Guðrún Ása Grímsdóttir has suggested that this letter, as well as several of the pilgrimages to Rome mentioned in *Sturlunga saga*, are evidence for the acceptance of the principles of *Si quis suadente*, and of the archbishop's right to interfere in Iceland by the early thirteenth century, even as a bishop like Guðmundr Arason (1203–1237) had no patience for the legal niceties involved, preferring to excommunicate his enemies directly.³³

By the time of legal reforms in the Norwegian realm a century later (in the 1270s),³⁴ *Si quis suadente* and the ideas it enforced had been translated into Old Norse-Icelandic and appeared in the new Christian lawcodes produced in the archdiocese as well as in many statutes issued by Icelandic bishops. The remainder of this article evaluates the ways that Icelandic manuscript culture engaged with and interpreted the canon and explores what this tells us about the development of local canon law, law which looked to Rome and the standard law texts of the period but also adapted and interpreted the law to suit local circumstances.

Vernacular laws

There are no provisions specifically protecting clerics in the earliest preserved Christian lawcodes from Iceland, these codes are short and are more concerned with the protection of church property than church personnel.³⁵ Near the end of the thirteenth century, there was a push to con-

32 *Diplomatarium Islandicum*, 1.218–23.

33 Guðrún Ása Grímsdóttir, "Um afskipti erkibiskupa af islenzkum málefnum á 12. og 13. öld," *Saga* 20 (1982): 38–43. On Bishop Guðmundr's style of excommunication see, Elizabeth Walgenbach, "Outlawry as Secular Excommunication in Medieval Iceland, 1150–1350," (Ph.D. diss. Yale University, 2016), 123–53.

34 Jørn Øyrehaugen Sunde, "Daughters of God and Counsellors of the Judges of Men: Changes in the Legal Culture of the Norwegian Realm in the High Middle Ages," *New Approaches to Early Law in Scandinavia*, edited by Stefan Brink and Lisa Collinson (Turnhout: Brepols, 214), 131–183.

35 *Grágás: Islændernes lovbog I fristatens tid udgivet efter det Kongelige biblioteks haandskrift*, edited by Vilhjálmur Finsen (Copenhagen: Fornritafjelag Norðurlanda í Kaupmannahöfn, 1852), 15–17; and *Grágás: Stykker, som findes i det Arnamagnæanske Haandskrift Nr. 351 fol. Skálholtsbók og en Række andre Haandskrifter*, edited by Vilhjálmur Finsen (Copenhagen: Kommissionen for det Arnamagnæanske Legat; Gyldendal, 1883), 15–17.

solidate and update royal as well as ecclesiastical laws in the Norwegian kingdom.³⁶ During this period, many new codes were promulgated for different regions of the kingdom as well as for different parts of the ecclesiastical province. It is during this time of law production that *Si quis suadente* seems to have been fully incorporated into local legal sources, including vernacular church lawcodes.³⁷ The two codes most relevant to Iceland are Archbishop Jón rauði's Christian lawcode for Frostþing and the "new" Christian laws for Iceland, compiled by Bishop Árni Þorláksson and accepted by the Alþing in 1275. I have chosen to include Jón rauði's code in this discussion because it was produced at almost the same time as Kristinréttir Árna, by the same man who oversaw and assisted Árni in his work. Indeed, at least one manuscript of Kristinréttir Árna actually identifies Archbishop Jón as the originator of the code.³⁸

Jón rauði's Christian lawcode was promulgated in 1273 although it was not always accepted as valid law.³⁹ The version of *Si quis suadente* that it preserves does not translate the entire canon word for word but rather makes a short statement about violence against clerics: "if a person lays violent hands on a priest or a cleric or a cloistered person, whoever does that is excommunicated by the deed itself and no one can absolve him except the lord pope or one of those whom the pope grants a special authority to do so."⁴⁰ This passage in the law is clearly derived from the canon although it is not an exact translation. The pope is still named as the competent authority to absolve *ipso facto* excommunications, but the code also mentions the possibility that this authority could be delegated at least in particular cases. The clause *nisi mortis urgente periculo* "unless in urgent mortal peril" of the Latin law is also absent from the Norse version.⁴¹

36 Sunde, "Daughters of God," 131–83.

37 Lára Magnúsdóttir, *Bannfæring*, 303–38, 474.

38 Magnús Lyngdal Magnússon, "Kátt er þeim af kristinrétti," 56–57. AM 350 fol. 107va reads: "her byriar upp hinn nýia cristins doms rett þann er herra ion erch(ibyskup) saman setti ok lögtekin er vm skalh(olts) biskups dæmi." [Here begins the new Christian laws that Lord Jón the archbishop compiled and that are accepted as law in the diocese of Skálaholt].

39 *Norges gamle love indtil 1387*, edited by Rudolph Keyser et al. (Christiania: Chr. Gröndahl, 1846–1895), 2.341.

40 *Norges gamle love*, 2.379: "at maðr læggr hæftugr hændr a presta. eða klerka. oc klaustrmenn. ok huær sem þat gerer. þa er han i banne af sialfu verkinu. oc ma af ængum læysazst næma af herra þauanom. æða nokrom þæim sem han fær æinkanlegt uald till þæss."

