

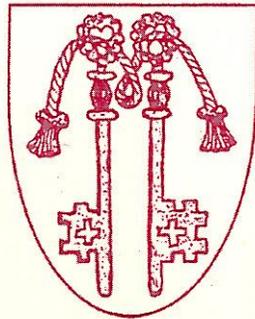
THE STEPHAN KUTTNER INSTITUTE
OF MEDIEVAL CANON LAW
MÜNCHEN
2013

BULLETIN OF MEDIEVAL CANON LAW

NEW SERIES

VOLUME 30

AN ANNUAL REVIEW



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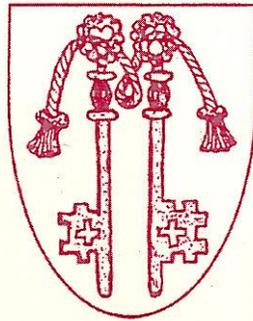
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Abbreviations

The following sigla are used without further explanation:

ACA	<i>Archivo de la Corona d'Aragón/Arxiu de la Corona d'Aragó</i>
AHC	<i>Annuario historiae conciliorum</i>
AHDE	<i>Anuario de Historia del Derecho español</i>
AHP	<i>Archivum historiae pontificiae</i>
AJLH	<i>American Journal of Legal History</i>
AKKR	<i>Archiv für katholisches Kirchenrecht</i>
AS	<i>Acta Sanctorum</i>
ASD	<i>Annali di storia del diritto</i>
BAV	Biblioteca Apostolica Vaticana
BDHI	<i>Bibliothek des Deutschen Historischen Instituts in Rom</i>
BEC	<i>Bibliothèque de l'Ecole des Chartes</i>
BIDR	<i>Bullettino dell'Istituto di Diritto Romano</i>
BISM	<i>Bullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano</i>
BL	British Library
BM	Bibliothèque municipale
BMCL	<i>Bulletin of Medieval Canon Law, New series</i>
BNF/BN	Bibliothèque nationale de France / Biblioteca nazionale
BSB	Bayerische Staatsbibliothek
Cat. gén.	<i>Catalogue général des manuscrits des bibliothèques publiques de France (Départements, octavo series, unless otherwise indicated)</i>
CCL	<i>Corpus Christianorum, Series latina</i>
CCCM	<i>Corpus Christianorum, Continuatio mediaevalis</i>
CHR	<i>Catholic Historical Review</i>
CID	<i>Cuadernos informativos de derecho histórico publico, procesal y de la navegación</i>
Clavis	E. Dekkers, <i>Clavis patrum latinorum</i> , ed. 2
CMH	<i>Cambridge Medieval History</i>
COD	<i>Conciliorum œcumenicorum decreta</i> , ed. Centro di Documentazione... (COD ³ : ed. 3)
CSEL	<i>Corpus scriptorum ecclesiasticorum latinorum</i>
DA	<i>Deutsches Archiv für Erforschung des Mittelalters</i>
DBI	<i>Dizionario biografico degli Italiani</i>
DDC	<i>Dictionnaire de droit canonique</i>
DHEE	<i>Diccionario de historia eclesiástica de España</i>
DHGE	<i>Dictionnaire d'histoire et de géographie ecclésiastiques</i>

DMA	<i>Dictionary of the Middle Ages</i>
DThC	<i>Dictionnaire de théologie catholique</i>
Du Cange	Du Cange, Favre, Henschel, <i>Glossarium mediae et infimae latinitatis</i>
EHR	<i>English Historical Review</i>
EncD	<i>Enciclopedia del diritto</i>
GC	<i>Gallia christiana</i>
HDIE	<i>Histoire du droit et des institutions de l'Eglise en Occident</i>
HJb	<i>Historische Jahrbuch</i>
HLF	<i>Histoire littéraire de la France</i>
HRG	<i>Handwörterbuch zur deutschen Rechtsgeschichte</i>
HZ	<i>Historische Zeitschrift</i>
IRMAe	<i>Ius romanum medii aevi</i>
JEH	<i>Journal of Ecclesiastical History</i>
JK, JE, JL	Jaffé, <i>Regesta pontificum romanorum</i> ... ed. secundam curaverunt F. Kaltenbrunner (JK: an. ?-590), P. Ewald (JE: an. 590-882), S. Loewenfeld (JL: an. 882-1198)
JMH	<i>Journal of Medieval History</i>
JTS	<i>Journal of Theological Studies</i>
LHR	<i>Law and History Review</i>
LMA	<i>Lexikon des Mittelalters</i>
LThK	<i>Lexikon für Theologie und Kirche</i> (LThK ² : ed. 2)
Mansi	Mansi, <i>Sacrorum conciliorum nova et amplissima collectio</i>
Mazzatinti	G. Mazzatinti (continued by A. Sorbelli <i>et al.</i>), <i>Inventari dei manoscritti delle biblioteche d'Italia</i>
MEFR	<i>Mélanges de l'École française de Rome: Moyen âge – Temps modernes</i>
MGH	Monumenta Germaniae historica
• Auct. ant.	Auctores antiquissimi
• Capit.	Capitularia
• Conc.	Concilia
• Const.	Constitutiones
• D - DD	Diploma - Diplomata
• Dt. Chron.	Deutsche Chroniken
• Epp.	Epistolae (in Quart)
• Epp. saec. XIII	Epistolae saeculi XIII
• Epp. sel.	Epistolae selectae
• Fontes iuris	Fontes iuris Germanici antiqui, Nova series
• Ldl	Libelli de lite imperatorum et pontificum
• LL	Leges (in Folio)
• LL nat. Germ.	Leges nationum Germanicarum
• Poetae	Poetae Latini medii aevi

• SS	Scriptores
• SS rer. Germ.	Scriptores rerum Germanicarum in usum scholarum separatim editi
• SS rer. Germ. N.S.	Scriptores rerum Germanicarum, Nova series
• SS rer. Lang.	Scriptores rerum Langobardicarum
MIC	Monumenta iuris canonici
• Ser. A	Series A: Corpus Glossatorum
• Ser. B	Series B: Corpus Collectionum
• Ser. C	Series C: Subsidia
MIÖG	<i>Mitteilungen des Instituts für österreichische Geschichtsforschung</i>
NA	<i>Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde</i>
NCE	<i>The New Catholic Encyclopedia</i>
NDI	<i>Novissimo Digesto Italiano</i>
ÖAKR	<i>Österreichisches Archiv für Kirchenrecht</i>
PG	Migne, <i>Patrologia graeca</i>
PL	Migne, <i>Patrologia latina</i>
Poth.	Pothast, <i>Regesta pontificum romanorum</i>
QF	<i>Quellen und Forschungen aus italienischen Archiven und Bibliotheken</i>
QL	Schulte, <i>Quellen und Literatur</i>
RB	<i>Revue bénédictine</i>
RDC	<i>Revue de droit canonique</i>
REDC	<i>Revista español de derecho canónico</i>
RET	<i>Revista español de teología</i>
RG	<i>Rechtsgeschichte: Zeitschrift des Max-Planck Instituts für europäische Rechtsgeschichte</i>
RHD	<i>Revue historique de droit français et étranger</i> (4 ^e série unless otherwise indicated)
RHE	<i>Revue d'histoire ecclésiastique</i>
RHM	<i>Römische historische Mitteilungen</i>
RIDC	<i>Rivista internazionale di diritto comune</i>
RIS ²	Muratori, <i>Rerum italicarum scriptores: Raccolta degli storici italiani, nuova edizione...</i>
RQ	<i>Römische Quartalschrift für christliche Altertumskunde und Kirchengeschichte</i>
RS	Rolls Series (Rerum Britannicarum medii aevi scriptores)
RSCI	<i>Rivista di storia della Chiesa in Italia</i>

RSDI	<i>Rivista di storia del diritto italiano</i>
RTAM	<i>Recherches de théologie ancienne et médiévale</i>
SCH	<i>Studies in Church History</i>
SDHI	<i>Studia et documenta historiae et iuris</i>
<i>Settimane</i>	<i>Settimane di studio del Centro italiano di studi Spoleto sull'Alto Medioevo</i>
SG	<i>Studia Gratiana</i>
Stud. Greg.	<i>Studi Gregoriani</i>
ThLL	<i>Thesaurus linguae latinae</i>
TRE	<i>Theologische Realenzyklopädie</i>
TRG	<i>Tijdschrift voor Rechtsgeschiedenis</i>
ZKG	<i>Zeitschrift für Kirchengeschichte</i>
ZRG Kan. Abt.	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanon- istische Abteilung</i>
ZRG Rom. Abt.	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Roman- istische) Abteilung</i>

In references to standard editions and to commonly known general works on the sources and literature of Roman and canon law in the Middle Ages – such as Savigny, Maassen, Schulte, Fournier-Le Bras, Kuttner, *Repertorium*, Van Hove's *Prolegomena* (2nd ed.), the *Monumenta iuris canonici*, etc. – only a shortened title will be given, without bibliographical detail. The Proceedings of the International Congresses of Medieval Canon Law will be referred to as (e.g.): *Proceedings Boston 1965*.

For the serial publications of the great academies:

Abh. Akad. ... followed by name of city, e.g. *Berlin, München*, etc. = *Abhandlungen der ... preussischen, bayerischen*, etc. *Akademie der Wissenschaften, philosophisch-historische Klasse*.

Similarly for *Mémoires, Memorie, Proceedings, Rendiconti, Sitzungsberichte*, etc. the abridged form is always understood as referring to the series covering philosophy and the humanities where several classes or sections exist in a single academy; e.g.

<i>Mém. Acad. Inscr.</i>	<i>Rendic. Istit. Lombardo</i>
<i>Proceed. Brit. Acad.</i>	<i>Sb. Akad. Wien</i>

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Annual Report 2012

The main event in the field of medieval canon law in 2012 was the Fourteenth International Congress in Toronto from August 5th to August 11th, organized by our colleague and friend Joseph Goering with his collaborators from the University of Toronto. The Congress held 40 concurrent sessions and seven plenary sessions with altogether 135 speakers. They read papers on a multitude of subjects in many areas of the history of canon law. Participants and speakers came from most European countries (Italy, France, Spain, Germany, United Kingdom, Switzerland, Czech Republic, Hungary, Greece, Netherlands, Belgium, Poland, Russia, Denmark, Sweden, Norway, Finland), from the United States and Canada, and even from Australia. The papers dealt with problems and questions of canon law, its sources and institutions from late antiquity (sixth century) to the end of the sixteenth century. It was very satisfying for older scholars from the generation of Stephan Kuttner's disciples to meet and to learn about the research of young scholars all over the world. The memory of Stephan Kuttner was remembered by a touching lecture of his son Thomas about the years of his father's life in the Nazi period. A report on the Stephan Kuttner Institute was given by its president. The General Assembly of ICMAC, presided by Kathleen Cushing, took place on August 11th in the afternoon. The Congress ended with a splendid closing banquet on the evening of that day.

An excursion on August 8th brought the participants to the region of Niagara Wine Country with a visit of Niagara Falls. It was a memorable event — some older congressists remembered that the same region had been visited during the Fourth Congress of Medieval Canon Law in Toronto on August 24th 1972.

The Board of Directors of the Stephan Kuttner Institute of Medieval Canon Law met in the evening of August. During that most important meeting the general secretary Anders Winroth presented the proposal of Yale University to transfer the Institute

to Yale University, where it had been from 1964 to 1970 under the guidance of Stephan Kuttner. The conditions will be fixed by a formal agreement between Yale University and the Stephan Kuttner Institute. The proposal of transfer was generally welcomed by the members of the Board, because President Peter Landau is now a retired professor and will also step down from the presidency during the next Congress in 2016 at the latest. A draft for the agreement between Yale University and the Stephan Kuttner Institute was drafted and signed in 2013. Yale University will guarantee the support and hosting of the Institute on its campus in New Haven, Connecticut for the next 25 years. Transfer of the property of the Institute to New Haven will be paid by Yale University. The transfer began in July 2013. A branch office of the Institute will stay in Munich under the President Peter Landau until 2016.

During the afternoon of August 10th a long prepared Liber amicorum for Robert Somerville was presented in Toronto. It has the title 'Canon Law, Religion and Politics' and was edited by Uta-Renate Blumenthal, Anders Winroth and Peter Landau and its contents are listed in this volume's Bibliography. The tribute contains nineteen essays, written by contributors from the United States (Austin, Beach, Blumenthal, Brasington, Brundage, Constable, Donahue, Trumbore Jones, Makowski, Pennington, Peters, Shrader), the United Kingdom (Brett, Cushing), Canada (Reynolds), Germany (Jasper, Landau, Schneider) and France (Roumy). The book also has a comprehensive bibliography of Robert Somerville's many publications in the field of canon law history and general church history, starting already in 1966. Bob Somerville was one of the first disciples of Stephan Kuttner, a professor at Yale University from 1964-1970. Another Liber Amicorum, published in 2012, concentrates on the history of canon law and is dedicated to the scholar E. C. Coppens, born in Belgium, Professor for History of Canon Law at the Catholic University Nijmegen since 1989. This Liber amicorum contains twenty essays, written by authors from many countries: Netherlands (Ackermans, Dondorp, Hallebeek, Neve), Belgium (Vleeschouwers-Van Mellebeek, Waelkens), France (Basde-

vant-Gaudemet, Lefebvre-Teillard, Roumy, Siméant), Germany (Dolezalek, Landau, Fowler-Magerl, Daniela Müller), Italy (Condorelli), Spain (Larrainzar, Viejo-Ximénez), Hungary (Szuromi), United States (Helmholz, Pennington).

*The Stephan Kuttner Institute
of Medieval Canon Law,
Munich.*

Peter Landau

New Evidence for the Canons of the First Lateran Council

Louis I. Hamilton and Martin Brett

The manuscript and its context.

The tradition of the canons of the Lateran Council (1123) has not been established despite its profound significance. I.S. Robinson has rightly described the Council as ‘the last occasion when the characteristic Gregorian reform programme dominated conciliar legislation’.¹ In part two of this article, Martin Brett explains in detail the difficulties in establishing such a tradition and the limits of the standard edition available in the *Conciliarum oecumenicorum decreta*.² In this first part, I shall introduce new evidence for the canons found in Firenze, Biblioteca Medicea Laurenziana, Santa Croce Plut. 9.dex.1, a copy of the *Expositio in Pentateuchum* by Bruno of Segni, who died on July 18 1123, three months after the conclusion of the council, which he may have attended.³ Since it is complete and one of the earliest extant copies, it is a significant exemplar of Bruno’s commentary. The twelfth-century manuscript had been owned by Santa Croce, but was removed to the Laurenziana in 1766 by an act of the Grand Duke of Tuscany, Pietro Leopoldo (1747-†1792), in which he dissolved the venerable Franciscan library.⁴ It is comprised of 170 folios and is 190 x 280mm. The

¹ Ian S. Robinson, *The Papacy, 1073-1198: Continuity and Innovation* (Cambridge Medieval Textbooks; Cambridge 1990) 134-135.

² COD³ 187-194.

³ William L. North demonstrates convincingly that Bruno was still active in the papal curia of Calixtus II, based upon his reading of an incident that appears to reference Bruno in Hermann of Tournai, *Liber de restauratione s. Martini Tornacensis*, MGH, SS 14, 287. William L. North, ‘In the Shadows of Reform: Exegesis and the Formation of a Clerical Elite in the Works of Bruno, Bishop of Segni (1078/9-1123)’ (Ph.D. Dissertation University of California, Berkeley 1998) 105-106.

⁴ Pietro Leopoldo became Holy Roman Emperor Leopold II (1790-1792); on the manuscript see Bernardino Farnetani, ‘L’attuale biblioteca,’ *Santa Croce*

catalog of 1777 describes the codex as twelfth century and as containing ‘in between pages 75b and 76 in the same antique hand as above’ some ‘ecclesiastical sanctions’.⁵ The online catalog lists the manuscript as dated between 1100-1110, a very precise date for which I have found no support.⁶ This dating is certainly incorrect as the materials at folios 75v and 76r are, indeed, ‘ecclesiastical sanctions’, and more precisely are canons produced in 1123 at the First Lateran Council.⁷ Therefore the manuscript must be later than April of 1123. If the proper post-quem is 1123, then the ante-quem may be 1136 when the most obvious source for or recipient of the canons, the bishop of Florence, Goffredo (1113-1136, † 1142), was forced into exile. That presumes the manuscript is Florentine in its origin and was not brought to Florence from elsewhere in Italy by the Franciscans of Santa Croce. At present there is no way to say this definitively.

The manuscript is made up of quires of irregular numbers of folios although no material is missing from the text.⁸ The tenth

nel solco della storia, ed. Massimiliano G. Rosito (Florence 1996) 99-106 at 100.

⁵ ‘Inter pag. 75 b and 76 eadem antiqua manus, in spatio vacuo, quod supererat, has Ecclesiasticas Sanctiones adscripsit,’ A. M. Bandini, *Catalogus codicum Latinorum Bibliothecae Mediceae Laurentianae, Florentiae*, (Florence 1774-1777) 4.col. 385.

⁶ Biblioteca Medicea Laurenziana, Plutei online: <http://teca.bmlonline.it/TecaRicerca/showMag.jsp?RisIdr=TECA0001309864> (Accessed 25 May 2013.)

⁷ George Dameron, *Episcopal Power and Florentine Society, 1000-1320* (Harvard Historical Studies 107; Cambridge, Mass. 1991) 71.

⁸ I would like to thank Dr. Rosa Marulo for confirming my examination of the quaterno containing folios 75 and 76 and for providing me with the following description of the manuscript: ‘Pluteo IX dex. 1. Membr.; III, 170, IV; 1-6⁸, 7⁴, 8-21⁸, 22⁶; catchwords; initial fascicule: hair side. 280 × 195 = 17 [227] 36 × 12 [148] 35, rr. 39 / ll. 39 (f. 2r); dry point ruling. Scribes: scribe A (ff. 1r-149r), scribe B (ff. 149r-170v). Initials of paragraphs in red. Modern binding. At fol. IIIv, in a fifteenth-century hand: ‘Iste liber est conventus sancte Crucis de Florentia ordinis minorum in quo continetur Comentum Brunonis super Genesim, Exodum, Leviticum, Numeri et Deuteronomium. In octavo bancho aperte ecclesie.’ (Rosa Marulo, Ph.D., in a personal correspondence of 20 December 2012; tr. Louis Hamilton).

quire is a quaterno, the last folios of which contain the canons at 75v and 76r.⁹ The text of the commentary at 75r ends a little more than two-thirds down the folio with room for an additional twelve lines of text. The catchwords, 'et nisi his', at the lower right of 75r correspond to the incipit of 77r. At the lower left (interior gutter) is the word 'explicit', perhaps intended to signal the intentional point of the break in the commentary. The canons are copied (without a 'proemium') beginning at the top of 75v, commencing with the first canon of the COD edition. The canons continue at the top of 76r with canons 10b, 12, and 11. The remaining three quarters of the folio is cut away and 76r is left as a stub. This could allow folio 76 to serve as a kind of bookmark for the reader to find these canons easily, as it did in my experience with the manuscript. 76v is intentionally left blank. At 77r Bruno's commentary continues without any lost text (with 'et nisi his') in the same hand that had been copying the previous material. In the estimation of the eighteenth-century catalog, the same hand copied out the canons. The change in format of the canons makes it difficult to say with certainty.

The Laurenziana manuscript represents a unique tradition of the canons of the Lateran Council of 1123, a fact that has not been previously appreciated.¹⁰ It is decidedly shorter than the 'alpha' or 'beta' traditions of the COD and represents the second shortest version of the canons presently known. Only Bibliothèque nationale de France lat. 152, fol. 44, with which it shares the first nine canons, is shorter (see the concordance provided below at the end of this article). In addition, the first nine canons of the Laurenziana version are in the same sequence as the first nine canons presented in Archivio Capitolare di Pistoia C.135, fol. 284-285 (the larger significance of this is discussed below by Martin Brett). What follows is a diplomatic

⁹ The manuscript may now be viewed online:
<http://teca.bmlonline.it/TecaViewer/index.jsp?RisIdr=TECA0001309864&keyworks=bruno>

¹⁰ North identified these as the canons of First Lateran in a passing reference to the manuscript, 'In the Shadows of Reform' 29-30.

edition of the canons found in Pluteo 9.dex.1 with notes intended for comparison to the COD.

Biblioteca Medicea Laurenziana, Pluteo 9.dex.1, fol. 75v-76r (=F)

Select variants from COD are noted (=C). The numbering and some variants from Pistoia, Archivio Capitolare del Duomo C.135 are also entered (=M); in these notes, unless otherwise stated, F agrees with M against the COD edition.

[1] SANCTORUM patrum exempla sequentes et officii nostri debitum^a innouantes, ordinari quemquam per pecuniam in ecclesia dei uel promoueri auctoritate sedis apostolice modis omnibus proibemus.

COD c.1a, M c.1a

^a debito CM

[2] NULLUS in episcopum nisi canonice electum consecret.^a Quod si presuptum^b fuerit, et consecrans^c et consecrator absque recuperationis spe deponatur.

COD c.3; M c.2

^a nisi consecret *tr.* M ^bsuptum^{ac} F, presumpum C
^cconsecratus C

[3] A SUIS episcopis excommunicatos, ab aliis episcopis abbatibus, et clericis, in communionem recipi proculdubio prohibemus.

COD c.2; M c.3

[4] NULLUS etiam^a in prepositum, nullus in archipresbiterum, nullus in decanum nisi presbiter uel diaconus,^a nullus in archidiaconum nisi diaconus ordinetur.

COD c.6; M c.4

^a *om.* C

[5] NULLUS omnino archidiaconus aut presbiter^a, siue prepositus uel decanus animarum curam uel prebendas^b ecclesie^c sine

iudicio uel consensu episcopi alicui tribuat; inmo^d sicut in^e sanctis canonibus constitutum est animarum cura, et rerum ecclesiarum^f dispensatio in episcopi iudicio, et potestate permaneat. Siquis uero contra hoc facere aut potestatem que ad episcopum pertinet sibi uendicare presumpserit ab ecclesie liminibus arceatur.

COD c.4; M c.5

^a archipresbiter C ^b prebendans^{ac} F ^c ecclesia C ^d inmo C
^e om. CM ^f ecclesiarum CM

[6] PRETEREA iuxta beatissimi pape STEPHANI^a sanctionem statuimus ut laici quamuis religiosi sint, nullam tamen de ecclesiasticis rebus aliquid disponendi habeant facultatem. Set^b secundum apostolorum canones omnium negotium^c ecclesiarum curam episcopus abeat, et ea uelut deo contemplante dispenset. Si quis ergo principium^d uel aliorum laicorum dispositionem seu donationem rerum siue possessionum ecclesiarum^e sibi uendicauerit,^f ut sacrilegus iudicetur.^g

COD c.8; M c.6

^a Stephani papae C ^b Sed C ^c negotiorum CM ^d principium CM
^e ecclesiarum CM ^f uendicaueris^{ac} F ^g videatur C

[7] PRESBITERIS, diaconibus, et^a subdiaconibus, concubinarum^b, et uxorum contubernia penitus interdicimus. Et aliarum mulierum cohabitationes,^c preter quas synodus nicena propter solas necessitudinum causas habitare permisit, [U]idelicet matrem, sororem, amitam, uel materteram, aut alias huiusmodi de quibus nulla iuste ualeat oriri suspitio.^d

COD c.7; M c.7

^a vel C ^b concubinarum CM ^c cohabitationem C ^d suspitio oriri C

[8] CONIUN<C>TIONES consanguineorum fieri prohibemus. Quoniam eas et diuine et seculi prohybent leges. Leges enim diuine hoc agentes, et eos qui ex eis prodeunt non solum eiciunt, set maledictos appellant. Leges uero seculi infames tales uocant

et ab hereditate repellunt. Nos itaque patres nostros sequentes, infamia eos notamus et fames^a esse censemus.

COD c.9; M c.8

^ainfames *recte* CM

[9] ORDINATIONES que a burdino heresiarcha postquam a romana ecclesia est dampnatus queque^a etiam a pseudoepiscopis per eum post ea ordinatis facte sunt, nos esse irritas^b iudicamus.

COD c.5; M. c.9

^aquaecumque C ^birritas esse C

[10] EIS qui ad ierosolimam proficiscuntur et ad christianam GENTEM defendendam et tirranidem infidelium debellandam, efficaciter auxilium suum prebuerint,^a suorum peccatorum remissionem concedimus, et domos,^b familias, atque omnia bona eorum in beati petri, et Romanę ecclesię protectione sicut a domino nostro PAPA URBANO statutum fuit suscipimus. Quicumque ergo ea distrahere^c uel auferre quamdiu in uia illa morantur presumpserit,^d excommunicationis^e ultione plectantur.

COD c.10a; M c.12

^aprebuerint CM : prohibuerint F ^bet *add.* C ^cdistraere^{ac} F
^dpresumpserint C ^eexcommunicationes^{ac} F

[11] EOS AUTEM qui uel pro ierosolimitano, uel pro ispanico itinere cruces sibi in uestibus posuisse noscuntur, et uiam postea^a dimississe cruces iterato assummere, et uiam ab instanti pasca usque ad proximum sequens^b pasca perficere apostolica auctoritate precipimus. Alioquin ex tunc eos ab introitu ecclesie^c sequestramus et in omnibus <fol. 76r> terris eorum diuina officia preter infantibus^d baptismum,^e morientibus^f penitentiam^g, interdiciamus.

COD c.10b; M c.13

^aet eas C ^bsequens proximum C ^cecclesie introitu C
^dinfantium C ^eet *add.* C ^fmorientium C ^gpoenitentias C

[12] SI QUIS treguam dei fregerit,^a usque tertio ad satisfactionem ab episcopo admoneatur. Quod si nec^b tertio^c satisfacere

contepserit, episcopus, uel cum metropolitani consilio uel^d cum duobus aut uno uicinorum episcoporum in rebellem anathematis sententiam dictet et per scripturam^e circumquaque denuntiet.

C c.15β; M c.14

^a diffregerit C ^b om. C ^c admonitus *add.* C ^d aut C
^e sripturam^{ac} F, episcopis *add.* CM

[13] SI QUIS Romipetas et peregrinos, apostolorum limina et aliorum sanctorum oratoria uisitantes, capere seu rebus quas ferunt expoliare,^a et^b mercatores nouis teloneorum et^c pedaticorum exactionibus molestare temptauerit, donec satisfecerit communionem careat christiana.

COD c.14; M c.17

^a spoliare C ^b uel C ^c seu C

This edition of the canons and the concordance below reveal that the Laurenziana manuscript represents a tradition of the canons distinct from those used for the COD. This edition is both substantially shorter than the other branches and distinct from them in its ordering of the shared materials.

It is worth noting that those canons found in the ‘alpha’ tradition but not present in the Laurenziana are often the most particular, least universally relevant, of the canons. So, the regulation of revenue (COD 12) at Santa Maria Rotunda, the Pantheon in Rome, and at San Nicola di Bari is not found among these canons. The canon (COD 16) concerning the relationship between monks and bishops appears to be of general application, but in the context of First Lateran it appears to have been aimed at Montecassino. It is also absent, as is the canon concerning Benevento (COD 17).¹¹ The prohibition against falsifying coins

¹¹ On the difficult relationships between Montecassino and its episcopal neighbors in relation to these canons, see Martin Brett, ‘The Canons of the First Lateran Council in English Manuscripts’, *Proceedings Berkeley 1980* 13-28, at 23, n. 31. For an example of a particularly contentious relationship between Montecassino and the archbishop of Capua, see Louis I. Hamilton, ‘Desecration and Consecration in Norman Capua, 1062-1122: Contesting Sacred Space during the Gregorian Reforms’, *Haskins Society Journal* 14 (2003) 137-150.

(COD 13) is also not found here and, if this pattern holds, may refer to a problem presented by a specific, unnamed, locale.

The canons in Pluteo are also presented in a highly coherent manner. First, there is the strong statement against simony (c.1), followed by the proper consecration of a bishop only by those bishops canonically elected (c.2). Having established proper episcopal election, the text warns bishops against accepting the excommunicated (c.3). With that the next canon proceeds to the order of clergy in c.4 and in c.5 placing the exercise of the cure of souls by those clergy under the clear control of the bishop. The canons next address the question of the relationship of the laity to the clergy, prohibiting lay control of ecclesiastical matters. As an extension of c.6, c.7 forbids clerical marriage, and c.8 concerns consanguinity in marriage. Canon 9 is the condemnation of the acts of Burdinus, that is the anti-pope Gregory VIII, and its location is the least logical (it seems to better fit the earlier canons), but it might simply stand apart. The final ‘section’ of the Laurenziana canons is organized around pilgrimage, the peace and truce and crusade. C.10 and 11 are crusading canons, and c.12 adds material on the truce of God, material only found in the COD ‘alpha’ canons in the *Polycarpus* form, but included in the ‘beta’ tradition. There is also a reiteration of a canon from Urban II’s council at Troia.¹² C.13 concludes the collection and concerns the protection of pilgrims in general and those to Rome in particular.

Biblioteca Medicea Laurenziana Plut. 9.dex.1 is, in short, a highly coherent collection focused on the central themes of the

¹² COD³ 193. Robert Somerville provides a fuller version of the canon from Troia than does the COD³: ‘Si quis treguam Dei fregerit, usque tertio ad satisfactionem ab episcopo moneatur. Quod si nec tertio satisfacere consenserit, episcopus vel cum metropolitani consilio aut cum duobus aut uno vicinorum episcoporum in rebellem anathematis sententia dictet, et per scripturam episcopis circumquaque denunciaret. Sic excommunicatum episcoporum nullus in communionem suscipiat, immo scriptura suscepta sententiam quisque confirmet. Si quis aliter praesumpserit, ordinis sui periculo subiacebit. Responsum est ab omnibus, fiat’. Robert Somerville in collaboration with Stephan Kuttner, *Pope Urban II, the Collectio Britannica, and the Council of Melfi (1089)* (Oxford 1996) 305.

papal reformers of the preceding generation. This is not to conclude that the remaining material from ‘alpha’ is not authentic to first Lateran, but it does suggest that the copyist of these canons had an unusually clear sense of their overall import and their themes. That clarity throws into relief the confusion that is the ‘alpha’ tradition as discussed below.

Other Versions of the First Lateran Canons

This new form of the canons from the Lateran Council of 1123 contributes significantly to the tangled tale of their reception. It also offers a convenient moment to survey the advances that have been made in our knowledge of the process in the last fifty years.

The standard text since 1973 has been Claudio Leonardi’s for the third edition of the *Conciliarum oecumenicorum decreta*, though the edition of Lateran I was unaltered from that offered in 1962. With the fiftieth anniversary of the Second Vatican Council so recently past, one can scarcely read unmoved the preface and introduction by Hubert Jedin and Giuseppe Alberigo (which too were reprinted unchanged in 1973). The sense of urgency and hope that informs both, and their conviction that reform in the present depended upon a secure sense of the inherited past, leap from the page. At a more mundane level this introductory matter is also essential reading, for it gives a clear statement of the limits within which the editors decided to work, and also of the intellectual difficulties that these limits could create. Jedin’s Preface laid out the constraints, while recognizing that their principles of selection and choice between variants might not receive universal assent, ‘thinking it enough to say that our readings have been taken from the best available editions, and that recourse was only rarely had to the manuscripts’.¹³

Alberigo’s Introduction deals more fully with these principles and the way they were to be applied:¹⁴

¹³ COD³ viii, citing the Councils of Lyon as examples.

¹⁴ COD³ xv-xvi.

Another question concerned the sources from which the texts were to be published. Firstly, we had no hesitation in adopting for our use such critical editions as already existed, only noticing such variants as were of the most weight in understanding the text Otherwise we tried to establish our text on the basis of the most reputable ('probatissimae') editions, devoting new attention to them. Sometimes C. Leonardi did turn to the manuscript tradition where it was necessary for producing a satisfactory text for the first time. No-one can fail to see that we have not been able to follow one and the same principle in applying our critical method but have adjusted to the different conditions of scholarship....

Given that the project for a convenient and trustworthy set of canons of every previous ecumenical council was formed as a direct consequence of the decision of John XXIII to call Vatican II in January 1959, such principles of economy could scarcely be avoided in the short time available. However, they created exceptional difficulties in creating a satisfactory version of the First and Second Lateran Councils, for there was no critical edition of either, nor any edition which could reasonably be called 'probatissima', nor any convenient census of the manuscripts. Indeed Leonardi knew of no surviving medieval copy of Lateran II at all until 1963.¹⁵

Alberigo also set out other principles of selection. It was to be recognised that:

those matters which were formally and solemnly approved had an altogether distinctive character as against other meanings, opinions or purposes, however significant, which were not in the event agreed by the assent of the councils.

¹⁵ 'Per la tradizione dei concili di Ardana, Lateranensi I-II, e Tolosa', BISM 75 (1963) 57-70 at 68.

It followed that:

the canons should be printed as they stood in writings approved by the councils, omitting everything which was subsequently either altered or modified . . . nor did it seem appropriate to take account of controversies concerning the extent to which Roman pontiffs approved certain passages in the conciliar decrees or not.

In his edition of the First Lateran Council, Leonardi followed at least part of this prescription with great fidelity. His text was almost entirely based on the material printed in the earlier collections, supplemented by the version included in the *Historia regum* attributed to Simeon of Durham.¹⁶

Leonardi distinguished two families of texts, ‘alpha’ and ‘beta’. He knew the ‘alpha’ copies from four chief sources: the text printed first by Etienne Baluze from an Aniane manuscript, now Paris, BNF lat. 3881; another very similar one Leonardi found in BAV Reg. lat. 987 – the only substantial manuscript which he collated directly;¹⁷ the Durham version, and a more idiosyncratic copy printed by Pertz from an appendix to the Vienna copy of the *Collection in Ten Parts* formerly at Olomouc.¹⁸ These were characterized by a sequence of canons which was more or less consistent in order and content at least up to c.14, and ended at various points up to c.17, though with differing omissions, arrangement of canons and some striking variants in the later canons. Leonardi based his ‘alpha’ edition predominantly on the order of the Baluze edition and the Vatican manuscript, particularly in placing c.17 at the end, though he inserted c.11 on the authority of Pertz’s edition and the ‘beta’

¹⁶ COD³ 189. *Simeonis monachi opera omnia*, ed. Thomas Arnold (RS [75]; London 1882-1885) 2.269-272 printed from the only surviving (and relatively late) complete manuscript of the *Historia*, Cambridge, Corpus Christi College 139, fol. 127r-127v.

¹⁷ For these two manuscripts see n.26 below.

¹⁸ MGH LL 2.2 182-183, for which see too Brett, ‘First Lateran’ 19 n.21.

copies.¹⁹ His ‘beta’ form, the so-called vulgate text first printed completely in the Roman edition of 1612, was distinguished by a markedly different order of canons, and by the inclusion of four more not found in any ‘alpha’ copy. He used no medieval manuscript for this form but rightly supposed that its origin would be found in some variant tradition of the *Collectio canonum* of Anselm of Lucca. The discussion was somewhat clouded by his treatment of a version first printed by Mansi from the celebrated copy of the *Collection in Three Books* in Pistoia, Archivio Capitolare del Duomo C.135. This shares c.19 with the vulgate text, and also differs in arrangement from the ‘alpha’ text. The sequence is, however, even more remote from that of the ‘beta’ copies, and cc.20-22 are missing. Without explaining his judgment Leonardi treated the Pistoia text as copied from an ‘alpha’ copy subsequently enlarged from a ‘beta’.²⁰

He believed that the ‘beta’ form was later than the ‘alpha’, partly because Gratian attributed the distinctive added canons to Urban II, and partly because he could only identify surviving manuscript evidence for ‘alpha’ versions. Quite what he understood by the priority of the ‘alpha’ texts is not entirely clear, nor did he indicate what weight should be attached to canons only found in the later ‘beta’. However, printing these in a continuous sequence with the ‘alpha’ canons can lead an incautious reader to treat the conflated text as a single whole, though it is still far from clear what relation, if any, the canons peculiar to the ‘beta’ tradition have to the decisions of Lent

¹⁹ The decision to place c.17 here had unfortunate consequences. In the eclectic text which resulted, cc.16 and 18, which are effectively a single canon (c.17 of the ‘beta’ set), are divided, although in the manuscripts which have COD’s c.18 the combined cc.16 and 18 replace the various forms of c.16 which occur elsewhere.

²⁰ Since the Pistoia copy is in a single hand with no traces of subsequent revision, this hypothetical reworking must have taken place earlier, if at all. For the manuscript see now *Collectio canonum trium librorum*, ed. Joseph Motta (MIC Ser. B 8; Vatican City 2005) 1.xxii-xxxi, esp. xxx, citing the earlier literature. Leonardi knew this copy through the edition by J.D. Mansi, *Sanctorum conciliorum et decretorum collectio nova seu collectionis... Supplementum* (Lucca 1748-52) 2.355-358, which he collated as *Msi*¹.

1123.²¹ Leonardi was well aware how provisional his conclusions were, for he described his procedure more fully in 1963, observing modestly that the whole problem was ‘in large part still to be investigated’.²²

Between the second edition of COD in 1962 and its third and most recent revision a good deal of important new work was already being undertaken. In 1971 Stephan Kuttner’s paper on some Roman manuscripts had elucidated some of the sources from which the *Correctores Romani* and the editors of the Roman edition of the councils of 1608-1612 had gone to work. Further he showed that BAV lat. 1361, a composite collection based largely on a combination of a distinctive version of an enlarged Anselm of Lucca with a *Panormia*, contained a twelfth-century copy of the ‘beta’ canons.²³ The significance of this became yet clearer in 1986-1987, with two critical papers by Peter Landau. In the course of his investigation of the so-called Anselm of Lucca C version he demonstrated that BAV Vat. lat. 4983, certainly known to the Roman editors, was in fact a

²¹ Brett, ‘First Lateran’ 22 proposed that they might be the work of a later council of Calixtus of 1123-1124, where the affairs of Ravenna in c.22 were certainly discussed. Beate Schilling, *Guido von Vienne – Papst Calixt II.* (MGH Schriften 45; Hannover 1998) 583 n.204 lent some cautious support to that position, though justly observing that there is good evidence also for discussion of the affairs of Ravenna at the Lent council. Georg Gresser, *Die Synoden und Konzilien in der Zeit des Reformpapsttums in Deutschland und Italien von Leo IX. bis Calixt II. 1049-1123* (Konziliengeschichte Reihe A; Paderborn-Munich-Vienna-Zürich 2006) discusses the origins of the canons of 1123 at 482-489 without entering into any debate on their transmission, for which the reader is referred at 482 n.190 to the German translation of COD, *Dekrete der ökumenischen Konzilien*, ed. Josef Wohlmuth (3rd ed. Paderborn-Munich-Vienna-Zürich 2000) 2.

²² ‘Per la tradizione’ 65.

²³ Stephan Kuttner, ‘Some Roman Manuscripts of Canonical Collections’, *BMCL* 1 (1971) 7-29 esp. 10, reprinted with additions idem, *Medieval Councils, Decretals and Collections of Canon Law* (Variorum Collected Studies, 126; Aldershot 1992) II, cf. ‘New Retractationes’, 4. His paper was in part an amplification of the study by Claudio Leonardi, ‘Per la storia dell’edizione Romana dei concili ecumenici (1608-1612): Da Antonio Agustín a Francesco Aduarte’, *Mélanges Eugène Tisserant* (Studi e Testi 236; Vatican City 1964) 583-637.

composite post-medieval copy of an unusual Anselm B with additions from another copy in the Anselm A' tradition. In a second paper he showed that all the known Anselm A' copies included the 'beta' canons as they had appeared in the 1612 Roman conciliar edition, and that BAV lat. 1361 as well as BAV Vat. lat. 4983 were clearly derived from just such a copy.²⁴ The effect of this demonstration was something of a paradox, in that we now had an abundance of twelfth-century witnesses to the 'beta' canons, but their value as evidence for the events of 1123 could be seen to depend entirely on the authority of that single Anselm A' archetype from which they all derived.²⁵

By then Robert Somerville's fundamental work on the transmission of Urban II's councils, and its associated surveys of innumerable manuscripts of the councils of the eleventh and twelfth century had transformed our understanding of the materials from which earlier editors had worked. Somerville added many more which modern scholars would now have to take into account. The effect of his enquiries was to clarify some aspects of the transmission of the 'alpha' canons, in particular by demonstrating that Baluze's Aniane manuscript (now Paris BNF lat. 3881), Leonardi's BAV Reg. lat. 987 and Reg. lat. 1026 were three copies of the same appendix found added to the *Polycarpus*

²⁴ Peter Landau, 'Der Rezension C der Sammlung des Anselms von Lucca', *BMCL* 16 (1986) 17-54 esp. 20 n.21, 22 n.35, 23 n.36, 31 for the Lateran canons in the A' copies; 'Erweiterte Fassungen der Kanonensammlung des Anselms von Lucca aus dem 12. Jahrhundert', *Sant'Anselmo, Mantova e la lotta per le investiture*, ed. Paolo Golinelli (Bologna 1987) 323-337, esp. 327-330, 333-336, also noting the evidence that Gratian knew and used this version.