41 No complete copies of Jón rauði's code survive from Iceland. The Icelandic manuscript AM

Archbishop Jón helped to oversee the production of the code usually associated with Bishop Árne Þorláksson, compiled specifically for the Icelanders. This code was partially accepted at the Alþing in 1275.⁴² Árne did not simply copy the code of his Norwegian boss, however. In early manuscripts of Árne's Christian law we find an even simpler form of *Si quis suadente*. In the earliest extant manuscript AM 49 8vo, chapter 14, the code reads: "we are obliged to respect the rights of the holy church and of clerics. Because whoever disrespects a cleric or cloistered person with a violent hand is excommunicated by the deed itself until he is absolved according to God's laws under the supervision of the bishop. There are certain circumstances in which a person does not fall into automatic excommunication although he attacks or deals a blow to this type of person (i.e. a cleric) and the bishop will explain these and make decisions according to what God's laws say."⁴³ This is not a translation of the full canon (nor an exact copy of Jón rauði's text) although it is clearly using phrasing and concepts derived from the Latin canon. It does not mention the pope directly, instead referring all matters to the bishop's further interpretation. It also alludes to the many exceptions that did not require a papal absolution although these too are referred to the bishop's interpretation rather than being listed. In two early manuscripts, AM 49 8vo and AM 350 fol, there is a marginal note that this is taken "[af] decretalibus."⁴⁴ It is possible that rather than being a source reference, this note is actually more about where the bishop should look to clarify the issues of any particular case. In complex cases, he should look to the *decretales*, that is the *Liber extra*. Some manuscripts of Kristinréttir Árna incorporate more details about automatic excommunica-

175 a 4to, however, contains a text about the papal ban that is very similar to chapter 54 of Jón rauði's code cited here. See, *Norges gamle lov*, 2.378–81.

42 *Árna saga*, 49.

43 "Kristinréttir Árna frá 1275: Athugun á efni og varðveizlu í miðaldahandritum," edited by Magnús Lyngdal Magnússon (MA thesis, Háskóli Íslands, 2002), 160 (typography simplified): "[E]n erv fleiri lutir þeir sem ver erom scylldvgrir at þyrma retti hæilagrar kirkio oc lerðra manna. Þvi at huerr er heiptugri hendi misþyrmir cleric æða clavstra manni þa ær hann ibanni af sialfs sins verki þar til er hann fær lavsn eptir gvðs lagvm með forsia byscops. Nv erv þeir noccorir at bvrðir er maþr fellr eigi ibann þo at þæsshattar manni veiti til ræþi eða hogg oc scal byscop þat scyra oc scipa eptir þvi sem guþslog segia."

44 It is generally accepted that these *decretales* probably refer to the work we now call the *Liber extra*, which was promulgated in 1234 and compiled by Raymond of Penyafort at the request of Pope Gregory IX.

tions, including a chapter that refers to 16 offenses that lead to automatic excommunication (a text, “*vm banns verk*,” discussed below) although this text is placed late in the code or as an appendix rather than being incorporated into the original discussion in chapter 14.

Both Jón’s and Árni’s lawcodes translate from the canon *Si quis suadente*. They are not a complete reproduction of the canon but rather take the basic concept and a few key phrases such as *heiptugri hendi* “violent hand” for *uiolentas manus* “violent hands” and translate them into Norse.⁴⁵ It is notable that the Norwegian code refers to the idea that those committing violence against clerics are under papal ban while the Icelandic code, in its earliest surviving manuscript, simply refers further interpretation to the bishop. Some copies also refer cases to the bishops’ *umboðsmenn* or agents.⁴⁶ In addition to these lawcodes, there are other texts that were incorporated into manuscripts of church law that further explain the concept of automatic excommunication and address the pastoral duties tied to such excommunications.

An important group of these texts documents a church council that was held in Bergen in 1280. One of the points of discussion during this council was the administration of automatic excommunications at a local level. A statement derived from this council is preserved in five Icelandic manuscripts, three of which also contain a copy of *Kristinréttir Árna*.⁴⁷ The first part of the text gives the reasoning behind the text being produced, explaining that people cannot know that they have sinned unless they know what actions are forbidden. The bishops compare themselves to a doctor who takes responsibility for a person’s physical health: they were responsible for a person’s spiritual health and needed to outline the spiritual consequences of forbidden actions for their flocks. They use a dramatic phrasing from the Pauline epistles saying that not to warn people would mean that the bishops themselves had blood on their hands.⁴⁸

45 On the translation in *Kristinréttir Árna* see, Lára Magnúsdóttir, *Bannfæring*, 83.

46 The version of *Kristinréttir Árna* in AM 135 4to (*Arnarbælisbók*) fol 77r from ca. 1340 refers cases to either bishops or their *umboðs men* “delegates.”

47 *Diplomatarium Islandicum*, 2.174. AM 351 fol., AM 354 fol. and AM 347 fol. all contain both this *skipan* and a copy of *Kristinréttir Árna*. A shorter version of this decree is also preserved, but this version does not present a list of actions leading to automatic excommunication. See, *Diplomatarium Islandicum*, 2.185–88.