²⁵ COD³ 188 proposes that the 'beta' text of the *editio Romana* depended on two distinct copies. The text is said to be drawn from a manuscript once the property of Agustín, almost certainly BAV Vat. lat. 4983 or an almost indistinguishable copy, and from one or more other copies in the Vatican Library (*Concilia Generalia Ecclesiae Catholicae*, ed. A. Carafa et al. [Roma 1608-1612] 4. p. a iiv). The Roman edition shares some readings with the *Polycarpus* manuscripts (Brett, 'First Lateran' 22 n.28), and at least one copy of that collection was already known to the 1612 editors (see the next note). These variants by themselves are no proof that two distinct forms of the 'beta' text were available in 1612.

canonical collection, again reducing the evidential value of the agreement of the copies while multiplying their number.²⁶ However, in other respects his much expanded list of known copies did even more to illustrate the extraordinary variety of forms which had all been lumped together under the ‘alpha’ heading. He added in particular Paris, BNF lat. 9631, an addition to a French copy of the *Collection in Four Books*,²⁷ the Baluze fragment in BNF lat. 152,²⁸ and the excerpts from the council

²⁶ Robert E. Somerville, *Pope Urban II's Council of Piacenza: March 1-7, 1095* (Oxford 2011) 30-32, 72-73, 85-87 summarizes the fruit of many years' study of this appendix and the copies in which it occurs. At 31-32 with n.72 he underlines the significance of BAV 'assembled by or for Antonio d'Aquino' for the use of the compilers of the *editio Romana*, which contains extensive extracts from the *Polycarpus* almost certainly from what is now BAV Reg. lat. 1026. In his *Pope Urban II, the Collectio Britannica and the Council of Melfi 189-190* he notes that the Calixtus material in the book includes all the evidence in the *Polycarpus* appendix. According to the index to BAV Barb. lat. 860 published by Vittorio Peri, 'Due protagonisti dell' *editio romana* dei Concili ecumenici: Pietro Morin ed Antonio d'Aquino', *Mélanges Eugène Tisserant* (Studi e Testi 237; Città del Vaticano 1964) 131-232 at 216-219, there is relevant material at fol. 85-89v, 201r-208v, 224r-227r. However, Robert Somerville, 'Cardinal Deusdedit's *Collectio canonum* at Benevento', *Ritual, Text and Law; Studies in Medieval Canon Law and Liturgy presented to Roger E. Reynolds*, ed. Kathleen G. Cushing and Richard Gyug (Aldershot 2004) 281-292, at 283 notes that Lateran I cc. 1-3 appear in the late fourteenth-century BAV Vat. lat. 399. In *Piacenza* 32 he notes a 'slender and foggy' possibility that this manuscript took its texts from a version independent of that in the *Polycarpus* though very similar to it.

²⁷ Robert E. Somerville, 'The Councils of Pope Calixtus II: Reims 1119', *Salamanca Proceedings 1976* 35-50, reprinted in *Papacy, Councils and Canon Law in the 11th-12th Centuries* (Variorum Collected Studies 312; Aldershot 1990) XII at 40-41; for subsequent literature on the collection, see Linda Fowler-Magerl, *Clavis canonum* (MGH Hilfsmittel 21; Hannover 2005) 119-121.

²⁸ For the fragment in Paris BNF lat. 152, fol. 44-45, formerly belonging to Baluze, dating it s.xii/xiii, see Somerville, *The Councils of Urban II*, 1: *Decreta Claromontensia* (AHC Supplementum 1; Amsterdam 1972) 64 and n. 81. Paris BNF Baluze 4, fol. 118r-119r are sheets from Pierre de Marca, *De concordia sacerdotii et imperii* viii. xxi (2.363-365), covering I Lateran. In mg: 'Je l'ay corrigé sur le ms. d'Aniane [BnF 3881] dans mon exemplaire de la seconde edition to. 2 pag. 436'. The changes to the text from cc 1-17, ending 'Cetera non extant' are all consistent with this being a collation of

found in the *Collection in Ten Parts*,²⁹ all of which differed from the previously known copies in text and arrangement.

In 1985 I tried to assemble what was then known of these ‘alpha’ copies, noting the existence of a second independent Durham copy of the version in the *Historia regum*, two copies from Christ Church, Canterbury, another from Hereford which showed some convergence with the fragment from Madrid which Leonardi had published in 1963, and a second copy at Olomouc of the idiosyncratic form printed by Pertz from the Vienna manuscript of the *Collection in Ten Parts*.³⁰ A particular point which emerged from all this was the variety of text and order to be found under the *alpha* umbrella, and in particular the extreme instability of cc. 15-16 where they were included at all.

Subsequent work has only served to reinforce these conclusions. In 1998 Beate Schilling called attention to another copy of the ‘alpha’ text in the early and important manuscript Cambrai BM 504, which contains only cc.1-10 and 12-14.³¹ This new text from Florence is the first containing a substantial proportion of the Lateran canons to have been reported since, as far as I know, but some further scattered fragments have shown

BNF lat. 152 against the revised form of de Marca, which had been based from the start on the *Polycarpus* manuscript. This version’s independence is shown by its distinctive version of c.16:

Abbatibus et monachis interdicimus ne suscipiant ecclesias seu ecclesiastica beneficia a manu laicorum sine consensu sui episcopi. Interdicimus etiam ipsis visitationes et unctiones infirmorum et publicas penitentias et ne presumant parrochiales missas celebrare.

This is closest to the form in the Hereford cathedral copy (Brett, ‘First Lateran’ 18), but far from identical.

²⁹ For the excerpts in the *Collection in Ten Parts* Somerville, ‘The Councils of Pope Calixtus II and the Collection in Ten Parts’, BMCL 11 (1981) 80-86, reprinted *Papacy, Councils and Canon Law XI*; *Clavis canonum* 209-214; see too Joaquin Rueda Sedano, ‘The Manuscript Tradition of the Collection in Ten Parts’, in the forthcoming *Proceedings Toronto 2012*.

³⁰ Brett, ‘First Lateran’ 16-22, esp. 18 n.19. The Vienna manuscript naturally also includes in its main text the excerpts described by Somerville from Paris BNF lat. 10743.

³¹ Schilling, *Guido von Vienne – Papst Calixt II*. 583, n. 205. The canons in the Cambrai copy end less than half way down fol. 120vb, and are followed by ‘Explicit’, though this is not in the main hand.

that the uncertainty surrounding the content of c.16 is yet greater than was known in 1985.³²

The special importance of the Florentine manuscript is as a proof that the text and order of the Pistoia copy are not a mere freak or whim of the copyist, but are part of a wider transmission. Correspondingly, we now have at least three families of manuscripts. The first is the unstable mass of ‘alpha’ manuscripts, only to be treated as a single family by a process of drastic simplification, and better treated as several sub-groups. The second is represented by the Pistoia copy with a partial second one in Florence, which differs markedly in arrangement from any ‘alpha’ copy and contains one canon not found in any of them. The third is the strikingly coherent family of the Anselm A’ manuscripts of Leonardi’s ‘beta’, where the canons appear in a third and distinctive sequence. It is only this third group, resting apparently on a single earlier exemplar, that contains cc. 20-22.

The concordance at the end of this paper provides a brisk summary of the differences between the known copies containing a substantial part of the canons that have been attributed to the First Lateran Council. From this it seems reasonable to draw some provisional conclusions. Firstly, a relatively stable form of cc. 1-10 and 12-14 of the *COD* text was very widely accepted as

³² Brett, ‘First Lateran’ 20 n.23 cited a form of c.16/18 very close to that of the Pistoia copy as an addition to the Tuscan BAV Vat. lat. 1348 at fol. 119v (for which see now esp. Stephan Kuttner and Reinhard Elze, *A Catalogue of Canon and Roman Law Manuscripts in the Vatican Library* (Studi e Testi 322, 328; Vatican 1986-1987) 1.107 and *Clavis canonum* 102-104. This has the rubric, ‘Papa Calixtus bone memorie’. A rather later witness in London, BL Royal 9.A.viii fol. 28v, originally from the area of Bologna, has the same text under ‘Calixtus papa ii in Laterano concilio’. All three of these copies differ in detail from the Anselm A’ copies, not least in lacking ‘Quod si aliter – ultioni subiaceat’ at the end. Yet another form is found in the appendix to an abbreviated Ivo, *Decretum* written in England in the second half of the twelfth century, now Roma, Accademia dei Lincei 41 E 1 (Corsini 1808) fol. 227v, for which see Giorgia Corso in *Il Trionfo sul tempo: Manoscritti illustrati dell’Accademia Nazionale dei Lincei*, ed. Antonio Cadei (Modena 2002) 191-192, no. 80, printed in *Proceedings Washington 2004* 102-103 n.29. See too above n.27.

the work of the council of Lent 1123. Secondly, the more local concerns of c. 11, and to a lesser extent c. 17, may explain their omission in some versions; their survival in several otherwise unrelated copies, and the broad agreement of the copies on their text, certainly suggest that they do indeed reflect decisions taken at the time. Thirdly, although the subject matter of cc. 15, 16 and 18 is attested in more than one tradition of the canons, the texts vary so widely that it is impossible now to determine what was agreed, or indeed whether any consensus was achieved on the topics at all. Fourthly, no new evidence has yet been found to support the claim that cc. 20-22 formed part of the decisions of Lent 1123, or to indicate where they originated.

For theologians, and historians concerned with great questions, such complexities will be little more than a distraction; their concern is with larger issues, and they wish only for a generally trustworthy text giving a best guess at what contemporaries thought had been declared in 1123. Yet the evidence we have does not allow one to give more than the roughest approximation to anything of the sort. There is every reason to suppose that wide uncertainty prevailed from the earliest years after the council, and that no surviving copy can claim pre-eminent authority.

The principles laid down for themselves by the COD editors cannot be applied with any rigor, for what one believes the fathers decided there proves to be in great measure precisely a matter of controversy and opinion. A more ambitious edition, based on all the evidence that has come to light since 1973, and unconstrained by urgent pressure of time, will have to find quite new ways of representing the legacy of the council.

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Concordance between copies of the canons

- P = Paris, BNF lat. 3881 fol. 184v-185v (above n. 26)
 T = Wien, ÖNB 2178 fol. 173v-174v and Olomouc, Státní vědecká knihovna C.O. 205 fol. 1v-1r (Brett, 'First Lateran' 19, n. 21).
 C = consensus of Cambridge, Corpus Christi Coll. 19 fol. 333v-334r and Durham, Cath. Library B.IV.18 fol. 97v-98r (Brett, 'First Lateran' 17 n.14)
 D = consensus of Durham, *Historia regum* and Cambridge, Peterhouse 74 fol. 119v-120v (Brett, 'First Lateran' 17 n.15)
 V = Paris, BNF lat. 9631 fol. 46v-47 (above n.27)
 E = Cambrai BM 504 fol. 120v (above n.31)
 H = Hereford Cath. Lib. O.ii.7 fol. iv-iiiv (Brett, 'First Lateran' 17 n.15, 18)
 K = BNF lat. 152 fol. 44 (above n. 28)
 F = Firenze Bibl Med. Plut. 9.dex.1
 M = Pistoia, Bibl. cap. 135 fol. 284v-285v (above n. 20)
 RA = Anselm A' (above nn. 23-24) and *Editio Romana*

COD	P	T	C	D	V	E	H	K	F	M	RA	Gratian
1.	1	1	1	1	1	1	1		1	1	1	C.1 q.1 c.10 ¹
2.	2	2	2	2	2	2	2	1	3	3	9	
3.	3	3	3	3	3	3	3	2	2	2	10	D.62 c.3 ¹
4.	4	4	4	4	4	4	4	3	5	5	7	C.16 q.7 c.11 ¹
5.	5	5	5	5	5	5	5		9	9	6	
6.	6	6	6	6	6	6	6	4	4	4	2	D.60 c.2
7.	7	7	7	7	7	7	7	5	7	7	3	
8.	8	8-9	8	8	8	8	10	6	6	6	4	C.16 q.7 c.25 ¹
9.	9	10	9	9	9	9	11		8	8	5	
10a.	10a	12	11	10	10	10a	13	7a	10a	12	11a	
10b.	10b	13		11	12	10b	15	7b	10b	13	11b ²	
11.		14			13					11	12	
12.	11-2	15 ²	13		14	11	16			15	14	C.10 q.1 c.14 ¹
13.	13	16 ²		12	15	12	9	8		16	15	
14.	14	17 ²	12	13	16	13	14	9	12	17	16	C.24 q.3 c.23 ¹
15a.	15											
15b.									11	14	13	
16a.	16											
16b.										18	17	C 16 q 1 c 10 ¹

¹ Omitted in earlier form.

² In Madrid BN 7127, numbered as here; 'Per la tradizione' 60.

COD	P	T	C	D	V	E	H	K	F	M	RA	Gratian
16c.		18										
16d.							8 (pt)					
16e.												
17.	17	11	10		11		11			10	8	
18.							8 (pt)			19	18	C.16 q.7 c.39 ¹ <i>inscript. Urban</i>
19.										20	19	C.18 q.2 c.31 ¹ <i>inscript. Urban</i> C.16 q.4 c.1 <i>inscript. Urban</i>
20.											20	C.24 q.3 c.24 ¹ <i>inscript. Urban</i>
21.											21	D.27 c.8
22.											22	C.12 q.2 c.37 ¹ <i>inscript. Urban</i>

Three Manuscripts Containing the Canons of the 1179 Lateran Council

Danica Summerlin*

Alexander III's 1179 Lateran council was held to celebrate the end of an eighteen-year schism between the papacy and the Empire. It also promulgated a series of around twenty-seven conciliar canons that entered into the later-twelfth century decretal collections and, ultimately, the *Liber Extra*, and is more often referred to as the Third Lateran Council or Lateran III.¹ The transmission of those conciliar decrees is the focus of this paper, and in particular three manuscripts which provide examples of the dissemination of copies of the canons that differ, in some cases radically, from the 1179 canons as found in the decretal collections and the standard modern reference work, the *Conciliarum Oecumenicorum Decreta*, or COD. Two, British Library Cotton Claudius A.iv and Berlin, Staatsbibliothek Preussischer Kulturbesitz Savigny 3, demonstrate the canons being excerpted for their legally pertinent information. The third, Vatican Library Reg. lat. 984, goes much further, even to the point where it may support hints found elsewhere in the manuscript tradition that drafts of the canons accidentally circulated, masquerading as the canons themselves simply because no 'official' copy of the canons existed.

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¹ Throughout this study, the decretal collections of the later-twelfth century will be referred to according to the abbreviations and rough schematic laid down by Walther Holtzmann, especially in his *Studies in the Collections of Twelfth-Century Decretals*, ed. and rev. Christopher R. Cheney and Mary G. Cheney (MIC Ser. B 3; Città del Vaticano 1982) xx-xxxi (henceforth Holtzmann-Cheney) which also provides references to published editions or analyses of the collections.

Overall, the 1179 decrees have a remarkable coherence. Despite their apparently constantly-changing sequence,² most scholars have presumed that the conciliar canons stayed essentially the same across every tradition. General histories of the papacy refer to the canons as part of a long-term papal legislative agenda pushed forward during the twelfth century.³ Holtzmann once suggested that the council commanded the dissemination of the decretal collections, although he later retracted that hypothesis.⁴ Even Walter Herold, whose 1952 thesis on the canons attempted in part to reconstitute their ‘lost’ initial sequence, failed to challenge the prevailing view that Alexander used the council to promulgate a legislative agenda that was then, broadly speaking, instituted.⁵ In the opinion of Raymonde Foreville, that agenda can be teased from Alexander’s earlier decretals.⁶ Her recent challenges to the legislative authority of those decretals notwithstanding, Anne Duggan’s

² Stephan Kuttner, ‘Brief Note, Concerning the Canons of the Third Lateran Council’, *Traditio* 13 (1957) 505-506; for the text of the canons edited by Claudio Leonardi and others see COD³ 211-225; Walter Herold, ‘Die Canones des 3. Laterankonzils’, (PhD thesis; Bonn 1952). See also the forthcoming revised version of the COD, where the text of the 1179 canons is edited by Ken Pennington and Atria A. Larson.

³ E.g. Ian S. Robinson, *The Papacy 1073-1198: Continuity and Innovation* (Cambridge 1990) 121; R. H. Helmholz, *The Oxford History of the Laws of England, 1: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford 2004) 93.

⁴ Walther Holtzmann, ‘Die *Collectio Eberbacensis*’, ZRG Kan. Abt. 48 (1928) 551; Holtzmann-Cheney 12 and cf. Fransen’s comment that ‘it does not seem necessary to give much weight to [Holtzmann’s] hypothesis’, Gérard Fransen, ‘Les canonistes et Latran III’, *Le troisième concile de Latran (1179): Sa place dans l’histoire*, ed. Jean Longère (Paris 1982) 37.

⁵ Herold, ‘Die Canones’.

⁶ Raymonde Foreville, *Latran I, II, III et Latran IV* (Paris 1965) 152, ‘Les décrets réformateurs promulgués lors de la session de clôture furent l’œuvre de canonistes travaillant sur des données proposées d’avance et fondées, soit sur les canons d’anciens conciles (joutes et tournois, paix et trêve de Dieu), soit, dans une mesure très large, sur les décrétales qu’Alexandre III, canoniste lui-même, avait adressées en grand nombre aux églises’; cf. eadem, ‘La place de Latran III dans l’histoire conciliaire du XIIe siècle’, *Le troisième concile de Latran (1179)* 16.

2008 study for the *History of Medieval Canon Law in the Classical Period* also investigated the 1179 decrees on the basis that they were designed and received as legislative acts.⁷ Only two studies have challenged that perspective. Gérard Fransen's 1982 analysis of the decrees' canonical reception was as concerned with whether the canons were accepted as it was with how they were, but it can provide only an introductory study to a complex issue.⁸ Most recently, Atria Larson and Richard Engl have opened the possibility that additional decrees were at least discussed in the conciliar sessions.⁹ In contrast to the majority of these scholars and in keeping with the scepticism expressed by Fransen and Engl and Larson, however, I would argue that the 1179 decrees only gradually became accepted as overarching legal authorities, in much the same way as papal decretals gained widespread acceptance through their transmission in the decretal collections. While the presence of a papal version of the canons cannot be doubted, it appears that the circulated texts depended on other sources such as local bishops and, of course, the decretal collections.

No papal letters promulgating the 1179 decrees survive. Given that *Quoniam in agro*, the letter that summoned the council, survives in five known copies sent to the archbishops, bishops, and abbots of Bourges, Hungary, Pisa, Salzburg and Tours, it seems unlikely that any letter of Alexander

⁷ Anne J. Duggan, 'Conciliar Law, 1123-1215: The Legislation of the Four Lateran Councils', *History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Liber Extra*, ed. Wilfried Hartmann and Kenneth Pennington (Washington D.C. 2008) 341-366; for her comments on the 'legislative authority' of papal decretals, see 'De Consultationibus: The Role of Episcopal Consultation in the Shaping of Canon Law in the Twelfth Century', *Bishops, Texts and the Use of Canon Law around 1100: Essays in Honour of Martin Brett*, ed. Bruce C. Brasington and Kathleen G. Cushing (Aldershot 2008) 191-214, and particularly her 'Making Law or Not? The Function of Papal Decretals in the Twelfth Century', *Proceedings Esztergom 2008* 41-70.

⁸ Fransen, 'Les canonistes et Latran III' 33-40.

⁹ Richard Engl and Atria A. Larson, 'Ein unbeachtetes Zeugnis zum dritten Laterankonzil: Bernardo Maragones *Annales Pisani*', *ZRG Kan. Abt. 128* (2011) 357-368.

promulgating the canons was considered to have legal force.¹⁰ The absence of a letter formally repeating the canons or their fundamental tenets nevertheless provides an interesting contrast to Gregory VII and Lucius III. The former is known to have repeated edicts from his synods to local bishops in letters.¹¹ That Lucius III also repeated the bulk of *Ad abolendam* in a letter to Peter, bishop of Arras, sent from Verona in 1184 demonstrates continuity between the pre- and post-Gratian eras.¹² It is therefore intriguing that no certain record of a papal attempt to circulate the 1179 decrees survives. A sole manuscript hints at such an effort. This manuscript is now in the Biblioteca Medicea Laurenziana in Florence. It includes, as well as a copy of the 1179 papal conciliar canons, records of Vallombrosan congregations held in 1179 and 1188.¹³ The record of the congregations is not a copy of decrees or acts, but a narrative

¹⁰ The letters to Pisa, Hungary and Bourges are JL 13097-13099 respectively. The letter to Tours can be found in *Papsturkunden in Frankreich, neue Folge, 5: Touraine, Anjou, Maine und Bretagne*, ed. Johannes Ramackers (Abh. Gött. 3e Folge 35; Göttingen 1969) 361-363 no. 256. The letter to Salzburg was dated some four months prior to the others: 30 May 1178, rather than 21 September, and is JL 13070. For a discussion of the letters, see Foreville, *Latran I, II, III* 135; Karl Hefele, *Histoire des Conciles d'après les documents originaux*, rev. and trans. Henri Leclercq (Paris 1912-1913) 5.1086; Georgine Tangl, *Die Teilnehmer an den allgemeinen Konzilien des Mittelalters* (Weimar 1922) 211, followed by Johannes Laudage, *Alexander III. und Friedrich Barbarossa* (Forschungen zur Kaiser- und Papstgeschichte des Mittelalters Beihefte zu J.F. Böhmer, *Regesta Imperii* 16; Cologne 1997) 233; *Councils & Synods, with Other Documents Relating to the Church in England, Volume 1: A.D. 871-1204*, ed. Christopher N.L. Brooke, Martin Brett, and Dorothy Whitelock (Oxford 1981) 1.1011 (henceforth *Councils & Synods*).

¹¹ Uta-Renate Blumenthal, 'Conciliar Canons and Manuscripts: The Implications of their Transmission in the Eleventh Century', *Proceedings Munich 1992* 378; see also Gregory VII, *Epistolae vagantes*, ed. and trans. H.E.J. Cowdrey (Oxford 1982) 14-19, no. 6-8.

¹² WH - : JL 15377 = *Papsturkunden in Frankreich, neue Folge, 4: Picardie*, ed. Johannes Ramackers (Abh. Gött. 3e Folge 23; Göttingen 1940) 207-210 no. 154.

¹³ Firenze, Biblioteca Medicea Laurenziana S. Marco 599. The canons are on fol. 49ra-55ra, with the records of the Vallombrosan congregations in 1179 and 1188 on fol. 47r-48r and 48v respectively; see also Fransen, 'Les canonistes et Latran III' 39-40.

detailing the events of the meeting. Gérard Fransen pointed to a clause in the narrative whereby the abbot of Vallombrosa elected to hold a council ‘following the order of the aforementioned Pope Alexander and after having taken the counsel of his fellow abbots’.¹⁴ Fransen indicated that it showed the almost immediate re-promulgation of the conciliar canons, but the text is in fact slightly more ambiguous than he suggested.

The idea that conciliar canons were re-promulgated locally has an extensive pedigree. As well as Robert Somerville’s establishment of an Innocentine reform ‘agenda’ in the councils of the 1130s,¹⁵ John of Salisbury stated that Eugenius III’s council at Cremona was held to disseminate the 1148 canons of Reims in Italy.¹⁶ The repetition of conciliar canons had other uses, too: Timothy Reuter argued that the series of councils held locally by the popes during their various exiles from Rome were ‘one of the main ways in which the reformed papacy made its influence felt’.¹⁷ Yet the main narrative sources for the 1179 canons – the *Historia* of William of Tyre and the *Historia* and *Chronica* of Roger of Howden – omit any mention of local synods called to re-promulgate the canons.¹⁸ William explicitly

¹⁴ Firenze, Biblioteca Medicea Laurenziana S. Marco 599, fol. 47r.

¹⁵ Robert Somerville, ‘The Councils of Pope Calixtus II: Reims 1119’, *Proceedings Salamanca 1976* 48-9; idem, ‘The canons of Reims (1131)’, *BMCL* 5 (1975) 125-127, 130; idem, ‘The Council of Pisa, 1135: A Re-examination of the Evidence for the Canons’, *Speculum* 45 (1970) 109-11; idem, ‘Another Re-examination of the Council of Pisa, 1135’, *Readers, Texts and Compilers in the Earlier Middle Ages. Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, ed. Martin Brett and Kathleen G. Cushing (Farnham 2009) 103-105, with the texts on 109-10; idem, *Councils of Urban II, vol. 1: Decreta Claromontensia* (AHP Supplementa, 1; Amsterdam 1972) 41.

¹⁶ Reims (1148) = Mansi 21.711-8; John of Salisbury, *Historia Pontificalis*, ed. and trans. Marjorie Chibnall (Oxford 1986) 50.

¹⁷ Timothy Reuter, ‘A List of Bishops Attending the Council of Tours (1163)’, *AHC* 8 (1976) 116.

¹⁸ Roger of Howden, *Chronica Magistri Rogeri de Houedene*, ed. William Stubbs (RS 51; London 1868-71) 2.171; Roger of Howden, *Gesta Regis Henrici Secundi Benedicti Abbatis*, ed. William Stubbs (RS 49; London 1867) 1.222.

attests an even less authoritative restatement of the conciliar canons when he omitted them from his chronicle and instead directed any who were interested in the decrees' contents to the copy lodged in the library at Tyre.¹⁹ These narratives are the most detailed, and the absence of any reference to local re-promulgation of the canons suggests that the Vallombrosan manuscript does not refer to a broad order or mandate to reproduce the decrees' texts.

Combined with the lack of a papal letter promulgating the canons, these suggest that there was no authoritative and direct papal involvement in the canons' dissemination. All of this is in keeping with the localised dissemination of conciliar canons that existed for pre-Gratian councils. Yet while that supports the idea that the 1179 conciliar decrees were not immediately incorporated into every law book, the details of their reception also suggest that the conciliar decrees were not universally considered to be untouchable precedents, and that multiple versions circulated. There are the usual small differences between manuscripts, of which a few may represent different manuscript traditions of the decrees. Some of these traditions appear in multiple manuscripts, others in only the one.²⁰ There are a couple of larger differences: in three decretal collections of the 'Worcester' group, the two-thirds majority in c. 1, *Licet de*

¹⁹ William of Tyre, *Willelmi Tyrensis Archiepiscopi Chronicon*, ed. R.B.C. Huygens (CCCM 63; Turnhout 1986) 998: 'Cuius siquis et statuta et episcoporum nomina, numerum et titulos scire desiderat, relegat scriptum quod nos ad preces sanctorum patrum, qui eidem synodo interfuerunt, confecimus diligenter, quod in archivo sancte Tyrensis ecclesie inter ceteros, quos eidem ecclesie contulimus libros, cui iam sex annis prefuimus, iussimus collocari'.

²⁰ A case in point is c. 17, on the *ius patronatus*. In the canon, a limit was placed on the time between a benefice becoming vacant, and the subsequent election of a new holder to the vacancy. However, across the manuscript tradition, that limit changes: in some manuscripts, it is three months, in some two, in some six, and in one twelve, although that may simply be the result of scribal error. See Joshua Tate, 'The Third Lateran Council and the *Ius Patronatus* in England', *Proceedings Esztergom 2008* 598-599; Herold, 'Die Canones' 75 l.12.

uitanda, has been altered to three-quarters.²¹ That is likely to be a familial scribal error, a hypothesis supported by the presence of a similar anomaly in a further set of four manuscripts; there is no known link between those four manuscripts and the ‘Worcester’ family.²²

At the same time, c. 4, *Cum apostolus*, seems to exist in two different versions. In the middle of the canon, there sits a clause which prohibits bishops on visitations receiving what the canon terms ‘sumptuous meals’. The section is fairly lengthy, but its manuscript transmission is less than certain. While both the COD and the edition of the canons edited by Walter Herold included the phrase in c. 4,²³ it seems to have entered into the printed tradition with the *Editio Romana*;²⁴ it is absent from Crabbe’s edition of the *Appendix Concilii Lateranensis*, and from the early reprint by Binius.²⁵ In terms of the manuscript tradition, however, the picture is, if anything, more confused. Both canonical and non-canonical manuscripts of the 1179 canons lack the phrase, including the Lincoln *Appendix*,²⁶ *Roffensis*,²⁷ Reims

²¹ Cambridge, Peterhouse 193, fol. 223rb-223va; Ferdinand Schönsteiner, ‘Die Collectio Claustro-neoburgensis: Eine neu entdeckte Kanonsammlung’, *Jahrbuch des Stiftes Klosterneuburg* 2 (1909) 1-154, see photo of canon facing p.1; London, BL, Cotton Vitellius E.xiii, fol. 205vb; on the ‘Worcester’ group itself, see Charles Duggan, *Twelfth-Century Decretal Collections and their Contribution to English History* (London 1963) 95-110, especially his comment that ‘the Klosterneuburg collection is seriously defective in technical and historical details’ at 96 and the analysis of the *Cottoniana* and *Petrihusensis* at 103-109.

²² In the set of four manuscripts, the same canon changes the two-thirds majority to three-quarters on two occasions, but the final mention returns to two-thirds: Berlin, SB Savigny 3, fol. 181rb-181va; Firenze, Biblioteca Medicea Laurenziana, S. Marco 762, fol. 129ra; München, BSB Clm 11316, fol. 116r-120r; and the *Florianensis* decretal collection now in Vienna, as detailed in Herold, ‘Die Canones’ 36.

²³ COD³ 213; Herold, ‘Die Canones’ 49.

²⁴ *Conciliarum generalium ecclesiae catholicae, Pauli V. Pont. Max. auctoritate editus* (Rome 1612) 4.28.

²⁵ *Concilia omnia, tam generalia quam particularia*, ed. Phillipe Crabbe (2nd ed. Cologne 1551) 2.838; *Concilia generalia, et provincialia quaecunque reperiri potuerunt omnia*, ed. Severus Binius (Cologne 1606) 3.1345-1350.

²⁶ Lincoln, Cathedral and Chapter Library 121, fol. 55v.

674,²⁸ *Bambergensis*, *Lipsiensis*, and *Erlangensis* of the ‘Bamberg’ group of manuscripts,²⁹ and where the canon appears in the *Brugensis* collection in Vatican Ottob. lat. 3027.³⁰ Yet a number of manuscripts include the clause, including the *Petrihusensis* and *Alcobacensis I* decretal collections, the manuscript in which the *Cheltenhamensis* collection also falls, and the Cambridge, St John’s College manuscript of the *Appendix Concilii Lateranensis*.³¹ While these could all be (theoretically) linked in some way,³² the presence of the clause in further traditions including Firenze, Bibliotheca Medicea Laurenziana S. Marco 762,³³ the *Parisiensis I* decretal collection³⁴ and the copy of the 1179 canons in both the *Breviarium* and the *Liber Extra* manuscripts³⁵ – which also helps to explain the clause’s presence in the *Editio Romana* – suggests two different versions of the decrees, with either an accidental alteration, perhaps through a marginal addition or eye-skip, or a change made more deliberately.

Any account here of the manuscript transmission’s complexity is of necessity brief. While these differences are critical to the study of the canons’ overall transmission, the

²⁷ London, BL Royal 10.C.iv, fol. 137rb-137va.

²⁸ Reims, BM 674, fol. 154ra.

²⁹ Bamberg, SB Can.17, fol. 47vb; Erlangen, UB 342, fol. 291vb; see also the notes to Herold, ‘Die Canones’ 49.

³⁰ BAV Ottob.lat. 3027, fol. 19v-20r.

³¹ Cambridge, Peterhouse 193, fol. 225va; Lisbon, BN Alcobaça 144, fol. 2r-v; London, BL Egerton 2819, fol. 13rb; Cambridge, St John’s College 148 (F.11), fol. 70r.

³² *Petrihusensis* and *Cheltenhamensis* are members of the same group of decretal collections, the Worcester group; Charles Duggan hypothesised a link between the ‘Worcester’ collections and *Alcobacensis*, while the order of the canons in Egerton 2819 is highly reminiscent of that in the St John’s *Appendix*, which theoretically used a variant of the Worcester family: see Charles Duggan, ‘English Canonists and the *Appendix Concilii Lateranensis* with an Analysis of Saint John’s College, Cambridge, MS 148’, *Traditio* 18 (1962) 459-68.

³³ Firenze, Biblioteca Medicea Laurenziana S. Marco 762, fol. 121rb.

³⁴ Paris, BN lat. 1596, fol. 8v-9r.

³⁵ 1 Comp. 3.34.6 = Sigüenza, Biblioteca del Cabildo 10, fol. 80rb; X 3.39.6 = Firenze, BN Centrale Pal. 157, fol. 130va-b.

purpose of this paper is instead to draw attention to three manuscripts of the canons where there are substantial differences between the copies transmitted and those that are published. The reasons behind the disparity between the published canons and the manuscripts differ: in two cases, later alterations are the cause, while in the third the motivations for the change are more troublesome to detect.

The London and Berlin manuscripts demonstrate the process of legal excerpting. *Claudiana* is a late-twelfth or early-thirteenth century English manuscript.³⁶ Charles Duggan dated the collection itself to no earlier than 1185, and likely later.³⁷ Although the canons fall within a block of material common to both *Claudiana* and its sister collection, *Bridlingtonensis*, they were not included in the latter.³⁸ There is no obvious explanation for the absence, and in any case the copies of the canons in *Claudiana*, described by Holtzmann as ‘an original revision’,³⁹ were not drafts or agenda as hypothesised by the Cheneys.⁴⁰ Instead, they present a redacted version.

Claudiana is the only decretal collection to contain the 1179 conciliar canons as a block within its structure.⁴¹ Partially as a result, both Duggan and Holtzmann considered the conciliar

³⁶ London, BL Cotton Claudius A.iv, fol. 189-216, with the canons on fol. 204vb-206vb.

³⁷ Duggan, *Twelfth-Century Decretal Collections* 84-95, especially 85; on 88 he states that ‘in the Claudian manuscript [the familial archetype] appears in a single unbroken sequence at the beginning of the completed collection’; this section incorporates the conciliar canons, although their absence from *Bridlingtonensis* means that their inclusion in the archetype is debatable. Also discussed in Charles Duggan, ‘Decretal Collections from Gratian’s *Decretum* to the *Compilationes antiquae*’, *History of Medieval Canon Law 1140-1234* 261.

³⁸ Duggan, *Twelfth-Century Decretal Collections* 91.

³⁹ Holtzmann-Cheney 132 n.2.

⁴⁰ Holtzmann-Cheney 132.

⁴¹ In contrast, most copies of the canons fall at the beginning or end of a collection. The only case where this does not hold true is in *Cusana* which, rather oddly, splits the conciliar canons into smaller sections that are dispersed through the collection, see Holtzmann-Cheney 66-74 and 70-4 for the analysis.

decrees to be a single chapter in the collection. Within that chapter, the canons were distinguished from each other by the use of twenty-three rubrics, while the marginal enumeration counts in red Roman numerals from i to xxviii.⁴² The disparity between the number of rubrics, the marginal enumeration, and the role of the canons as a single chapter of the decretal collection helps to obscure the fact that the copy of the canons in *Claudiana* was incomplete, with only nineteen of the twenty-seven canons found in the COD copied out.

As well as the eight canons that were omitted, several of those that remain were edited or adapted before being copied out. To deal with the absent canons first, they include the long canon that limited the privileges of the Templars and Hospitallers, the canon against the schismatics, a canon prohibiting lay exactions, the canon against tournaments, and the canon that dealt with the *ius patronatus*.⁴³ These canons have little in common, except perhaps the fact that they were perceived to be too contentious or irrelevant to ecclesiastical government in England. Of the canons that were included, two were split under multiple rubrics, while nine can be found essentially as they are in the COD.⁴⁴ The remaining eight canons were all edited or adapted, mostly to remove either narrative or repetitive content in a way that streamlines the legal content of the canon. Scene-setting narrative sections were removed. C.23, for example, *Cum dicat apostolus*, concerned the provisions for leper colonies. In *Claudiana*, the narrative that explains why the canon is necessary is absent. Instead, the canon begins with ‘We order that’, several

⁴² London, BL Cotton Claudius A.iv, fol. 204vb-206vb, although the numbering in Roman has occasionally been cut away, probably during the binding process.

⁴³ C.2, 8, 9, 14, 15, 17, 19, 20 as in COD³. As the most accessible and established version, the numbering of the COD³ will be used when referring to the canons.

⁴⁴ The two that were split were cc. 1 and 3, *Licet de uitanda* and *Cum in sacris ordinibus*. They provide c. 12-13 and 14-15 of the arabic numbering, and c. xvii-xviii and xvix and xx of the Roman numbering. The entire canons are c. 22, 10, 18, 6, 16, 25, 26 and 5, which are c. 3 (iii, iv), 6, 7, 8, 9, 10, 11 (c. vii-xvi) and 19.

clauses in.⁴⁵ The lengthy passage detailing the iniquities perpetuated on the colonies had been excised. The result is a much shortened canon:

COD⁴⁶

London, BL Cotton Claudius A.iv, fol. 206va-b.

Cum dicat Apostolus, abundantiore honore membrum infirmioribus deferendum, ecclesiastici quidam, quae sua sunt, non quae Iesu Christi, quaerentes, leprosi qui cum sanis habitare non possunt et ad ecclesiam cum aliis convenire, ecclesias et coemeteria non permittunt habere nec proprii iuvare ministerio sacerdotis. Quod quia procul a pietate christiana esse dignoscitur, de benignitate apostolica constituimus, ut ubicumque tot simul leprosi sub communi vita fuerint congregati, qui ecclesiam sibi cum coemeterio constituere, et proprio gaudere valeant presbytero, sine contradictione aliqua permittantur habere. Caveant tamen, ut iniuriosi veteribus ecclesiis de iure parochiali nequaquam existant. Quod namque eis pro pietate conceditur, ad aliorum iniuriam nolumus redundare. Statuimus etiam, ut de hortis et

Statuimus quoque ut ubicumque tot leprosi simul sub communi vita fuerint congregati qui ecclesiam construere cum cimiterio igitur, et proprio valeant gaudere presbytero, sine contradictione aliqua permittantur habere. Caveant tamen ut iniuriosi veteribus de iure parochiale nequaquam existant. Quod enim eis pro pietate conceditur, ad aliorum iniuriam nolumus redundare. Statuimus etiam ut de ortis et

⁴⁵ London, BL Cotton Claudius A.iv, fol. 206va-206vb.

⁴⁶ COD³ 222-223; but see also Herold, 'Die Canones' 80-81.

nutrimentis animalium suorum, nutrimentis animalium suorum
decimas tribuere non cogantur. decimas dare non cogantur.

Other canons were the focus of an even more discerning pen. C. 27, a gargantuan canon that criticised both heretics and mercenaries, was cut down to only five clauses.⁴⁷ C.11, on clerical celibacy, was reduced to a single sentence condemning homosexuality.⁴⁸ In these two cases, a canon which was long and unwieldy and a canon which repeated a by-then generally accepted precedent were shortened to put forward only the most pertinent legal extracts.

When the Cheneys collected together Holtzmann's papers, they suggested that the copies of the canons found in the *Claudiana* collection were drafts or original revisions.⁴⁹ The 1179 canons were not the only conciliar decrees incorporated into the collection: a set of decrees purporting to be those of the 1175 provincial council at Westminster were identified by Mary Cheney to represent drafts and propositions for the 1175 synodal decrees, rather than full canons themselves.⁵⁰ The presence of other 'draft' canons may explain the simplicity of the Cheneys' commentary on the conciliar canons in the *Claudiana* manuscript. Even a cursory comparison of the propositions and the *Claudiana* canons demonstrates that the latter are longer, more legally precise, and contain sanctions and stipulations that differ from the vague intimations of the propositions. So the canons cannot be both drafts and a redacted version at the same time without significant mental contortions. While neither approach can be entirely ruled out, the balance of the evidence suggests to me that the canons were excised from a fuller version, rather than representing drafts or propositions of the canons.

⁴⁷ London, BL Cotton Claudius A.iv, fol. 204vb.

⁴⁸ London, BL Cotton Claudius A.iv, fol. 206va.

⁴⁹ Holtzmann-Cheney 132.

⁵⁰ Mary G. Cheney, 'The Council of Westminster 1175: New Light on an Old Source', SCH 11 (1975) 61-68; for the additional details, see *Councils & Synods* 1.965-993, including the list of propositions at 1.978-981.

A similar logic suggests that the copy of the canons in Berlin Staatsbibliothek Savigny 3 also represents a redacted version of the decrees. There, they fall after a variant of Anselm of Lucca that is of interest for its own reasons.⁵¹ What differentiates the Berlin manuscript of the 1179 canons from *Claudiana* is the extent of the alteration. Savigny 3 lacks only a single canon from the common stock, c. 17, but the remaining canons were treated far more ruthlessly than those in *Claudiana*. Twenty-three of the twenty-six that were included were shortened in some way. Eleven lack the majority of their early constructive narratives, leaving the canons as legalistic principles and regulations and little else.⁵² A further eight are also confused when compared to the COD text.⁵³ Again, the text that has been removed was all surplus to the requirements of someone who only wanted the regulations from the canons. An example is provided by c. 6 of the council, *Reprehensibilis valde*, which was severely truncated in several places, with excess clauses removed from both the beginning of and within its text.⁵⁴

COD⁵⁵ Berlin, SB Savigny 3 fol.
178ra-b

Reprehensibilis valde
consuetudo in quibusdam
partibus inolevit, ut fratres et
coepiscopi nostri seu etiam
archidiaconi, quos appellaturos

⁵¹ Berlin, SB Savigny 3, fol. 178ra-181vb; Linda Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections before 1140* (MGH Hilfsmittel 21; Hannover 2005) 206-207; Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140). A Bibliographical Guide to the Manuscripts and Literature* (Washington D.C. 1999) 279.

⁵² Canons 7, 6, 25, 23, 4, 16, 20, 19, 27, 3 and 1, which are c.1-2, 3, 5, 7.1, 10, 17, 18, 20, 24, 25 and 26 in the Savigny manuscript.

⁵³ C.24, 26, 18, 12, 10, 14.2, 8 and 11, which are c.4, 6, 7.2, 8, 9, 12, 16.1, and 21-3 in the Savigny manuscript.

⁵⁴ Berlin, SB Savigny 3, fol. 178ra-b.

⁵⁵ COD³ 214. For the same canon, see also Herold, 'Die Canones' 65 and X 2.28.26.

in causis suis existimant, nulla penitus admonitione praemissa suspensionis vel excommunicationis in eos ferant sententiam. Alii etiam, dum superioris sententiam et disciplinam canonicam reformidant, sine ullo gravamine appellationem obiciunt et ad defensionem iniquitatis usurpant, quod ad subsidium innocentium dignoscitur institutum. Quocirca ne vel praelati valeant sine causa gravare subiectos vel subditi pro sua voluntate sub appellationis obtentu correctionem valeant eludere praelatorum, praesenti decreto statuimus, ut nec praelati, nisi canonica commonitione praemissa, suspensionis vel excommunicationis sententiam proferant in subiectos, nisi forte talis sit culpa, quae ipso genere suo excommunicationis poenam inducat; nec subiecti contra disciplinam ecclesiasticam ante ingressum causae in vocem appellationis prorumpant. Si vero quisquam pro sua necessitate crediderit appellandum, competens ei ad prosequendam appellationem terminus praefigatur, infra quem, si forte prosequi

[P]raelati sine canonica ammonitione premissa, suspensionis uel excommunicationis sententiam non proferant in subiectos, nisi forte talis sit cum culpa quae ipso suo genere suspensionis uel excommunicationis penam inducit. Nec subiecti contra disciplinam ecclesiasticam ante ingressum cause in uocem appellationis erumpant. Si quisquam pro sua necessitate crediderit appellandum, competens ei ad prosequendam appellationem terminus

neglexerit, libere tunc episcopus sua auctoritate utatur. Si autem in quocumque negotio aliquis appellaverit et eo qui appellatus fuerit veniente, qui appellaverit venire neglexerit, si proprium quid habuit, competentem ei recompensationem faciat expensarum, ut hoc saltem timore perterritus, in gravamen alterius non facile quis appellet. Praecipue vero in locis religiosis hoc volumus observari, ne monachi sive quicumque religiosi, cum pro aliquo excessu fuerint corrigendi, contra regularem praelati sui et capituli disciplinam appellare praesumant, sed humiliter ac devote suscipiant quod pro salute sua utiliter fuerit eis iniunctum.

prefigatur, infra quem si prosequi forte neglexerit, libere tunc episcopus auctoritate sua utatur. Si in quocumque negotio aliquis appellauerit et eo qui appellatus fuerit ueniente, qui appellauerat uenire neglexerit. si proprium quid habuit, competetem illi recompensationem faciat expensarum.

Precipue in locis religiosis id uolumus obseruari, ut cum pro aliquo excessu fuerint corrigendi, contra regularem praelati sui uel capituli sui disciplinam appellare non presumant. Sed humiliter ac deuote suscipiant quod pro salute sua fuerit eis iniunctum.

The nature of the editorial selection in both *Claudiana* and the Savigny manuscript is strongly reminiscent of that found in the decretal collections. There, surplus information was removed from other lengthy passages in order to streamline the legal content of the selected extracts.⁵⁶ It intimates, therefore, that a trained lawyer was responsible for the pruning of the canons in both *Claudiana* and the Berlin manuscript. Since the

⁵⁶ See, for example the example of the decretal 'Cum sacrosancta Romana ecclesia' (WH 299 = JL 12020), as given in Heribert Schmitz, *Appellatio Extraiudicialis: Entwicklungslinien einer kirchlichen Gerichtsbarkeit über die Verwaltung im Zeitalter der klassischen Kanonistik (1140-1348)* (Münchener Theologische Studien 3, kanonistische Abteilung 29; Munich 1970) 23-29.

manuscripts have two very different provenances – England and, possibly, southern France or northern Italy⁵⁷ – it is unlikely that the same lawyer was responsible for both copies of the canons. In any case, it is also easy to demonstrate that the edited copies of the canons found in the Berlin and *Claudiana* manuscripts were not dependent. Both contain material lacking from the other.⁵⁸

As such, these two manuscripts help demonstrate how individual local clerics chose to treat the canons. Their inclusion alongside other legal texts continues a long tradition of using conciliar canons as authorities. What is perhaps surprising, however, is the fact that a local canonist was willing to treat the canons of a ‘general’ council as extracts that could be reduced to such simplistic legal principles. While the decision to label the 1179 Lateran council as ‘ecumenical’ was made later and not by its attendees, the importance of the council to contemporary canonists has been long accepted. It is readily evidenced by the canons’ presence in the decretal collections and by canonists, theologians and even local clerics referring to the conciliar decrees in their commentaries and letters as early as the mid-1180s.⁵⁹ Yet the canons were blatantly not considered to be

⁵⁷ The Berlin manuscript’s earliest known provenance is France, where it was part of the collection of Hauteserre de Salvaion in the seventeenth century; Fournier-LeBras located the compilation of the collection, known as the *Collectio 13 librorum* and compiled using Anselm A ‘Aucta’, to Poitiers, in ca. 1090-1100, although Martin Brett has expressed, to me, reservations about accepting such a date without query. For a summary of the literature, see Kéry, *Biographical guide* 226, which dated the manuscript itself to the twelfth century.

⁵⁸ London BL Claudius A.iv, fol. 206va-b, includes a section of the c. 23 that is lacking in the Berlin manuscript. In contrast, Savigny 3, fol. 181ra incorporates a section of c.27 beginning ‘In Gasconia Albigesio et partibus Tolosanis et aliis locis’, while the section of the canon included in *Claudiana* was taken from later in the canon, see London, BL Cotton Claudius A.iv, fol. 204vb.

⁵⁹ Christopher Cheney, ‘The Numbering of the Lateran Councils of 1179 and 1215’, *Medieval Texts and Studies* (Oxford 1973) 203-208. See also Charles Duggan, ‘A Durham Canonical Manuscript of the Late-Twelfth Century’, *SCH* 2 (1965) 183; also on the collections, see Herold, ‘Die Canones’, *passim*. On the use of the 1179 canons by theologians, the best study remains Jean

unalterable precedents, possessing an overarching superiority as has been implied. In the case of these two manuscripts, the conciliar canons were obviously viewed in a similar fashion to papal decretals. They provided the lawyers with the legally pertinent information that they required, and nothing either more, or less.

The final manuscript is, in its own way, even more puzzling than those in London and Berlin. Vatican Library, Reg. lat. 984 was written, most likely, in the later-twelfth century but has a series of marginal and interlinear annotations made by a correcting hand in darker ink. That said, even these corrections cannot hide the gulf between the text of c.27 of the 1179 council as presented in Reg. lat. 984 and that published in the COD. The texts diverge significantly, to a point that throws doubt on the idea that the two emerged from a direct archetype.

In the COD, the text of c.27 is long and unwieldy.⁶⁰ It attacked heretics, particularly those in southern France, mercenaries, and all who supported either group. There is a natural-seeming break around a third of the way through, where the focus of the canon switches from heretics to mercenaries before, in the final third, the canon ostensibly deals with both. It remains debated whether or not the sections before and after the break represent two discrete canons, as argued by Anne Duggan, or whether they were intended to be one long decree, as Herold believed.⁶¹ For the moment the critical point is that the manuscripts suggest that medieval scribes were as confused as modern authors. There is no consistency in the way in which they treated the canon. In the traditions investigated for my dissertation, it appears whole twenty-four times;⁶² in two

Longère, 'L'influence de Latran III sur quelques ouvrages de théologie morale', *Le troisième concile de Latran* 91-103.

⁶⁰ COD³ 224-5.

⁶¹ Anne J. Duggan, 'Master of the Decretals', *Pope Alexander III (1159-81): The Art of Survival*, ed. Peter C. Clarke and Anne J. Duggan (Aldershot 2012) 415-6; Herold, 'Die Canones' 33-4.

⁶² Overall, see Herold, 'Die Canones' 27, and e.g. *Quinque Compilationones antiquae necnon Collectio canonum Lipsiensis*, ed. Emil Friedberg (Leipzig 1882) 189 (*Lips.* pr. 3); Josef Juncker, 'Die Collectio Berolinensis', ZRG Kan.

consecutive but separated sections fourteen times;⁶³ and as two distinct canons, separated by others, four times.⁶⁴ Some of these manuscripts were legal, others were not. The non-legal manuscripts tend to contain either the canon entire, as in the Vallombrosan manuscript,⁶⁵ or in two consecutive sections, as in William of Newburgh.⁶⁶ Canonical or legal manuscripts account for all three formats of the canon, however. In both the *Cantuariensis* decretal collection and the appendix to the *Collectio Atrebatensis* in Arras 425, the canon is broken into two consecutive sections. In the *Dertusensis*, *Duacensis* and *Ambrosiana* collections, as in the copy found included alongside other legal material in Oxford Oriel College 53, the canon is entire.⁶⁷ In *Alcobacensis I*, however, the canons were distinctly separate.

Abt. 44 (1924) 348 (*I Berol.* c. 22); Holtzmann-Cheney 71 (*Cus.* c. 65); Holtzmann-Cheney 64 (*Duac.* c. 2); Oxford, Oriel College 53, fol. 255va-255vb; Tortosa, Biblioteca Capitulare 144, fol. 30v-31v (*Dert.* c. 77); Holtzmann-Cheney 42 (*Ambros.* c. 72); London, BL Royal 10.C.iv, fol. 139va-139vb (*Roff.* c. 26); London, BL Egerton 2819, fol. 11ra; Lincoln, Cathedral and Chapter 121, fol. 54v-55r; Holtzmann-Cheney 48 (*Flor.* c. 14); Walter Deeters, *Die Bambergensisgruppe der Dekretalensammlungen des 12. Jahrhunderts* (Bonn 1956) 315-316 (*Erl.* c. 14); BAV Arch.S.Pietro C. 110, fol. 131r, right margin.

⁶³ London, BL, Arundel 490, fol. 219ra-219rb (*Eberb.* 19.2-3); *Die Canonesammlungen zwischen Gratian und Bernhard von Pavia*, ed. Emil Friedberg (Leipzig 1897) 52 (*I Par.* 4-5); Cambridge, Peterhouse 193, fol. 223vb-224rb (*Pet.* pr. c. 6-7) and therefore likely *Cottoniana* too; Cambridge, St John's College 148 (F.11), fol. 63v-65r (St John's *Appendix* c. 4-5); Herold, 'Die Canones' 27; Arras, BM 425, fol. 72r-73r; London, BL, Royal 10.B.iv, fol. 62rb-62va (*Cant.* 4.3, 4.4).

⁶⁴ Brussels, Bibliothèque royale de Belgique II 2532, fol. 212vb, 213rb; Deeters, *Die Bambergensisgruppe* 315-6; Lisbon, BN Alcobaça 144, fol. 5r, 7r.

⁶⁵ Firenze, Biblioteca Medicea Laurenziana S Marco 599, fol. 52ra-va; see also Howden, *Gesta* 1.228-9 as an example taken from the chronicle of Benedict of Peterborough.

⁶⁶ William of Newburgh, *Historia in Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. Richard Howlett (RS 82; London 1884-1890) 1.208-10.

⁶⁷ Oriel 53, fol. 355va-355vb.

Vatican Reg. lat. 984 adds a new dimension to this problem.⁶⁸ The canon comprises two separate but consecutive decrees, as in a host of canonical compilations. But the wording and contents of those decrees are, as already highlighted, different. The two canons are self-contained, with no cross-over. Mercenaries were not equated with heretics until the later annotator made his changes. Some portions of the material are repeated in both canons, but mostly where they provide stock phrases such as the lead-in clauses for the remission of penance. At the same time, the remission of penance offered is different for those who fought heretics than for those who fought mercenaries. In Vatican Reg. lat. 984, those who fought heretics were allowed a remission on half their penance, rather than all their penance for two years as was given to those who opposed mercenaries, in large part because the two canons are completely separated out.⁶⁹ The text also omits the rather odd anathema proclaimed on heretics, although the later annotator added it back into Vatican Reg. lat. 984, clearly following an exemplar of some form. In and of itself, that removal of the anathema marks a considerable adjustment: it removes one of the more counter-intuitive elements of the canon, because why anathematise a heretic? It also draws the text of the canon closer to that promulgated against heresy at Tours in 1163, although there remains no great overlap between the two canons as

⁶⁸ BAV Reg.lat. 984, fol. 4r-5r.

⁶⁹ 'We, however, trusting in the mercy of God and of the holy apostles Peter and Paul, grant those who, if they devote themselves to [heretics'] expulsion for one year, or who work for the conversion that we desire, a remission of half the penance imposed on them... We... grant to faithful Christians who take up arms against [mercenaries], and who on the advice of bishops or other prelates seek to drive them out, a remission for two years of penance imposed on them, or, if their service shall be longer, we entrust it to the discretion of the bishops, to whom this task has been committed, to grant greater indulgence, according to their judgment, in proportion to the degree of their toil'. BAV Reg.lat. 984, fol. 4v; translation based on *The decrees of the Ecumenical Councils, vol I: Nicaea to Lateran V*, ed. and trans. Norman Tanner (Washington D.C. 1990) with emendations as required by the manuscript text.

promulgated.⁷⁰ Overall, however, the texts of the two canons in Vatican Reg. lat. 984 are clearer, more streamlined, and more legally precise than the text preserved elsewhere.

The fundamental question, therefore, is how such a significant difference between c.27 in Vatican Reg. lat. 984 and elsewhere could exist. There is always the possibility that it represents an anomalous tradition, the result of a scribe's mistake or alteration. It could equally represent a different stage in the drafting of the canon that happened to be preserved in this one manuscript, given hints elsewhere in the manuscript tradition that multiple versions of the canons circulated. Both these suggestions are valid, and deserve serious consideration. Palaeographically, the hand probably dates to the late-twelfth century; circumstantial evidence links the manuscript to the abbey of St Martial in Limoges at around the same date. The preface to the canons, for example, suggests a central French provenance since it uses, correctly, all the titles of Henry of England and Louis of France, and the link to St Martial is strengthened by the presence of a mixed chronicle/inventory of the abbey to 1174.⁷¹ If the manuscript was linked to St Martial, it is a remarkably close geographical copy of the canons to the Languedoc, a region that troubled the church for exactly the issues discussed in the canon. Although the south of France was far from the only place where mercenaries and heretics were visible, with the north of France being probably the most obvious alternative,⁷² Languedoc has been linked with c. 27 of the 1179 canons in the past.⁷³

⁷⁰ The substantive difference between the two was that the decree of Tours condemned heretics but not their protectors. Robert Somerville, *Pope Alexander III and the council of Tours (1163)* (Berkeley 1977) 50; Mansi 21.1177-8.

⁷¹ BAV Reg. lat. 984, fol. 1v, 'In uicesimo itaque anno illius apostolatus regnante Ludovico Rege Francorum, qui fuit filius Ludovici Regis, et regnante etiam cum filiis Henrico nobilissimo Rege Anglorum, Duce Normannorum et Aquitanorum, Comite etiam Pictauentium et Andegauentium'.

⁷² There are many varied interpretations of both heresy and mercenary activity in twelfth-century France and the Low Countries. For a recent perspective, see Malcolm Barber, 'Northern Catharism', *Heresy and the Persecuting Society*:

By the early thirteenth century the library at St Martial included a Gratian, most of the *Corpus Iuris Civilis*, and a copy of the *Decretales*.⁷⁴ Since Gérard Fransen drew scholars' attention to two discrete collections of late-twelfth century canonical *quaestiones* that were, at some point, in the St Martial library, it suggests that a trained canonist may have lived in the monastery.⁷⁵ In turn, that opens the possibility that the two, different canons found in Vatican Reg. lat. 984 represent the attempt of a local canonist to make sense of a confusing

Essays in Honour of R.I. Moore, ed. Michael Frassetto (Studies in the History of Christian Tradition 131; Leiden 2006). As far as the use of mercenaries is concerned, the Angevin Henry II used Brabanters at the siege of Dol: John D. Hosler, 'Revisiting Mercenaries under Henry FitzEmpress, 1167-88', *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages*, ed. John France (Leiden 2008) 36-38, while Henry of France, as archbishop of Reims, refers to 'coterelli' burning a church and killing men in a letter to Alexander III; Alexander's reply, referring to the letter, was printed in *Veterum scriptorum et monumentorum historicorum dogmaticorum moralium, amplissima collectio*, ed. Edmund Martène and Ursine Durand (Paris 1724-33) 2.866. The use of mercenaries in a more general sense was condemned by an 1171 treaty between Louis VII and the Emperor Frederick, *Die Urkunden Friedrichs I. 1168-1180*, ed. Heinrich Appelt (MGH Diplomata 10.3; Hannover 1985) 47.

⁷³ Elaine Graham-Leigh, *The Southern French Nobility and the Albigensian Crusade* (Woodbridge 2005) 96; Laurent Macé, *Les comtes de Toulouse et leur entourage, XIIe – XIIIe siècles. Rivalités, alliances et jeux de pouvoir* (Toulouse 2000) 355-358; André Vauchez, 'Les origines de l'hérésie cathare en languedoc, d'après un sermon de l'archevêque de Pise Federico Visconti († 1277)', *Società, Istituzioni, Spiritualità: studi in onore di Cinzio Violante* (Spoleto 1994) 1032-1034 and esp. 1034; see also Walter Wakefield, *Heresy, Crusade and Inquisition in Southern France* (London 1974) 85-86, 100.

⁷⁴ *Chroniques de Saint Martial de Limoges*, ed. Henri Duplès-Agier (Paris 1874) 337-338.

⁷⁵ Although Fransen was characteristically cautious about saying definitively that the manuscripts were in St Martial by ca. 1200, and were not later additions to the monastery's holdings: Gérard Fransen, '*Questiones Vaticanae, Urgellenses, Lemovicenses*', ZRG. Kan. Abt. 86 (1969) 438-439; on the dating idem, '*Questiones Lemovicenses II*', ZRG Kan. Abt. 107 (1990) 156-171, at 158: 'Cette allusion, précédée de "Hodie" me paraît due à un copiste et ne pas faire partie du text original', referring to WH 194: JL 14071 = 1 Comp. 2.20.18; on the manuscript's provenance, see idem '*Questiones Lemovicenses II*' 160.

precedent by turning it into two discrete canons that could actually be used.

But is that likely? The Berlin and London manuscripts mentioned earlier demonstrate that local canonists did feel able to remove material from the canons, but that is not the same as reconstructing a separate precedent with very different contents – even to the point of different levels for the remission of sins. If a local cleric had made that change, then it would be tantamount to forgery. At the same time, additions to decretals frequently resulted in understanding being impeded, rather than aided.⁷⁶ In the Vatican manuscript, the alterations make the underlying meaning clearer, and not more confused. A further criticism of the argument for local change is the fact that, had the canon been considered too vague, then clerics could have requested a papal letter in order to clarify its intentions. The monks of Monte Cassino and Hugh de Puiset, bishop of Durham did just that.⁷⁷ And, of course, it relies on the unprovable presence of a monk with both canonical learning and the gumption to make the changes.

Given that there is evidence elsewhere in the manuscript tradition that numerous versions of individual canons circulated, therefore, it is not improbable that Vatican Reg. lat. 984 preserves, either in part or in entirety, an alternative draft of the canon. If that were the case, then the copy of the canon that appears elsewhere would represent either a different, potentially later, draft or a distorted text. Such a scenario would also explain its confused tone, more in keeping with a text that has undergone alterations than with a legally precise, pre-drafted authority as is

⁷⁶ Charles Duggan noted the use of a ‘garbled conflation’ of two decretals in the *Dekretanhang* in Troyes, BM 103, fol. 265va; Duggan, ‘Decretal Collections’ 256; see also Schmitz’ commentary on WH 299 : JL 12020 = X 2.28.5 concerning appeal, which was hopelessly mangled between its issue and its later appearance in the *Liber Extra*: Schmitz, *Appellatio Extraiudicialis* 23-31.

⁷⁷ Fransen, ‘Les canonistes’ 38, ‘Alexandre III doit intervenir personnellement pour que le concile soit observé’. WH 872: JL 14347 = X 3.26.12; Alexander III to the abbot-elect and the monks of Monte Cassino, 1179 x 1181; WH 207: JL 13868 = 1 Comp. 1.8.9 [*Roff.* 59].

seen elsewhere in the canons. Added to that, in at least two places the manuscript provides hypothetically earlier versions of other decrees. When all this is considered, it is possible that the copy of c.27 in Vatican Reg. lat. 984 in fact contains an earlier version of the canons than that which was disseminated throughout Europe, and which we know thanks to the COD.

Despite an extensive manuscript tradition for the 1179 canons, therefore, it is difficult to sustain the idea that a single version of their text was used across Latin Christendom, or that the canons were considered to be untouchable authorities. Instead, as emphasised by the London and Berlin manuscripts, they were in some cases treated in a similar fashion to decretals, which also explains their inclusion in a number of the decretal collections. Despite the potential for different reasons explaining their divergences, the three manuscripts discussed here demonstrate overall how uncertain the transmission of twelfth-century conciliar canons can be, even after the dissemination of Gratian and the appearance of the decretal collections. Caution is definitely necessary: these are, after all, three manuscripts out of at least fifty-six. But if even these three manuscripts differ from the text of the canons as presented in the COD – which was ultimately based on the canons in the *Appendix Concilii Lateranensis* collection – then it seems to undermine the idea that a particular, papally-determined version of the 1179 canons circulated. It opens up the possibility that the canons can help to link different decretal collections, since they provide a set number of texts that can be used for comparative purposes. It also, however, places the onus for the circulation of the decrees on the local bishops and canonists who used the texts, rather than those who drafted them and in doing so opens the potential for conciliar canons to have enjoyed the same uncertain status as papal decretals in twelfth-century ecclesiastical government.

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Sacerdotal Celibacy in Medieval Hungary

Katarína Štulrajterová

Sacerdotal celibacy is one of the most controversial topics in the history of the Christian Church. While the expression celibacy is used today in the sense of complete abstinence from sexual activity, its original meaning was not being married. Anyone without a living spouse was a ‘caelebs’. Over the centuries many explanations of the Church’s position on celibacy have been proposed: an attempt to allow the clergy to concentrate on spiritual affairs, a genuine desire of the clergy to distinguish themselves from laymen, and even a practical solution by the Church to prevent the dispersal of clerical property. All of these may be partly correct.

Attempts to discover the correct answer has produced a rich literature on the subject. Amongst the most recent works are those of David G. Hunter on early celibacy and Helen Parish which covers the history of celibacy up to modern times and supplies a rich bibliography of previous studies.¹ Leidulf Melve has also written on clerical marriage in the late eleventh century.² Michael Frassetto edited a valuable collection of essays on the subject, and the work of James Brundage is critical for understanding the concept of celibacy within the complexities of canon law.³

¹ David G. Hunter, *Marriage, Celibacy, and Heresy in Ancient Christianity: The Jovinianist Controversy* (Oxford 2007); Helen Parish, *Clerical Celibacy in the West, c.1100-1700* (Farnham 2010).

² Leidulf Melve, ‘The Public Debate on Clerical Marriage in the Late Eleventh Century’, *JEH* 61 (2010) 688-706.

³ Michael Frassetto, *Medieval Purity and Piety: Essays on Medieval Clerical Celibacy and Religious Reform* (New York-London 1998); James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago 1987); see also Christian Cochini, *Les origines apostoliques du célibat sacerdotal* (Geneva 2006); Stefan Heid, *Zölibat in der frühen Kirche: die Anfänge einer Enthaltenspflicht für Kleriker in Ost und West* (Paderborn 1997); Giuseppe Fornasari, *Celibato sacerdotale e “autocoscienza” ecclesial: Per la storia della ‘Nicolaitica haeresis’ nell’occidente medievale* (Udine

Despite this significant interest in sacerdotal celibacy in general, little attention has been paid to the way in which its rules were adopted in the Kingdom of Hungary. In 1861 Augustin Roskovany of his four volume general work on celibacy devoted only a few pages to Hungary, largely quoting the legislation of the Arpadian period verbatim.⁴ His main source seems to have been Peterffy's 1742 edition of the decisions of Synods and Councils held in Hungary.⁵ Apart from these two, Gabriel Adrianyi published a short article in the 1970s, and Waldmüller one in the 1980s that only mention celibacy in passing.⁶ English sources are limited to one short chapter about Hungarian celibacy in Henry Charles Lea's *History of Sacerdotal Celibacy in the Christian Church*.⁷ Finally, Vincent Múcska, writing in Slovak, contributed a short article 'Kotázke celibátu do začiatku 12. storočia' (On Celibacy up to the Beginning of the twelfth Century), which was printed in *Slovanské Štúdie* in 1994. This dearth of analysis may partly reflect scarcity of sources.⁸ In this article I will try to ascertain the date from when it is reasonably certain that celibacy in its modern sense was accepted by the Church in Hungary, and to demonstrate the path the Hungarian church took to ensure acceptance of this doctrine. This work

1981); Filippo Liotta, *La continenza dei chierici nel pensiero canonistico classico: Da Graziano a Gregorio IX* (Milan 1971).

⁴ Ágoston Roskoványi, *Coelibatus et breviarium: duo gravissima clericorum officia e monumentis omnium seculorum demonstrata* (8 vols. Pest 1861-1881). For the period of time in question, the first volume, *Monumenta de coelibatu a sec. I-XIII* (Pest 1861) is especially useful.

⁵ *Sacra Concilia Ecclesiae Romano-catholicae in Regno Hungariae celebrata I.* ed. Carolus Peterffy (Bratislava 1742).

⁶ Gabriel Adrianyi, 'Die Ungarischen Synoden', AHC 8 (1976) 541-575; Lothar Waldmüller, *Die Synoden in Dalmatien, Kroatien und Ungarn: Von der Völkerwanderung bis zum Ende der Arpaden, 1301* (Paderborn 1987).

⁷ Henry Charles Lea, *History of Sacerdotal Celibacy in the Christian Church* (3rd ed. London 1907, 4th ed. London 1932).

⁸ The two most frequently cited are *A Szent István, Szent László es Kálman korabeli törvények es zsinati határozatok forrásai*, ed. Levente Závodszy (Budapest 1904, reprinted Budapest 2002) and *Decreta Regni Mediaevalis Hungariae 1000-1301*, ed. János M. Bak, György Bónis, James Ross Sweeney (3 vols. 2nd rev. ed. Bakersfield, Cal. 1999) (= DRMH 1).

considers the same legislation as my predecessors but attempts a fuller analysis and corrects a few translational errors.

Early Legislation

Celibacy, as now defined, was not a requirement ‘sine qua non’ until the eleventh century, though, in principle, those of the rank of deacon and above were supposed to abstain from having sex with their wives. There were attempts to enforce celibacy on the higher clergy as early as the beginning of the fourth century. Canon 33 of the Council of Elvira (c. 306), ruled that all clergy, other than those in minor orders, should be celibate using the words:⁹

Bishops, presbyters, deacons, and others with a position in the ministry are to abstain completely from sexual intercourse with their wives and from the procreation of children. If anyone disobeys, he shall be removed from his clerical office.

Later in 386, Pope Siricius published a decretal ordering celibacy for ‘priests and levites’, a position restated by Innocent I (402-417). Leo I (440-461) clarified exactly what celibacy for the purposes of this paper was supposed to mean. In his letter to Bishop Rusticus of Narbonne he stated that married men need not separate from their wives on receiving Holy Orders, but [if they remained under the same roof] they could [only] continue living together as ‘brother and sister’.¹⁰ This implies that celibacy

⁹ Samuel Laeuchli, *Sexuality and Power: The Emergence of Canon Law at the Synod of Elvira* (Philadelphia 1972); Maurice Meigne, ‘Concile ou Collection d'Elvire’, RHE 70 (1975) 361-387, and most importantly, Eckhard **Error! Main Document Only**.Reichert, *Die Canones der Synode von Elvira: Einleitung und Kommentar* (Dissertation Universität Hamburg 1990), who presents an edition and commentary.

¹⁰ ‘Epist. ad Rusticum Narbonensem episcopum, Inquis., III Resp.’, PL 54. 1204a: ‘lex continentiae eadem est ministris altaris quae episcopis atque presbyteris, qui cum essent laici sive lectores, licito et uxores ducere et filios procreare potuerunt. Sed cum ad predictos pervenerunt gradus, coepit eis non licere quod licuit. Unde, ut de carnali fiat spirituale conjugium, oportet eos nec dimittere uxores, et quasi non habeant sic habere, quo et salva sit charitas

was to mean sexual continence and not the unmarried state. This position had obvious drawbacks, and there were several attempts to change the rules, all of which were unsuccessful. The situation only started to change with the reforming popes of the eleventh century. The first pope to attempt to enforce a universal canon law on celibacy was Leo IX (1049-1054), who used the expression: ‘if you commit incest with your spiritual daughter, with what conscience do you dare to handle the mystery of the Lord’s body?’¹¹ In 1059 Pope Nicolas (1059-1061) forbade the faithful from attending Masses celebrated by married priests, a measure repeated by Alexander II (1061-1073) and Gregory VII. Pamphlets were written against this ruling, and riots broke out in synods when bishops attempted to issue regulations separating priests from their wives. The reforming Archbishop John of Rouen was driven out of his diocesan synod in 1072, and in 1074 there were near-riots in various parts of Europe. In Paris, the clergy condemned the reforming decrees as ‘intolerable and therefore unreasonable’.¹² Finally at the Second Lateran Council of 1139, Innocent II pronounced that clerical marriages were not only unlawful but invalid.

Other Countries and Celibacy

Although Hungary is the topic of this essay it is informative to see how the rules on celibacy worked in other European countries: they were more honored in the breach than in the observance.

In England, in 1102 the council at Westminster ruled that no archdeacon, priest, deacon, or canon might marry or retain a wife and no one was to be ordained to the order of subdeacon or

connubiorum, et cesset opera nuptiarum’. Roskoványi, *Coelibatus et breviarium* 93

¹¹ Colin Morris, *The Papal Monarchy: The Western Church from 1050 to 1250* (Oxford 1989) 103; Peter Damian, ‘De Celibatu Sacerdotum’, PL 145. 385A: ‘Qui ergo cum spirituali filia tua committis incestum, qua conscientia Dominici corporis audes tractare mysterium?’

¹² Morris, *Papal Monarchy* 104.

above without a profession of chastity. Twenty-five years later the same council prohibited cohabitation, ordering those who disobeyed to be stripped of rank, deprived of benefices and considered infamous. Finally, the Westminster council of 1200 ordered clerics in the relevant orders to expel their concubines or lose their livings. Despite the widespread promotion of the Gregorian reforms in the late eleventh century, we learn from Gervase of Chichester that many English priests professed ignorance of the rules on clerical celibacy, but it is probable that by 1200 such ignorance was largely disingenuous. For whatever reason, it appears that those rulings continued to be disregarded. Poems written immediately after the Fourth Lateran Council (1215) also record that the English priesthood held its rulings on celibacy and chastity in contempt.¹³ Even in the early thirteenth century King John found a novel way to raise money, by holding priestly concubines to ransom.¹⁴

In Germany, despite the rulings of Paschal II at the Synod of Troyes in 1107, priests lived openly with their wives until at least 1175. In that year the archdeacon of Salzburg, incidentally the most orthodox German province, complained that he was unable to discipline those of his priests who lived happily with their wives and was furthermore powerless to prevent the ordination of the sons of these priests.¹⁵

In Bohemia, Cosmas, the dean of Prague, wrote in 1118 about the death of his wife Boseteha, and also referred to his son. Somewhat later Cosmas wrote in admiration of a widowed priest who was capable of living in sexual abstinence – he himself seemed to be incapable of such restraint. By the end of the twelfth century, a discourse on the necessity for celibacy given by a legate, Pietro Cardinal of Santa Maria in Via Lata, sparked a

¹³ My thanks to Prof Hugh M. Thomas of Miami University for letting me quote his as yet unpublished paper ‘Celibacy and the English Clergy in the Twelfth Century: Preaching, Resistance, and Accommodation’.

¹⁴ Roger of Wendover, *Flores historiarum (The Flowers of History)*, ed. Henry G. Hewlett (3 vols. RS 84; London 1887) 2.47; Christopher R. Cheney, ‘King John and the Papal Interdict’, *Bulletin of John Rylands Library* 31 (1948) 295-317.

¹⁵ Lea, *History of Sacerdotal Celibacy* 203.

priestly riot. The riot was put down with such severity that the independent spirit of the Bohemian priesthood was broken.¹⁶ From that time onward celibacy seems to have been generally accepted.

Finally, at the beginning of the thirteenth century in 1204 the archbishop of Lund informed the pope that many of his priests were still living with women ‘honoring them with fidelity and conjugal affection’. Innocent III replied that these delinquents should be intimidated by the threat of suspension or deprivation. This had little effect as the local priests ignored the threats and even claimed to have a papal dispensation for their actions. The problem certainly persisted into the time of Innocent IV (1243-1254) when the Council of Schening, with a little royal help, managed to enforce celibacy by threatening to remove their ‘privilegium fori’ and leaving them to the mercies of secular judges.¹⁷

Christianity in Hungary

Christianity reached Hungary at a relatively late period, but the Hungarian Church quickly embraced the general teachings of Rome, although the influence of the Eastern Church was still apparent at the beginning of the twelfth century. The Christian heritage of the Principality of Pribina at Balaton and the Kingdom of Great Moravia, which had been fully Christianized in the late eighth and early ninth centuries may account for this.¹⁸ The struggle for the ecclesiastical allegiance

¹⁶ Lea, *History of Sacerdotal Celibacy* 201: ‘The cardinal was so scandalized by the state of affairs that when a number of postulants for holy orders assembled in the Church he demanded that they should all swear to preserve continence. Thereupon all the present priests urged them not to do so, the conflict developed into physical assault and needed to be suppressed by the soldiers’.

¹⁷ Lea, *History of Sacerdotal Celibacy* 207.

¹⁸ Richard Marsina, *Metodov boj* (Bratislava 1985); *Storia religiosa dei Cechi e degli Slovacchi*, ed. Luciano Vaccaro (Milano 1987); Ján Steinhübel, *Nitrianske kniežatstvo* (Bratislava 2004). Ivo Štefan, ‘Great Moravia, Statehood and Archaeology: The “Decline and Fall” of One Early Medieval

throughout the region between the Eastern Frankish Empire and Byzantium peaked in the 860s. Until then the territory of Great Moravia was within the missionary area of the Bishopric of Passau. However, the clergy from Passau did not limit themselves to spiritual and pastoral activities, but also acted as instruments of the Eastern Frankish Empire. The Great Moravian sovereign Rastislav, who refused to accept Frankish sovereignty, decided to create his own state Church in order to demonstrate his own independence.

Initially, Rastislav (in 861) turned to Pope Nicholas I for assistance. Nicholas refused, clearly as a result of the opposition by the Bavarian episcopate. Rastislav persisted, and in 862 he sent an embassy to the Byzantine Emperor Michael III to request teachers to spread the Christian faith in a language his people could understand. The Emperor favored his request, and in 863 he sent the Thessalonian brothers Constantine and Methodius.

Even before their departure for Great Moravia, Constantine had developed the Slavonic Glagolitic script and started translating liturgical and Biblical texts into the Slavonic language. At this time, the individual Slavonic dialects were still mutually comprehensible and Constantine's Old Slavonic, based on the dialect of the Macedonian Slavs, became the liturgical and literary language of Great Moravia.

At the start of their mission, the brothers established an institute at the court of Prince Rastislav, where they continued their work of translation and taught their first pupils. Their initial attempt to introduce the Byzantine liturgy to Great Moravia, was abandoned, and in 864 they promoted the so-called mixed liturgy of Saint Peter, which combined both Western and Eastern elements. A small fragment of this liturgy has survived in the Kiev Fragments, written in Glagolitic script in the tenth century, and another fragment of the same liturgy was found in the so-called Vienna Glagolitic Fragments.

The Christianized areas of Great Moravia were apparently divided between those following the Greek and the

Polity', *Frügeschichtliche Zentralorte in Mitteleuropa*, ed. Jiří Macháček and Šimon Ungerman (Studien zur Archäologie Europas, 14; Bonn 2011) 333-354.

Roman traditions, with the traditions mixed in some places.¹⁹ Things were to change significantly with the arrival of the Seven Tribes and the rise of the Arpadian dynasty even though the Byzantine influence never completely disappeared.²⁰ The Magyars had not generally accepted Christianity and, in their attempt to build a new nation, the Arpadian kings had first to rely on the well-Christianized parts of the former Great Moravia until they had persuaded their own people to accept the Roman Church. The kings rightly saw that they needed to be seen as promoters of Christian values rather than invaders to survive in a Christian Europe and to absorb their already Christian subjects. Two massive revolts in 1046 and 1061 showed how much the Magyar people disliked the religion which had recently been imposed on them; these resulted in plundering churches and killing priests.²¹

The first kings were forced to regulate Church matters, to penalize people failing to attend Sunday Mass and to promote the observance of fasts since their people were very unlikely to accept a distant and unfamiliar spiritual head - the pope. These monarchs had to manage Church affairs actively if Christianity was to make headway, and this royal control of the Hungarian Church led to significant differences in the way that certain doctrines were applied. William the Conqueror showed a similar interest in framing and enforcing Church law, both in England and in Normandy. According to Lea, William actively assisted the framing of the canons of the Council of Winchester and, in Normandy, his presence at a synod in Lillebonne was necessary to avert undue resistance to the regulations it passed.²² William supported Church reform mainly for political reasons, and he was at pains to distance himself from any charge of interference in

¹⁹ Alexander Avenarius, *Byzantská kultúra v Slovanskom prostredí v VI-XII. Storočí* (Bratislava 1992).