48 *Diplomatarium Islandicum*, 2.175.

This introduction is followed by a list of offenses punishable with automatic excommunication that the bishops stipulate was to be read out every year. The list is not an independent production but a translation of one of the lists of automatic excommunications that became common in canonical commentaries in the thirteenth century, although no source is mentioned beyond saying that it is in “God’s laws.”⁴⁹ Kristoffer Vadum has identified the particular source of this text as Raymond of Penyafort’s *Summa de paenitentia*.⁵⁰ The document names eight bishops (seven diocesan bishops and the archbishop) said to have been present at the council, including both Bishop Árne of Skálholt and Bishop Jörundr of Hólar.⁵¹ If Árne Þorláksson can be taken as an example, it seems that these bishops took their pastoral duties seriously, Árne ensured that the list was read out at the Alþing.⁵²

The document from the Bergen council is tied to a specific group of bishops at a specific point in time. Another text, which occurs in at least nine fourteenth-century manuscripts, is a more general rendering of a similar idea.⁵³ The text is referred to as “vm banns verk” in the *Diplomatarium Islandicum*. It provides a short explanation of why it is needed, and then lists a number of actions that led to automatic excommunication, a list that is derived from Raymond of Penyafort, like the text from the Bergen council.⁵⁴

The introduction offered in this shorter text is less focused on the potential consequences for individual sinners who might unknowingly commit mortal sins and more focused on ensuring that local priests do not inadvertently overstretch and grant their parishioners absolution in cases where they do not have the authority to do so.⁵⁵ Although 16 offenses are

49 *Diplomatarium Islandicum*, 2.176.

50 Vadum, “Canon law and politics,” 201–202. Cf. Haug, “Konkordat – Konflikt – Privilegium,” 99.

51 For further discussion of this council see Eldbjørg Haug, “Concordats, Statute and Conflict in *Árna saga biskups*,” *Collegium Medievale* 28 (2015): 81–95.

52 *Árna saga biskups*, 94.

53 The *Diplomatarium Islandicum* lists 8 fourteenth-century manuscripts of this text. I have found an additional, incomplete copy in Stock, Perg, nr. 26 4to, fol 4v.

54 Vadum, “Canon law and politics,” 201–203.

55 *Diplomatarium Islandicum*, 2.212 (text corrected from AM 48 8vo): “Nv af því at varla ma illt varaz nema viti þa sýniz oss nytsamligt ok allra hellz navdsynligt at prestarnir se vissir at eigi lati þeir fyri vanvizkv sakir bannsetta menn samneyta qðrvm ok fara oleysta eda taki a sik þav mal ok latiz leysa er þeir hafa ecki valld til.”

mentioned at the beginning, only 12 are actually enumerated. It also contains a list of seven circumstances in which striking a cleric does not lead to excommunication requiring papal absolution, which is also derived from Raymond of Penyafort as Vadum has shown.

This is likely an independent translation from Latin rather than a condensed version of the list given in the document from the Bergen council.⁵⁶ Not only are the offenses listed with less detail in “vm banns verk,” some of the offenses are left out altogether. The writer explains that because it is unlikely that certain offenses could be relevant in “this part of the world” he has not bothered to translate them into Norse – perhaps an understandable omission given the likelihood of the average Icelandic parishioner robbing Roman merchants or aiding Muslims fighting against crusaders.⁵⁷ Although the source for both of these documents about automatic excommunication might be the same, it appears that they are two more or less independent translations, the later more intently focused, I argue, on an audience of local priests. Priests are, in any event, mentioned as the specific audience for the text, which explains that they need to be informed about these types of excommunication so that they do not overstep their authority.⁵⁸

Most of the Icelandic manuscripts that contain a version of Raymond of Penyafort’s text contain this shorter translation. Between this short text and the document from the Bergen council there were at least two independent translations of this portion of *De paenitentia* circulating in Norse ecclesiastical circles in the fourteenth century. In three instances both versions are copied into the same manuscripts (AM 347 fol., AM 351 fol., and AM 354 fol.).⁵⁹

56 Kristoffer Vadum has reached this same conclusion on other grounds, “Canon law and politics,” 201–203.

57 *Diplomatarium Islandicum*, 2.213–14: “kvnnv sidr at beraz i þessvm halfvm veralldarinnar sem ver byggjum.” See also, Lára Magnúsardóttir, *Bannfæring*, 395.

58 *Diplomatarium Islandicum*, 2.212: “taki a sik þav mal ok jlatiz leysa er þeir hafa ecki valld til.”

59 AM 351 fol. and AM 354 fol. are strongly associated with Skálholt, while AM 347 fol. has been identified as a Helgafell manuscript.

Bishops, clerics and the administration of *Si quis suadente* excommunications

Although the most common text in Old Norse-Icelandic that addresses automatic excommunication is “vm banns verk,” another explanation about automatic excommunication also survives, in a statute or *skipan* attributed to Bishop Jón Halldórsson and dated to 1326. The text is preserved in at least six medieval manuscripts, although several of these are now fragmentary.⁶⁰ The most complete versions of this decree list 24 separate actions that led to automatic excommunication as well as mentioning that there are many other actions not listed because “it is not expected that people might fall into them here in our land.”⁶¹ The first 16 actions follow the earlier lists derived from Raymond of Penyafort. Kristoffer Vadum has argued that the additional offenses mentioned by Bishop Jón that are not derived from Raymond of Penyafort can all be traced to Latin sources, including the official collection of Pope Clement V’s legislation, the Clementines, which were promulgated in 1317.⁶²

In addition to translations from various canonical works Jón Halldórsson’s *skipan* also contains more details and explanations on how these rules are to be disseminated and enforced. He focuses on the practical administration of automatic excommunications, insisting that provosts copy the document and read it out to their constituents at least twice a year.⁶³ He also insists that certain offenders should be identified by provosts and sent to Skálaholt on Ash Wednesday and Ascension Thursday to be seen by the bishop.⁶⁴ Although the language of the “papal ban” appears, it is clear that the actual administrative authority is being exercised by the bishop.

This decree further emphasizes points made in an earlier decree associated with Bishop Árni Þorláksson, which provides, in much less detail, instructions for priests about how to administer excommunication.⁶⁵ The

60 *Diplomatarium Islandicum*, 2.582.

61 *Diplomatarium Islandicum*, 2.592: “þi at eigi er jafnbætt at menn falli j þa her a varu landi.”

62 Vadum, “Bruk af kanonistisk litturatur,” 397–410.

63 *Diplomatarium Islandicum*, 2.592: “þa biodum ver ollum profastum varum at taka transkriptum eptir þessu varo brefi.”

64 *Diplomatarium Islandicum*, 2.592.

65 It occurs in at least three fourteenth-century manuscripts AM 350 fol., AM 175 a 4to, and AM 671 4to. *Diplomatarium Islandicum*, 2.23–28. AM 350 fol. also contains Jón Halldórsson’s list of automatic excommunications.

decree emphasizes that in most circumstances, priests are not to remove laymen from churches or ban them from entry. They must give three warnings to an offender in the presence of witnesses to give them adequate opportunity to mend their ways, features that were standard for ensuring that excommunication was not wielded immoderately. This limitation does not, however, apply to cases in which someone brings an automatic excommunication on themselves.⁶⁶

Provision 25 of the B version of this decree, for example, states that someone who has brought a papal excommunication on themselves by their own action should “swear, before he is absolved, to go to the pope or archbishop if he is able, unless the bishop wishes to reach a different agreement.”⁶⁷ Here, the pope is acknowledged as the ultimate authority over “papal,” i.e. automatic excommunications, the archbishop is also mentioned, but the bishop is presented to readers as the party with the ability to decide how any particular case should be resolved. This is consistent with *Kristinréttir Árna*, which leaves the administration of such excommunications to the interpretation of the bishop.⁶⁸

These general commands can be compared with one of the few early cases that documents the use of an automatic excommunication in Iceland. This case concluded in 1357 and is preserved in an original document now in the Icelandic National Archives.⁶⁹ Two *visitatores* to Iceland, neither of whom are bishops, judged in a case about fishing rights associated with the wealthy church at Grenjaðarstaðir in northern Iceland. They found that the defendant, Illugi, had violated the church’s rights and was “eptir statuto vilhelmi cardinalis sabenensis legata pauans til noreghs fællenn i pauæns bann af sealfoo verkinu.”⁷⁰ [according to the statute of Cardinal William of Sabina papal legate to Norway, by his very act brought under a papal excommunication]. It seems that these *visitatores*, probably sent by the Norwegian archbishop, were acting as judges in Iceland. Basing

66 *Diplomatarium Islandicum*, 2.24–25.

67 *Diplomatarium Islandicum*, 2.32: “skal sveria adr hann er leystr at fara a pafa fvnd eda erki-biskvps ef hann ma nema biskvp vili annat sæma.”

68 “*Kristinréttir Árna frá 1275*,” 160.

69 The document is: Þjóðskjalasafn Íslands, K 28 (Grenjaðarstaðir), edited in, *Íslandske orignaldiplomer indtil 1450*, ed. by Stefán Karlsson (Copenhagen: Munksgaard, 1963), 33 nr. 29.

70 *Ibid.*

their judgement on a statute issued by the papal legate William of Sabina (discussed in more detail below) they concluded that Illugi was at fault and had already brought himself under a “papal ban.” Their judgement was the recognition of a sanction that had already fallen automatically.

Papal Absolution and Delegation

The above case highlights a peculiar feature of automatic excommunications: there was a gap between who could identify these excommunications and who had the authority to do anything about them once they had fallen, unless an offender was in urgent mortal peril. There were simply more people who brought these excommunications on themselves than any pope, however efficient, could ever manage to address. Sometimes, as in the earliest letters cited above, the pope directly delegated his authority in individual cases.⁷¹ Lára Magnúsardóttir has argued that this power was delegated to the bishops of Niðaróss generally by the Cardinal Bishop William of Sabine in a letter dating to 1247.⁷² William of Sabina (also known as William of Modena) was an Italian cleric who worked as a papal diplomat late in his career. He came as a papal legate to the archdiocese of Niðaróss in connection with the coronation of Hákon Hákonarson in 1247.