²⁰ 'The Seven Tribes' is a term used to describe the peoples who migrated into the region at the end of the ninth and the beginning of the tenth centuries.

²¹ Gabor Klaniczay, 'Paradoxes of Royal Sainthood as Illustrated by Central European Examples', *Kings and Kingship in Medieval Europe*, ed. Anne J. Duggan (London 1993) 363.

²² Lea, *History of Sacerdotal Celibacy* 212.

the privileges of the Church herself.²³ In Hungary however, kings Ladislas and Coloman were the prime movers in modifying the legislation that Rome had proposed, and overt royal management of how papal doctrines were interpreted in Hungary continued up until the death of Coloman in 1116. By this time most of the Gregorian reforms had been accepted, although sacerdotal celibacy was a continuing problem.

As he had seized the throne from Solomon, the legitimate ruler, Ladislas needed to legitimize his rule. He was helped in this by an apostolic letter that decreed the veneration of the bodies of those who had encouraged and promoted Christianity in Pannonia. Accordingly, in 1083 there were no fewer than five canonizations that took place: Zoerard-Andrew, Benedict, Bishop Gerard, King Stephen and his son, Emeric.²⁴ These canonizations firstly helped to secure Ladislas' legitimacy but also helped to make Christianity itself more attractive to the wavering Magyars. The following year the missing right hand of Saint Stephen, which had been appropriated some years before by a cleric named Mercurius, was found in Bihar, and a church was built to house the relic. The Hungarians now had five saints and holy relics of their own. Christianity was finally firmly established as the state religion.²⁵

Ladislas' reign was marked by the conflict between Pope Gregory VII (1073-1085) and the Emperor Henry IV, over the emancipation of the Church from lay control, in particular over free episcopal elections, the right to appoint priests in private churches, and the celibacy of the major clergy. Shortly before Ladislas' seizure of the throne in 1077, Henry IV, who had earlier been excommunicated, acknowledged the pope's spiritual supremacy by appearing barefoot and repentant at Canossa. Despite his apparent capitulation, the conflict was to continue.

²³ Ibid.

²⁴ Gabor Klaniczay, *Holy Rulers and Blessed Princesses: Dynastic Cults in Medieval Central Europe*, trans. Éva Pálmai (Cambridge 2002) 123-133.

²⁵ Attila Zsoldos, *The Legacy of Saint Stephen* (Budapest 2004); Klaniczay, 'Paradoxes of Royal Sainthood' 363.

The dispute between the pope and the emperor had divided Europe. The Hungarian king could not remain neutral, and in 1078 Ladislav chose the papal party. In the same year, his marriage to Adelaide, the daughter of the German anti-king Rudolph of Swabia, further demonstrated his political preference. Gregory asked Ladislav to offer political asylum to those German magnates expelled by Henry. The perennial struggle for the throne between Ladislav and ex-king Solomon may have influenced his choice, the deposed Solomon, still hoped to regain his former position with Henry's help.

Ladislav still faithfully supported the German anti-king, as late as 1087, even though Gregory VII was long dead. By 1090, Adelaide had died and as Solomon had died earlier, there were no further obstacles to good relations between the German and Hungarian kings. However Ladislav had finished his days on bad terms with the new pope, Urban II. Urban stated that he regarded the king's reign as one in which the Hungarian people wandered from 'the true path' and the kingdom had withdrawn from its obedience to the Apostolic See.²⁶

Croatia was the main reason for the discord between pope and king. It had been a papal fief since 1075 when its ruler, Demeter Zvonimir, accepted the status of papal vassal in return for the gift of a royal crown from Gregory VII. Their agreement provided that Demeter would swear to ensure the chastity of all ecclesiastics from subdeacons to bishops in his coronation oath.²⁷ After Demeter's death and the subsequent extinction of his dynasty, a struggle for the Croatian throne commenced in 1089. Demeter's widow, Ladislav's sister Helena, asked her brother for help. Ladislav successfully drove away the pretenders, but he demanded that the Croatians should install one of his nephews,

²⁶ Kornel Szóvák, 'The Image of the Ideal King in Twelfth-Century Hungary: Remarks on the Legend of St Ladislav', *Kings and Kingship in Medieval Europe*, ed. Anne J. Duggan (London 1993) 247; (27 July 1096) Pope Urban II to Coloman: 'Iam diu enim Ungarorum populi errorum devia sunt secuti et derelictis sue salutis pastoribus alienorum gregum vestigiis adheserunt . . . iam diu regnum tuum ab apostolice sedis obedientia descivit et erroris huius principibus ac ministris deditum per latioris vie devia seductum est'.

²⁷ Lea, *History of Sacerdotal Celibacy* 205.

Almos, on the throne. Croatia lost its independence and became part of Hungary.

Ladislav's Legislation on Celibacy

In 1092 Ladislav was the driving force behind the Synod of Szabolcs, which seemed either to ignore or modify the legislation of the popes on celibacy.²⁸ Firstly, the Synod, prompted by Ladislav, only ruled that second marriages were illegal. Instead of using the phrase 'second marriage', it called them bigamous, possibly as an expression of disapproval. It was decided that those priests and deacons who were 'bigamous' or had married only once, but to a widow or a woman who had been repudiated by another man, should separate from their wives and could only resume their holy orders if they did penance.²⁹ Those who did not wish to abandon their now-illicit marriages would suffer degradation from their canonical orders. The discarded ex-wives had to be returned to their families, but it was permissible for them to marry someone else if they wished because the previous marriage with the priest was considered unlawful.³⁰ Ladislav made it clear that priests could be married, but only to women considered to be suitable. It also made clear they could only marry once; second marriages were prohibited.

Ladislav delegated enforcement to his bishops. Any bishop or archbishop who granted a parish or any other benefice to an illicitly married ('illicitis coniugiis') priest would have to answer for this to the king and the other bishops of the country.³¹

²⁸ The first national synod held in Hungary.

²⁹ David d'Avray, *Medieval Marriage: Symbolism and Society* (Oxford 2005), see Chapter 3 on bigamy. Lea, *History of Sacerdotal Celibacy* 203-205.

³⁰ DRMH 1 54, 1/1092, Synod of Szabolcs: 'Bigamos presbiteros et diaconos, et viduarum vel repudiarum maritos iubemus separari, et peracta penitentia ad ordinem suum reverti. Et qui noluerint illicita coniugia dimittere, secundum instituta canonum debent degradari. Separatas autem feminas parentibus suis iubemus reddi et quia non erant legitime, si voluerint, liceat eis maritari'.

³¹ Ibid. 54, 4/1092: 'Si quis autem episcopus aut archiepiscopus ab illicitis coniugiis separari nolentibus, spreto sinodali decreto aut consensum prebuerit,

The ability of the king to judge these wayward bishops shows that ‘privilegium fori’ was not yet customary in Hungary: the king was the highest authority for both secular and Church matters. If a married priest continued to ignore the Synod’s decree, he would be liable to judgment [and punishment] by a bishop.³²

Ladislav was clear on the extramarital behavior of his priests - he would not tolerate any who kept bondswomen in place of wives. ‘If any priest lives together with a bondswoman in place of a wife, he shall sell her; and if he does not want to, she shall be sold nevertheless, and her price shall be given to the bishop’.³³ This certainly prohibited sexual activity between a priest and his bondswoman. It may be that he was at liberty to free her and then marry her, but he was definitely not permitted to keep an unfree woman in his household. He could not have it both ways.

The third article of the Synod’s decree showed Ladislav’s real political genius. Ladislav granted a temporary indulgence to all priests in their first marriage ‘on account of the bond of unity and peace of the Holy Spirit until the lord pope shall advise us otherwise’.³⁴ Ladislav was aware of Gregory’s rulings on priestly celibacy but, unwilling to force every priest in the country into immediate continence, he devised the formula of ‘temporary indulgence’ still allowing the pope to be the ultimate arbiter. It is possible that he was aware of the priestly riots in Western Europe and wished to prevent the same thing from happening in his

aut ecclesiam dederit, aut aliquid, quod ad ordinem pertinet, agere permiserit, a rege et coepiscopis suis secundum, quod rationabile videtur eis, diiudicetur’.

³² Ibid. 54, 4/1092: ‘Si vero archipresbiter causa ignorantie episcopo consenserit aut presbiter per consensum illius in tali vitio permanserit, iudicio episcopi voluntario subiaceat’.

³³ Ibid. 54, 2/1092, Synod of Szabolcs: ‘Si quis autem presbiter ancillam suam uxoris in locum sibi associaverit, vendat; et si noluerit, venundetur tamen, et pretium eius ad episcopum transferatur’. Lea makes a rare mistake here by missing two words which complete the meaning, cf. *History of Sacerdotal Celibacy* 204.

³⁴ Ibid. 54, 3/1092: ‘Presbiteris autem, qui prima et legitima duxere coniugia, indulgentia ad tempus datur propter vinculum pacis et unitatem santi spiritus, quosque nobis in hoc domini apostolici paternitas consiliatur’.

country. Ladislav probably never wrote to the pope to ask for the temporary indulgence – it was in nobody's interest to do so.

A similar delay in fully enforcing the Cluniac program of ecclesiastical reform occurred in England. In 1075, Lanfranc, the Archbishop of Canterbury since 1070, held a national council in London which addressed most of the reforms but not the issue of priestly marriages. A year later at the Council of Winchester, Lanfranc's attempt to enforce absolute celibacy was overruled by the other prelates on the grounds that it would have been impossible to ensure obedience to the rule. Instead, the council forbade future marriages and instructed the bishops to refrain from ordaining married men to holy orders.³⁵ Jean Gaudemet draws a parallel between England and Hungary noting that exceptions were made in both countries.³⁶ However, whereas the Council of Winchester made exception only for priests 'in castles or in the countryside' and then only for extant marriages,³⁷ Ladislav exempted all priests without exception until he should be advised otherwise.³⁸

Gregory died in 1085, and, after Adelaide died in 1090, Ladislav no longer felt bound to support the papacy; he switched sides to support the Emperor. The Church itself was split, with both the Anti-pope Clement, appointed by the Emperor, and Pope Urban II claiming the right to decide on church doctrine. Even if Ladislav had wanted a ruling on his temporary indulgence, he did not know to whom he should write. In fact, it seems to have taken a hundred and fifty years and the accession

³⁵ Lea, *History of Sacerdotal Celibacy* 226-227; Jean Gaudemet, 'Le célibat ecclésiastique: Le droit et la pratique du XIe au XIIIe s.', ZRG Kan Abt. 58 (1982) 1-31 at 9.

³⁶ Gaudemet, 'Le célibat ecclésiastique' 9.

³⁷ *Councils and Synods: With Other Documents Relating to the English Church I. A.D. 871-1204*, ed. Dorothy Whitelock, Martin Brett and Christopher N.L. Brooke (Oxford 1981) 619: 'Sacerdotum vero in castellis vel in vicis habitantium habentes uxores non cogantur ut dimittant'.

³⁸ DRMH 1 54, art. 3/1092; 64 art. 29; *A Szent István, Szent László es Kálman* 201, art. 31.

of Gregory IX to ensure that even the first marriage of a priest would no longer be tolerated.³⁹

Coloman's Legislation on Celibacy in Hungary

The next Hungarian king, Coloman (1095-1116), is generally believed to have supported the Gregorian reform. His uncle, King Ladislas, had forced him to take holy orders, and by the time of Ladislas' death Coloman had become Bishop of Varad. Ladislas preferred Coloman's younger brother, Almos, as his successor, considering him to be stronger and probably a more effective ruler, but Almos was to be disappointed.⁴⁰ Coloman claimed his right to the crown and received a dispensation from the pope to leave the Church and become king. This caused a rift with his brother and from 1098 onwards, his position was threatened by the claims of Almos. Both brothers exploited the strained relations between the pope and the emperor. Almos sought help from the emperor, and Coloman, who had been backed by Urban II since his accession to the Hungarian throne, continued to cooperate with the papacy.

There can be little doubt that Coloman sincerely believed in the Gregorian reform of the liturgy and in the separation of ecclesiastical and secular judicial functions. He granted 'privilegium fori' and increased the powers of bishops within their own dioceses. However, when ecclesiastical prerogatives threatened to paralyze his capacity to rule effectively, he put state interests first. This pragmatism is demonstrated by his retention of powers to appoint prelates in his own kingdom and by his resuming into royal ownership Church-owned fish ponds, except where possession had been originally granted by King Stephen.⁴¹

³⁹ Joseph Freisen, *Geschichte des Canonischen Eherechts bis zum Verfall der Glossenlitteratur* (Paderborn 1893) 724; Vincent Múcska, 'Kotázke celibátu', *Slovanské Štúdie* 1 (1994) 40-49.

⁴⁰ Steinhübel, *Nitrianske kniežatstvo* 168.

⁴¹ He forfeited the right to invest bishops but not the one to choose and appoint them – 'non electioni et postulationis' – although this one is questionable, as argued by Kornel Szovák, 'I rapporti tra Papato e Ungheria nel secolo XII', *Mille anni di cristianesimo in Ungheria*, ed. Pál Cséfalvai,

Coloman's experience as a former clergyman was useful when he tried to tackle the still common problem of the second marriages of Hungarian clergy in his legal code. In his first synod (First Synod of Esztergom⁴²) he repeated the rulings of Ladislas' Synod of Szabolcs and ordered the same three categories of married clergymen – priests who had married a second time, priests who had married widows, and priests who had married women repudiated by their previous husbands – to end their illicit marriages or be ejected from the clergy.⁴³ This regulation again implied that the marriage of a priest to a single woman was legitimate. However his sanctions were more detailed; not only would the guilty clergyman be defrocked ('ab ordine deponantur') but if they also held a church they would be deprived of it ('et si teneant ecclesiam, careant ecclesia').⁴⁴ Since this same problem was raised at the Second Synod of Esztergom, it can be assumed that married priests still existed. The Second Synod made it clear that malefactors would be deprived of all benefices and ecclesiastical dignities, not just of any church they held.⁴⁵

In the Synod of Szabolcs, Ladislas had required women 'bigamously' married to priests to be returned to their families, and allowed them to remarry if they wished.⁴⁶ The priest himself

Maria Antonietta De Angelis (Budapest 2001) 42; Katarína Štulrajterová, 'Innocent III. a Uhorsko so špeciálnym zreteľom na Slovensko', *Studia Archeologica Slovaca Medievalia* 3-4 (Bratislava 2000-2001) 171-185.

⁴² Commonly known by its Latin name Strigonium.

⁴³ DRMH 1 30, art. 67; *A Szent István, Szent László es Kálman korabeli törvények es zsinati határozatok forrásai*, ed. Levente Závodszy (Budapest 1904, reprinted Budapest 2002) 192, art. 67: 'Bigami et viduarum vel repudiatarum mariti a coniugiis cessent illicitis, vel a cleri excludantur consortiis'.

⁴⁴ *A Szent István, Szent László es Kálman* 204, art. 56: 'Si quis de clero secundam uxorem vel viduam vel repudiatam duxerit, deponatur.'; and 206, art. 71: 'Clerici repudiatarum viduarumque mariti, necnon et bigami ab ordine deponantur, et si teneant ecclesiam, careant ecclesia'.

⁴⁵ *Ibid.* 207, art. 8: 'Ut clerici bigami et viduarum et repudiatarum mariti, temporalibus ecclesie beneficiis et cunctis dignitatibus ecclesiasticis priventur'.

⁴⁶ DRMH 1 54, art. 1/1092.

had to separate from his wife, and if he then performed the appropriate penance he might be allowed to reassume Holy Orders. In contrast, the first Synod of Esztergom ruled that a 'bigamous' priest could only return to holy orders with the consent of his wife.⁴⁷ Rather than imposing a separation, Coloman required both parties to agree to it. It appears that without the wife's agreement, the marriage stood and the priest was obliged to leave holy orders. The requirement of separation for the priest to remain in holy orders raises several questions that cannot be answered in the present state of scholarship. The requirement for wives to return to their families implies that the priest need not support them, but if the family were unwilling or unable to accept these women back some of them must have been left destitute.

King Coloman seems to have realized that imposing celibacy on the Hungarian clergy was a Herculean task. Acknowledging human frailty, he decreed at the first Synod of Esztergom that priests who had married their wives in accordance with prevailing legal practices remained free to live in continence with their wives.⁴⁸ However, the synod did rule that those who had entered the deaconate or the priesthood unmarried could not take wives later.⁴⁹ Further, while the Church

⁴⁷ *A Szent István, Szent László es Kálman* 204, art. 57: 'Bigami presbiteri, qui ad ordines suos redire voluerint, ex consensu uxorum suarum recipiantur'; Vincent Múcska, 'K otázke celibátu'. Dr. Múcska pointed out that the requirement to demand the consent of the cleric's (second) wife is possibly nonsense; while the Synod of Szabolcs had required penitence, this time the consent of an illegal wife was required. Dr. Múcska suggested that the 'voluerint' should be read as 'noluerint' in order to make sense. Unfortunately, the translation would now read 'Bigamous priests, who do not wish to return to their orders, may be accepted back with the consent of their wives'. This makes little sense. It is extremely unlikely that the Church would welcome the return of an unwilling, impenitent, and unhappy priest.

⁴⁸ DRMH 1 61, art. 29; *A Szent István, Szent László es Kálman* 201, art. 31: 'Presbiteris uxores, quas in legitimis ordinibus acceperunt, moderatius habendas provisa fragilitate indulsumus'.

⁴⁹ DRMH 1 62, art. 30; *A Szent István, Szent László es Kálman* 201, art. 32: '...'

reluctantly accepted the widespread phenomenon of married priests, it certainly did not condone them having concubines. A priest with a concubine was to be defrocked.⁵⁰

Married bishops were not permitted. Coloman's first synod stated that those designated to the episcopate might not assume that office if they were still in a legitimate marriage, unless their wives consented.⁵¹ Since sexual continence was required from a bishop, he had to make a decision. Should he continue in connubial bliss with his wife, or should he accept the promotion? If the priest decided to follow his vocation he would be helped by the thoughtful disposition, which stated that bishops' wives might not live on episcopal estates. Coloman evidently preferred to remove the temptation that the presence of a wife might cause to a bishop. It is hoped that the moral fortitude of the bishop would have prevented him from seeking any substitute for his wife.⁵²

Coloman's rulings on clerical marriage are remarkably similar to those of the Eastern Church, whose priests could be married but might not remarry on the death of their wife and whose bishops were forbidden to be married and might not even live under the same roof as a woman. Although it would be almost impossible to prove, Coloman and his uncle Ladislav may have been deliberately avoiding any irrevocable choice between the Western and Eastern Churches. Certainly there were a few hundred monasteries observing the Eastern rites in Hungary even after 1054 when the schism occurred, and some of them were still active up until the thirteenth century.⁵³ If the two kings were

Qui diaconatum vel presbiteratum sine matrimonio adepti sunt, uxorem ducere non liceat'.

⁵⁰ DRMH 1 63, art. 57; *A Szent István, Szent László es Kálman* 204, art. 58: 'Similiter, si presbiter concubinam habuerit, deponatur'.

⁵¹ DRMH 1 60, art. 11; *A Szent István, Szent László es Kálman* 199, art. 11: 'Ut hi, qui ad episcopatum promovendi sunt, si matrimonio legitimo iuncti sunt, nisi ex consensu uxorum, non assumantur'.

⁵² DRMH 1 62, art. 31; *A Szent István, Szent László es Kálman* 201, art. 33: 'Uxores episcoporum episcopalia predia non inhabitent'.

⁵³ Further evidence for a Byzantine influence is contained in the fact that in Hungary the start of Lent was considered to be the Monday of the week

not deliberately biding their time, they would have been influenced, however unconsciously, by the close proximity of the Eastern Church in Hungary's eastern neighbors.

Disciplinary Proceedings against Hungarian Clergy in the Thirteenth Century

That celibacy was taken seriously in Hungary is illustrated in the story of a bishop alleged to have broken his vows of chastity. During the pontificate of Innocent III and the reign of King Emerich, rumors started to spread that Calanus, the Bishop of Pecs, was having an incestuous relationship with his niece. These rumors eventually reached Rome, where at first Innocent tried to disregard them, although he was forced to act when King Emerich asked him to intervene and inquire into the case.

Calanus had been a significant force during the final years of the reign of Emerich's father. He had held the office of Ban of Slavonia and, later, that of Governor of Croatia and Dalmatia. He was elected Bishop of Pecs in 1188, and was honored by Pope Celestine III with a pallium, although this was normally reserved for archbishops. His political and ecclesiastical influence seems to have diminished during the reign of Emerich.

Shortly after the rumors started – sometime in 1203 at the latest since Innocent referred to them in a letter of 7 January 1204 – Calanus became a candidate for the archbishopric of Esztergom, the senior Hungarian archbishopric.⁵⁴ At some time

previous to Ash Wednesday thus making Lent last 49 days rather than 40. Avenarius, *Byzantská kultúra v Slovanskom prostredí* 128-129; Gyula Moravcsik, *Byzantium and the Magyars* (Amsterdam 1970) 114, 117-118; Gyula Moravcsik, 'The Byzantine Church in Medieval Hungary', *American Slavic and East European Review* 6 (1947) 134-151; Peter Toth and Tomáš Glaser, *Prelude to a United Europe: Greek Cultural Presence in Hungary from the 10th to the 19th Century* (Budapest 2008).

⁵⁴ *Die Register Innocenz' III. 6. Band: 6. Pontifikatsjahr, 1203/1204. Texte und Indices*, ed. Othmar Hageneder, John C. Moore, Andrea Sommerlechner,

between 20 August 1204, when the former Archbishop of Esztergom, Ugrin, died,⁵⁵ and 22 November 1204,⁵⁶ the date of Innocent's letter which was the source of the information, Calanus became the principal objector to the election of John of Merania, Archbishop of Kalocsa, by the cathedral chapter of Esztergom.⁵⁷

John of Merania had King Emerich's support to take the vacant see whereas there is strong evidence that Calanus supported Emerich's younger brother Andrew in his attempt to seize the Hungarian throne. The accusation of incest which Calanus faced suggests that he was an obstacle to someone who retaliated by trying to discredit him to the pope. The possible candidates as accuser were either King Emerich (Innocent's letter of 7th July 1206 stated that it was he who had informed the pope) or John of Merania.⁵⁸ Had the accusation been upheld, Calanus' career would have effectively been over. Emerich would have deprived his brother of one of his most important supporters, so he willingly added his voice to those demanding the removal of Calanus. For John of Merania this would just have been a way to eliminate the opposition to his election.

We learn from Innocent's letter to Calanus that the Bishop of Győr had charge of a confidential investigation into the case, assisted by the other bishops from the archbishopric of Esztergom. Innocent also informed Calanus that six local bishops – those of Győr, Eger, Vác, Oradea, Veszprém and Nitra – and other prelates had testified on his behalf and praised him as a

Christoph Egger, Herwig Weigl (Wien 1995) 330 n.194 ; Fejer, CDH/ II, 444. (7.1.1204).

⁵⁵ Margit Beke, *Esztergomi Ersekek 1001-2003* (Budapest 2003) 81.

⁵⁶ *Die Register Innocenz'III. 7. Band, 7. Pontifikatsjahr, 1204/1205. Texte und Indice.* ed. Othmar Hageneder, Andrea Sommerlechner, Herwig Weigl, Christoph Egger, Rainer Murauer (Wien 1997) 273 n. 159 (22.11.1204)

⁵⁷ Štulrajterová, 'Innocent III. a Uhorsko' 177-178, 180.

⁵⁸ *Die Register Innocenz'III., 9. Band, 9. Pontifikatsjahr 1206/1207. Texte und Indices,* ed. Andrea Sommerlechner, Othmar Hageneder, Christoph Egger, Rainer Murauer, Herwig Weigl (Wien 2004) 206 n.113.

‘man of honest conversation and full of personal qualities’.⁵⁹ These same churchmen had been instructed to allow Calanus to clear himself by canonical compurgation. However, this would have caused a conflict of interest since those bishops would become suffragans of Calanus if his candidature for the archbishopric of Esztergom were successful, which may explain why the compurgation did not take place.⁶⁰ Calanus was postulated Archbishop of Esztergom but only remained Archbishop Elect for a short time (20 August 1204 until 1 August 1205).⁶¹ He still insisted on a canonical compurgation in order to stop the rumors.

The pope had to intervene again. In 1205, in the absence of any serious evidence and any open accusation against Calanus (‘nullus appareat accusator’), the Bishop of Csanad, from the archbishopric of Kalocsa, and the Abbot of Cikkador, from the archbishopric of Esztergom, were ordered to organize a public compurgation.⁶² Interestingly, Innocent chose a prelate from each archbishopric, possibly as a sign of unity. However, neither this compurgation, nor another which the same two prelates were asked to organize in the presence of two bishops and three abbots from the archbishopric of Kalocsa, ever took place. Apparently some (unnamed) bishops had refused to take part.⁶³

In 1206 Innocent again had to ask the bishop of Csanad and the abbot of Cikkador to protect and defend Calanus from false accusations, the persistence of which implied that those prelates who had refused to take part in the compurgation were continuing to show contempt for the earlier papal mandate. The pope threatened that, if they continued to ignore his orders, they

⁵⁹ *Die Register Innocenz’ III. 6. Band* 330 n.194; Fejer, CDH/ 2.444. (7.1.1204).

⁶⁰ James R. Sweeney, ‘Innocent III, Canon Law and Papal Judges Delegate’, *Popes, Teachers, and Canon Law in the Middle Ages*, ed. James R. Sweeney and Stanley Chodorow (Cornell University 1989) 26-52.

⁶¹ Beke, *Esztergomi Ersekek* 83.

⁶² *Die Register Innocenz’ III. 8. Band, 8. Pontifikatsjahr 1205/1206 Texte und Indices*. ed. Othmar Hageneder, Andrea Sommerlechner, Christoph Egger, Rainer Murauer, Herwig Weigl (Wien 2002) 177 n.99.

⁶³ *Die Register Innocenz’ III., 9. Band*, 206, n.113; CDH/2 462. (19.6.1205)

would face charges of 'lying and hatred' in Rome. In spite of this spirited and lengthy papal defense, Calanus was forced to withdraw his candidacy, and the vacant archbishop's see was eventually filled by John of Merania. Even when Andrew finally acceded to the throne, he was unable to reverse the ordination of John; Calanus eventually died of old age, still Bishop of Pecs.

Two interesting questions arise. Firstly, why did the bishop's enemies use the charge of incest, and secondly, why were the bishops and abbots so hesitant in taking part in the purgation itself? We can only guess the answer to the first question. Both unchastity and incest were serious offences, but it is probable that incest caused greater clerical disapproval and even more disgust amongst laymen. In St. Augustine's hierarchy of sexual offences, fornication was the least serious sexual offence, followed in seriousness by adultery, then incest, with unnatural sexual practices as the worst.⁶⁴ Pope Alexander III had advised the Bishop of Poitiers that incest with one's mother-in-law was more serious than simple adultery, although rather less serious than incest with one's natural mother.⁶⁵ Sexual offences that broke a vow of continence were already judged as being more serious than simple adultery.⁶⁶ It would appear by this that a distinction was being made between laymen and churchmen; since churchmen had taken a vow of continence, their sexual peccadilloes were to be punished much more severely.

The answer to the second question lies in the papally devised procedure called 'per notorium' (through notoriety) used to tackle clerical sexual misconduct. A clergyman was considered guilty if it was a matter of widespread common repute that he had committed a sexual offence: no accuser or denunciation was required. The courts could also relax the strict

⁶⁴ James Brundage, 'Carnal Delight: Canonistic Theories of Sexuality', *Proceedings Salamanca 1976*, 372; C.32 q.7 c.11, 14, Gratian agreed with Augustine's scheme in C.32 q.7 d.p.c.10.

⁶⁵ Brundage, 'Carnal delight' 373; X.4.13.2.

⁶⁶ C.27 q.1 c.21

standard of evidence.⁶⁷ If full confirmation by two credible eyewitnesses was not available, then the testimony of one witness supported by circumstantial evidence was sufficient.⁶⁸ Although accepted in practice, the procedure caused some embarrassment and discussion within the schools of law. Helmholz noted that, once the principle of common knowledge had been established, judges had to find a way of dealing with defendants who refused to plead guilty. This led to the process of compurgation; the accused could ‘purge themselves from the accusations by producing a stipulated number of oath-helpers or compurgators who were prepared to swear that they believed the defendant’s sworn denial’.⁶⁹ By their tacit inaction, the majority of the Hungarian prelates demonstrated either that they were unsure about the innocence of Calanus or that they were acting under pressure from the royal courts or elsewhere.

There is little doubt about the family relationship between Bishop Calanus and the supposed object of his desire, but the relationship is less clear in the next example. The sources inform us that an archdeacon of Vác ‘broke canon law by appointing as canon a boy he had fathered on a woman under the appearance of marriage but in fact incestuously’. Did he father his son on a blood relative or in-law, or did his political opponents wish to aggravate his situation?

While a complete picture is not possible, the most likely scenario is that the archdeacon had been married before taking holy orders. His wife had died after giving birth to his son and the future archdeacon joined the church, leaving his family to bring up the boy though maintaining contact and helping financially. By the time the boy had grown up enough to start a career in the church, the archdeacon was in a position to maneuver his son into a position of some authority. Unfortunately during his rise to archdeacon, he had been

⁶⁷ X 3.2.8; James Brundage, *Medieval Canon Law* (New York and London 1980) 145.

⁶⁸ Brundage, *Medieval Canon Law* 145.

⁶⁹ R. H. Helmholz, *Canon Law and the Law of England* (London 1987) 119-144.

somewhat overzealous in accumulating benefices as well as taking bribes from those whom he had assisted into positions of authority. The appointment of his own son as a canon was the final straw for the cathedral chapter and they drew up a list of complaints to the pope.

In the rather long and impressive list of offences, the main charge against the archdeacon was not simony and the accumulation of benefices without papal authorization. It was the arbitrary removal of canonically appointed canons and the promotion of his son to that office. The problem for the chapter was how to remove the archdeacon's son. Since the youth had not done anything wrong himself, the best option was to state that he was ineligible to hold his office. If the archdeacon's late wife had been a blood relative, this would have been enough to bastardize the son and therefore make him ineligible to sit in the chapter.

In the end, as was the usual papal practice, Pope Honorius preferred to delegate the inquiry to local judges as he could not possibly judge the issue without hearing both sides of the story.⁷⁰ Unfortunately, there appears to be no record of the outcome of this case.

Thirteenth-Century Legislation

The final piece of legislation on married clergy dates from 1267 and imposed different rules for priests and deacons and for bishops. No-one could become a priest, deacon or sub-deacon if they were already married unless they promised to separate from their wife, while continuing to maintain them, and to live in strict chastity.⁷¹ Priests or deacons who had married

⁷⁰ Bishop of Nitra, the Archdeacon of Nitra and the Provost of St Thomas in Esztergom were delegated by the mandate of 15 December 1222; ASV, Reg. Vat. 12, fol. 13rv, an. 7, ep. 51; *Codex diplomaticus et epistolaris Slovaciae*, ed. Richard Marsina (Bratislava 1987) 2.205, n.278. *Codex diplomaticus Hungariae ecclesiasticus ac civilis*, ed. György Fejér (Pest 1829) 3/1.389. Fejér mentions Canon G. erroneously as Canon P.

⁷¹ Péterffy, *Sacra Concilia* 88, art. 11/1267: 'Nullum uxoratum in presbyterum, vel diaconum, vel sub-diaconum promoveatis, nisi, qui ex consensu uxoris, se

after ordination were to be removed from their ministry and lose their benefices. However, where such a marriage had been legitimate when contracted, the clergyman could resume his ministry and benefices on the same conditions of separation and chastity as married men seeking ordination.⁷² Only priests or deacons without a living wife could become a bishop, and there was no concession allowing separation.⁷³ Further, if such a person had previously been married twice – consecutively not concurrently – or if one of his wives had been repudiated by another or had been unchaste, he could not be elected bishop.⁷⁴

The Synod of Buda some fifteen years later did not specifically mention married bishops but referred to married clergy in general; this time the punishment for any of the clergy who cohabited with their own wives was excommunication.⁷⁵

victurum caste firmiter promiserit, et uxorem a cohabitatione removerit, et eidem necessaria secundum facultatem suam providerit’.

⁷² Ibid. 89, art. 18/1267: ‘Presbyteros, vel diaconos uxoratos, qui ante acceptos ordines, vel postea uxores acceperunt, ab altaris ministerio, et ecclesiastico beneficio separamus, nec tamen dispensationem de his vobis concedimus, ut hi, qui uxores ante jam dictos ordines acceperint; quoniam legitimae sunt, si uxoribus ultro, et sine coactione continentiam voventibus, ipsi quoque vovebunt, et easdem uxores a cohabitatione removebunt, ad altaris ministerium redeant, et beneficia ecclesiastica habeant’.

⁷³ Ibid. 88, art. 1/1267: ‘Nullum, nisi presbyterum, aut diaconum, et qui uxorem non habebat, in Episcopum eligatis’.

⁷⁴ Ibid. 88, art. 2/1267: ‘Nullum, qui duas uxores habuerit, aut qui unam concubinam, aut repudiatam, aut meretricem, seu prostitutam, vel qui aliam, quam virginem est sortitus uxorem, in episcopum eligatis’.

⁷⁵ Ibid. 107-108, art. 10/1279: ‘Ut vicariae non committantur laicis vel clericis uxoratis ... Prohibemus quoque, nec archidiaconi, et alii rectores ecclesiarum, laicis, vel clericis uxoratis, suas praesumant committere vicarias: et ad hoc dicti archidiaconi, et ecclesiarum rectores per suspensionem officii, et privationem beneficii, laici autem, vel clerici uxorati, ne hujusmodi vicarias recipiant, per excommunicationis sententiam a suis diocesanis compescantur omnino’. and art. 12/1279: ‘Ut non cohabitant mulieribus... Inhibemus districtius, ut nullus clericus beneficiatus, aut in sacris ordinibus constitutus, mulieres aliquas in domibus suae habitationis retinere, vel alibi eis cohabitare praesumat. Qui vero ipsas nunc tenet, nisi infra tres menses ab ultimo die praesentationis synodi in antea numerandos, eas a cohabitatione sua prorsus ejecerit, vel qui ejectas resumpserint, vel eis cohabitaverint, extunc se sciant excommunicationis sententia innodatos, a qua sententia per suum diocesanum

After 1279 all the local Hungarian synods legislated against concubines but no longer dealt with wives.⁷⁶ This probably indicated that the Hungarian priesthood had finally submitted to the rules on clerical marriage, even if with little enthusiasm and without necessarily embracing chastity. Once the clergy became differentiated from their parishioners, it was important that their moral standards were maintained.

Summary

Not all religions regarded celibacy as an essential. For the Christian Church it had become a central issue, and differing views applied over the course of the centuries. Greek Orthodox rules differed from Roman ones, at least after the Council of Trullo (692), and it is interesting to note that celibacy was required from Greek bishops but not from priests.⁷⁷ The normal Greek custom has always been that most candidates for Holy Orders leave their seminaries shortly before being ordained deacons to marry. After their marriage, they return to the seminaries in order to take higher orders. As priests, they remain married, but may not remarry on the deaths of their wives. Greek bishops, who may not live under the same roof as a woman, are commonly not chosen from the ranks of the married, secular clergy but from monks, who of course are by definition celibate. Although Christianity had reached Hungary relatively late, it appears that the Hungarian Church quickly embraced the general teachings of Rome. This was probably assisted by the Christian

absolvi possint, primo de suis cohabitationibus, mulieribus praedictis ejectis, ac ipsis clericis ab earum omnino cohabitationibus separatis; et sufficienti praestita cautione, quod contra constitutionem hujusmodi de caetero non venient, sed ipsam omni tempore inviolabiliter observabunt’.

⁷⁶ Ibid. 140-141, art. 5: ‘De poena publicorum concubinariorum . . . decreto igitur praesenti statuimus: ut, quicumque clericus contra ipsius constitutionis vigorem deinceps deliquerit, excommunicationis poena in eo contenta, propter causas praedictas, cessante quartae partis redituum beneficiorum suorum, praesentis constitutionis auctoritate, damnationi subjaceat’.

⁷⁷ Roman Cholij, *Clerical celibacy in East and West* (2nd ed. Leominster 1989).

heritage of Great Moravia and by the enormous efforts of the Arpadian kings, especially Ladislas and Coloman. Both were astute sovereigns whose regulation of Church affairs is reminiscent of certain of the Frankish rulers in the seventh and eighth centuries. Although both Ladislas and Coloman were aware of the Gregorian reforms permeating the Roman Church, they introduced them with a certain degree of caution. Nevertheless, this probably caused little delay, especially when we compare Hungary with other European countries.

The two cases from the beginning of the thirteenth century, one of a bishop of Pecs alleged to have broken his vows of chastity by having an incestuous relationship with his niece and the second about the archdeacon of Vác who had fathered a son on a woman 'under the appearance of marriage but in fact incestuously', suggests that at least some of the charges they faced were trumped up. It could be argued that the accusation of incest was used by their political enemies to undermine the standing of the accused clergymen.

Finally, as the last legislation on celibacy was issued in 1279 at the Synod of Buda, and allowing the span of another generation (20-30 years) to root the problem out completely, it is reasonably certain that the date by which the Hungarian clergy accepted the canons on celibacy would have been the early 1300s.

An Approach to Canonical Procedure: The Compilation of ‘exceptiones’ in British Library Add. 24979

Emily Corran

In the course of the high Middle Ages, the ‘exceptio’, an objection raised by the defendant against an accusation, became an increasingly important procedure in canon law. ‘Exceptiones’ could be raised against many aspects of the plaintiff’s case, including the form of the papal letters initiating the trial, the legal officers, or the terms of the accusation.¹ A single peremptory exception could be sufficient to invalidate a whole case, or a series of dilatory exceptions could delay a case for several months, allowing the defendant more time to prepare.² In consequence, it became common practice for proctors to place a string of ‘exceptiones’ in the hope that some at least would be accepted, and papal courts were encumbered with an escalation of business.³ The ‘exceptio’ was a significant enough aspect of canon law procedure for Innocent III to legislate on it several times. He acknowledged its importance by including the ‘exceptio’ in his list of the necessary parts of the trial.⁴ Innocent

¹ Jane E. Sayers, *Papal Judges Delegate in the Province of Canterbury 1198-1254: A Study in Ecclesiastical Jurisdiction and Administration* (Oxford 1971) 80-84.

² A peremptory exception was a fundamental objection to the validity of the case, and a dilatory exception was an objection to a point of incorrect procedure, see Wiesław Litewski, *Der römisch-kanonische Zivilprozeß nach den älteren ordines iudicarii* (2 vols. Kraków 1999) 302-307; James A. Brundage, *Medieval Canon Law* (London-New York 1995) 130; Sayers, *Papal Judges Delegate* 80.

³ Linda Fowler-Magerl, *Ordines Iudicarii and Libelli de Ordine Iudiciorum (From the Middle of the Twelfth to the End of the Fifteenth Century)* (Typologie des sources du moyen âge occidental 63; Turnhout 1994) 42-44.

⁴ *Quoniam contra falsum*, X 2.19.11. The parts of the trial listed are: ‘citationes et dilationes, recusationes et exceptiones, petitiones et responsiones, interrogationes et confessiones, testium depositiones et instrumentorum productiones, interlocutiones et appellationes, renunciationes, conclusiones et cetera’.

also sought to limit the scope for frivolous exceptions, ordering judges to set a date before which all exceptions must be placed, and ruling that those who raise unsuccessful exceptions must bear the expenses for that part of the trial.⁵ ‘Exceptiones’ acquired greater prominence in procedural works, and the number of treatises devoted solely to ‘exceptiones’ also increased from the end of the twelfth century.⁶ Given their variety and utility, the use of ‘exceptiones’ did not diminish as a result of Innocent’s legislation. Despite the threat of incurring expense, defendants continued to use ‘exceptiones’ prolifically.