The letter in question focuses on who has jurisdiction over different cases and excommunicates those who do not respect judgements, those who rise up against the Norwegian king, and those who attempt to rape nuns. This is almost certainly the statute cited in the Grenjaðarstaðir case. This letter also gives bishops the power to absolve the excommunications that the cardinal calls for. It states that: “Concerning these pains of excommunication and all the other [excommunications] which we give in Norway, we give our authority to the bishops of those people who fall into such grievous cases that they [i.e. the bishops] may absolve them if they

71 This was common. Pope Innocent III delegated these types of absolutions to the Danish archbishop Anders Sunesen for example. See Torben K. Nielsen, “Archbishop Anders Sunesen and Pope Innocent III: Papal Privileges and Episcopal Virtues,” *Archbishop Absalon of Lund and his World*, ed. by Karsten Friis-Jensen and Inge Skovgaard-Petersen (Roskilde: Roskilde Museums Forlag, 2000), 119–120.

72 Lára Magnúsardóttir, *Bannfering*, 430–31.

want to improve themselves and atone before God and men.”⁷³ This letter survives in two fifteenth-century copies from Iceland, as well as at least one fourteenth-century Norwegian manuscript, AM 65 4to.⁷⁴ It was not something emphasized within the large number of Icelandic law manuscripts that have survived from the fourteenth century. The privileges from Cardinal William that fourteenth-century Icelandic manuscripts seem most keen to preserve are those concerning the easing of rules about work on holy days and fasting.⁷⁵

Árni Þorláksson himself is said to have obtained a privilege to absolve automatic excommunications. The composer of his saga mentions that: “At this time [1272] Sighvatr, a canon of Niðaróss cathedral, a friend of Bishop Árni, was at the papal court and at his [Árni’s] request, this same Sighvatr obtained from the above-mentioned Pope Gregory [X] the privilege under the seal of Herman, who was then a papal penitentiary, stating that the aforementioned Árni should be able to absolve in 30 [types] of those cases which he earlier did not have authority over in the fashion that the same letter granted him.”⁷⁶ The writer of *Árna saga* saw fit to make it clear that Bishop Árni was officially delegated to absolve and judge a number of cases. The saga emphasizes that Bishop Árni obtained a direct papal grant to adjudicate in many matters, many of which were likely *ipso facto* excommunication cases, as many reserved papal powers were connected to such cases.⁷⁷ Bishop Árni is probably one of the best documented of Icelandic

73 *Diplomatarium Islandicum*, 1.550: “Um þessar banns pinur oc allar adrar þer er ver budum i Norighi þa fam ver valld vart biskupum þeirra er i þvilik storfelli oc stormeli kunnu i falla at þeir meggi löysa þa af ef þeir vilia betra sik oc bóta vidur god oc men.” The Latin version, which survives in an early modern copy of a now lost codex made by Árni Magnússon, is printed in *Diplomatarium Islandicum*, 1.548 and *Norges gamle lov*, 1.450.

74 One of these copies is in AM 186 4to Hvanneyrarbók, which also contains the only copy of the letter on *Si quis suadente* sent to Iceland and dated to 1177. See above page 163.

75 Short versions of this privilege as well as its confirmation by pope Innocent IV are very common in fourteenth-century Icelandic manuscripts. It occurs in 35 of the 50 Kristinréttir Árna manuscripts from before 1550.

76 *Árna saga*, 30: “Í þenna tíma var í páfans hirð síra Sighvatr kórsbróðir af Niðarósi, vin Árna byskups, ok fyrir hans bæn fekk þessi sami Sighvatr af fyrrnefndum páfa Gregorio þat privilegium undir innsigli Hermanni, er þá var poenitentiarius herra páfans, at fyrrnefndr Árni byskup skyldi leysa mega þrjá tigi þeira mála sem aðr hafði hann eigi vald til eptir þeim hætti sem þat sama bréf vátar.”

77 For a list of these powers and their appearance in the Decretalists see, Figueira, “Papal Reserved Powers,” 206–11. See also Eldbjørg Haug, “Minor Papal Penitentiaries of Dacia, their Lives and Careers in Context (1263–1408).” *Collegium Medievale* 21 (2008): 98.

bishops and also one strongly associated with following the letter of the law; it is in any event notable that this privilege is specifically addressed in his saga.⁷⁸ In *Kristinréttir Árna* a similar authority is assumed without comment.

It is from the 1290s, as Lára Magnúsardóttir has shown, that Icelandic bishops began to delegate *Si quis suadente* cases to other officials, whether provosts or *officiales*.⁷⁹ These later statutes again emphasize that the decision-making is to be at the hands of the bishop and that people need to be disabused of the assumption that any priest can release them from excommunication. In a later statute some offenses are still reserved to the bishop alone, including the cases of violence against clerics at the heart of the original canon: according to an archepiscopal statute of the 1340s, those who laid *heiptuga hönd* on a “learned man, monk or nun” could only be absolved by the bishop.⁸⁰ It is also of note here that for the first time in the Icelandic sources and more explicitly than in the original canon or the *Liber extra*, nuns are listed in the protected group of clerics.