British Library Add. 24979 includes two works on ‘exceptiones’, namely, Sinibaldo dei Fieschi’s (later Innocent IV) *Summa de exceptione*, and an anonymous compilation of exceptions, *Quoniam natura*, which directly precedes it. The anonymous compilation, as far as I know, is the only known copy of the work. It is remarkable because, unlike other procedural works on ‘exceptiones’, it does not present ‘exceptiones’ as a well-defined set of procedures, but instead systematically summarizes the *Liber extra* into a series of objections.

The Manuscript

The codex Add. 24979 is a collection of canon law treatises originating in Italy in the fourteenth century. The works included are varied, and a number of scribes were involved in the book’s production. The order of contents is:

1. A compilation of ‘exceptiones’ *Quoniam natura* (fol. 2r-10v). This is identified in the medieval contents page as *Summa Galfredi* (fol. 1v).
Inc. ‘Quoniam natura cotidie novitates nititur invenire’.

⁵ X 2.14.5, 2.25.4.

⁶ Fowler-Magerl, *Ordines Iudicarii* 4; idem, *Ordo iudiciorum vel ordo iudiciarius: Begriff und Literaturgattung* (Ius commune Sonderhefte 19; Frankfurt 1984) 185-218.

Expl. 'quod faciant iusticiam et si adversarius appellaverit, extra. de appellationibus [recusationibus et relationibus], Qua fronte (X 2.28.25)'.⁷

2. Pope Innocent IV (Sinibaldo dei Fieschi), *Summa de exceptione*: 'Summa exceptionum Innocencii pape quarti' (fol. 10v-11v).

Inc. 'Excipitur contra litteris vel sigillum si bulla sit falsa vel sigillum'.

Expl. 'Si testis aliquid de suo addit .i. de mandato, totam seriem testimonii decolorat in .ix. puta et simplex'.

Printed edition: TUI (Venice 1584-1585) 3.2, fol. 104ra-105va.⁷

3. Peter Ilerdensis, *Breviarium*: 'Breviarium B. ad omnes materias iure canonico in velandas' (fol. 12r-15v).

Inc. 'Verborum superfluitate penitus resecata de talento credito vobis vel in quo socii margaritam'.

Expl: 'per totam lxiii. distinctione Salonitane (D.63 c.24), ubi plene de hac materia est notatum a Johanne (Johannes Teutonicus, *Glossa ordinaria* to D.63 c.24 sub verbo *sub excommunicationis interpositione*)'.

Printed Edition: Bernadus Compostellanus, *Lectura aurea in primum librum Decretalium cum Apostillis Anthonii de Crevant* (Paris: Galliot, 1516).⁸

4. Damasus of Hungary, *Summa titulorum extravagantium* (fol. 16r-32v)

Inc. 'Iuri operam daturum prius nosse oportet quid sit ius'.

Expl: Last page is damaged and illegible. Last legible words, fol. 32r: 'rei deposite possessionem retineat deponens, videlicet Digestum'.

5. Bernard of Montemirat, *Lectura in Decretales Gregorii IX* and *Lectura Novellarum*: 'Apparatus super Decretales' (fol. 33r-68r, 107r-138v).

⁷ See Fowler-Magerl, *Ordo iudiciorum* 216-218.

⁸ See Kuttner, *Repertorium* 318 n.1.

Lectura in Decretales Inc: ‘Gregorius interpretatur vigilans et bene vigilavit’.

Expl: ‘quia indignum est et a romane ecclesie consuetudine alienum etc.’

Lectura Novellarum. (fol. 135v) Inc: ‘Cum [in] multis casus est planus quia per generalem clausulam’.

Expl: ‘ut prescriptionibus vel compositionibus’.

Printed Editions: *Lectura aurea domini abbatis antiqui super quinque libris decretalium*, ed. Johannes Schott (Strasburg 1510-1511); *Per illustrium doctorum tam veterum quam recentiorum in Libris Decretalium aurei comentarii* (1 vol. Venice: Lucantonio Giunta, 1588).⁹

6. The *Extravagantes* of John XXII ‘Incipiunt extravagantes domini Johannis pape xxii. In primis de taxationibus litterarum recipientibus’ (fol. 69r-84r).

Inc.: ‘Johannes episcopus servus servorum dei ad perpetuam rei memoriam’.

Expl: data Avinion vii. ydus augustus anno vii.’.

Printed editions: *Corpus iuris Canonici*, ed. Friedberg (Leipzig 1879-1881, reprinted Graz 1955) 2.1200-1235 and *Extravagantes Joannis XXII* (MIC Series B 6; Vatican City 1983).

7. Alphabetical table of decretals: ‘Tabula supra decretum’ (fol. 85r-106r).

Inc.: ‘Abbas elegitur ab congregatione’.

Expl: ‘Zelo indiscreto aliquo excommunicatione sacrilegium est xxiiii. q. ultima, Non (C.24 q.3 c.5). Explicit tabula supra decretum’.

⁹ See Martin Bertram, ‘Pierre de Sampson et Bernard de Montemirat. Deux canonistes français du XIII^e siècle’, *L’Eglise et le droit dans le Midi (XIII^e-XIV^e siècles)* ed. Jean-Louis Biget (Cahiers de Fanjeaux 29; Toulouse and Fanjeaux 1994) 37-74, reprinted in *Kanonisten und ihre Texte (1234 bis Mitte 14. Jh.): 18 Aufsätze und 14 Exkurse* (Education and Society in the Middle Ages and Renaissance 43; Leiden-Boston 2013) XIII.

The first three works are copied by the same scribe, and follow directly within one quire. All the subsequent works are copied within separate quires, each by a different scribe. The codex retains its sixteenth-century wooden binding. There is a certain amount of disparity in size of page and decoration in the different works, most notably in the case of the *Extravagantes* of John XXII, which is written on smaller sheets of parchment, and decorated with more elaborate initials than the rest of the codex. It seems probable that the manuscript existed originally as separate booklets, which were subsequently sewn into one volume.

The proximity of the compilation *Quoniam natura* and Innocent IV's *Summa* is significant. Their inclusion together and common subject matter suggests that they were copied, along with the *Breviarium*, as complementary works.

The Structure of the Compilation *Quoniam natura*

The author of *Quoniam natura* identifies his work as a compilation of exceptions in his introduction, and explains his intention to follow the structure of the *Liber extra*:¹⁰

My intention in this work was to compile in one volume under certain books and titles the various

¹⁰ fol. 2ra: 'Intentio mea in hoc opere fuit ut diversas exceptiones sub diversis libris et titulis dispersas, sub certis libris et titulis in uno volumine compilarem. Materia huius operis sunt exceptiones et est exceptio actionis exclusio. ff. de exceptione l.ii. et extra. de foro competenti, Ex parte, in apparatu (Dig. 44.1.2 ['exceptio est quasi quaedam exclusio'] and X 2.2.15). Utilitas est ut hiis habitis et intellectis facilius possint haberi auxilia contra aliquos negocia, sive iudicia, sive casus impediens. Supponit hetice, id est morali scientie, sicut alii libri iuris. Modus agendi est modus habitus in decretalibus domini Gregorii. Dividitur presens compilatio in v^{que} partes. In prima, tractatur de hiis que sunt contra iura (iuri MS) scripta et non scripta, et contra iudices et personas que habent esse in iudicio; in secunda, de hiis que sunt contra iudicium et ea que faciunt ad iudicium; in tertia, contra clericos et res eorum et etiam contra aliquos contractus; in quarta contra sponsalia et matrimonium et accessoria matrimonio; in quinta et ultima contra accusatores crimina allegantes'.

exceptions scattered across various books and titles. The subject of this work is exceptions and an exception is an attempt to stop an action . . . The usefulness of it is that, with these things held and understood, assistance may more easily be obtained against people who put obstacles in the way of business, or judgments, or cases. It falls under ethics, that is, moral science, as other books dealing with law do. The method is that of the decretals of Gregory. The present compilation is divided into five parts. The first is concerned with those [exceptions] which are against written and unwritten laws, and against judges and those who have a role in judgment; in the second, concerning those which are against a judgment and the things that contribute to judgment; in the third, against the clergy and their affairs, and also against some contracts; in the fourth, against espousals and marriage and those things connected to marriage; in the fifth and last, against those accusers alleging crimes.

This choice of organisation is significant. The chapters of the five parts broadly follow the titles of the five books of the *Liber extra*. Within the chapters, the author summarizes the decretals contained in the title in order to bring out any ‘exceptiones’ that can be inferred. For example, in the chapter on election, the author works through the chapters of the title, listing possible grounds on which an election may be ruled invalid. In the first section the author works through the chapters ‘de constitutionibus’, ‘de consuetudine’, ‘de electione’, ‘de translationibus’ ‘de renunciatione’ and ‘de officio delegati’, i.e. the titles of the first book of Gregory IX’s decretals.¹¹ By such a method, the author attempts to apply the principle of ‘exceptio’ thematically to the entirety of the *Liber extra*.

The more common structure of procedural works on exceptions was to list possible ‘exceptiones’ in order of the stage

¹¹ fol. 2r-3r.

of the trial, or according to the aspect of the action against which the ‘exceptio’ was placed. An early work on ‘exceptiones’ attributed to Pillius, *Precibus et instantia*, is organized into two sections for exceptions in criminal and civil courts, with the exceptions in the first part organized according to aspects of the case to which a defendant could object.¹² Some other twelfth-century works adopt a looser structure, in which ‘exceptiones’ are grouped by the part of the trial to which they relate; thus, the popular *Actor et Reus* lists ‘exceptiones’ and ‘obiectiones’ in the order of legal procedure, so that the entire trial is portrayed through the lens of the possibility of objection.¹³ Innocent IV also organises his *Summa* thematically according to the aspects of an action against which a litigant could bring an exception.¹⁴

The choice to structure the compilation along the lines of the *Liber extra* is therefore original and implies a rather different authorial intention from other works on ‘exceptiones’. Whereas other compilations are organized as practical manuals for those involved in actions, this work seems more geared towards the idea of legal hindrance as an overarching value. In the introduction, the author repeats the definition of the ‘exceptio’ taken from *Digest*, that exception is ‘the exclusion from action’.¹⁵ By including lists of exceptions against transactions such as translations and elections, the author has extended his definition of ‘action’ to include all legal procedures. In consequence, he broadens his understanding of the term ‘exceptio’ to include not only all possible exceptions and replications in a trial, but also to anything that can invalidate a legal procedure: in a comparable way to the dual modern use of the term ‘objection’ as a technical legal term and as a general expression of opposition, the author of the index has applied the idea of exception to all legal transactions.

¹² Fowler-Magerl, *Ordo iudiciorum* 188.

¹³ *Ibid.* 204.

¹⁴ The chapters of the work include: ‘contra litteras vel sigillum’, ‘contra iudices’, ‘contra actorem’, ‘contra auditorem’, ‘contra excusatorem’, ‘contra procuratorem’, ‘contra testes’. fol. 10v-11v. See Fowler-Magerl, *Ordo iudiciorum* 218.

¹⁵ See n.10.

The author of the compilation departs from the titles of the *Liber extra* in one significant passage, in which he includes a series of more conventional ‘exceptiones’. The index includes a section composed of chapters on ‘exceptiones’ against the three principle people involved in a trial, the plaintiff, defendant and judge, particular aspects of procedure, and other figures, such as advocates and proctors. The author draws attention to the fact that he is departing from the structure of the *Liber extra* in his preamble to this section:¹⁶

Since there are three necessary people in a trial, namely, the judge, the plaintiff and the defendant, although a chapter concerning the person of the plaintiff and the defendant is not found in the decretals, I will discuss them and first concerning the plaintiff.

The compilation does include a more conventional set of exceptions that can be raised in a trial against the key participants. However, the author makes it clear that this section is somewhat separate from his overall structure. Also, he does not go so far as to include chapters on other conventional categories of exception, for example, against the place and time of the law court, or the form of the letters. Such omissions reinforce the impression that the compilation was not intended as a practical procedural manual.

Some Examples of the Author’s Method

A close reading of *Quoniam natura* can further demonstrate the author’s method in summarizing the *Liber extra*, and the way in which he gathers decretals.

‘De electione’.

The language in the index and the adjacent *Summa de exceptione* is similar: Innocent IV presents his work as a check-

¹⁶ fol. 3ra, opening of paragraph labelled ‘De actore’: ‘Quoniam in iudicio sint tres persone necessarie scilicet iudex, actor et reus, quamvis de persona actoris et rei non inveniatur expressus titulus in decretalibus, ego de istis hic tractabo et primo de actore’.

list of possible reasons for objection: ‘An exception is made against letters if the defendant is more than two day’s journey away . . . if it is a feast day’ etc.¹⁷ Almost throughout the index, on the other hand, the author provides a similar list of negative possibilities. His most common formula is to provide a list of illegal transactions ending with the phrase ‘non valet’. This method can be demonstrated by quoting two examples from the chapter, ‘De electione’:¹⁸

An election which is not carried out canonically is not valid . . .
Item: the election of one who received ordination from a schismatic is not valid.

These two statements are drawn from the same decretal, *Quia diligentia* (X 1.6.5), in which Alexander III ruled on the election of a former schismatic as bishop. He decided that the candidate can be confirmed with a dispensation, provided that the election was carried out according to canonical form, and that he did not receive orders as a schismatic. The author of the index therefore draws the first general rule from the pope’s stipulation that the election should have been celebrated ‘secundum formam canonum’, and the second rule from the fact that the pope granted a dispensation on condition that he had not been ordained as a schismatic.¹⁹

Item: an election which is not carried out by the greater and wiser part is not valid.

Five decretals are quoted here to support the generalization: X 1.6.6 *Licet de vitanda*, in which it is stated that the pope can be elected by a two-thirds majority; X 1.6.22, *Dudum ad audientiam*, in which the rule is modified – in a case in which the candidate elected by a majority was accused of being too young

¹⁷ fol. 11ra top of the final paragraph of this column. ‘[E]xcipitur contra litteras si sit reus ultra duas dietas . . . si sit dies festivus’.

¹⁸ fol. 2va chapter De electione, after first paragraph: ‘Electio que non est facta canonice non valet, extra. eodem Quia (Quod MS) diligentia § Item electio illius qui suscepit ordinem a scismatico non valet. Ut in eodem Quia diligentia’.

¹⁹ fol. 2va ‘De electione’ after fourth paragraph: ‘Item electio que non est facta a maiori parte et saniori non valet, extra. eodem Licet de vitanda et capitula Dudum ad. Et capitula Cumana sed contra videtur eodem capitula, Bone memorie et Ecclesia vestra’.

to be a bishop, Innocent III judges provisionally that the candidate elected by minority should be confirmed; X 1.6.50 *Cumana*, a decretal which is concerned with the question of who has the right to vote, and in which Gregory IX cancels an election in which those present failed to elect by a legal majority. The author then identifies two decretals as counter-examples to this summary: X 1.6.23 or 36 *Bonae memoriae* – this is ambiguous, since there are two decretals that start with these words in the chapter on election: in 23, it is a case in which a majority implemented an election against the rules. Innocent III first ruled that the remaining minority should be allowed to elect a new candidate, and subsequently devolved the power of election to himself; in chapter 36, it is a case in which a majority elected a bishop, but without the presence of one canon, who had been the chosen successor of the deceased bishop – Innocent III rules that the election cannot be valid when a minority has been excluded, even though the right to elect can never lie with a minority; X 1.6.57, *Ecclesia vestra*, in which the opponents of an episcopal election claim that although a candidate was elected by a majority, he was not elected by the wiser part, and that therefore the election was invalid. Gregory IX declares the election to be void. These are all cases in which the greater and saner part did not elect a bishop for an exceptional reason.

In both examples, the author states a general principle then offers a series of decretals which prove it. He frequently uses court decisions which exceptionally allow a certain kind of transaction in order to infer a more general prohibition; when a schismatic is given a dispensation to be ordained, he infers that those who have been ordained as schismatics cannot be elected.²⁰ Also, within the general heading, the author includes judgments which modify or offer counterexamples to his general inference; this is true not only of the decretals which he indicates as

²⁰ For another example of this way of turning around a decretal, see below, 82, where, in the chapter on plaintiffs, the author summarises judgments (X 1.29.21 and X 5.39.40) which describe a wide variety of ways in which an excommunicate can be absolved before going to court, with the statement that an excommunicate cannot bring a case.

counterexamples, but also of those which he cites apparently to support his case. Thus, the principle that elections should be made by the majority and wiser part of a chapter is complicated by Innocent's decision in X 1.6.22 to allow a bishop elected by a minority to take office, when the majority candidate was found to be unsuitable (he could have ordered a new election). The decretals *Bonae memoriae* offer, depending on which decretal he meant, either an important caveat – that a majority vote is still not valid if any part of the chapter is absent, or an equally significant exception to the rule – where a majority has broken the rules in implementing an election, the power of election devolves to the minority.

Although at first sight the index seems to simplify the *Liber extra* to a compressed form, the author's choice of citations demonstrate that he intended to draw his reader's attention to ambiguities in the decretals. In both cases, the author of the index turns a positive statement in the decretals, for example, that a former schismatic can be elected, that bishops should be elected by the greater and saner part, into a negative rule with the formula 'non valet'.

'De actore'.

The chapter 'De actore' does not correspond to a title of the *Liber extra*; the author therefore takes legal principles from throughout the *Decretals*. The manner in which the author of the index gathers and cites judgments in the procedural chapters is striking for its juxtaposition of very different decretals, and for the legal analogies which are drawn. These unexpected connections are revealing of the way in which canon lawyers used decretals in practice. In order to demonstrate these features, I quote five headings from the chapter, 'De actore'.

—'A major excommunication bars a plaintiff'.²¹ Five decretals are quoted: X 1.29.21, from the title 'De officio et potestate

²¹ fol. 3ra 'De actore', directly after the preamble, 'Maior excommunicatio repellit actorem'.

iudicis delegati’; X 2.1.19 from ‘De iudiciis’; X 2.25.2 and X 2.25.12 from ‘De exceptionibus’; and X 5.39.40 ‘De sententia excommunicationis’. These decretals are drawn from across the *Liber extra*, but all offer the same procedural lesson: that a case cannot continue as long as the plaintiff is excommunicate. X 1.29.21 and X 5.39.40 describe how and in what circumstances an excommunicated plaintiff can be absolved before a trial commences. The remaining decretals all forbid the continuation of a case in which a participant is excommunicated: an accusation of major excommunication cannot be met with the replication that the defendant has a minor excommunication (X 2.25.2), and a judge should repel all excommunicated plaintiffs even if the defendant either raises the exception of excommunication late in the trial, or omits it altogether (X 2.25.12). X 2.1.19, however, shows the limits of these statements; in a case where an objection of excommunication was raised but the judges continued to interview witnesses instead of halting the case to investigate, the pope ruled that these judges should be removed and that new judges-delegate should be found. These new delegates would be obliged to deal with the exception of excommunication before they proceeded to the main case. The author takes from this decretal the principle that when an exception of excommunication has been raised, the case should be suspended until the exception is either proved or dismissed. The decretals that the author has chosen to cite here display two contrasting principles: first, that an excommunicate absolutely must not be allowed to take part in a court case; second, that popes were aware that excommunicates may nevertheless need to prosecute, and therefore provided routes to absolution for would-be litigants.

—‘Item if a woman should complain about any layman to an ecclesiastical judge, he cannot have cognizance of it unless she is a widow and poor . . . except the cases which pertain to the ecclesiastical forum which are listed under the rubric ‘contra

forum',²² (X 1.29.38) 'De officio et potestate iudicis delegati'. The author refers to a decretal in which Pope Gregory IX responds to an appeal from a woman and her son against a widow who has approached judges delegate in order to judge her right to some land which they are occupying. The woman and her son object that this widow lied in her letters that she was poor and that therefore she does not have the right to have an ecclesiastical court judge her property disputes. Gregory responds that if this is true, the case should be considered void. The case and the index entry refer to a principle in canon law, that vulnerable people, designated by the Roman law terminology 'miserabiles personae', who were often in practice widows and orphans, can claim the protection of church courts.²³ In fact, this decretal was decisive in determining the extent of the church's jurisdiction over widows and orphans; on the basis of this decretal, most canonists agreed that not only the status of widowhood constituted a 'miserabilis persona', but the status combined with poverty.²⁴ This is therefore a case in which rules created to protect the vulnerable led to the creation and enforcement of further rules to prevent litigants from abusing the principle.

—'Item: if an adulterer seeks restitution of conjugal rights, his wife can object adultery and vice versa'. X 3.32.15 'De conversione coniugatorum'. The story behind this decretal pertains to a man who became a Cistercian monk. Innocent III rules that his wife may not claim restitution of conjugal rights because she committed adultery.

²² fol. 3ra paragraph 'De actore' after first paraph. 'Item si mulier conqueratur de aliquo laico iudici ecclesiastico non potest cognoscere nisi sit vidua et pauper, Extra: "De [officio et potestate iudicis] delegate" "Significantibus"; nisi in casibus qui pertinent ad forum ecclesiasticum qui habentur in rubrica contra forum'. I have not been able to identify the rubric 'contra forum'.

²³ R.H.Helmholz, *The Spirit of Classical Canon Law* (Athens, Georgia and London 1994) 116-144.

²⁴ *Ibid.* 130.

—‘Item: one claiming his own guilt is not to be heard’.²⁵ X 3.24.8 from ‘de donationibus’, X 3.8.8 from ‘de concessione praebendae et ecclesiae non vacantis’, with a counter example: X 3.8.13.²⁶ This title brings together decretals from several contexts. The first is a case between members of the Hospitaller order, in which the rector of the hospital of Saint Allucius planned to give the hospital into the care of another house. When one party in Saint Allucius stated that this decision was based on an agreement in which many brothers were not consulted, and those who did participate were excommunicated and guilty of perjury and fraud against the people of Pescia, it was found that the brothers and patrons of St. Allucius were accusing themselves of these crimes. Innocent III therefore judged them to be unable to defend themselves legitimately, and it was ruled that there should be no prejudice for the second house involved. In the second decretal, Innocent III replies to a complaint from a cleric that he was received as a canon by the church of Trent, but was not given a prebend by this chapter. Innocent therefore commands that they give the next available prebend to the appellant. In this case the religious house’s error was to accept another canon when they had no available prebend. Innocent makes the same judgment that their error should not prejudice the canon in question. Finally the author of the index identified a counter example: a case in which an abbot promised a cleric the next vacant benefice, but that when one became available, the abbot refused to give him the prebend on the grounds that such a promise was forbidden by the Third Lateran Council. The pope ruled in this case that the promise cannot be binding for the same reason. The author of the index has therefore identified a procedural decretal in one part of the *Liber extra*, then found another context in which Innocent seemed to use the same

²⁵ fol. 3ra paragraph ‘De actore’ after third paragraph: ‘Item allegans turpitudinem suam non audiendus’.

²⁶ The reference to these cases reads ‘extra. de donationibus, Inter dilectos, et de excessibus prelatorum, Cum super questione. Sed contra de concessione prebende, Ex tenore, solutio ibi’. I am taking the title ‘de excessibus prelatorum’ as a mistake for ‘De concessione prebende’, since a decretal with the correct opening words appears under this title, and fits the theme.

principle. Finally, he draws attention to a similar case in which Innocent comes to the opposite conclusion. The difference seems to be that in the first two cases, the transaction had been agreed and partially carried out, whereas in the last case, only a letter promising the conferment of a benefice was in question.

—‘Item: anyone who gives or takes bribes for lawsuits should not be heard.’²⁷ X 1.42.2 from ‘De alienatione iudicii mutandi causa facta’. This is a case in which a cleric transferred a suit into the ecclesiastical courts in return for payment and acted as a lawyer for the litigants. Gregory IX complains that this kind of advocacy in favor of the more powerful seems to be based on greed and those who carry this out are contemptible (‘odiosae’). He therefore calls for ecclesiastical censure on these clerics. In theory, canon law only had jurisdiction over such temporal cases which appealed to the church after a failure of secular law (‘ex defectu iustitiae’). This meant that when the jurisdiction of secular courts had broken down, either because of a failure of the existing legal system, or because the secular legal system simply did not provide for an eventuality, lay litigants could appeal in church courts.²⁸ The practice that Gregory determined against is the manipulation of a few exceptional decretals in return for bribes.

This sample is revealing of the author’s method: he identifies statements of procedure within the decretals, then searches for additional examples in which the same procedure is stated, or in which he considers that the same procedure should apply.

There is no discernible train of thought at work behind the juxtaposition of exceptions against the plaintiff. We can see a progression from titles on excommunication, to judgments on judges delegate, marriage and election. This miscellaneous approach is a result of the fact that the author has identified a

²⁷ fol. 3ra paragraph ‘De actore’, after fourth paragraph in this chapter: ‘Item qui emunt vel accipiunt alio modo actiones litigiosas non sunt audiendi’.

²⁸ Helmholz, *Spirit of Classical Canon Law* 132-34.

category of exceptions, those made against the plaintiff, which did not have its own title in the decretals, and accordingly has gathered decretals from throughout the *Liber extra*.

What does such a checklist add to our understanding of the teaching and practice of canon law? First, it brings home the extent to which thought about legal principles functioned on an abstract level in an academic setting: the statements of procedure are not divided into an obviously functional list according to the kind of case or procedure (the *Actor et Reus* would be an example of a more compartmentalised organisation). The author preferred to make general points and tried to find examples to demonstrate them broadly. Second, it could be observed that many of the themes which appear in this list, including the protection of widows, the ‘exceptio criminis’, marriage and election, are all instances of solutions to practical problems which reveal the values at work in canon law.²⁹ The author is often concerned with objections that can be raised against those who make cynical use of decretals in favor of widows, of the wide jurisdiction of ecclesiastical courts, or of their own errors. The compilation should be seen as a response to a process of formalisation in canon law. First canon lawyers produced a set of rules intended to ensure that certain values were protected out in court. As the rules were spelled out, these principles were vulnerable to being manipulated by litigants who used such rules to bring about their desired outcome. In a third stage, the author of this index offers a set of legal expedients against those who seek to abuse those rules that protect a moral imperative.

Conclusion

Although the index of exceptions is of interest purely as a response to Innocent IV’s better-known *Summa de exceptione*, it can also provide broader insights into the way that canonists

²⁹ Indeed, these topics correspond to the chapter headings of a recent great synthesis of canon law, which were chosen as instances where a moral principle produced a (to modern eyes) remarkable set of legal norms, Helmholz, *Spirit of Classical Canon Law*.

thought about and used the decretals. Significantly, the author resists the tendency, much in evidence in Innocent III's decisions on exception, to formalise procedure, and to bring a precise definition to procedural acts. Instead, the author creatively redefines the 'exceptio', and uses it as a guiding principle to survey all aspects of canon law embodied in the decretals. He does not view this instrument of procedure as a formula to be applied in a restricted way but, instead, has grasped the underlying principle of the 'exceptio', that legitimate objections should be brought against legal accusations, and made it into a comprehensive principle. This is a way of thinking not usually associated with canonists. Within each chapter, the analogies and precedents identified are not obvious. The author often included counter examples, and problematic precedents which suggest that he intended his reader to use the same processes of analogy and distinction to resolve the problems posed by the decretals. It was this kind of thought, which dwelt on the problems posed by decretals, and which explored and reinterpreted their meanings, that pushed forward the development of canon law in the high Middle Ages.

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A Gloss of Hostiensis to X 5.6.17 (*Ad liberandam*)*

Uta-Renate Blumenthal

Given the importance of the crusading movement to later medieval history, it was striking to come across the remark by James Brundage that Gratian's *Decretum* nowhere discussed the crusades,¹ and, moreover, that 'no treatise *De cruce signatis* has yet been discovered throughout the vast literature of medieval canon law'.² Even in the *Liber Extra*, decretals regarding particular aspects of the enterprise d'Outremer are only found scattered under various titles, especially, for instance, under 'De voto et voti redemptione'. The French scholar, Michel Villey, many years ago pointed out the singular importance for the development of the crusades of constitution 71, 'Ad liberandam', of the Fourth Lateran Council celebrated by Pope Innocent III in 1215.³ The main purpose of 'Ad liberandam' was to detail the arrangements for the Fifth Crusade, but in doing so Innocent not only summarized and expanded the traditional aspects of the

* I am very grateful to Kenneth Pennington and Martin Bertram for their kind and generous assistance with this paper that owes its existence to the urging of Ken Pennington. All errors remaining are my own.

¹ James A. Brundage, *Medieval Canon Law and the Crusader* (Madison, Milwaukee-London 1969) 39.

² Ibid., 190. Cf. Martin Bertram, 'Johannes de Ancona: Ein Jurist des 13. Jahrhunderts in den Kreuzfahrerstaaten', *BMCL* 7 (1977) 49-64, reprinted in idem, *Kanonisten und ihre Texte (1234 bis Mitte 14. Jh.)* (Leiden 2013) XIV 375-391.

³ Michel Villey, *La Croisade: Essai sur la formation d'une théorie juridique* (L'Église et L'État au Moyen Age 6; Paris 1942) 112, 179-185. See for the council and its constitutions the critical working edition by Antonio García y García, *Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum* (MIC Ser. A, 2; Vatican City 1981) 3-118, 110-118 for c.71 as well as idem, 'The Fourth Lateran Council and the Canonists', *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. Wilfried Hartmann and Kenneth Pennington (History of Medieval Canon Law; Washington D.C. 2008) 367-378, and Anne J. Duggan, 'Conciliar Law 1123-1215: The Legislation of the Four Lateran Councils', *ibid.* 318-366; all with further literature.

crusading movement, he also pointed to the future and consciously or not laid the foundation for all crusades that were to follow. The First Council of Lyons in 1245 in its constitution ‘Afflicti corde’ repeated verbatim most of ‘Ad liberandam’, and its content is also closely reflected in the *Constitutiones pro zelo fidei* of the Second Council of Lyons of 1274 as Maureen Purcell has shown.⁴

The significance of the Fourth Lateran Council for the history of the Church in general is well known. Accordingly, Raymond of Peñafort included all of its constitutions in the *Liber Extra*, which he compiled at the request of Pope Gregory IX with the exception of three. Raymond omitted constitutions 42, 49 and practically all of constitution 71, ‘Ad liberandam’.⁵ Gregory IX had sent the *Liber Extra* in September of 1234 to the University of Bologna with the admonition ‘ut hac tantum compilatione universi utantur in iudiciis et in scholis, districtius prohibemus,

⁴ Maureen Purcell, *Papal Crusading Policy 1244-1291* (Studies in the History of Christian Thought; Leiden 1975); see especially the appendix A, 187-199. For the canonistic transmission of ‘Afflicti corde’ see Martin Bertram, ‘Die Extravaganten Gregors IX. und Innozenz’ IV. (1234-1254)’, ZRG Kan. Abt. 92 (2006) 1-44, at 23 n.29 for a single transmission of the complete text and n.29a for the seventeen manuscripts transmitting the excerpt ‘Sane quia iusto iudicio celestis imperatoris . . . expensis deductis necessariis computare’; see also *Original Papal Documents in England and Wales from the Accession of Pope Innocent III to the Death of Pope Benedict XI (1198-1304)*, ed. Jane E. Sayers (Oxford 1999) 285 for an original transmission of ‘Afflicti corde’. For the First and the Second Councils of Lyons see COD 273-301 and 303-331.

⁵ For the characteristics of Raymond’s work see Stephan Kuttner, ‘Raymond of Peñafort as Editor: The ‘Decretales’ and ‘Constitutiones’ of Gregory IX’, BMCL 12 (1982) 65-80, reprinted with *Retractiones* in *Studies in the History of Medieval Canon Law* (Variorum Collected Studies 325; Aldershot 1990) XII; Martin Bertram, ‘Die Dekretalen Gregors IX.: Kompilation oder Kodifikation?’, *Magister Raimundus: Atti del Convegno per il IV centenario della canonizzazione di San Raimondo de Penyafort (1601-2001)*, ed. Carlo Longo (Rome 2003) 61-86; Thomas Wetzstein “‘Resecatis superfluis’”? Raymond von Peñafort und der Liber Extra’, ZRG Kan. Abt. 92 (2006) 355-391; see also Edward Reno’s Columbia University Ph.D. dissertation, ‘The Authoritative Text: Raymond of Penyafort’s Editing of the ‘Decretals of Gregory IX (1234)’, at:

<http://academiccommons.columbia.edu/catalog/ac:132233> (last accessed 2/10/13).

ne quis praesumat aliam facere absque auctoritate sedis apostolicae speciali'.⁶ This surely explains at least in part the lack of specific commentaries after 1234 on the topic of the crusades, given that precisely those sections of the constitution 'Ad liberandam' of 1215 that were omitted in the *Liber Extra* spelled out the features which actually molded the juristic aspects of the movement. The brief excerpt included in the *Liber Extra* as 5.6.17 encompasses only the excommunication of 'false Christians' who provided Muslims with arms, iron and wood for ships, who sold ships to them or conducted Muslim vessels, as well as of those who supplied counsel or aid to the enemy. Such individuals were to be deprived of their property and to become the slaves of those who captured them. Their sentences were to be publicly renewed in all maritime cities on Sundays and feast days, and absolution could only be obtained by giving up all illicit commercial gains and making in addition appropriate donations in support of the Holy Land.⁷ This excommunication was an important part of constitution 71 of the Fourth Lateran Council to be sure, but not nearly as significant in the long run as the decree's introduction of papal taxation of churches and monasteries, its stipulations regarding the right to income from

⁶ Po.9694; ed. Friedberg, 2.2-3; an English translation is found in *Prefaces to Canon Law Books in Latin Christianity*, ed. and trans. Robert Somerville and Bruce C. Brasington (New Haven and London 1998) 235-236; see also the discussion of the prohibition *ibid.* 225-227.

⁷ X 5.6.17: 'Ad liberandam terram sanctam (*Et infra:*) Excommunicamus praeterea et anathematizamus illos falsos et impios Christianos, qui contra ipsum Christum et populum Christianum Saracenis arma, ferrum et ligamina deferunt galearum; eos etiam, qui galeas eis vendunt vel naves, quique in piraticis Sarracenorum navibus curam gubernationis exercent, vel in machinis aut quibuslibet aliis aliquod eis impendunt consiliorum vel auxilium in dispendium terrae sanctae; ipsosque rerum suarum privatione mulctari, et capientium servos fore censemus, praecipientes, ut per omnes urbes maritimas diebus dominicis et festivis huiusmodi sententia publice innovetur. Et talibus gremium non aperiatur ecclesiae, nisi totum, quod ex commercio tam damnato perceperint, et tantumdem de suo in subsidium terrae sanctae transmiserint, ut aequo iudicio in quo deliquerint puniantur. Quodsi forte solvendo non fuerint, sic alias reatus talium castigetur, quod in poena ipsorum aliis interdicatur audacia similia praesumendi'.

benefices for crusading clergy, the protection of crusaders, their families and their property, as well as last not least its detailed regulations regarding indulgences and commutations—full or partial—of penances and even crusading vows. Yet all of this was omitted by Raymond of Peñafort and therefore did not become part of the scientific discourse in ‘courts and schools’ after September 1234, when the *Liber Extra* was completed, although there had been earlier commentaries on the constitutions of the council of 1215, including c.71 ‘Ad liberandam’, by Johannes Teutonicus, Vincentius Hispanus and Damasus Hungaricus.⁸

Hostiensis (Henry of Susa), ‘il canonista più importante e brillante del s. XIII’, was the great exception.⁹ The cardinal complained bitterly in his *Lectura*, also called the *Commentarium* or *Apparatus*, when he glossed X 5.6.17 ‘Ad liberandam’:¹⁰

Ad liberandam terram sanctam et infra. In hac
decisione continetur pars quaedam in qua ponuntur
indulgentie sive privilegia cruce signatis concessa,
de qua et fit mentio quotidie in litteris apostolicis . . .
. . . Et ideo cum practicatoria sit et utilis et necessaria
nullatenus debuit removeri. . . . Ut ergo quod

⁸ See García y García, *Constitutiones*, for rubrics, casus and the commentaries by Johannes Teutonicus (175-270), Vincentius Hispanus (273-384) and Damasus Hungaricus (387-458).

⁹ Kenneth Pennington, ‘Enrico da Susa’, DBI 42 (1993) 758a-763b with an extensive discussion and bibliography and idem ‘Enrico da Susa, cardinale Ostiense’, DGI (2013) 795-798. See also Elisabeth Vodola, ‘Hostiensis’, DMA 6 (1985) 298-299.

¹⁰ My edition and discussion is based on the two-volume Strassburg edition: *Lectura sive apparatus domini hostiensis super quinque libris decretalium*, dated January 19, 1512. The text of the gloss to X 5.6.17 is found in 2.fol. 275r-276v; the above quote is found on fol. 275a. For a precise description of these volumes and an extensive bibliography see Martin Bertram ‘Handschriften und Drucke des Dekretalenkommentars (sog. Lectura) des Hostiensis’, ZRG Kan. Abt. 75 (1989) 177-201, here 192-194, reprinted idem, *Kanonisten und ihre Texte XII* 319-341 with *Nachträgen und Berichtigungen* 498-500; here 332-334.

textus omisit glossa suppleat, quia et multi quotidie
 ipsam querunt nec inveniunt eadem, quatenus tangit
 hunc articulum duximus hic apponendam. Et est talis

. . .

Hostiensis then proceeded to transcribe all relevant portions of the text of c. 71 'Ad liberandam', omitting only the text of X 5.6.17 itself¹¹ as well as purely rhetorical sections and items exclusively pertaining to the Fifth Crusade,¹² before glossing the entirety of the almost completely reconstituted decree. Brief excerpts from the gloss have been noted by scholars in the past, but the very long gloss as a whole has to my knowledge never attracted any attention.¹³ Surely as a proof of authenticity Hostiensis concluded the transcription of the text as follows, indicating his source: 'Datum Lateran. xix kal. Ianuarii Pontificatus nostri anno octavodecimo'. For emphasis and with an admonishment for papal scribes, the cardinal referred to this source once again at the very end of his commentary: 'Datum lateran. etc. que consideranda est in rescriptis'.

This date, December 14, 1215, is exactly the date for the calendar entry 5012 in Potthast's *Regesta pontificum romanorum*. The entry covers verbatim excerpts from c.71 of 1215. The chief source for Potthast was Laerzio Cherubini's *Bullarium Romanum*, the only reference listed that provided a date, as emphasized by Stephan Kuttner, given that all other traditions were undated. 'The source of Cherubini's text is, however, unknown', he pointed out.¹⁴ Kuttner had originally argued that c.71 'Ad liberandam', 'a bundle of *ad hoc* ordinances and administrative measures', had been published separately

¹¹ See n.7 for the text and the italicized sections of the edition below.

¹² See the edition below, 101 (nn. 7 and 8) and 103 (n.9)

¹³ Cf. nn.23, 24, 29-35 below.

¹⁴ Stephan Kuttner in collaboration with Antonio García y García, 'A New Eyewitness Account of the Fourth Lateran Council', *Traditio* 20 (1964) 115-178, reprinted in idem, *Medieval Councils, Decretals, and Collections of Canon Law* (Variorum Collected Studies 126, 2nd ed. Brookfield 1992) IX and 'Retractiones' 7-8. The quote is found on 133 n.25. For Cherubini and the *Bullarium* see DBI 24.434b-435b.

after the conclusion of the Council on November 30 1215.¹⁵ If that were the case Hostiensis's date at the end of his transcription of c.71 could not be used to indicate the promulgation of the entire set of constitutions from the Lateran council. However, in the *Retractiones* to his paper, Kuttner agreed with Christopher Cheney's argument that 'between the general notice [of the council] and the list of signatories present, the seventy-one decrees themselves... were entered as nos. 163-233' in Vat. *Indice* 254 in its description of the now lost eighteenth year of the register of Pope Innocent III.¹⁶ García y García's critical working edition of the Fourth Lateran Council subsequently established that c. 71 was found in every one of the 64 still extant complete manuscripts of its decrees, although c.71 is at times unnumbered and not always as the final item of the series.¹⁷ Thanks to Vat. *Indice* 254 and its description of the lost register volume of Innocent III it is clear that all of the 71 constitutions of the Fourth Lateran Council were found in the register of this pontiff in sequence. Hostiensis's gloss to X 5.6.17 'Ad liberandam' now finally proves that all were promulgated on December 14, 1215, providing the date missing everywhere except in Cherubini's *Bullarium*, first published in 1586. Cherubini's source was perhaps Hostiensis' *Lectura* at X.5.6.17, for the text covers only sections of c.71 also found in the gloss.

Unfortunately, Hostiensis does not provide a date for his own gloss. When Kenneth Pennington discovered an earlier recension of the gloss in Oxford, New College 205, he noted that the cardinal completed the last version of the *Lectura* at the end of his life: 1270-1271.¹⁸ In dating the text in the Oxford manuscript Pennington, however, found 'no references... to events or persons after ca. 1265', and concluded that Hostiensis's commentary as found in the margins of the Oxford codex 'could

¹⁵ Ibid. 133 and Appendix C, especially 174.

¹⁶ Ibid. 7 of the *Retractiones*; for the *Indice* see Anton Haidacher, 'Beiträge zur Kenntnis der verlorenen Registerbände Innocenz' III.', RHM 4 (1960-61) 37-62, at 47 and 61 n.3.

¹⁷ García y García, *Constitutiones* 19-20.

¹⁸ Kenneth Pennington, 'An Earlier Recension of Hostiensis's *Lectura* on the Decretals', BMCL 17 (1987) 77-90, at 78 n.6.

not have been written earlier than 1254 and not later than ca. 1265'.¹⁹ Pennington's recent discovery of what is probably a mixed early/late version of Hostiensis' commentary in Durham Cathedral C.II.7 and 8 will perhaps change these dating criteria.²⁰ However, such conceivable changes will have no bearing on the gloss to X 5.6.17, for the text of this gloss edited below is definitely that of the late recension. This late recension has been published in all of the printed editions of Hostiensis' *Lectura*: Strasbourg 1512, Paris 1512, and Venice 1581.²¹ A comparison with the readings of the recension in Durham Cathedral C.II.8, and as far as possible with Oxford, New College 205 shows this beyond any doubt.²² According to Pennington's dating for the text of the Oxford codex, we have to assume that the additions that differentiate the late version were added by the cardinal after c.1265 and by 1270-1271.²³ Such a date is also suggested by Andreas Fischer who used the references to the cardinalate in the late recension of the commentary as indication that they were added after 1262, when Henry of Segusio was made a cardinal.

¹⁹ Ibid. 79 and 81.

²⁰ For the customary division of the *Lectura* into two volumes, divided into books I and II and books III, IV and V respectively, see Bertram, 'Handschriften' 320-321.

²¹ Bertram, 'Handschriften' 330, determined that the Venetian edition of 1581 is a reprint of the Paris edition, but 'anscheinend mit zusätzlichen Fehlern behaftet'. It is unfortunately this edition that was recently reprinted in two volumes with an introduction by Jörg Müller: *Commentaria et lectura in decretalibus von Henricus de Segusio Cardinalis Hostiensis (gest. 1271)* (Ius Commune: Rechtstradition der Europäischen Länder, Kanonistische Literatur 6; Frankfurt am Main 2009). Both Bertram and Pennington, 'Early recension', 78 n.6, agree that the Strasbourg 1512 edition offers the most reliable text, hence my selection of S as basic printed edition.

²² The Oxford codex is very tightly bound, making it impossible to read sections of the marginal gloss that are found in the inner margins. It is fortunate, therefore, that Durham Cathedral C.II.8 happens to transmit the early recension of the *Lectura* at X 5.6.17 to make a textual comparison possible.

²³ Roberto Grison, 'Il problema del cardinalato nell'Ostiense', AHP 30 (1992) 125-157 carefully analyzed the additions made to the early recension and estimated that they approximately doubled the size of the *Lectura* (130). His extensive bibliography is noteworthy.

Hence the late recension should be dated at the earliest 1265 but stems probably from the summer of 1270, when Hostiensis wrote the last datable entry.²⁴

Both the early and the late versions of Hostiensis's commentary include the gloss to X 5.6.17. In the two recensions the text is divided into eight 'partes', with an unnumbered initial section, 'Ipsis autem clericis'. The eight 'partes' are: 'Cupientes'; 'Nos autem'; 'Sane quia'; 'Si qui vero'; 'Ceterum'; 'Excommunicamus'; 'Quia vero'; and 'Nos ergo'.²⁵ In most cases and despite mostly insignificant variants the texts of the sections of the gloss to X 5.6.17 are generally alike in the early and the late versions of the gloss, except for the insertion in the later version of a brief set of mostly Roman law references in connection with the protection of property for crusaders in part three, 'Sane quia'.²⁶ However, there is one significant exception. Part two of the gloss, 'Nos autem', differs profoundly in the early and the late recensions. Under the term 'Sancte Romane ecclesie' of the text of c. 71 of the Fourth Lateran Council, Hostiensis inserted in the late version an extraordinary passage praising the characteristics of the college of cardinals defending its rights as a corporation. Both Oxford, New College 205 and Durham Cathedral C.II.8 lack this passage which is present in Admont, Stiftsbibliothek 4 and the printed editions.²⁷ Hostiensis here strongly opposes the argument that cardinals should be treated as individuals because they appeared to lack the institutions that were essential to corporations, such as a common treasury or a syndic. He points out that the cardinals had both a common treasury and in place of the syndic the 'camerarius', who divided all income equally between all members of the 'collegium'. Moreover, he wrote, they gathered daily to deal with worldwide issues and were known as a single entity, the 'sacrum collegium' and formed the

²⁴ Andreas Fischer, *Kardinäle im Konklave: Die lange Sedisvakanz der Jahre 1268 bis 1271* (BDHI 118; Tübingen 2008) 257.

²⁵ For 'Cupientes', see 105; 'Nos autem', 106; 'Sane quia', 109; 'Si qui vero', 112; 'Ceterum', 114; 'Excommunicamus', 115; 'Quia vero', 117; 'Nos ergo', 118.

²⁶ See below 109-112.

²⁷ See below 106-108.

‘summum et excellens collegium super omnia alia, iunctum adeo cum papa, quia cum ipso unum et idem est’.²⁸

This passage was used by Brian Tierney many years ago to describe Hostiensis’s view of the Roman Church as a corporation and pope and cardinals as a ‘corporate unity’ accompanied by constitutional consequences.²⁹ Tierney’s analysis was controversial. In particular John Watt tried to contrast Hostiensis’s definitions of ‘plenitudo potestatis’ with the texts adduced by Tierney, who responded in detail.³⁰ More recently the debate has been resumed and to a certain extent resolved by Roberto Grison in response to the discovery of the early recension by Kenneth Pennington.³¹ Grison carefully weighed the differences between the two recensions and concluded that:³²

tutti i principali testi sul cardinalato, quelli su cui il dibattito storiografico tra Tierney e Watt si è concentrato, mancano in fatti sistematicamente nel manoscritto di Oxford contenente la prima recensione.

One of Grison’s examples is a brief reference to the gloss to X 5.6.17.³³ The section ‘Fratres nostri’, which begins part two ‘Nos autem’, is shared by both versions. It depicts only a general notion of unity between pope and cardinals, and actually remains in the realm of the older notion of the cardinalate forming a

²⁸ See 108 below.

²⁹ Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Canonists from Gratian to the Great Schism* (Cambridge 1955, reprinted in a revised edition: *Studies in the History of Christian Thought* 81; Leiden-New York-Köln 1998) 149-153 at 149.

³⁰ John A. Watt, ‘The Use of the Term “Plenitudo potestatis” by Hostiensis’, *Proceedings Boston 1963* 161-187, where the gloss to X 5.6.17 is listed without any commentary on 187; Brian Tierney, ‘Hostiensis and Collegiality’, *Proceedings Toronto 1972* 401-409.

³¹ Grison, ‘Il problema del cardinalato’.

³² *Ibid.* 130.

³³ *Ibid.* 136-137.

relationship with the pontiffs that is comparable in most respects to that of a bishop and his cathedral canons.³⁴ The subsequently added text only found in the late version of the gloss, ver. ‘Sancte romane ecclesie—greca ibi posita’ greatly strengthens the concept of unity if not identity of pope and cardinals.³⁵

The evolution of Hostiensis’s ecclesiology is illustrated for a second time in the gloss of his *Lectura* to X 5.6.17. In part eight, ‘Nos ergo’, the cardinal deals with the difficult question of how to clarify the contradiction between the papal supremacy and the fact that all priests were divinely granted the power of the keys.³⁶ He concludes that in this regard as in all others the pope, the ‘summus pontifex’ has power (‘potestas’) beyond and above all others. For this reason, Hostiensis continues, he can for reason grant full forgiveness of sin, something that is permitted to nobody else, for the power of others is limited:

Et est ratio quia ipse papa vocatus est in plenitudinem potestatis ideoque plenam indulgentiam potest facere; alii vero in partem sollicitudinis, ideoque ad ipsos particularis tantum pertinet et semiplena.

The contradiction to the text of the gloss ‘Ad liberandam’ quoted earlier, when Hostiensis identified the pope and the college of cardinals as one and the same, ‘unum et idem’, could not be any clearer.³⁷ However, once it is realized that Part VIII ‘Nos ergo’ was already included in the early recension of the *Lectura*, the contradiction is resolved. It allows us to pursue the evolution of the ecclesiology of Hostiensis, who expanded the *Lectura* by additions without — at least in this case — changing his earlier texts. Towards the end of his life the cardinal of Ostia apparently no longer assumed that the cardinalate only participated

³⁴ Cf. Tierney, ‘Hostiensis’ 401. For the text of the passage see below, 106, part two.

³⁵ See for the text, 106-108 below.

³⁶ See below, 118-120.

³⁷ See n.27

'semiplena' in the papal plenitude of power. The gloss to X 5.6.17 in the *Lectura* demonstrates that not a few ambiguities in the thought of the greatest canonist of the thirteenth century can be resolved by a comparison of the early and the late recensions.

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Hostiensis, Gloss to X 5.6.17

This edition is based on the two-volume Strassburg edition of the *Lectura* of Hostiensis: *Lectura sive apparatus domini Hostiensis super quinque libris decretalium*, dated January 19, 1512. The text of X 5.6.17 is found in 2. fol. 275r-276v. The readings have been compared with the reprint of the edition Venice 1581 with an introduction by Jörg Mueller to *Commentaria et lectura in decretalibus von Henricus de Segusio Cardinalis Hostiensis* († 1271) (2 vols. Ius Commune: Rechtstradition der Europäischen Länder, Kanonistische Literatur 6; Frankfurt am Main 2009) and Admont, Stiftsbibliothek 4 with the later recension and Durham, Cathedral Library C.II.8, fol. 229v-230v for a variant of the earlier recension in Oxford, New College 207, fol. 204v-205r identified by Kenneth Pennington. Martin Bertram, Rome, kindly provided specific readings from BAV Vat. lat. 1446 and Vat. lat. 2546. Only selected variants have been indicated; simple transpositions, medieval spellings, changes from singular to plural and vice versa have been omitted. Variants between the printed editions Strassbourg and Venice and García's critical working text are not significant and have not been indicated. For details, see above p. 92 n.10 and 95 n.21.

Abbreviations:

S= Strassburg edition

V= Venice edition in the Frankfurt reprint

A= Admont Stiftsbibliothek 4, late recension

D= Durham, Cathedral Library C.II.8, earlier recension

O= Oxford, New College 207, first recension

García= *Constitutiones*, ed. García

Ad liberandam terram sanctam et infra. In hac decisione continetur pars quaedam in qua ponuntur indulgentie sive privilegia cruce signatis concessa, de qua et fit mentio

5 quotidie in litteris apostolicis, sicut et supra de voto c.finali¹ et
 infra c.i. Excommunicamus i. § Catholici² ut et ibi not. Et ideo
 cum practicatoria sit et utilis et necessaria nullatenus debuit
 removeri, sicut not. supra de voto Quod super his § Rursus³ et
 infra. titulo i. Ad abolendam § Illos quoque;⁴ supra de offit.
 ordin. Dilectus § i. ver. Dictus⁵ cum suis concordantibus et
 10 infra de apostatis c.ii. § i.⁶ Ut ergo quod textus omisit glossa
 suppleat, quia et multi quotidie ipsam querunt nec inveniunt
 eadem, quatenus tangit hunc articulum duximus hic
 apponendam. Et est talis. Primo in rubrica i. inter cetera sic
 continetur:⁷ *Ipsis autem clericis sic indulgemus ut beneficia*
 15 *sua integre percipiant per triennium acsi essent in ecclesiis*
residentes et, si necesse fuerit, ea per idem tempus pignori
*valeant obligare. Postea sequitur:*⁸ *Cupientes autem alios*
ecclesiarum prelatos necnon clericos universos in merito et in
premio habere participes et consortes ex communi
 20 *approbatione concilii statuimus ut omnes omnino clerici tam*
subditi quam prelati vicesimam ecclesiasticorum proventuum
usque ad triennium integre conferant in subsidium terre sancte
per manus eorum qui ad hoc fuerint apostolica providentia
ordinati, quibusdam religiosis exceptis ab hac prestatione
 25 *merito eximendis; illisque similiter qui assumpto vel*
assumendo crucis Christi signo sunt personaliter profecturi.
Nos autem et fratres nostri sancte Romane ecclesie cardinales
plenariam decimam persolvemus, sciantque se omnes ad hoc
fideliter observandum per excommunicationis sententiam
 30 *obligatos, ita quod illi qui fraudem scienter commiserint,*
sententiam excommunicationis incurrant. Sane quia iusto
iudicio celestis imperatoris obsequiis inherentes, speciali decet

26 signo] regno A 32 obsequiis] om. D

¹ X 3.34.11 ² X 5.7.13 §4 ³ X 3.34.8 ⁴ X 5.7.9 illos quem ⁵ X 1.31.18 ⁶ X 5.9.2 ⁷ García 111 l. 23-25 ⁸ García 113 l.3-115 l.111

*prerogativa gaudere, cum tempus proficiscendi annum excedat
 in modico, cruce signati a collectis uel talliis aliisque
 gravaminibus sint immunes, quorum personas et bona post 35
 crucem assumptam sub beati Petri et nostra protectione
 suscipimus, statuentes ut sub episcoporum et
 archiepiscoporum et omnium prelatorum ecclesie Dei
 defensione consistant, propriis ad hoc nichilominus
 protectoribus specialiter deputandis, ita ut donec de ipsorum 40
 obitu uel reditu certissime cognoscatur, integra maneant et
 quieti; et si quispiam contra presumpserit, censura
 ecclesiastica compescatur. Si qui vero proficiscentium illuc ad
 prestandas usuras iuramento tenentur astricti, creditores
 eorum ut remittant eis prestitum iuramentum et ab usurarum 45
 exactione desistant, eadem precipimus discretione compelli.
 Quod si quis creditorum eos ad solutionem coegerit usurarum,
 eum ad restitutionem earum simili cogi animaduersione
 mandamus. Iudeos uero ad remittendas usuras per secularem
 compelli precipimus potestatem, et donec illas remiserint, ab 50
 universis Christi fidelibus per excommunicationis sententiam
 eis omnino communicatio denegatur. His autem qui Judeis debita
 solvere nequeunt in presenti, sic principes seculares utili
 dilatione provideant, quod post iter arreptum usque de
 ipsorum obitu vel reditu certissime cognoscatur, usurarum 55
 incommoda non incurrant, compulsis Judeis proventus
 pignorum quos interim ipsi perceperint, in sortem, expensis
 deductis necessariis, computare, cum huiusmodi beneficium
 non multum videatur habere dispendii quia solutionem sic
 prorogat, quod debitum non absorbet. Porro ecclesiarum 60
 prelati qui in exhibenda iustitia cruce signatis et eorum
 familie negligentibus extiterint, sciant se graviter puniendos.*

37 episcoporum...et²] eorum archiepiscoporum ac D 54 usque] usquequo
 S, García 58 cum...dispendii] et cum huius beneficium non inultum
 videatur D; dispendium videatur habere A

Ceterum quia cursarii et pyræte nimis impediunt subsidium terre sancte, capiendo et spoliando transeuntes ad illam et
65 *redeuntes ab ipsa, nos eos et principales adiutores et fautores eorum excommunicationis vinculo innodamus, sub interminatione anathematis inhibentes ne quis cum eis scienter communicet in aliquo venditionis vel emptionis contractu et iniungentes rectoribus civitatum et locorum suorum, ut eos ab*
70 *hac iniquitate revocent et compescant; alioquin quia nolle perturbare perversos nihil aliud est quam fovere, nec caret scrupulo societatis occulte, qui manifesto facinori desinit obviare, in personas et terras eorum per ecclesiarum prelatos severitatem ecclesiasticam volumus et precipimus exerceri.*
75 *Excommunicamus præterea etc. ut hic sequitur in textu usque in fine. Et infra:⁹ Quia vero ad hoc negotium exequendum est permaxime necessarium ut principes et populi christiani ad invicem pacem observent, sancta universali synodo suadente statuimus, ut saltem per quadriennium in toto orbe christiano*
80 *pax generaliter observetur, ita quod per ecclesiarum prelatos discordantes reducantur ad veram pacem aut treugam inviolabiliter observandam; et qui acquiescere forte contempserint, per excommunicationem in personas et per interdictum in terras arctissime compellantur, nisi forte tanta*
85 *fuerit inimicorum malitia, quod ipsi non debeant tali pace gaudere. Quod si forte censuram ecclesiasticam vilipenderit, poterint non immerito formidare, ne per auctoritatem ecclesie contra eos, tanquam in perturbatores negotii crucifixi, secularis potentia inducatur. Nos ergo de omnipotentis Dei*
90 *misericordia et beatorum apostolorum Petri et Pauli auctoritate confisi et ex illa quam nobis, licet indignis, contulit Deus ligandi atque solvendi potestatem, omnibus qui laborem*

81 aut] firmam *add.* D

⁹ Ibid. 116, l.133–118, l.160

istum in propriis personis subierint et expensis, plenam suorum peccaminum de quibus veraciter fuerint corde contriti et ore confessi veniam indulgemus et in retributione iustorum 95 salutis eterne pollicemur augmentum. Eis autem qui non in personis propriis illuc accesserint, set in suis dumtaxat expensis iuxta facultatem et qualitatem suam viros idoneos destinaverint, et illis similiter qui licet in alienis expensis, in propriis tamen personis accesserint, plenam suorum 100 concedimus veniam peccatorum. Huiusmodi quoque remissionis volumus et concedimus esse participes, iuxta quantitatem subsidii et devotionis affectum, omnes qui ad subventionem terre sancte de bonis suis congrue ministrabunt, aut circa predicta consilium et auxilium impenderint 105 opportunum, omnibus etiam pie proficientibus in hoc opere sancta et universalis synodus orationum et beneficiorum suorum suffragium impertitur, ut eis digne proficiat ad salutem. Datum Lateran. xix. kal. Ianuarii Pontificatus nostri anno octavodecimo. 110

Ipsis autem clericis: ver. Scilicet secularibus: sed et religiosi administrationem habentes proventus vicesime reddituum suorum terrae sanctae concesse percipere possunt. Quod dic ut legitur et notatur supra de voto c.finali.¹⁰ Integre etc.: Ergo etiam quotidianas distributiones, cum et ipsas 115 percipiant residentes, licet eas non habeant in theologia studentes nec in servitio episcopi existentes, quod dic ut legitur et not. supra de praebendis Licet;¹¹ et de clericis non residen. De cetero;¹² et infra de verborum signif. Olim.¹³ Videtur tamen contrarium per illud capitulum supra de 120 prebend. Licet.¹⁴ Solutio: Non dicitur ibi acsi esset in ecclesia

¹⁰⁴ terre sancte] ipsius terre D ¹¹¹ Ipsis...147] om. O ¹¹³ percipere] participere A, D

¹⁰ X 3.34.11 ¹¹ X 3.5.32 ¹² X 3.4.7 ¹³ X 5.40.16 ¹⁴ X 3.5.32

residens sicut hic. Ista enim verba aliquid operari debent ut legitur et not. infra de privil. Ex ore § i.¹⁵ Sed et maiori privilegio dignus est exponens personam tot periculis et proficiscens in servitio Jesu Christi ut infra eodem ver. § Sane quia.¹⁶ Inde est quod studens in theologia etsi habeat privilegium percipiendi integrum fructus beneficiorum suorum per quinquennium, ut supra titulo i. c.finali et § finali.¹⁷ Non tamen dicitur ibi: quod ipsos percipiat acsi residens esset, nec quod ipsos valeat obligare ut hic dicitur et ibi not. Ideo tenendum esset ut praedixi, nisi papa aliud declararet, ad quem et non ad magistrum spectat declaratio dubiorum, ut patet in eo quod legitur et notatur supra qui filii sint legit. Per venerabilem § Rationibus.¹⁸ Nec insultes et dicas, quare ergo declaras hoc dubium? Respondeo ei quod ego nullum declaro dubium, sed verum est quod in dubio a verbis edicti non recedo, quibus melius est deservire in tali casu quam aliud phantastice divinare, ff. de legatis l.ii. Non aliter,¹⁹ ff. de exercit. act. l.i. § Si is qui navem²⁰ ver. In re igitur dubia.²¹ Et breviter videtur hoc satis expressum supra de voto c.finali § finali ubi de hoc.²² *Et si necesse.* Puto quia aliter non potest separare: et sic intendit providere non utilitate; semper enim esset ei utile quod hoc facere posset, sed necessitate tantum, que legem non habet, supra de observ. ieiun. Consilium ante finem.²³ *Per idem tempus*, scilicet per triennium, non ergo ultra. Quid si interim moriatur? Dic ut plene not. supra ne praelat. vices suas Querelam.²⁴

Cupientes. Prima Pars. Alios ecclesiarum praelatos:
Hoc ideo dicit, quia in superioribus continetur quod ipse papa

139 Et... 141 hoc] *om.* A

¹⁵ X 5.33.17 ¹⁶ Infra line 244 ¹⁷ X 5.5.5 and § Docentes vero in theologica
¹⁸ X 4.17.13 ¹⁹ Dig. 32.1.69 (67) ²⁰ Dig. 14.1.1.19 ²¹ Dig. 14.1.20 in fine
²² X 3.34.11 ²³ X 3.46.2 ²⁴ X 5.4.4

Innocentius iii. de his que reservare potuit, xxx. milia librarum 150
 in hoc opus concedit, preter navigium, quod cruce signatis de
 urbe atque de vicinis partibus confert. *Consortes*: Quia quoad
 talia nullus zelus, nulla invidia locum habet. *Quam prelati*:
 cuiuscumque conditionis vel religionis existant. *Quibusdam*
religiosis ver. eximendis: Puta hospitalariis et templariis, qui 155
 huic obsequio continue insistunt et ad hoc sunt specialiter
 deputati. Unde et multi sunt aliis privilegiis decorati, ut patet
 infra de privil. c. Dilecti et c. Porro²⁵ et supra de decimis, Ex
 parte tua § Sed praedecessor.²⁶ Non tamen sunt exempti licet
 in proprios Romanae ecclesiae filios sint recepti ut leg. et not. 160
 extra dominus noster de verb. sig. Veniens.²⁷ *Personaliter*:
 Quia de his eadem ratio exemptionem suadet, et de hoc § fit
 mentio supra de voto, c. finali²⁸ ut et ibi not.

Nos autem Secunda Pars. Fratres nostri: Nota quod in
 genere omnes cardinales fratres papae dicuntur, ut hic et supra 165
 de elect. In Genesi. in fine²⁹ et c. Ecclesia ii. in fine.³⁰ In
 speciali vero presbiteri et diaconi filii appellantur, ut supra de
 elect. Coram dilecto filio;³¹ supra de testam. Raynaldus § A
 cuius ver. Dilecto.³² Et episcopi fratres, ut supra de prebend.
 Venerabilis³³ et de consuetud. Cum venerabilis.³⁴ Et hoc 170
 generaliter obtinet, quod soli episcopi et superiores quicunque,
 non solum cardinales, set alii fratres, ceteri vero omnes, sive
 clerici, sive laici, filii appellantur, ut infra de crimine falsi
 Quam gravi poene.³⁵ *Sancte Romane ecclesie*: Nota contra
 illos qui dicunt, quod cardinales non habent ius capituli, sive 175

151 navigium] naufragium male D 168 filio] supra de supplenda neglig.
 prelat. Dilecto filio [X 1.10.5] add. V supra] de supplenda neglig. prelat.
 Dilecto filio <X 1.10.5> supra add. V, A, D 174 Sancte...217 posita] om.
 O, D

²⁵ X 5.33.4 and 7 ²⁶ X 3.30.10 ²⁷ Novellae Innocentii IV c.41 = VI 5.12.1
²⁸ X 3.34.11 ²⁹ X 1.6.55 ³⁰ X 1.6.57 ³¹ X 1.6.35 ³² X 3.26.18 ³³ X 3.5.37
³⁴ X 1.4.7 ³⁵ X 5.20.6

collegii, sed potius iure singulorum censentur, tanquam homines a diversis partibus mundi singulariter vocati et in singulis ecclesiis sibi commissis intitulati, licet et diaconi non dicantur habere titulum ut in precedenti glossa. Unde nec
 180 habent archam communem nec syndicum nec similia, que universitas habere consuevit sive collegium ff. quod cuiusque univ. l.i.³⁶ et nota infra de excessibus prelat. Dilecta.³⁷ Et inter hec duo iura, scilicet universitatis et singularitatis, magna differentia est, ut patet in eo quod notatur supra de constit.
 185 Cum omnes. Respon.i.³⁸ Sed errant evidenter qui talia autumnant presumendo, nam et de facto ita est, quod antea fiunt cardinales quod eis aliquis titulus assignetur. Et hac consideratione habita, cardinales dicuntur simpliciter, nulla alia ecclesia expressa, xxiii. di. In nomine Domini³⁹ et lxxix.
 190 di. Oportebat et capitulo sequenti.⁴⁰ Cuius ergo ecclesie dicentur tunc temporis cardinales? Utique non alterius quam Romane cuius et semper cardinales sunt ut hic expresse dicitur, et extra dominus noster not. de re iudicat. Sacro § Et ut ad praesens, ver. Perpetravit.⁴¹ Ad idem lxxix. di. Si quis ex
 195 episcopis.⁴²; sed et archam communem habent quoad servitia communia, et camerarium specialem, loco syndici, qui et oblate equaliter dividit inter eos. Sunt et simul congregati et ad tractatus communes totius mundi expediendos communiter conveniunt tota die, etsi minimum ius eligendi habent, quod ex
 200 iure congregationis non singularitatis competit, ut patet in eo quod legitur et notatur supra de elect. c.i. et c. Licet et c. Quia propter.⁴³ Quin immo et sacrum collegium vulgariter et

185 Sed errant] *S male* extant; errant A, V; Vat. lat. 1446; Vat. lat. 2546
 186 antea...cardinales] ante fuit cardinalis Vat. lat. 1446 199 etsi minimum]
 et summum Vat. lat. 1446

³⁶ Dig. 47.22 ³⁷ X 5.31.14 ³⁸ X 1.2.6 ³⁹ D.23 c.1 ⁴⁰ D.79 c.3 and c.4 ⁴¹
 Novella Innocent IV c.23 = VI 2.14.2 ⁴² D.79 c.5 ⁴³ X 1.6.1, 1.6.6, 1.6.42

communiter nominatur, unde et tale habendum est
 argumentum. ff. de flumi. l.i. respon.i.⁴⁴ et notatur supra de
 sponsal. Ex litteris.⁴⁵ Nam et nomina debent esse consequentia 205
 rebus, ut patet in eo quod legitur et notatur supra de prebend.
 Cum secundum apostolum.⁴⁶ Et in iure dicitur ecclesie
 Romane gremium xxiii. di. In nomine Domini, circa
 medium.⁴⁷ Ibi eligant autem de ipsius ecclesie gremio; estque
 summum et excellens collegium super omnia alia, unicum 210
 adeo cum papa, quia cum ipso unum et idem est, ut patet in eo
 quod legitur et notatur infra de privil. Antiqua,⁴⁸ respon. i. de
 penitent. Cum ex eo § finali⁴⁹ et supra qui filii sint legit. Per
 venerabilem § Rationibus. ver. Sunt autem.⁵⁰ Sed et
 collegiarum appellatione hi continentur, qui eiusdem potestatis 215
 sunt ff. de verb. sig. Collegiarum;⁵¹ ff. de illicit. colleg. l.iii. in
 fine et l. greca ibi posita.⁵² *Plenariam decimam*: Alii vero
 solam vicesimam ut supra § proxima et fit hac causa exempli,
 arg. i. q.i. Vilissimus;⁵³ xxvi. di. Vna;⁵⁴ supra de voto, Magne §
 i. ver. Quod enim agitur⁵⁵ cum suis concordantibus. *Ommes*: 220
 scilicet cardinales, ad decimam; alii inferiores ad vicesimam
 vel forsitan hic non intendit includere cardinales sed inferiores
 tantum. *Scienter*. Debet enim probabilis esse ignorantia
 excusata, infra de clerico excommunicato Apostolice sedis.⁵⁶
 Sed hoc quomodo potest esse: nam in facto proprio non est 225
 tollerabilis error; supra de rescriptis Ab excommunicato,⁵⁷ et
 nemo presumitur vires patrimonii ignorare, C de rescind.

210 excellens] excellentissimum Vat. lat. 1446 omnia] *om.* Vat. lat. 1446
 216 Collegiarum] vi. carta, et accedit *add.* S, V; Vat. lat. 1446, Vat. lat. 2546
 217 Plenariam decimam] per quartam decimam *male* V; plene Plenariam
 decimam D; plenam decimam Vat. lat. 1446 219 Vilissimus] A, D *male*
 Iustissimus 227 patrimonii] sui proximo A, D ignorare]

44 Dig. 43.12.1.1 45 X 4.1.7 46 X 3.5.16 47 D.23 c.1 48 X 5.33.23 49 X
 5.38.14 50 X 4.17.13 51 Dig. 50.16.173 52 Dig. 47.22.3 and 4 53 C.1 q.1
 c.45 54 D.26 c.4 55 X 3.34.7 56 X 5.27.9 57 X 1.3.41

vendit. Quisquis.⁵⁸ Respon.: Licet hoc non presumatur prima
 facie, tamen evenientes fortune contrarios eventus sepius⁵⁹
 230 operantur. ut in aut. de nup. § Quia verbo hactenus. coll. iiii.⁶⁰
 unde et sepius de facultatibus suis amplius quam in his sint
 sperant homines, ut instit. quibus ex caus. manumit. non pos. §
 In fraudem.⁶¹ Quia tamen talis sententia periculosa est,
 consulimus ut ad securitatem consciencie ecclesie ante des
 235 plus quam minus: quia tutius est de benignitate in talibus
 premium reportare quam de avaricia reddere rationem sicut
 aliis dicitur, sicut xxvi. q. finali Alligant.⁶² Et nota quod licet
 ad fideliter recolligendam hanc partem aliqui deputentur: non
 tamen habent potestatem aliquid diminuendi vel remittendi,
 240 nisi hoc expresse contineatur in litteris eorundem arg. ff. de
 procuratoribus Procurator totorum;⁶³ ff. de donationibus Filius,
 respon. i.⁶⁴ ideo frequenter seipsos decipiunt qui cum illis
 componunt.

Sane quia. Tertia Pars. Iusto iudicio: Vere iusto cum
 245 eis insistentes obsequiis pape vel etiam episcopi privilegiati
 sint ut patet supra de cler. non resid. De cetero et c. Cum
 dilectus.⁶⁵ Iustius enim est quod qui servit Deo, prerogativa
 gaudeat speciali, ideo notatur quod qui contra privilegia et
 contra libertatem ecclesie Dei facili interpretatur vel iudicat,
 250 humanis favendo et ipsa ampliando potest de iniusticia merito
 reprehendi. Super quo vide quod supra not. de rebus eccl. non
 alienan. c. finali.⁶⁶ *Celestis imperatoris:* id est Dei, qui est
 super terrenum ut patet xi. q. iii. Iulianus.⁶⁷ Et est hic evidens
 argumentum quod clerici divinis obsequiis insistentes a talliis

230 operantur... et] *om.* D 238 fideliter] fidelitatem A, D 244 Vere iusto]
 Vero iniusto V 245 episcopi] *male om.* S, V 250 iniusticia] iustitia A

⁵⁸ Cod. 4.44.15 ⁶⁰ Nov. 22 = Coll. 4.1 ⁶¹ Inst. 1.6.3 ⁶² C.26 q.7 c.12 ⁶³ Dig.
 3.3.63 ⁶⁴ Dig. 39.5.7.1 ⁶⁵ X 3.4.7 and 14 ⁶⁶ X 3.13.12 ⁶⁷ C.11 q.3 c.94

omnibus debent esse immunes. Quod et concedit lex etiam de 255
 uxoribus et liberis et familia clericorum, C. de episcop. et cler.
 l.ii,⁶⁸ quod dic ut not. supra de vita et honest. cleric. c.finali;⁶⁹
 supra de immun. eccles. Non minus et c. Adversus.⁷⁰ *In*
modico: Ideo et modica est lesio que de facili tolleratur ut patet
 in eo quod leg. et not. infra § i. ver. Cum huiusmodi.⁷¹ 260
Gravaminibus: id est oneribus. Nam etsi hoc intelligas de
 licitis talliis communiter, tamen graves et onerose sunt; et quod
 ad ipsas hec indulgentia non solum de facto sed et de iure
 locum habet. Si autem hoc intelligas de iustis vel subiectis
 nullo tempore sunt gravandi, quia nullus unquam in aliquod 265
 gravari debet, maxime a superiore suo, ut patet in eo quod
 legitur et notatur, supra de restitut. spoli. Conquerente,⁷² supra
 de appellat. Ut debitus.⁷³ Hoc autem sciendum: quod omnes
 tallie collecte, non obstante abusu contrario hodie generaliter
 sunt dampnate, ut in aut. de eccles. titul. § Ad hec sancimus⁷⁴ 270
 et ut nulli iudic. § Nulli vero liceat. col. ix.⁷⁵ et in lege
 Frederici, Hac edictali § Illicitas.⁷⁶ Quod dic ut plene notavi in
 summa de immu. eccles. § A quibus.⁷⁷ *Quorum personas*, ver.
Et bona: Non solum propria sed etiam possessa sive detenta:
 vel quantum periculum ad ipsos spectat cruce signatos, vel eos 275
 beare possunt, ut ff. de verb. sig. Bonorum i. et ii.⁷⁸ ff. de
 acqui. rerum domin. l. Rem in bonis;⁷⁹ ff. ut in pos. lega. Is cui
 § Bonorum i. et ii.⁸⁰ et ff. de petit. heredi. Item videndum §
 finali et duabus legibus sequentibus.⁸¹ Nec immerito, nam et

255 lex] om. D 264 iustis] iniustus A, iniustus illis tempore nulli subiectiel
 dic quod D 269 tallie] et add. D 273 A quibus] aliquis male D 274 Et...
 285 expressum] om. O, D

⁶⁸ Cod. 1.3.2 ⁶⁹ X 3.1.16 ⁷⁰ X 3.49.4 and 7 ⁷¹ Below line 260 ⁷² X 2.13.7
⁷³ X 2.28.59 ⁷⁴ Nov. 131, 5; Coll. 9.6.5 ⁷⁵ Nov. 134.1 (Authen. 9.9.1) ⁷⁶
 L.F. 2.53 in medio; the citation may not be to the L.F. but to the decree as
 an *extravagans*. ⁷⁷ Hostiensis, *Summa* (Venice 1574) col. 1210 ⁷⁸ Dig.
 50.16.49 ⁷⁹Dig. 41.1.11 ⁸⁰Dig. 36.4.5.6 ⁸¹Dig. 5.3.18(20),2, 19(21), 20(22)

280 cruce signato quilibet et omni tempore in possessione sua
regulariter tuendus, ut patet C. unde vi, Si quis in tantam;⁸² ff.
de vi privat. l. penultima⁸³ et in eo quod legitur et notatur supra
ut lite pen. c.i.⁸⁴ et de restitut. spol. Conquerente⁸⁵ et supra qui
filii sint legit. Causam ii. § i.⁸⁶ ubi est etiam in hac materia hoc
285 expressum. *Protectione*: speciali non generali quod dic ut
legitur et notatur infra de privil. Ex parte ii. Vnde.⁸⁷ Et si qui
eis iniurientur. *per censuram ecclesiasticam compescantur*: ut
infra eodem § i. ver. finali.⁸⁸ *Specialiter*: ad maiorem cautelam
arg. infra in principio et § Ceterum, ver. sub interminatione⁸⁹
290 arg. infra titulo i. Si adversus, in principio,⁹⁰ cum suis
concordantibus. Et quia episcopi sepe in talibus negligentes
sunt et remissi ut patet infra eodem § i. in fine et infra de privil.
Dilecti.⁹¹ *Ita ut donec*. ver. *hoc est in tantum*: se extendit hac
protectio, *Ut donec de ipsorum* etc.: scilicet cruce signatorum.
295 *Certissime*: simile, infra eodem § i.⁹² ver. His autem.⁹³ Non
ergo sufficit persumptio sola, sed forsitan sufficit certus nuncius
argumentum in eo quod legitur et notatur supra de spon. In
presentia;⁹⁴ vel dic quod aliud est ibi ubi sufficit verisimilis
presumptio, ut patet supra ut lite non contestata c.finali § Si
300 vero, ver. Si autem⁹⁵ et aliud hic ubi requiritur certa probatio et

290 titulo i] *add.* D: ‘Si adversus in princ. cum suis concor. quia et episcopi
sepe in talibus negligentes sunt et remisse ut patet infra eodem § i. in fine et
infra de privil. Dilectus ii. infra § i. in princ. et § Ceterum ver. Sub
interminatione ut ibi not. *Et quieta*: simile, supra de peregrinationibus c.
unico [X 2.29.1] *Contra presumpserit*: res scilicet ipsorum invadendo vel
depredando vel diminuendo vel inquietando; *ecclesiasticam censuram* etc.:
est ergo hac protectio ad tuitionem generalem et specialem ut not. supra
eodem ver. proximo’. ²⁹³ Dilecti] ; Dilectus ii. *male* D ²⁹⁸ vel...304 fine]
om.: D, V

⁸²Cod. 8.4.7 ⁸³Dig. 48.7.7 ⁸⁴X 2.6.1 ⁸⁵X 2.13.7 ⁸⁶X 4.17.7 ⁸⁷X 5.33.18 ⁸⁸
Infra line 308 ⁸⁹Infra line 360 ⁹⁰X 5.7.11 ⁹¹X 5.33.4 ⁹³Infra line 321 ⁹⁴
X 4.1.19 ⁹⁵X 2.6.5 § 7 in medio and § 8

hoc est quod hic innuit, quando dixit certissime, et est ratio diversitatis, quia maior debet esse favor dei et fidei quam matrimonii, ut patet supra eodem § in principio et in eo quod no. infra eodem capitulo finali, in fine.⁹⁶ *Et quieta*: simile, supra de peregrinantibus c. unico.⁹⁷ *Contra presumpserit*: res 305 scilicet ipsorum invadendo vel depredando vel diminuendo seu inquietando ecclesiastica censura etc.; est ergo hac protectio ad tuitionem et specialis ut et no. supra eodem ver. proximo.⁹⁸