Helmholz, focusing on England, found that almost all *Si quis suadente* excommunication cases were resolved in local church courts.⁸¹ In Iceland, although the pope is only a distant figure in much of the legal material, he is invoked as the authority through which bishops asserted their clerical privileges, not least over lesser clergy. Sometimes this was also done indirectly, through the mention of papal legates, the most important of whom was William of Sabina. It is not possible to say if any individual pope would have approved of the Icelandic legislation, but it was adapted to geographic realities that many popes did acknowledge.⁸²

78 For a recent discussion of *Árna saga* see, Haki Antonsson, “*Árna saga* biskups as Literature and History,” *Journal of English and Germanic Philology* 116 (2017): 261–85. Fifteenth-century papal letters grant an Icelandic bishop the right to absolve in reserved cases, Lára Magnúsardóttir, *Bannfering*, 431 note 420, citing *Diplomatarium Islandicum*, 4.723–28.

79 Lára Magnúsardóttir, *Bannfering*, 431–33. This is also suggested in some manuscripts of *Kristinréttir Árna* as in AM 135 4to, fol 77r.

80 *Diplomatarium Islandicum*, 2.763: “a lærðan mann mvnk eda nvnv.”

81 Helmholz, “*Si quis suadente*.”

82 See, for instance, Pope Innocent IV’s confirmation of the relaxation on work on holy days: *Norges gamle love* 1.456–58, and Pope Nicholas III’s concessions regarding Greenland and other islands in Niðaróss province: *Diplomatarium Islandicum*, 2.160.

Oaths and formulas

A few copies of oaths and formulas for release from excommunication give us some insight into how such excommunications might have been lifted, presumably after some kind of settlement, compensation, or penance was reached. A small number of oaths and formulas directly related to *Si quis suadente* survive in Icelandic manuscripts. It seems likely that these are the oaths or kinds of oaths that the decree of Bishop Árni mentions. They are probably similar to the oath that Bishop Árni wants the king's officials to swear in the passage from *Árna saga biskups* evoked at the beginning of this article. The oaths tend to occur in manuscripts of slightly later date than the earliest copies of *Kristinréttir Árna* or of "vm banns verk," many from the very end of the Middle Ages.⁸³ They often occur in the margins of legal manuscripts. This might have made them easier to access and suggests that the manuscripts were used to collect such information.

The basic form of these oaths is simple. They instruct a person to swear, sometimes with their hand on a "holy book" either that they did not knowingly attack a cleric (thus claiming an exception of the type listed by Raymond of Penyafort), that they will accept the judgement of the bishop or provosts and not repeat the offense, or that they will, if able, travel to Rome to seek absolution or do as the bishop instructs.⁸⁴ These oaths are in Old Norse-Icelandic and use similar phrases to the translated laws including *heiptuga hönd* for *violentas manus* "violent hands" and *páfa bann* for papal excommunication, that is *de jure* or automatic excommunication as stipulated in the canon.⁸⁵

AM 671 4to, one of the few manuscripts whose main subject is canon law to survive from medieval Iceland, contains a Latin formula in one of its lower margins.⁸⁶ This is also a formula for releasing an individual from excommunication. The formula has two distinct parts: the first is a formula releasing those who laid violent hands on a priest or cleric (or a layman in a church or on a feast day) from excommunication. The construction of

83 *Diplomatarium Islandicum*, 2.43–44.

84 *Diplomatarium Islandicum*, 2.46.

85 *Diplomatarium Islandicum*, 2.44.

86 This manuscript is the main subject matter of Vadum's doctoral dissertation, "Bruk af kanonisk literatur."

this formula is impersonal, it is not the speaker who does the absolving, rather, he uses the subjunctive of *absolvere* with the name Jesus, *absoluat te Jesus Christus* “let Jesus Christ absolve you.”⁸⁷ The second part switches to the first person *et ego absoluo te* “and I absolve you” for cases of adultery; incest in the second, third, and fourth degrees; and for fornication.⁸⁸ It may be a fine grammatical point, but it is worth noting that this Latin formula distinguishes between the excommunication incurred by violating *Si quis suadente* and the excommunication that one faced for various sexual offenses. Although, even if formally it was Jesus rather than an individual bishop or judge who was granting the absolution, this oath still implies that cases of violence against clerics and other automatic excommunications were usually addressed locally. Given their frequent placement in the margins of legal manuscripts, these formulas had a practical value for the bishops, provosts, or priests who consulted them. These types of oaths further suggest that local resolution of automatic excommunication cases was routine.