Si qui vero Quarta Pars. *Desistens*: et super hoc fiet celeris iusticia, alioquin modica esset prerogativa, cum 310 omnibus competat istud de iure communi, ut patet in eo quod legitur et notatur supra de iureiurando c.i. et c. Debitores,⁹⁹ simile, supra § proximo verbo ‘Quorum’ et infra eodem super verbo ‘animadversione’ § Ceterum, in fine;¹⁰⁰ quod si quisquam ver. coegerit¹⁰¹ nolens relaxare iuramentum vel 315 fideiussores et ostagia, forsitan distinguendo ut patet supra de fideius. Pervenit¹⁰² et de iureiur. Ex rescripto.¹⁰³ *Animadversione*: Et hoc etiam de iure communi est, ut supra de iureiur. Debitores¹⁰⁴ et infra Tua nos.¹⁰⁵ *Iudeos vero*: ver. 320 communicatio denegetur simile, infra de usu. Post miserabilem,¹⁰⁶ quod dic ut ibi not. *His autem*: ver. *principes seculares*: aliis iudices subaudi vel episcopi, ubi habent dominium temporale ut supra c. Postulasti¹⁰⁷ *certissime*: simile, supra eodem § prox. ver. quorum personas.¹⁰⁸ *non incurrant*: de facto, nam de iure 325 antequam incurrere debent. *Compulsis Iudeis*: ver. *expensis*: hoc dic ut legitur et notatur supra de pig. Cum contra,¹⁰⁹ supra

316 distinguendo] distringendo D 319 et infra] de usuris *add.* D
325 antequam] nunquam D

⁹⁶ X 5.6.19 ⁹⁷ X 2.29.1 ⁹⁸ Supra lines 295-304 ⁹⁹ X 2.24.1 and 6 ¹⁰⁰ Infra lines 324 and 349 ¹⁰¹ Ibid. ¹⁰² X 3.22.2 ¹⁰³ X 2.24.9 ¹⁰⁴ X 2.24.1 ¹⁰⁵ X 5.19.9 ¹⁰⁶ X 5.19.12 ¹⁰⁷ X 5.6.14 ¹⁰⁸ Supra line 273 ¹⁰⁹ X 3.21.6

de iureiur. Ad nostram i.¹¹⁰ *computare*: Quod nedum de Iudeis
 creditoribus sed etiam de Christianis fieri potest. Nec possunt
 multum conqueri de tali gravamen creditores, cum huiusmodi
 330 beneficium et cetera ut sequitur. *Cum huiusmodi beneficium*
 ver. *non multum* etc.: dic ubi dilatoria aliqua a principe datur
 vel tollitur tolerari potest. arg. xii. q.ii. Terrulas,¹¹¹ nam modica
 lesio et deceptio toleratur ut patet ff. de resti. in integ. Scio,¹¹²
 ff. de mino. In cause i. § Pomponius¹¹³ et modica
 335 dampnificatio supra de donat. Apostolice¹¹⁴ et arg. supra
 eodem § proximo. Respon. i.¹¹⁵ secus ubi peremptoria datur
 vel tollitur, quia nec gravis lesio toleratur ut patet C. de rescin.
 ven. l.ii.¹¹⁶ supra de decim. Suggestum¹¹⁷ cum suis
 concordantibus, ff. ne quid in flu. pub. l.i. § Sunt qui putant¹¹⁸
 340 et Ne quid in loco pub. l.i. § Si quis a principe¹¹⁹ et § Merito¹²⁰
 nisi ex certa et precisa voluntate principis aliquid dicatur, quod
 dic ut legitur supra de officio et potest. deleg. Ex parte ii.¹²¹ Et
 sumitur hec distinctio et mens istorum verborum ex eo quod
 legitur C. de preci. impera. offic. Quotiens et l. Rescripta.¹²²
 345 *Porro* ver. *familie*: arg. quod familia eodem privilegio cum
 domino suo gaudet, quod dic ut not. supra eodem de offit.
 archid. c.finali § Petiit. *Puniendo*. Comminatio est simile infra
 de de privil. Dilecti.¹²³

Ceterum Quinta Pars. *Cursarii et pyrate*: scilicet
 350 predones sive latrunculi maris. *Et principales adiutores et*
fautores: Hoc additur de novo in hoc concilio, nam et pyrate
 per concilium lateranensem sunt generaliter excommunicati ut

331 etc] quod *add.* D 332 tollitur] tolleratur D 334 In] Cum *male* A, D
 342 legitur] et not. *add.* A, D 345 familie...347 Petiit] *om.* O 346 eodem]
 om. A, D 350 sive] vel D

¹¹⁰ X 2.24.7 ¹¹¹ C.12 q.2 c.53 ¹¹² Dig. 4.1.4 ¹¹³ Dig. 4.4.13.4 ¹¹⁴ X 3.24.9
¹¹⁵ Supra line 309 ¹¹⁶ Cod. 4.44.2 ¹¹⁷ X 3.30.9 ¹¹⁸ Dig. 43.13 ¹¹⁹ Dig.
 43.8.2.10 ¹²⁰ Dig. 43.8.2.10 ¹²¹ X 1.29.12 ¹²² Cod. 1.19.2 ¹²³ X 5.33.4

infra de raptor. Excommunicamus.¹²⁴ Est autem hic potius declaratio quam adiectio, nam isti participant in dampnato crimine. Haud ergo dubium quin eadem sententia involvantur 355 ut legitur et notatur, infra de sent. excommun. Nuper a nobis § In primo et c. Si concubine.¹²⁵ Et ideo dicit ‘principales’, quia aliud est de faventibus non principaliter, sed per consequentiam quandam, quia illi non sunt excommunicati sed excommunicandi ut patet infra eodem § ver. Alioquin.¹²⁶ *Sub* 360 *interminatione* ver. *comminatio est*: sicut infra de sagittariis c. unico¹²⁷ et supra de iure patron. Relatum¹²⁸ quod dicitur ut ibi notatur. *Scienter*: simile, infra de sent. excommun. Significavit, in principio.¹²⁹ *In aliquot venditionis*: arg. hic quod excommunicatus vendere et emere et alios contractus 365 inire potest nisi specialiter prohibeatur sicut hic fit et infra de heret. Sicut ait § i.¹³⁰ ubi de hoc et c. Ad abolendam § Civitas.¹³¹ Nos tamen sentimus contrarium ut patet in eo quod plene notatur supra de dolo et contumac. Veritatis ad finem.¹³² Nec obstat quod hic dicitur; respon. enim ut in sequenti 370 glossa. *Contractu* a quo omnis excommunicatus arcetur que et ad ea que utilitatem suam respiciunt, sed ad maiorem exaggerationem voluit istud hic exprimere ut homines magis caverent sibi. arg. in eo quod leg. et not. infra titulo. i. Si adversus in principio,¹³³ sicut supra eodem § Si qui vero, in 375 principio et § Sane, ver. quorum,¹³⁴ et infra titulo i. Sicut ait § i.¹³⁵ in quibus et multa specificantur que de iure communi sunt, sicut et supra de iureiur. Etsi Christus in fine;¹³⁶ et de procur.

355 Haud] est D quin] an D 358 faventibus] fautoribus A, D 364 In... 379 causis] om. O 368 Civitas] cunctos *male* D 371 que... ad] quoad D

¹²⁴ X 5.17.3 ¹²⁵ X 5.39.29 and 55 ¹²⁶ Infra line 381 ¹²⁷ X 5.15.1 ¹²⁸ X 3.38.21 ¹²⁹ X 5.39.18 ¹³⁰ X 5.7.8 ¹³¹ X 5.7.9 ¹³² X 2.14.8 ¹³³ X 5.7.11 ¹³⁴ Supra line 309 and 244 ¹³⁵ X 5.7.8 ¹³⁶ X 2.24.26

Quia in causis.¹³⁷ *Et iniungentes* ver. *et compescant*: si
 380 umquam possunt imponendo et levando penas vel alio modo
 quocumque. *Alioquin* ver. Scilicet si circa hoc fuerint
 negligentes fovere. *Nec caret*: et sumuntur hec duo verba ex eo
 quod legitur lxxxiii di. Error et c. precedens et sequens.¹³⁸ Ad
 idem lxxxvi. di. Facientis,¹³⁹ infra de hereret. c.ii.¹⁴⁰ et in de
 385 sent. excommun. Quante¹⁴¹ ubi de hoc. *Ecclesiasticam*
 excommunicando, scilicet personas: et interdicendo terras infra
 de verb. signif. Querenti¹⁴² et infra eodem § Quia vero et
 verbo ‘ita quod’ in glossa.¹⁴³ Et infra titulo i. Ad abolendam §
 Statuimus, in fine.¹⁴⁴ Quinimo et super hoc possent impeti et
 390 manu militari distringi ut probatur xxiii q.ii. Dominus.¹⁴⁵ Sed
 et potest notari differentia inter severitatem ecclesiasticam et
 censuram, quod dic ut not. supra de offic. et potest. deleg.
 Preterea¹⁴⁶ § i. et extra dominus noster de homi. Pro humani §
 Cum igitur ver. Nos tanto.¹⁴⁷

395 *Excommunicamus* Sexta Pars: que est hic in textu, et
 premissa omnia fuerunt decisa; tales tamen et per concilium
 Lateranensem excommunicati sunt ut supra c. Ita
 quorundam;¹⁴⁸ *Preterea*: nam et hereticos excommunicaverat
 ut infra titulo i. Excommunicamus¹⁴⁹ et ideo dicit
 400 ‘Excommunicamus preterea’, etc.¹⁵⁰ *et lignaria*: alia <littera>,
 lignamina. *eos etiam* ver. *eis*: scilicet Saracenis. *In dispendium*
 hoc respicit hanc proximam clausulam ‘aut quibuslibet aliis’
 etc. usque hic, ut patet in eo quod notavi supra c. Quod olim,
 responso i. § unico in princ.¹⁵¹ et supra eodem. Ita quorundam

379 si] sed nunquam D 381 Scilicet] om. D 383 lxxxiii] lxxx. male A, D
 390 militari] mulctari D Sed...394 tanto] om. O 403 ut patet] et patet ut A,
 D

¹³⁷ X 1.38.7 ¹³⁸ D.83 c.2 and 4 ¹³⁹ D.86 c.3 ¹⁴⁰ X 5.7.2 ¹⁴¹ X 5.39.47 ¹⁴² X
 5.40.20 ¹⁴³ Infra line 454 ¹⁴⁴ X 5.7.9 ¹⁴⁵ C.23 q.2 c.2 ¹⁴⁶ X 1.29.5 ¹⁴⁷ VI
 5.4.1=Coll. III Innocentii IV c.31 ¹⁴⁸ X 5.6.6 ¹⁴⁹ X 1.7.13 ¹⁵⁰ X 5.6.17 ¹⁵¹
 X 5.6.12

respon. i. ver. ‘pares’.¹⁵² *Ipsosque* ver. scilicet ‘falsos 405
 christianos’ qui talia committunt; *mulctari* etc. et hoc quidem
 dictum erat supra c. Ita quorundam § Vel usque¹⁵³ infra § i. ver.
et talibus ut et ibi not. *Precipientes* sub. § Huius partis. *Et*
talibus hic incipit addere concilio Lateran. supra eodem, Ita
 quorundam,¹⁵⁴ hoc enim ibi dictum non fuerat. *Ex commercio* 410
 totum ergo lucrorum quod ad eos pervenit ex hoc commercio
 debet converti in subsidium terre sancte in cuius detrimentum
 hoc commissum est, sicut pecunia simoniaca redditur ecclesie
 in cuius contumeliam data est, ut supra de simonia
 Consulere¹⁵⁵ et c. Audivimus in fine.¹⁵⁶ Et est hic arg. et supra 415
 eodem capitulo proximo. § finali¹⁵⁷ quod quicquid lucratur
 excommunicatus in mercimoniis est pauperibus erogandum.
 Nam sine communione et participatione christianorum hoc
 lucrum non contingit, que est sibi potius quam aliis interdicta,
 ut patet infra de clerico excommun. ministrante, Illud § Illud, 420
 ver. excommunicato.¹⁵⁸ Et de hoc notavi in summa de
 penitentiis § finali. sub § Quid de his qui excommunicati.¹⁵⁹ Et
tantumdem de suo: sicut ergo illud quod Iudeus Christianis
 extorsit occasione publici officii ei aufertur ut supra capitulo
 proximo § finali.¹⁶⁰ Ita et hic. Est tamen duplex differentia, 425
 quia illud est simplum et erogatur pauperibus, quid qualiter
 intelligatur ibi notavi. Hic autem est duplum, et mittitur in
 subsidium terre sancte. Cum igitur illud est simplum et hoc
 duplum sit, hoc delictum gravius reputatur; nemo enim dubitat
 gravius esse commissum quid est gravius vindicatum xxiiii q.i 430
 Non afferamus.¹⁶¹ Et ‘in delicto equali proximas eis imminere
 penas iustum putamus’ in Aut. ut fratrum filii, col. ix.¹⁶² Sed et

407 Vel] § penult. D 428 simplum] male duplum S

¹⁵² X 5.6.6 ¹⁵³ X 5.6.6 ¹⁵⁴ X 5.6.6 ¹⁵⁵ X 5.3.38 ¹⁵⁶ X 5.3.41 ¹⁵⁷ X 5.6.16 ¹⁵⁸
 X 5.27.5 ¹⁵⁹ *Summa aurea* (Venice: 1574) col. 1682 to X 5.38 ¹⁶⁰ X 5.6.16
¹⁶¹ C.23 q.14 c.21; S male q. iiiii ¹⁶² Authen.9.7.4=Nov.127.4

sunt delinquentes plus vel minus prout magis aut minus peccaverint puniendi, ut supra de vita et honestate cleric. c. Ut clericorum § i. ver. statuimus.¹⁶³ *In quo delinquerint*: sicut supra de immunitat. ecclesie c.finali,¹⁶⁴ supra de translat. episcopi, Quanto § Ceterum¹⁶⁵ cum suis concordantibus. *Puniantur*: sed et secundum leges bona talium confiscantur et delinquentes capite puniuntur. C. que res export. non debeant l. ii.¹⁶⁶ C. de commer. et merca. Mercatores.¹⁶⁷ *Quod si forte*: sub § Huius partis *Sic alias*: simile, supra eodem. Postulasti § respon.i.¹⁶⁸ infra ubi de hoc. *aliis interdicator*: sic pena unius metus est multorum ut hic patet et supra de officio jud. ord. Irrefragabili § Ceterum in fine,¹⁶⁹ supra de calumniat. c.ii.¹⁷⁰ ff. de penis capitalium § Famoso,¹⁷¹ ff. depositi, Bona fides i. responso. ante finem,¹⁷² iunge in textu¹⁷³ *et infra*: scilicet in eodem consilio legitur prout sequitur in sequenti § Quia vero.

Quia vero, Septima Pars: *Pacem observent*: Quia pluribus intentus etc. ut patet de cleric. coniug. Diversis.¹⁷⁴ Civis, scilicet pacem violator, excommunicandus est secundum canones, supra de treuga et pace c.i.¹⁷⁵ secundum leges vero decapitandus, ff. de re mili. l.finali, in fine;¹⁷⁶ *ut saltem per quadriennium*: nam ipsam semper servare deberent sicut supra de treuga et pace c.i.¹⁷⁷ quod dic ut ibi not. *Itaque quod* ver. *reducantur*: hoc enim est eorum officio xc. di. c.i.¹⁷⁸ vii. q.i. Si primates,¹⁷⁹ ne debiliores a potentioribus opprimantur ff. de offi. presi. Illicitas § Ne potentiores.¹⁸⁰ *Pacem aut treugam*:

434 Ut] aut A, D 449 patet] supra add. D 452 decapitandus] est *add.* A, D in fine] *om.* D 453 semper] *om.* A, D

¹⁶³ X 3.1.13 ¹⁶⁴ X 3.49.10 ¹⁶⁵ X 1.7.3 ¹⁶⁶ Cod.4.41.2 ¹⁶⁷ Cod.4.63.4 ¹⁶⁸ X 5.6.14 ¹⁶⁹ X 1.31.13 ¹⁷⁰ X 5.2.2 ¹⁷¹ Dig. 48.19.28.15 ¹⁷² Dig. 16.3.31 ¹⁷³ All editions as well as the manuscripts consulted contain these words—perhaps a remnant of instructions for an insert. ¹⁷⁴ X 3.3.5 ¹⁷⁵ X 1.34.1 ¹⁷⁶ Dig. 49.16.16 ¹⁷⁷ X 1.34.1 ¹⁷⁸ D.90 c.1 ¹⁷⁹ C.5 q.2 c.4 in fine. ¹⁸⁰ Dig. 1.18.6.2

aliud enim est pax, aliud est treuga ut patet in eo quod legitur et notatur supra eodem titulo Significavit ad finem.¹⁸¹ *In personas et interdictum*: sicut supra capitulo § Ceterum in 460 fine.¹⁸² *Nisi forte* ver. *malicia*: puta heretici sint vel in malicia obstinati, infra titulo i. Excommunicamus i. § Moneantur,¹⁸³ infra de raptor. c. ii.¹⁸⁴ supra de Iudeis Cum non ab homine,¹⁸⁵ et infra eodem ver. i. *Quod si forte* ver. *Per auctoritatem ecclesie* que quanta sit perpendi potest ex eo quod legitur et 465 notatur extra. dominus noster. de homicid. Pro humani § Sacri,¹⁸⁶ ver. ‘Sit que cum suis’, supra c. Ita quorundam § Tales.¹⁸⁷ Et hoc iustum est bellum quod auctoritate ecclesie fit, de quo dic ut not. supra de iureiur. Sicut¹⁸⁸ et infra. *Secularem potentiam*: huius enim regulare est quia ex quo ecclesia non 470 habet quid faciat, recurrere debet ad brachium seculare ut patet supra de iudiciis, Cum non ab homine,¹⁸⁹ infra de cleric. excommun. c.ii. in fine¹⁹⁰ cum suis concordantibus.

Nos ergo, Octava pars. *Ligandi atque solvendi*: xxiiii. q.i. Quodcumque¹⁹¹ quod et omnibus sacerdotibus in parte 475 commune est, unde Mat. xviii. c. ‘Amen dico vobis quodcumque alligaveritis super terram, erunt ligati et in celo; et quodcumque solveritis’, etc.¹⁹² et Jo. xx. scilicet: ‘Accipite spiritum sanctum; quorum remiseritis peccata’, etc.¹⁹³ que verba dicaverat non solum Petro sed omnibus discipulis. 480 Quamvis et ei significanter dicatur ‘tu vocaberis cephas’, ideo id est in caput ecclesie, xxiiii. q.i. Rogamus,¹⁹⁴ lxii. di. Nulla ratione;¹⁹⁵ et iterum ‘quodcumque ligaveris’, etc. Mat. xvi.¹⁹⁶

462 infra] *male* S, A, D 467 suis] concordantibus *add.* A, D 480 dicaverat] dicta sunt A, D 481 et] etiam A, D 482 lxii] xciii *male* A, D, S

¹⁸¹ X 5.6.11 ¹⁸² Supra line 349 ¹⁸³ X 5.7.13 § 3 ¹⁸⁴ X 5.17.2 ¹⁸⁵ X 5.39.14
¹⁸⁶ VI 5.4.1 = Coll. III Innocentii c.31 ¹⁸⁷ X 5.6.6 ¹⁸⁸ X 2.24.29 ¹⁸⁹ X
 2.1.10 ¹⁹⁰ X 5.27.2 ¹⁹¹ C.24 q.1 c.6 ¹⁹² Mat. 18:18 ¹⁹³ Joh. 20:20 ¹⁹⁴ C.24
 q.1 c.15 ¹⁹⁵ D.62 c.1 ¹⁹⁶ Mat. 16:19

ad designandum unitatem ecclesie, et quia habet omnem
 485 principatum, nihilominus eam tamen tam pro se quam pro
 aliis hanc potestatem intelligitur suscepisse xxiii. q.i.
 Quodcumque¹⁹⁷ et c. Cum beatissimus¹⁹⁸ et c. sequen. Igitur
 commune est hoc ecclesie in omnibus sacerdotibus, ligant
 enim vel solvunt. Primo, idest ligatum vel solutum, ostendunt
 490 ut patet infra de sententia excommunicationis A nobis ii.,¹⁹⁹
 Secundo, excommunicando, vel sententiam relaxando. infra.
 de sentent. excommun. Per tuas et c. Sacro;²⁰⁰ Tertio,
 satisfactionem penitentie imponendo: ad quam faciendam
 obligavit et sic ligant vel parcendo et indulgendo: et sic
 495 solvunt ut patet infra de penitentiis, Omnis et c. Cum ex eo.²⁰¹
 In his autem omnibus sicut summus pontifex super omnes est,
 sicut pre omnibus potestatem habet. Unde et ex causa plenam
 indulget veniam peccatorum ut sequitur; quod nulli alii licitum
 est, immo limitatur potestas, infra de penitentiis Cum ex eo.²⁰²
 500 Et est ratio quia ipse papa vocatus est in plenitudinem
 potestatis ideoque plenam indulgentiam potest facere. Alii
 vero in partem sollicitudinis, ideoque ad ipsos particularis
 tantum pertinet et semiplena. Ad hoc ii. q.vi. Decreto²⁰³ et
 supra de usu pallii, Ad honorem.²⁰⁴ De ceteris dic ut plene not.
 505 in summa de penitentiis, sub rubrica De remissionibus;²⁰⁵
veraciter: non ficte, sicut in sequend. glossa. *Corde contriti*:
 per contritionem penitentia eterna remittitur, sed agenda est
 penitentia temporalis ut colligitur de pen. di.i. Multiplex²⁰⁶ et
 c. Quem penitet in fine,²⁰⁷ et c. Verbum,²⁰⁸ et c. Si

487 Igitur...ecclesie] Ergo et in commune est ecclesie D 494 obligavit]
 obligant A, D 499 eo] iuncto *male* A, D, S

¹⁹⁷ C.24 q.1 c.6 ¹⁹⁸ C.24 q.1 c.16 ¹⁹⁹ X 5.39.28 ²⁰⁰ X 5.39.40 and 48 ²⁰¹ X
 5.38.12 and 14 ²⁰² X 5.38.14 ²⁰³ C.2 q.6 c.11 ²⁰⁴ X 1.8.4 ²⁰⁵ *Summa*
 (Venice 1574) col.1865-1866 ²⁰⁶ De pen. D.1 c.49 ²⁰⁷ De pen. D.1 c.88 ²⁰⁸
 De pen. D.1 c.51

peccatum,²⁰⁹ et c. Si primi hominis di.v. Consideret in fine²¹⁰ 510
 et di.vii. c.finali.²¹¹ *Temporalem*: et ex causa sacerdos alleviare
 potest et papa in totum remittere ut patet in precedenti glossa
 et in eo quod legitur et notatur infra de penit. c. Significavit et
 c. Deus qui.²¹² Sine contritione autem nullus veraciter
 absolvitur ut patet xi. q.iii. Cum aliquis,²¹³ xxiiii. q.ii. 515
 Legatur,²¹⁴ de con. di.iiii. Omnis qui,²¹⁵ de penit. di.i.
 Neminem,²¹⁶ C. de heret. l. Manicheos,²¹⁷ in aut. ut non
 luxurientur contra naturam. respon. i. coll. vi.²¹⁸ Ideoque
 quando quis non contritus absolvitur solutio est ad hominem,
 non ad deum. Hoc est quoad militantem ecclesiam et non 520
 triumphantem, infra de senten. excomm. A nobis ii.²¹⁹ et
 notatur supra de testibus, Veniens ii. § finali.²²⁰ *Et ore confessi*:
 in vere enim penitente requiruntur tria: oris confessio ut hic,
 cordis contritio de pen. di.i. Convertimini.²²¹ Et hic precedit et
 di.iii. Scindite²²² et c. Sane in fine,²²³ operis satisfactio de pen. 525
 di.iii. Perfectam.²²⁴ Primum scilicet confessio non est res signi,
 sed signum tantum, scilicet contritionis. Secundum vero,
 scilicet contritio, est res signi, scilicet confessionis,
 satisfactionis sive mundationis. Tertium, scilicet satisfactio
 sine mundatio, non est signum alicuius rei, sed est res signi 530
 tantum, scilicet confessionis et contritionis sicut not. supra de
 celebrat. missarum, Cum Marthe § Distinguendum.²²⁵ *Eis
 autem ver. iuxta facultatem et qualitatem suam*: secundum
 quod duceret et expenderet si ipsimet iret, hoc enim est de

515 ut...Legatur] *om.* A, D 517 C] supra D 520 et...522 finali] *om.* O
 527 scilicet] *om.* D 528 scilicet¹] quod A, D 531 confessionis] et est signum
 scilicet *add.* A, D

²⁰⁹ De pen. D.1 c.82 ²¹⁰ De pen. D.5 c.1 ²¹¹ De pen. D.7 c.6 ²¹² X 5.38.3
 and 8 ²¹³ C.11 q.3 c.108 ²¹⁴ C.24 q.2 c.2 ²¹⁵ De con. D.4 c.96 ²¹⁶ De pen.
 D.1 c.43 ²¹⁷ Cod. 1.5.4 ²¹⁸ Authen. 6.5.1=Nov. 77.1 ²¹⁹ X 5.39.28 ²²⁰ X
 2.20.38 ²²¹ De pen. D.1 c.34 ²²² De pen. D.1 c.33 ²²³ De pen. D.3 c.18 ²²⁴
 De pen. D.3 c.8 ²²⁵ X 3.41.6

535 mente ut patet supra de voto, Magne § penult. ver. ubi pro te et
 seq.²²⁶ *Idoneos*: scilicet ad pugnandum, secundum quod legitur
 et distinguitur supra de voto, Quod super his.²²⁷ Sed pauci sunt
 remanentes qui hoc adimpleant, unde non credunt plenam
 indulgentiam peccaminum se adeptos. *Et illis similiter* ver. *in*
 540 *alienis*: subaudi cum suis non possint, *personis*: satis enim
 expendit qui plus non habet et exponit personam et animam in
 vitam que omnibus est preferenda temporalibus C. de sacrosan.
 eccl. Sancimus. i.²²⁸ Collige ergo ex his verbis et precedent. et
 his que hic et et ibi not. quod pauperes facilius salvantur quam
 545 divites, quia citius faciunt quid possunt. Dominus autem cor
 interrogat et non manum, xiiii. q.v. Si quid invenisti²²⁹ et xv.
 q.vi. c.i. ad finem;²³⁰ item not. quod sicut socii temporales
 quorum unus ponit pecuniam, et alius laborem sive personam
 lucrum ex societate proveniens participant temporale ut inst.
 550 de societate § De illa;²³¹ sic et spirituales socii spirituale
 lucrum plene remissionis peccaminum participare possunt, ut
 hic patet et in precedent. Ver. *huiusmodi quoque* ver. *iuxta*
quantitatem subsidii et devotionis affectum: Tales enim non
 consequuntur plenam remissionem ex vi istius indulgentie, sed
 555 participans tantum in partem capiunt magis vel minus,
 secundum quod fecerint plus vel minus, prout notatur simile in
 delictis et penis; supra eodem § Precipientes.²³² Et est simile,
 infra de privil. Ut privilegia § i. ver. Hec autem et ver. penult.
 et finali.²³³ *Consilium et auxilium*: cum enim secundum
 560 beatum Augustinum nullum malum impunitum, nullum bonum
 irremuneratum, iustum est ut retributionis boni particeps sit qui
 in ipso faciendo consilium et auxilium prebet; sicut et pene

544 hic et] *om. D* 555 magis... minus] *om. D* 556 quod] magis vel minus
add. D

²²⁶ X 3.34.7 ²²⁷ X 3.34.8 ²²⁸ Cod. 1.2.21 ²²⁹ C.14 q.5 c.6 ²³⁰ C.15 q.6 c.1

²³¹ Inst. 3.25. pr. ²³² Supra line 407 ²³³ X 5.33.24, 32 and 33

mali particeps est, qui ipsis delinquentibus favet, ut patet in eo quod legitur et not. supra eodem § Ceterum.²³⁴ *Omnibus etiam* ver. *proficiscentibus*: aliis proficiscentibus sed prima littera 565 prevalet. *Synodus*: scilicet ista presens que quandoque vocatur synodus universalis ut hic, quandoque concilium generale, supra de accusat. Sicut olim et infra eodem c.i.²³⁵ Datum lateran. etc. que considerata est in rescriptis quod dic ut legitur et not. supra de rescrip. Eam te.²³⁶ 570

²³⁴Supra line 349 ²³⁵X 5.1.25 and c.1 ²³⁶X 1.3.7

Nicholas Puchnik, a Portrait of a Medieval Canonist

Dominik Budský

Nicholas Puchnik (†1402), a trained lawyer and practicing judge, is the author of the *Processus iudiciarius secundum stylum Pragensem*. His work and activity must be examined in three parallel lines, i.e. taking degrees and other activities within the University of Prague, his activities at the Archdiocese of Prague, and finally obtaining benefices and related income necessary for his subsistence. At key moments, Nicholas found himself in the middle of larger contemporary political events.

Puchnik, also cited in the sources by the other varied names Pucnik, Buchnik, Buchnico, Botnig, came from a small gentry family settled at the small fortification near the South Bohemian town Horažďovice.¹ He first appeared in written sources in the year 1373, when there is evidence that he obtained his first degree at the University of Prague-Bachelor of Arts.² A little later, between the years 1375 to 1376, as he advanced in his university career, he is mentioned as the rector of a school in Roudnice and Labem. In 1375 he obtained the licentiate and two years later he obtained the degree Master of Arts.³ In the same year (1377) he is still mentioned as university 'examinator'.⁴

A key moment in Puchnik's biography came in 1383, when he obtained the licentiate to teach the *Decretum*,⁵ after he

¹ August Sedláček, *Hrady, zámky a tvrze Království českého* [The Castles, Chateaux and Citadels of the Kingdom of Bohemia] (Prague 1895, reprinted Prague 1993-1998) 11.266.

² *Monumenta historica Universitatis Carolo-Ferdinandae Pragensis*, 1: *Liber decanorum Facultatis philosophicae Universitatis Pragensis* (Prague 1830)(=MUP 1) 157, September 1373, 'examinati fuerunt . . . ad baccalariatum . . . Buchnik Bohemus'.

³ Josef Tříška, *Životopisný slovník předhusitské pražské univerzity* [Bibliographical Index of the University of Prague in Pre-Hussite Period] (Prague 1981) 414.

⁴ MUP 1.178.

⁵ Zdeňka Hledíková, *Úřad generálních vikářů pražského arcibiskupa v době*

had lectured on canon law at the University of Prague just one year before. This degree was also related to his litigation with John de Dulmen about the right to give lectures on the *Liber Sextus*.⁶

In 1383 Puchnik received his first administrative position. He was appointed as an official by Archbishop John of Jenstein.⁷ Both events, i.e. the licentiate and his appointment as an official, were probably closely related. Jenstein most likely chose Puchnik because he was well-educated and still skilled. He probably met Puchnik in Prague or in the school of Roudnice, where Puchnik had taught.⁸ Unlike Jenstein, Nicholas had not studied at foreign universities. It is important to note that for the period of his officialate, we have no evidence in the sources of Puchnik's benefice, although the holding that office should have been financially quite demanding.

In the following years we can find Puchnik mainly in the academic sources, eventually in the judgments and other documents of the officialate. His first benefices are mentioned just before the end of the 1380s. Thus Puchnik is documented in 1385 as a witness of the transfer of Charles College from Lazar's House to the Rotlev's house.⁹ From 1386 to 1389 he served as

předhusitské [The Office of General Vicar of the Prague Archbishop in Pre-hussite Period] (Acta Universitatis Carolinae. Philosophica et historica. Monographia, 41; Prague 1971) 127-128.

⁶ *Acta iudiciaria consistorii Pragensis* ed. Ferdinand Tadra (Prague, 1893-1901) 2.169 (=AI 1-8); Jiří Kejř, *Dějiny pražské právnické univerzity* [History of Prague Law University] (Prague 1995) 54.

⁷ Hledíková, *Úřad generálních vikářů* 127-128. He is first mentioned with the licentiate to teach the *Decretum* in the officialate sentence on 31 July 1383, where it is also announced, that Puchnik assumed the office of Master Bores, Archdeacon of Horšovský Týn. See *Regesta Bohemiae et Moraviae aetatis Wenceslai IV.*, ed. Karel Beránek and Věra Beránková (Prague 2006) 5.1-1.86 no. 148, (=RBMV). This documents Puchnik's first act in the office of the officialate.

⁸ Tříška, *Životopisný slovník*, 414, rector in Roudnice.

⁹ *Monumenta historica Universitatis Carolo-Ferdinandae, Album seu matricula facultatis iuridicae universitatis Pragensis* (Prague 1834) 285 (=MUP 2); Jaroslav Eršil and Jiří Pražák, ed. *The Archives of Prague Metropolitan Canonry I (-1419), Catalogue of Documents and Papers* (Prague

Vice-Chancellor,¹⁰ and finally in 1388 he obtained his first benefice. He is mentioned as a canon in Mělník and Olomouc¹¹ and as the real holder of both benefices.¹² Unfortunately, it is not possible to determine when he received them, it might have occurred when he was appointed official in 1383. Likewise, the sources do not indicate whether Mělník was associated with a benefice and if so, what income the benefice carried. In Olomouc, a canonical benefice is recorded as late as in a charter of 1401.¹³

Puchnik had a good income thanks to the intercession of John of Jenstein, when he was accepted as a canon of the Prague Metropolitan Canonry. There, after the usual process, he was appointed on 15 April 1388. John of Kbel represented him during the whole process.¹⁴ The provision document, which indicates that Puchnik could keep the benefices in Olomouc and Mělník, also mentions a parish church in Hartvíkovice, over which he had a dispute with the curia.¹⁵ Simultaneously he might have obtained some benefices from the bishop of Olomouc, which can be seen as insurance if he would acquire the benefice in

1956) 141 no. 503.

¹⁰ Tříška, *Životopisný slovník* 414.

¹¹ In the connection with both benefices he was first mentioned as a Prague canon in a papal commissioned chart on 18 February 1388 see: *Monumenta Vaticana res gestas Bohemias illustrantia*, ed. Kamil Krofta (Prague 1903) 5.1.101 (=MBV); *Regesta Bohemiae et Moraviae aetatis Wenceslai IV.*, ed. Věra Jenšovská (Prague, 1967-1981) 1.554; (=RBMV). From 31 March 1388 see Beránek and Beránková, RBMV 5.1-1.145 no. 301, he is mentioned in a sequence of official documents as a Prague and Olomouc canon (until that time only as licenciate without any benefice!). Moreover, from 1396 he is also mentioned as a canon of Vyšehrad and other canonicates (Mělník, St. George at the Prague Castle) are not mentioned. He is mentioned at the end of his life in Vyšehrad, for example RBMV 5.1-2.50 no. 713; AI 4.31-32 no. 77.

¹² MBV 5.1.101 n. 159; Václav Vladivoj Tomek, *Dějepis města Prahy* [History of the City of Prague] (Prague 1905) 5.129; Tříška, *Životopisný slovník* 414; Karel Zamastil, *Kollegiální kapitula mělnická* [Collegiate Chapter in Melnik] (Mělník 1846) 42 mentions him as the Mělník canon on 1 July 1397 without any reference to sources.

¹³ RBMV 1.7.1838.

¹⁴ Relevant documents, see: MBV 5.1.101; RBMV 1.554.

¹⁵ MBV 5.1.101; RBMV 1.554.

Olomouc, because the total income of all benefices should not exceed 50 talents.

In summary, we can say that Nicholas had at least a modest income in the late 1380s, and given that, it is most likely that he was tied to none of the above mentioned benefices with duties or functions. Therefore he could fully concentrate on the activities of the officialate or on purely intellectual matters. This fact is reflected in the sources where we find Puchnik as an ‘examinator’ in 1389¹⁶ and as rector of the University of Prague in the academic year 1389-1390.¹⁷ Shortly after 1388 he was able to lend 95 Prague Groschen to the later archbishop of Prague, Olbram of Škvorec. This is evidence of Nicholas’s improved financial situation.¹⁸

In the meantime, from February 1386 to October 1389, we can assume that he wrote the treatise *Processus iudiciarius secundum stilum Pragensem*.¹⁹ It can be said that it was a quiet period in Puchnik’s life, because he had a comparatively large amount of time for intellectual work because he worked as an official and also at the university. Later on, he also received a decent income. Moreover, Puchnik could work under peaceful conditions as far as the relations between the archbishop and the emperor were concerned. Puchnik was well prepared to compose

¹⁶ MUP 1.261, There he is as examiner and Master of Liberal Art, Vice Chancellor at the University (Nicolaus Bochniko).

¹⁷ Pavel Spunar, *Repertorium auctorum Bohemorum provectum idearum post Universitatem Pragensem conditam illustrans* (Wroclaw-Warsaw-Krakow-Gdansk,-Lodz 1985) 157 mentions him as rector.

¹⁸ Antonín Podlaha, *Libri erectionum archidiecesis Pragensis saeculo XIV et XV* (Prague 1927) 6.242-243 (=LE).

¹⁹ Miroslav Boháček, ‘Processus iudiciarius secundum stilum Pragensem’, *Akademiku Václavu Vojtíškovi k 75. narozeninám pracovníci Archivu ČSAV, Práce z archivu ČSAV* [The Workers of Archives of Czechoslovak Academy of Sciences to Academic Václav Vojtíšek for his 75. birthday, The Journal from the Archives of Czechoslovak Academy of Sciences] (Prague 1958) 5-35 at 16. Domiiniik Budský, ‘Processus iudiciarius secundum stilum Pragensem Mikulaše Puchnika (Rozbor dochovaných rukopisů)’, *Studie o rukopisech* 39 (2010) 255-277 and ‘Processus iudiciarius secundum stilum Pragensem and its Author’, *ZRG Kan. Abt.* 98 (2012) 324-340.

a treatise with the training of his licentiate, despite the fact that, presumably, he did not acquire a doctorate.²⁰

With the beginning last decade of the fourteenth century, Nicholas was moving more and more to the centre of church politics, where he more or less remained until the end of his life. In the years 1390-1392 he is mentioned in the possession of another benefice as a rector of the parish church in Hartvíkovice in the diocese of Olomouc.²¹ Achieving this benefice was probably a part of Nicholas's 'benefice strategy', although this case was rather a partial episode.²² Although it was a parish benefice, it did not burden Puchnik because he installed a vicar there. But shortly after, a more profitable parish in a geographically closer location by St. Nicholas in Old Town was offered to him. So Puchnik left Hartvíkovice, and was noted in St. Nicholas in 1391. It can be assumed that he also kept a vicar there.²³ Moreover, he became the delegated representative of John of Pomuk in the office of general vicar during August 1392, and then he most likely came to the office and became his colleague, a second general vicar.²⁴ With regard to the fact that

²⁰ Dominik Budsky, *Mikuláš Puchník - život a právnické dílo* [Nicolaus Puchnik - Life and his Canon Law Treatise] (Ph.D thesis, Catholic Theological Faculty, Charles University of Prague 2013); Dominik Budsky, 'Processus iudiciarius secundum stilum Pragensem Mikuláše Puchníka, Rozbor dochovaných rukopisů', [Analysis of the preserved manuscripts] *Studie o rukopisech* 39 (2009) 255–277.

²¹ He was in litigation over this benefice since 18 Febr. 1388 (MBV 5.1.101; RBMV 1.554). He won this dispute, because he held a contract in Hartvíkovice-see below in this footnote (26 August 1392). On 12 Dec. 1390 (MBV 5.1.228-229), he was allowed, although possessing the benefice in the parish church in Hartvíkovice, but also to accept one other benefice. However, he shall probably relinquish Hartvíkovice thanks to the assuming a parish at St. Nicholas. As a holder of Hartvíkovice he is lastly mentioned on 26 Aug. 1392 (AI 3.78, contract at the parish).

²² See previous footnote.

²³ Tříška, *Životopisný slovník* 414 (without reference to a source).