Conclusions

Key phrases and concepts from the canon *Si quis suadente* as well as from canonical commentaries on this canon were translated into Old Norse-Icelandic, on multiple occasions and likely from different exemplars. They were also adapted to fit the reality of Icelandic conditions. Given the survival of translations and discussions in a wide range of fourteenth century manuscripts, we can conclude that there was broad knowledge among clerics of the formal rules and the canonical interpretations of the canon, which circulated most widely through translations of Raymond of Penyafort’s *Summa de paenitentia*, which was copied both as part of a decree from a local council and as a text “vm banns verk,” which was often incorporated as a chapter of *Kristinrétr Árna* or appended to it in manuscripts. The shift identified by Richard Helmholz and Elisabeth Vodola away from excommunication as a dramatic curse toward its more measured, more

87 *Diplomatarium Islandicum*, 2.48: “A vinculis peccatorum et excommunicationis si aliqua teneris eoquod violentas manus in presbyterum vel clericum vel laicum jn tali dominica vel tali festiuitate iniecisti absoluat te Jesus Christus.”

88 *Diplomatarium Islandicum*, 2.48.

law-bound form happened in Iceland by the fourteenth century,⁸⁹ although the sources that underpin this development were present and discussed in Niðaróss province as early as the end of the twelfth century.

Vadum and Perron emphasize in different ways that the range of canon law sources available to Scandinavian clerics, while more extensive than is sometimes supposed, was nevertheless meagre compared with centers of learning like Paris, Bologna, or Rome.⁹⁰ The degree of knowledge circulating in Niðaróss is, in other words, also a matter of perspective, with even a person versed in all of the sources known to have been in Niðaróss province having a narrower perspective than a clerk in the papal chancery. Nevertheless, a great variety of material focused on the issues raised by *Si quis suadente* survives from medieval Iceland. Indeed, one is struck by the sheer volume of texts that address the specific issues of automatic excommunications. It appears not only in lawcodes or letters but also in frequently copied texts and in formulas added to the margins of manuscripts as well as at least a few fourteenth-century legal cases. Most of the sources about the canon in Niðaróss can be identified as translations from common Latin sources, but they are also translations that often explicitly only address cases that were likely to have local relevance. They were pastoral texts that local priests should heed lest they fail to refer appropriate cases to the bishop. In Iceland we are in general not in a position to know a lot about the individual conflicts in which these laws might have been applied although the case from 1357 suggests that it was not uncommon in property disputes connected with the church.

There has been some discussion as what the phrase *guðs lög* “God’s laws” might refer to in these texts. Eldbjörg Haug discusses *guðs lög* in these texts as, “a concept of political theology,”⁹¹ while Lára Magnúsdóttir has argued, focusing on the political and historiographical implications, that they refer to the general body of canon law, which was valid law in Iceland.⁹² I would like to emphasize how these citations, though vague, refer to written works of law. These laws are sometimes said to *stendri ritað* “stand

89 Helmholtz, “Excommunication as a Legal Sanction;” Vodola, *Excommunication*, 36–43, 192–93; and Lára Magnúsdóttir, *Bannfæring*, 381–450.

90 Perron, “Local Knowledge of Canon Law;” Vadum, “Canon Law and Politics,” 178.

91 Haug, “Concordats, Statute and Conflict,” 92–96.

92 Lára Magnúsdóttir, *Bannfæring*, 370–440.

written.”⁹³ or to be in a “law book of the holy church” as in the Stock. Perg. 26 4to version of “vm banns verk.”⁹⁴ It is difficult to say precisely what the phrase meant to those who wrote it but it was often referring to a specific written source, which can sometimes, as in these cases, be precisely identified. These texts are not only works we now think of as being part of the canonical *Corpus iuris canonici*, but also commentaries on these works such as Raymond of Penyafort’s *Summa de paenitentia*.

Although formally associated with doctrines that privileged papal authority over the traditional rights of bishops, indeed it is often called *páfans bann* the “papal ban,” in practice it was a way for bishops to claim authority for themselves (not least over local priests and other clerics) while invoking a distant power. Parish priests are consistently reminded of the limitations on their authority in many of the different Old Norse-Icelandic texts addressing automatic excommunication. This limitation at the same time required them to have at least some knowledge of the types of cases that they needed to defer to the bishop or his appointed officials (*umboðsmenn*). The archbishop is occasionally mentioned (or his influence can be inferred, as when he sent *visitatores* to Iceland), but he is not frequently mentioned in the *Kristinréttir Árna* or these other texts. Indeed, even statutes promulgated by archbishops focus on the role of bishops. Jón Halldórsson in his list from 1326 provides a telling exception to the rule that these cases could be handled locally. In the event that a bishop was attacked, imprisoned, or outlawed, the resulting automatic excommunication could only be lifted by the pope.⁹⁵

The gap between a canon that formally reserves all rights of absolution to the pope and a body of legal evidence that clearly points to the bishop as having the main say over such cases and how they should be resolved is not just a matter of local canon law or adaptation to local geographic realities but also, as Helmholz has emphasized, a matter of the difference between the theoretical law and its practice.⁹⁶ In Iceland in the late-thirteenth and fourteenth centuries, “papal” excommunications were administered by bishops and their agents while the average priest was expected to have a

93 *Diplomatarium Islandicum*, 2.176: “sva stendr ritað j guðz lögum ok manna.”

94 “Suo segir laugbok hæilagrar kirkiv.” fol 4v.

95 *Diplomatarium Islandicum*, 2.591. These prohibitions might be compared with the tribulations of Bishop Guðmundr Arason in the thirteenth century.

96 Helmholz, “English Ecclesiastical Tribunals,” 27.

grasp on the types of cases that he should not attempt to address alone. At least one bishop, Árne Þorláksson, may have obtained a special privilege from Rome to exercise this authority, but many other bishops seem to have assumed it reflexively, whether or not they thought about Cardinal William's statute from 1247. Previous scholars have addressed these texts on automatic excommunication, especially in regard to the relationship between royal power and the church,⁹⁷ but in some ways, they are just as much about the internal hierarchy of the church in Iceland and its pastoral administration, a field ripe for further research.⁹⁸

This study shows that, at least for an important canon such as *Si quis suadente*, we cannot imagine that the local law developed out of a single act of translation or a single period in which the law was translated. The sources examined here show that churchmen in Iceland moved frequently between languages and sources and that while some translations became fixed and were copied repeatedly, other translations continued to be made at later periods and from different versions of similar texts. Moreover, these texts were copied repeatedly in different manuscripts throughout the fourteenth century, suggesting their relevance outside of any single political conflict.

Texts concerning the causes for and administration of automatic excommunication are preserved in a wide range of fourteenth-century Icelandic manuscripts. They occur in manuscripts associated with the episcopal see of Skálaholt as well as in at least one manuscript connected to the Helgafell monastery (AM 347 fol).⁹⁹ They occur in large, richly-decorated folio manuscripts and small, plain, single-column fragments. The most common text is also the shortest, the brief translation "vm banns verk." Sometimes, as is common in Icelandic legal texts, different provisions on the same topic are preserved in the same manuscript (sometimes in the same hand) calling for careful interpretation for those using the book.¹⁰⁰

97 Haug, "Konkordat – Konflikt – Privilegium;" Lára Magnúsdóttir, *Bannfering*, esp. 320–440; and Vadum, "Canon Law and Politics," 175–205.

98 For recent research on this topic see Sigurdson, *The Church in Fourteenth-Century Iceland*.

99 Stefán Karlsson, "Lovskrifer i to lande: Codex Hardenbergensis og Codex Belgsdalensis," *Festskrift til Alfred Jakobsen*, ed. by Jan Ragnar Hagland, Jan Terje Faarlund and Jarle Rønhovd (Trondheim: Tapir, 1987), 166–184.

100 Winroth, "Canon Law of Emergency Baptism," 209.

This study further suggests that we can posit a subgenre of texts that survives poorly from the medieval period: copies of ordinary bureaucratic texts like the fragment attested in AM 174 I d 4to, which contains a text that the Bishop Jón Halldórsson of Skálaholt ordered all of his provosts to make a copy of.¹⁰¹ AM 174 I d 4to is in fact probably one such copy, made not long after the decree of Bishop Jón Halldórsson was promulgated.¹⁰²

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101 *Diplomatarium Islandicum*, 2.592. We know frustratingly little about how provosts functioned in Iceland in this period.

102 The decree is dated to 1326. AM 174 I d 4to is dated to 1350 in *Ordbog over det norrøne prosasprog*, Den Arnamagnæanske Kommission (Copenhagen, 1989), 449.

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SUMMARY

Keywords: *Corpus iuris canonici*, *Si quis suadente*, excommunication, Bishop Árni Þorláksson

This article explains the adaptation of the canon *Si quis suadente* into Icelandic church law. This canon, which asserts that anyone who lays violent hands on a cleric is automatically excommunicated *latae sententiae*, without the need for a prior warning or spoken sentence, was incorporated into lawcodes and law manuscripts in Iceland in the thirteenth and fourteenth centuries. These diverse sources, including lawcodes, statutes, and oath formulas, show that the canon was understood and translated into Old Norse-Icelandic on multiple occasions. These sources also show that the canon was interpreted in a way that privileged the power and legal interpretations of local bishops although the association with so-called *páfans bann* “papal excommunication” remained.

ÁGRIP

***Si quis suadente* og bannfæring á Íslandi á miðöldum**

Lykilorð: kanónískur réttur, *Si quis suadente*, bannfæring, Árni Þorláksson biskup

Í greininni er fjallað um lagagreininna *Si quis suadente* í íslenskum miðaldaheimildum. Þessi lagagrein, *canon*, hljóðaði svo að hver sá sem ræðst á klerk „heiptugri hendi“ væri bannsettur af sjálfu verkinu, *latae sententiae*. Það þurfti ekki að veita viðvörðun né heldur segja dóminn upphátt áður en hann féll (eins og áður var í kirkjulögum). Þessi lagagrein finnst í lögum og lagahandritum á Íslandi frá 13. og 14. öld. Heimildirnar – lagabækur, kirkjuskipanir og eiðaformúlur – sýna fram á að lagagreinin *Si quis suadente* var þýdd á íslensku nokkrum sinnum á þessum tíma. Þótt formlega séð væri um „páfans bann“ að ræða var málum í reynd hátað þannig að biskup hafði mikið vald til að túlka greininna og framfylgja henni.

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