²⁴ To determine the exact date when he assumed the office of general vicar is not easy, because Puchnik was often mentioned just with the title of official or general vicar. As the vicar he is mentioned for the first time in record on 26 August 1392 (AI 3.78). In the previous records he is always mentioned only in connection with the function of the official. His designation to the position of

he was acting as official and as general vicariate simultaneously until May/June 1394, he must have had to manage a heavy workload, which is also proven by numerous entries in the court acts.²⁵ This means that he was occupied almost daily with one or another office, often in cases which prolonged over the years. In addition to this, his financial needs increased, because both functions were unpaid. It was a custom that their holder subsidized his own work and sometimes a part of the administrative costs by using his own wealth. The records in the court acts and other papers make clear that Puchnik took both functions very seriously. A really troubling period in Nicholas Puchnik's life was March of 1393. He became involved in the dispute between the Archbishop John of Jenstein and the King Wenceslas IV because of his office of general vicar. This issue has been repeatedly described in many ways; for our purposes Jaroslav Polc provides the most detailed narration.²⁶ Although the main character of the colorful description of the events is John of Pomuk, as it implies the name of Polc's monograph, yet Nicholas Puchnik often acts in some episodes as Pomuk's colleague in the office. After the well-known and often described

general vicar is recorded in 1395 (see LE 4.456-458). However, it is likely, that in August 1392, after having represented John of Pomuk in the office of general vicar (3 August 1392, RBMV 5.1-1.195, no. 431), he became Pomuk's colleague (second general vicar) and from 26 August 1392, he was already occupying the office of general vicar (AI 3.78).

²⁵ Court Acts of the Prague consistory (*Acta iudiciaria consistorii Pragensis*) are protocolarily records describing progress of individual lawsuits litigated before the court of general vicar. This court and its acts started in 1373, while the court of Prague official began more than a century before. The agenda of both courts was very similar and their competition largely mixed, only marital disputes were litigated in principle by the official's court. Nicholas Puchnik was one of the few personalities who could combine both judicial functions in one person. To the preservation of documents of officialate see Zdeňka Hledíková, 'Několik zlomků soudních písemností z církevní praxe druhé poloviny 14. a počátku 15. století', [A few Fragments of Court Documents from the Religious Practice of the second half of the Fourteenth and early Fifteenth Century] *Táborský archiv* 12 (2003) 25-52, including a series of several fragments of the officialate's index.

²⁶ Jaroslav Polc, *Svatý Jan Nepomucký* [Saint John of Pomuk] (Prague 1993).

election of the Abbot of Kladruby and after disputes with the king's man, Sigmund Huler, which ultimately resulted in Huler's summons to court on 20 March 1393, the crucial meeting and the attempt to negotiate between the emperor and the archbishop on the Prague's bridge. The result was the arrest and torture of two general-vicars.²⁷ Puchnik was subjected to almost the same 'procedures' of torture as his (later canonised) colleague. This torture was administrated by an urban executor, and even the emperor himself (!). We can only speculate about the possible causes, why Nicholas survived the torture and then, after he signed the statement, was 'vix semivivum dimisit' by the king, while Pomuk was already in such a condition that he could not even sign the statement.

Several hypotheses have been made to account for the differences. They range from the physical constitutions of the both vicars, different levels of intensity of the torture (according to Ludolf of Sagan was Puchnik 'flammis et ignibus manu sua, ut

²⁷ The torture is described in details in Johann Loserth, ed. 'Tractatus de longevo schismate des Abtes Ludolf von Sagan', *Beiträge zur Geschichte der hussitischen Bewegung, Archiv für österreichische Geschichte* 60 (1880) 419: 'Inter cetera autem honorabilem illum virum deo acceptum et hominibus Teutonicis et Bohemis amabile dominum Johanem presbyterum domini archiepiscopi Pragensia in spiritualibus vicarium decretorum doctorem crudeliter tortum combustum et evisceratum in aqua submersit, dominum Nicolaum Botnig licenciatum in decretis et magistrum in artibus Pragensem presbyterum flammis et ignibus manu sua, ut ita dicam, regia et manibus aliquorum aliorum miserabiliter eciam in membris pudendis attractatum vix semivivum dimisit, dominum Boleslaum (recte Bohuslaum [Bohuslav of Krnov, dean of Metropolitan Canonry], author's remark) lectorem Prage ordinarium, doctorem decretorum et Pragensem decanum captum et percussum, dominum insuper prepositum Misnensem venerabilem virum dictum Knobeloch tentum, nudatum et iam tormentis presentatum vix tandem liberos esse pasus est.' See also Polc, *Svatý Jan Nepomucký* 235. Also in Joseph Emler, ed. *Životy svatých a některých jiných osob nábožných, Život Jana z Jenštejna, arcibiskupa pražského* [The Lives of Saints and other Religious Persons, The Life of John of Jenstein, Archbishop of Prague] (Fontes rerum Bohemicarum; Prague 1873) 1.461: 'Neboť ctihodný pan Mikuláš Puchník, později zvolený arcibiskup pražský, pochodněmi a hořícími svícemi pálen...' [Since the venerable Mr. Nicholas Puchnik, later elected Archbishop of Prague, was tortured by burning torches and candles...].

ita dicam, regia et *manibus aliquorum aliorum miserabiliter*²⁸ eciam in membris pudendis'), to the different social backgrounds of both vicars. This consideration takes into account the fact that John was the son of a mere royal reeve of Pomuk, thus de facto the emperor's direct subordinate, while Nicholas Puchnik came from the family of gentry, from which Wenceslas IV recruited many of his favorites.²⁹ However, a question remains, whether Wenceslas IV, who was in state of rage, was able to discern the subtle differences in the social origins of the two protagonists.

Likewise, the fact remains that both Pomuk and Puchnik were established in more or less equal position in the contemporary accounts of events, as evidenced by the reading of Jenstein's complaint to Rome, although it probably exaggerates the matter intentionally.³⁰ Puchnik's posthumous reputation, unlike that of St. John of Pomuk, developed completely in the opposite way. John Hus doubted the events described by the Archbishop.³¹

²⁸ Emphasis added.

²⁹ For highlighting this point, I would like to express my thanks to Professor Zdeňka Hledíková.

³⁰ Jenstein's complaints mentioned Puchnik's martyrdom, see Paul de Vooght, *Hussiana* (Bibliothèque de la RHE, 35; Louvain 1960) 4.431, art. XXIV. In the footnote, the editor himself expresses his doubts about the use of expression ('martyrium') for Puchnik, while for John of Pomuk is used only the expression drowning (!) ('submersio'). The editor considered this passage to be confused and the use of the expression *martyrium* in the connection with Puchnik as untrustworthy.

³¹ The article against John Hus, that he was not for the imposing of the interdict after Pomuk was killed and Puchnik was imprisoned. The original text, see *Documenta Mag. Joannis Hus*, ed. František Palacký (Prague 1869) 165: 'Item ponitur, quod in domo Wenceslai picatoris, post prandium inmediate, coram magistro quodam et presbytero et aliquibus laicis dicere non erubuit atque dixit, quando facta fuit mentio de submersione D. Johannis pie memorie et Puchniak ac decani pragensis detensione, quod interdictum poni debuisset, praedictus M. Joann. Hus scandalose dixit: Magnum quid, quod illi popones detinentur! Dicatis rationem, quare a laude Dei cessari deberet?' Hus's answer: 'Istud dictum conservavit Protiva (=plaintiff) a longo tempore, sed adiecit mendacium. Ego dixi, quod non est ratio in scriptura Christi, quod propter me poponem vel alium, si incarcerer vel occiderer, quod a laude Dei et a divinis cessarent per totum regnum; dicatis scripturam vel rationem, dixi ad

Nonetheless Nicholas suffered a physical and psychological shock. After 20 March 1393 Puchnik disappeared for about a month from the court and from other sources. Actually, a similar absence in this period was recorded by all central church authorities. He was again active at the court in the late April of that year, and we do not find him as an ‘examinator’ at the university until July.³²

As a result of all these events, Puchnik took courage to make a probably personally motivated step in the late November 1396, when he purchased the perpetual income of two threescore Prague Grohens a year and gave this wage to the canonry for the purpose of celebration of John of Pomuk’s anniversary.³³ It was probably a tribute to the memory of his martyred colleague at the time of the burial of Pomuk’s body in the cathedral.³⁴ Then, Puchnik was replaced by John Kbel in the office of official in May or June 1394. The very next year there is an evidence of his official appointment to the office of general vicar, and one may notice further improvement in Nicholas’s financial situation.³⁵

Another possibility of improving his financial situation arose for Puchnik in 1396 when he managed to change his parish benefice at St. Nicholas for two benefices at St. George in Prague and Vyšehrad.³⁶ Due to the nature of the exchange (parish benefice), it can be assumed that both prebends were probably connected with the care of souls at the time of exchange, which would have been extremely disadvantageous for Puchnik. The possession of the first was not entirely without problems. Puchnik is mentioned in connection with the prebend at St. George rather sporadically, usually in a document in which

Protivam; et aestimo, quod non invenit usque hodie in lege Christi rationem, quod deberent propter detentionem sacerdotis cessare a divinis’.

³² MUP 1.285.

³³ Tadra, AI 3.217; Polc, *Svatý Jan Nepomucký* 131-132, 205, 266.

³⁴ Polc, *Svatý Jan Nepomucký* 265.

³⁵ 31 August 1395 (Podlaha, LE 4.456-458).

³⁶ *Libri confirmationum ad beneficia ecclesiastica Pragensis per archidiocesim*, ed. František Antonín Tingl and Josef Emler (Prague 1865) 5.262-263 (LC); Tomek, *Dějepis* 5.129 and 221; Tříška, *Životopisný slovník* 414.

Nicholas appeared directly in the affairs of the St. George's chapter.³⁷ Moreover, since 1399 he had to litigate over this benefice with its original holder.³⁸ This was probably not Puchnik's only court case; there is a documented delegation of the proctors Conrad de Braclis and Maurice Machuta on 31 January 1398 for Puchnik's cases.³⁹ It is true that it was not usual to change benefices with the care of souls into two without, even in that time, which was rich and full of bizarre 'benefice transactions'. It was likely an adequate income for both sides (one wealthy parish for two minor benefices). The exchange was profitable for a very busy Puchnik. It was an unusual exchange, and that was probably taken into consideration by the plaintiff in a document dated on 2 January 1401.⁴⁰ The last evidence of the dispute is from 29 March 1402, only a few months before Puchnik's election to the Archbishopric of Prague and his subsequent death in 1402.⁴¹ The dispute was then in the appeals stage by the auditors in Rome, and most likely a final sentence was not rendered until the summer of that year after Puchnik's death. One can only speculate to what extent this unusual exchange influenced Puchnik's nickname 'nullatenus et omnitenus ecclesiarum canonicus'.⁴²

The last benefice worth mentioning is dated 29 August 1401. Puchnik confirms in it that he acknowledged the debt of Smil of Vícov, the archdeacon of Litoměřice, for the amount of 50 Moravian talents, for the benefice of the Olomouc chapter.

³⁷ For instance on 16 January 1399 (Beránek and Beránková, RBMV 1/7.1706). One of the rare records of Puchnik's connection with the canonicate at St. George, it is a document of a public notary directly for this canonry. See also 18 February 1401 (Beránek and Beránková, RBMV 5/1-2.50, no. 713).

³⁸ He probably possessed the canonicate continuously till 1399, see Beránek and Beránková, RBMV 1/7.1706, but then he had to litigate over it with the original exchanger Nicholas Mislav.

³⁹ Tadra, AI 3.318.

⁴⁰ Krofta, MBV 5.956-957, it is ordered that the Prague official install Nicholas Puchnik at St. Nicholas in Lesser Town Prague again, if it will be proved he did not have any right to exchange it for the canonicate at St. George at Prague Castle.

⁴¹ Tadra, AI 4.107, no. 92.

⁴² For more details on this issue, see the final section of this study.

Further, it is mentioned that Smil still owed him 12 threescore and 30 Prague Groschen. Again, it is a proof of Puchnik's financial ability to provide loans and also evidence of Puchnik's possession of a benefice in Olomouc.⁴³

Let us go back to 1396, when several economic transactions of Puchnik are recorded. The 26 October, 1396 declaration of Peter of Všeruby, canon of St. Vitus, describes the allocation of a number of tributaries in Nehvizdy by the law of so-called 'commenda', which meant that Peter was in charge of part of Nicholas's benefice.⁴⁴

In the late 1390's Puchnik was dismissed from the office of the general vicar due to the accession of the new archbishop, Olbram of Škvorec (1396-1402). Olbram, conforming to the will of Wenceslas IV, who likely regarded Nicholas as potentially dangerous, dismissed him. The change was enacted 25 January 1398,⁴⁵ but even afterwards Puchnik was called the general vicar in many entries of Judicial Acts or *Libri erectionum* (especially in later 1398 and 1401).⁴⁶ Therefore Olbram's order of dismissal did not become effective, though it is unclear whether it was because of the weakening power of the monarch or Puchnik's position, or whether the Archbishop himself changed his decision. It is true that Puchnik had lent Olbram large sums to pay off his 'servitio', of which he finally became a due 'heir'. The last mention of Puchnik's other benefices, before his election as archbishop, dates from 6 April, 1400, when he leased the parish in Jemnice to priest Thomas for one year for 100 threescore Prague Groschen.⁴⁷

The sources do not record the exact date of the election when the St. Vitus chapter selected Puchnik. It was between 1 May, 1402 (death of Olbram of Škvorec) and mid-June of that

⁴³ Tadra, AI 4.31-32, no. 77.

⁴⁴ Tadra, AI 3.211; Jenšovská, RBMV 1/5.1352.

⁴⁵ Tadra, AI 3.317.

⁴⁶ In 1398 for instance Beránek and Beránková, RBMV 5/1-2.18, no. 628; Tadra, AI 3.370; in 1399, Jenšovská, RBMV 1/7.1706; in 1400 see Eršil and Pražák, *Catalogue of Documents and Papers* 186, no. 667; Beránek and Beránková, RBMV 5/1-2.40, no. 686 and many other proved records till 1402.

⁴⁷ Jenšovská, RBMV 1/7.1838.

year, because Pope Boniface IX confirmed the choice of the chapter on 26 July 1402.⁴⁸ Therefore, if one considers the time needed for the transmission of the election from Prague to Rome and the time needed for hearing at the Curia, the probable date of the election was sometime in the second half of May or mid-June 1402.

Since the monarch had been imprisoned since March of that year, it might have been a relatively 'free' election; otherwise it would have been difficult to select one of the witnesses of Wenceslas's fury, the person, for whom he certainly had antipathy. It is important that Sigmund of Luxembourg consented to the election.⁴⁹ Another motive of the chapter to elect Puchnik could be that the deceased Olbram owed him a significant and probably still outstanding amount for loans for 'servitium'. So Nicholas Puchnik became an 'archiepiscopus electus' Archbishop of Prague for a short time, but he did not live long enough to receive the definitive confirmation and installation. On 28 July he published a document, in which he promised to pay the 'servitium', including the debts of Olbram of Škvorec.⁵⁰ However, in the documents from the 10 September, 1402, published by the administrator of the archdiocese Jaroslav of Pořešín⁵¹ he was remembered as 'quondam archiepiscopus'. Therefore, he died between 28 July and 10 September and was buried in the St. Vitus Cathedral on 19 September, 1402.⁵²

The circumstances of his death are interesting in several aspects. Above all, it is difficult to explain where Puchnik died. It could have been in a castle in southern Bohemia-Poděhusy, which originally belonged to the Rosenbergs nobility, but which, in the years 1387-1407, was in the pledge of Vilém of Újezd, the viceburgravi of Prague Castle.⁵³ The Hussites destroyed it in

⁴⁸ Krofta, MBV 5.1124-1125, benefice vacated due to his election was reserved to Anton, cardinal of St. Cecily.

⁴⁹ Sedláček, *Hrady, zámky* 7.161, unfortunately claimed it without references to any sources.

⁵⁰ Krofta, MBV 5.1127.

⁵¹ Beránek and Beránková, RBMV 5/1-2.73, no. 771.

⁵² Tadra, AI 4.164. Particular place is unknown.

⁵³ For the death see the next footnote. *Hrady, zámky a tvrze v Čechách, na*

1421. There is certainly a question why Puchnik stayed in such a remote part of the country, especially when he expected confirmation from Rome. The only explanation may be in a link between the Puchnik's prebend in Vyšehrad and the estates of the same chapter near Prachatice. Or he could have just stayed shortly (overnight) in a castle located in the vicinity of the land's mercantile path. Puchnik could have known Burgrave Vilém from the Prague milieu.

More recent, information about Puchnik's death is contained in Bohuslav Balbín's *Miscellany*.⁵⁴ According to Balbin, Puchnik was poisoned. This argument might be supported by several factors. First, Nicholas's age, which can be estimated by the time of the acquisition of his academic degrees analogically to other scholars, was approximately fifty years in 1402, which was the age at which a person in this position usually did not die of natural death in the Middle Ages.

Moravě a ve Slezsku, vol. V: Jižní Čechy [Castles, Chateaux and Fortresses in Bohemia, Moravia and Silesia, vol. V: South Bohemia], ed. Karel Tríška et al. (Prague 1986) 154, castle Poděhusy 3 km east from Netolice; *Historický lexikon obcí ČR 1869-2005* [Historical Lexicon of Municipalities] (Prague, 2006) 2.405, district Prachatice.

⁵⁴ Allegedly sudden death caused many rumors about Puchnik's poisoning, see Bohuslav Balbín, *Miscellanea historica regni Bohemiae* (Prague 1682) dec. I, lib. VI, pars II, 58: 'Archiepiscopus Nicolaus Puchnik Wolframii nuper vicarius et canonicus pragensis. Seriem deinde archiepiscoporum sed brevi tempore pertexuit M. Nicolaus Puchnicus canonum in Pragensi Universitate doctor. Si vera sunt, qua Georgius Fabricius in Chronico Misnae adnotavit, sordidus et divitiis praeposteris accumulandis addictissimus fuit. Nolo addere dignam avaro mortem; sit fides penes authorem. Notae nostrae in Puchnicum: Nicolaus Puchnik inter archiepiscopos nullo pacto censi potest: electum esse quidem fateor et a pontifice confirmatum sed infulam non gessit. An 1402 19. Septembris ante consecrationem extinctus, cum in Mai initio Wolframus obierit. Veneno sublatum esse Puchnicum veteres tradunt et regem ipsum, qui porrexit suspicantur nonnulli. Pessina, alique meliores historici Nicolaum in Podiehus castro Rosensium Procerum [castle Podehus], veneno sublatum, corpusque eius Pragam devectum (et) in ecclesia s. Viti tumulatum affirmant et que de eius sordibus et avaritia narrantur ab adversariis conficta existimant, in quam ego quoque sententiam, licet in Epitome aliud scripserim, rebus melius perpensis inclino'.

Among the other arguments for Puchnik's violent death can be taken the probable interest of Wenceslas IV and his supporters not to let him assume the archbishopric. Although the king was still in captivity at this time, this does not mean, that Puchnik's death could not have been caused by some of Wenceslas' zealous supporters. Since the Poděhusy castle was in the pledge to Vilém of Újezd, a member of the gentry, and therefore likely a Wenceslas' supporter, who might have anticipated on his quick return to power. Thus Puchnik could theoretically have become a victim of the rivalry between Wenceslas's and Sigmund's fractions in the struggle for the power. All the preceding arguments are, of course, conjectures, definitive confirmation or negation of which is not possible because of the lack of documentation. In addition, information about the alleged poisoning occurs only in Balbín's writing, without reference to any specific source. Puchnik's death was most likely quite sudden, and therefore could be, as in many other similar cases, and by other generations explained as poisoning.

In the last part of this study, we will turn our attention to Puchnik's posthumous reputation, or his so-called 'second life'.

Several unfortunate factors and events tarnished Puchnik's reputation. First, connected to financial reputation of papal curia, was the claim of the payment of the whole 'servitium' for Nicholas Puchnik, even though he had not taken up the position of the archbishop of Prague. The curia logically argued that the confirmation of the appointment had already been issued, and therefore that the 'servitium' should have been paid in full. Thus the guarantors of the debt, John of Kbel and John of Malesice, were in a very awkward situation. Although they had substantial incomes, especially the latter, they were not be able to pay the huge charge of 3300 florins, an amount that was increased by the previous debts of Olbram of Škvorec and the subsequent penalties. After much conflict with the metropolitan chapter, an extraordinary tithe and payment schedule was

announced.⁵⁵ The case must have been very well known at that time, because it provoked a critical comment from John Hus.⁵⁶ This might be the reason why Puchnik did not have a good reputation among reform-minded clergy. Hus expressed his objections to the death for John of Pomuk and Puchnik's torture.

Further, the image of Puchnik as pluralist had a negative effect on his reputation. As I mentioned above, he was given the nickname 'nullatenus et omnitenus ecclesiarum canonicus' soon after his death.⁵⁷ This epithet probably indicated a greater concentration of benefices where Puchnik could not fulfil the prescribed residence duty, which was one of the typical problems of that time. If we list Puchnik's benefices at the peak of his career, he clearly had income from the metropolitan chapter in Prague and probably from an Olomouc benefice, as evidenced by a document in 1401.⁵⁸ It is also probable that he had some income from Vyšehrad, because he is mentioned continuously from 1396 until the end of life in the connection with the chapter.

⁵⁵ The whole case is described in details in Jaroslav Eršil, 'Zatížení církevními dárkami v Čechách na počátku 15. století (K otázce papežského desátku z r. 1403)' [Loading Church Tithes in Bohemia in the Early Fifteenth Century (On the Question of Papal Tithes 1403)], *Český časopis historický* [Czech Historical Review] 10 (1962) 533-555. Further comments about the canonry's economy is provided in the MA thesis of Martina Maříková, *Registrum acceptorum et divisionum capituli metropolitani Pragensis 1396-1418* (MA thesis, Department of Auxiliary Historical Sciences and Archives Studies, Faculty of Arts, The Charles University; Prague 2005) 61, chapter 5.2.3.

⁵⁶ *Magistri Iohannis Hus Opera omnia, Drobné spisy české* [Short Writings in Czech], ed. František Palacký (Prague 1885) 4.209: 'Za Puchníka k pražskému arcibiskupství stáli sú rukojmě ještě po jeho smrti Kbel a Malešic a jiní, a musili sú platiti, an, nepoživ nic biskupství, aniž v ně vstúpil, umřel jest!' [Guarantors of Puchnik's debt John of Kbel and John of Malesice had to repay the debt even though Archbishop Puchnik did not de facto assume the office, because he soon died.].

⁵⁷ The note is on the cover of the manual manuscript The archives of Prague Castle, the Metropolitan Chapter Papers, sign. IV / 5 (the title page), edition see Tadra, AI 3.x; see also, *Catalogus codicum manu scriptorum, qui in archivio Capituli Metropolitani Pragensis asservatur*, ed. Antonín Podlaha, (Editiones archivii et bibliothecae S. F. Metropolitani capituli pragensis 17; Prague 1923) 17.

⁵⁸ Tadra, AI 4.31-32, no. 77.

On the contrary, revenues from Mělník and the chapter of St. George at Prague Castle are highly questionable. The sources concerning Puchnik's activity in Mělník are not very reliable, and he contested the St. George benefice from 1399 to his election of archbishop. However, even if he really received the income from both canonicates, it would not be a large amount because Mělník and benefice of St. George incomes were not large. It is also worth noting that there were greater pluralists than Puchnik among the metropolitan canons of Prague during this period.

Finally, the connection of Puchnik's name with the story of a greedy cleric should be discussed. The story, having obvious features of 'exempla' and containing a series of 'topoi', was related in the work of Protestant classical philologist and educator George Fabricius⁵⁹ in his *Annales Urbis Misnae*.⁶⁰ The story describes the alleged visit of Nicholas Puchnik to Wenceslas IV, who granted him the right to take as much gold from his property as he could carry away. The greedy Puchnik had stuffed his wide shoes and all of his pockets with gold, but then he realised that he could not move because of its weight. The king laughed at him and dismissed him.⁶¹ This story about a

⁵⁹ George Fabricius was a classical philologist and university teacher working in Leipzig and Magdeburg, born 23 April 1516 in Chemnitz and died 17 July 1571 in Meissen. At the end of life he also compiled the annals, see his biography in *Allgemeine Deutsche Biographie* (Leipzig, 1877) 6.510-514.

⁶⁰ Georgius Fabricius, *Annales Urbis Misnae (Rerum Misnicarum libri VII)* (Jena 1598) 2.135: 'Praesul Misnensi Venceslao Romanorum regi exactiones pendit per biennium causa literis non expressa. Idem Venceslaus Iohannem quendam doctorem Theologiae, patria Germanum, in flumen Vultaham iubet conjici, qui coram rege dixerat, eum regio nomine indignum, qui regnum non didicisset aut sciret administrare: id autem fecisse suasu obscuri hominis Puchniconis praesulis. Eum Puchniconem cum avarum rex sciret, iussit ex aerario suo tantum auri sumere, quantum efferre posset. Laetatus ille regia munificentia, non solum tunicam amplam implevit, sed etiam perones rusticis usitatos induit, quos cum simili modo refersisset, progressurus loco, se movere non potuit. Rex illius stulticiam irridens exui iubet et onere illo spoliatum, a suo conspectu ejici'.

⁶¹ Though the story has obviously features of exempla, the storyline was not found in any of the of Czech or foreign summary collections and lists of

greedy cleric may hardly have had some basis in reality. However, the question is how it got into the Annals of Meissen. The motive of the author, who was a Protestant, could be guessed. It is worth mentioning that this story occurs in a work published almost two centuries after Puchnik's death. In this case it could be some kind of a local tradition in Meissen, which lasted until the late-sixteenth century or even longer, because Bohuslav Balbín knew the story too. He might have known it from Fabricius's treatise, although he regarded that work as fictional. On the contrary, the story is quoted uncritically and with approval by August Sedláček⁶² and V. V. Tomek,⁶³ to whom it served as evidence of the depravity of the Czech pre-hussite Catholic clergy. In addition, the accumulation of benefices was very common and was not found astonishing by anyone in Puchnik's time. The issue became important during the Reformation.

If we search for possible connections between Prague and Meissen to explain the transmission of the story, we find several possibilities. John of Jenstein was the Bishop of Meissen before becoming the Archbishop of Prague. From 18 April to 5 June 1390 Nicholas Puchnik acted as a delegate for John of Jenstein and John of Pomuk. The power of a 'legatus natus' for Meissen diocese is explicitly stated in the delegation.⁶⁴ Whether Puchnik

exempla: Frederic Tubach, *Index exemplorum: A Handbook of Medieval Religious Tales* (Helsinki 1969); Stith Thompson, *Motif-Index of Folk Literature* (Copenhagen 1955-1958); Karel Dvořák, *Soupis staročeských exempel* [Index of Old Bohemian exempla] (Prague 1978); *Quadragesimale admontské* [Quadragesimale of Admont] ed. Hana Florianová et al. (Prague 2006); *Caesarius z Heisterbachu Výprávění o zázracích* [Tales of miracles] ed. Jana Nechutová (Prague 2009). A similar story line, however, with completely opposite meaning (a monarch giving presents to a poor cleric) occurs in the Chronicle of the Anonymus of Gall, see the Czech translation Gallus Anonymus, *Kronika a činy polských knížat a vládců*, [The Chronicle and the Achievements of the Polish Princesses and Rulers] trans. Josef Förster (Prague 2009) 55.

⁶² Sedláček, *Hrady, zámky* 7.161.

⁶³ Tomek, *Dějepis města Prahy* 3.176.

⁶⁴ Tingl and Emler, *LC* 5.7-8; manuscript in The Archives of Prague Castle, The Metropolitan Canonry Papers, III-8, fol. 108v; Polc, *Svatý Jan*

officially negotiated with any messenger or ambassador from Meissen, to whom he might have made a negative impression, or whether his activity could have caused a bad impression in Meissen, cannot be documented in the sources. Meissen's aversion to Prague could have risen thanks to the activities of John of Jenstein, who took the office of a 'legatus natus' quite seriously and carefully administered it.⁶⁵ It is worth noting that the story of Puchnik the greedy cleric preceded the two-year debt of the Meissen provost to King Wenceslas IV in Fabricius' *Chronicle*.

Another possible link between Puchnik and Meissen could be found in the person of Wenceslas Knobloch, a canon and provost of the Meissen chapter, who was Nicolas' proctor during his admission into the prebend of the Metropolitan Chapter.⁶⁶ However, it is impossible to clarify the origins and spread.

It is possible to make the following summary. Puchnik undoubtedly belonged among the most important figures of his time. His personality was significant at the University of Prague and accounts for the importance of his practical treatise on procedure. Nicholas Puchnik's life is a good example of the difference between a life story (a conscientious clerk of his archbishop and tortured 'martyr') and his posthumous image ('nullatenus et omnitenus ecclesiarum canonicus', pluralist and greedy cleric). In this context, it is possible to compare this with the life, death and posthumous image of John of Pomuk. Although the fates of the two mentioned men were largely similar, there was a dramatic difference in their reputations after their deaths. While John of Pomuk became a baroque saint and 'martyr of confession', Nicholas became a pillorized pluralist.

Nepomucký 121.

⁶⁵ See more details in Zdeňka Hledíková, 'Die Prager Erzbischöfe als ständige päpstliche Legaten', *Beiträge zur Geschichte des Bistums Regensburg* 6 (1972) 221-256.

⁶⁶ Jenšovská, RBMV 1.564.

Stephan Kuttner (1907-1996): The ‘Pope’ of Canon Law Studies: Between Germany, The Vatican and the USA

Ludwig Schmutge*

Stephan Georg Kuttner, whom one could justifiably describe as the most important canonist of the twentieth century, came from an affluent Frankfurt family with Jewish roots.¹ Born on March 24, 1907 in Bonn, the son of Georg Kuttner (1877-1916), a judge and later a professor who had earlier converted to Protestantism, he died after a full and active life on August 12, 1996 in Berkeley, California.² After his Abitur at the Lessing Gymnasium in Frankfurt, this versatile, and musically highly gifted, man (he left behind string quartets, a Mass, songs and poems) began his university legal studies first in Frankfurt, then

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The following abbreviations are used:

Archiv SK	Archiv Stephan Kuttner, Munich
AS Roma	Archivio Centrale di Stato, Rome
DHI	Deutsches Historisches Institut, Rome
PA AA	Politisches Archiv des Auswärtigen Amtes, Berlin
UAZH	Universitätsarchiv Zürich

¹ Cf. Knut W. Nörr, ‘Stephan Kuttner: Persönlichkeit und wissenschaftliches Werk’, ZRG Kan. Abt. 68 (1982) iii-xi; Peter Landau, ‘Stephan Kuttners wissenschaftliches Werk’, RIDC 7 (1996) 13-20; as well as the obituary by Peter Landau in AKKR 165 (1996) 457-468; Horst Fuhrmann in DA 53 (1997) 411-413; Thomas N. Bisson (et al.) in *Speculum* 72 (1997) 929-943. Paolo Vian, “Non tam ferro quam calamo, non tam sanguine quam atramento”: Un ricordo del Card. Giovanni Mercati’, *Miscellanea Bibliothecae Apostolicae Vaticanae* 7 (2000) 393-479, at 476-478.

² See *Juristen an der Universität Frankfurt*, ed. Bernhard Diestelkamp and Michael Stolleis (Frankfurt 1989). Peter Landau, ‘Juristen jüdischer Herkunft im Kaiserreich und in der Weimarer Republik’, *Deutsche Juristen jüdischer Herkunft* ed. Helmut Heinrichs et al. (München 1993). The Social Democrat representative in the Prussian Landtag, Erich Kuttner (1887-1942), was a cousin of his father, Georg Kuttner.

in Freiburg and lastly in Berlin. There he sat the Referendar exam in 1928 and in March 1929 became an Assistant to Professor Kohlrausch at the Berlin Law Faculty. On July 2, 1930 he was awarded the civil law degree, *doctor iuris utriusque*, having submitted and defended a thesis on criminal law.³

The seminar of Ulrich Stutz (1868-1938), the Swiss canonist who taught at Berlin, introduced Kuttner to medieval canon law, to the sources to which he was to devote his entire scholarly life.⁴ Professors Stutz and Kohlrausch had suggested to him that he obtain his Habilitation with a thesis on medieval criminal law. Kuttner took leave from his Assistant and Referendar positions in the winter of 1930-1931 to work on this subject. He went to Rome with a stipend from the 'Notgemeinschaft der deutschen Wissenschaft' (the precursor of the Deutsche Forschungsgemeinschaft) in order to study canonical manuscripts in the Biblioteca Apostolica Vaticana.

Italy was the land of his dreams. At the age of 19, Stephan, his mother, and sister, in the tradition of the grand tour, had traveled the length of the country down to Sicily by chauffeur-driven car.⁵ In an interview held in 1988 with his son Thomas, Kuttner recounted of his second stay in Italy in 1930-1931:⁶

I had an introduction to the German Historical Institute - at that time it was called the Prussian Historical Institute in Rome (...). It had a wonderful library where I worked in the afternoon hours (...) I had contact with other Germans who were there on

³ For the life and works of Kuttner in the years 1940 to 1964 the primary source is Andreas Hetzenecker, *Stephan Kuttner in Amerika 1940-1964. Grundlegung der modernen historisch-kanonistischen Forschung* (Schriften zur Rechtsgeschichte Heft 133; Berlin 2007) 16-28.

⁴ For Stutz cf. Konrad Fuchs 'Stutz, Ulrich', *Biographisch-Bibliographisches Kirchenlexikon* (1996) 11.151-152.

⁵ Transcript, taped Interview with Thomas Kuttner, Munich Archiv SK, (hereinafter: Interview TK-SK) 62 note 79.

⁶ Thomas Kuttner recently published a very personal paper on his father: 'Stephan Kuttner: Both German Jew and Catholic Scholar', *Journal of Law, Philosophy and Culture* 5 (2010) 43-65.

scholarships. After the first month I knew that I would never learn Italian by doing what the others did - taking Italian lessons. So I decided to ask for room and board with a family, and I moved there and stayed with them. (...) And I think they are still disappointed that I didn't marry their daughter. She was a very nice girl.

In 1930-1931 Kuttner lived with the Rapaport family on Piazzale Flaminio. However, he did not marry the Rapaport daughter but rather Eva Susanne Ilch (1914-2007), seven years his junior, on August 22, 1933 in the Church of the Holy Spirit in Berlin-Westend. He had been engaged to Eva, who hailed from a well-placed Berlin Jewish lawyer's family, on his 26th birthday in March 1933. Both had converted to Catholicism two weeks before their marriage.⁷ They were convinced to take this step through conversations with the Jesuit and Professor of the Universitas Gregoriana, the canonist Ivo Zeiger (1898-1952). Father Zeiger and Kuttner had met in Berlin in Stutz's seminar.⁸ In Rome, Zeiger introduced his seminar colleagues to the church historian Robert Leiber (1887-1967), at that time the secretary of Eugenio Pacelli (Pope Pius XII).⁹ Kuttner maintained lifelong, close contact with both Jesuit priests.¹⁰

After the Rome intermezzo Kuttner took up his assistantship in Berlin again but continued to travel to Rome

⁷ Interview TK-SK.

⁸ Interview TK-SK. The estate of Father Zeiger is to be found in the Archiv der Deutschen Provinz der Jesuiten Section 27 No. 286 and 906. The collection, however, contains no correspondence with Stephan Kuttner. I thank the archivist Dr. Brodkorb for this information.

⁹ Archivio PUG, Leiber Collection, file 6 (Kuttner). Five letters from Kuttner to Father Leiber, dating from 1942 to 1957, can be found there. I thank my colleague, Stefan Heid for alerting me to these letters.

¹⁰ Following his departure from Rome, Kuttner wrote to Father Leiber from Washington DC, on 26 April 1942: 'You will no doubt believe me, when I say that both you and Father Zeiger are often in our thoughts; and if thoughts had wing, then as in times past, I would often have dropped by for a chat with you'. It is also revealed in the same letter that Father Leiber had been present at the baptism of the Kuttners' daughter, Susanne, in April 1940.

during summer vacations.¹¹ He read manuscripts in the Vatican and afternoons studied in the Prussian Historical Institute, where ‘again I was met with the kindest reception’, as he wrote to Stutz in 1932. He seems to have also enjoyed the goodwill of the Director, Paul Fridolin Kehr.¹² In the winter semester of 1932-1933 he again participated in the Stutz seminar.¹³ As a result of his sojourn in Rome, during which he had discovered a hitherto unknown decretal collection, he was able to publish his first canon law paper in the journal founded by Ulrich Stutz.¹⁴ He sent an offprint of his paper from Berlin, accompanied by a handwritten letter in Latin, to Pope Pius XI, on May 29, 1932.¹⁵ Wrote Kuttner once again in 1934: ‘With the granting of your apostolic blessing, Your Holiness has most graciously deigned to accept the dedication of a copy of this treatise’.¹⁶

1933

After Hitler’s seizure of power, especially following the enactment of the ‘Law for the Restoration of the Professional Civil Service’ of April 7, 1933, Stephan Kuttner, as a ‘full Jew’, had no opportunities either in academia or in the judiciary.¹⁷ He

¹¹ In July 1932 on his way to Italy he vacationed with his mother in Achensee. Postcard of July 22, 1932 to Stutz, UAZH.

¹² The letter to Pius XI of May 29, 1932 states: ‘Quanta sollicitudine id agat Sanctitas Vestra, ut litterae proficiscantur, e narrationibus Pauli Kehr professoris, qui Romae studiis meis semper fautor benignus exstitit, comperui’. See Appendix I below.

¹³ Kuttner’s letter to Stutz of October, 17, 1932, UAZH.

¹⁴ Stephan Kuttner ‘Eine Dekretsumme des Johannes Teutonicus (Cod. Vat. Pal. Lat. 658)’, ZRG Kan. Abt. 21 (1932) 141-189, a seminal work of the Bolognese Decretist School, now known as the *Glossa Palatina*. See Peter Landau, ‘Stephan Kuttner’s wissenschaftliches Werk’, RIDC 7 (1996) 13-20, at 13.

¹⁵ ASV, Segreteria di Stato 1932, rubrica 256 fasc. 7. The letter is reproduced in the Appendix.

¹⁶ Ibid.

¹⁷ For the sources of the Kuttner’s Roman years see Andreas Hetzenecker, ‘The Archiv SK in München’, ZRG Kan. Abt. 92 (2006) 779 and Hetzenecker, *Stephan Kuttner in Amerika* 55, n. 102. As a result of his emigration to the USA, the greater part of Kuttner’s correspondence from the years up to 1940,

was dismissed from his positions both as a Referendar and as an Assistant. Thus, he left Berlin in August 1933 with his young wife immediately after their wedding, to emigrate to Rome, since he was not welcome anywhere else. A second stipend from the German Foundation for Scholarship guaranteed, for the time being, a meagre livelihood for one year. Beginning in October 1933 the couple lived at Via Colonna Antonina 52 int. 16, directly across from the Chigi Palace (Montecitorio), and from late 1936 onward in Parioli at Via Adelaide Ristori 22.

In light of the political upheavals on May 4, 1933 Stutz had recommended his student most warmly for the Habilitation in Zürich.¹⁸ The Kuttners traveled to the city on the Limmat, and Stephan made contact with the President of the Academic Appointment Commission at the time, Professor Hafter, who confirmed in several pronouncements about the matter his opinion that there was 'no doubt whatsoever about his academic caliber'. The Zürich Law Faculty, however, at their meeting of May 30, 1933 'did not support his Habilitation application'.¹⁹ There must have been non-academic reasons put forward against Kuttner, arising from current political circumstances. Karl Siegfried Bader later remarked on the matter: 'That Kuttner... came to be the leading canonist in Rome and in the USA admittedly could not have been known in Zürich in 1933'.²⁰

Despite this rejection from Zürich, the relationship between Kuttner in Rome and Stutz in Berlin remained close; he felt close ties with his teacher's family, as is evidenced by the

to the extent that it was not retained in the Vatican, was lost. Hetzenecker did not consult the sources available on Kuttner in the ASV, the BAV, the DHI in Rome nor in the Political Archives of the Office of Foreign Affairs in Berlin. On the Faculty of Law at Berlin in 1933, see Anna Maria Gräfin von Lösch *Der nackte Geist: Die juristische Fakultät der Berliner Universität im Umbruch von 1933* (Tübingen 1999) on Kuttner, 490.

¹⁸ All details of the attempt to do the Habilitation in Zürich are found in UAZH and the Archiv Schmugge.

¹⁹ Documents in UAZH and Archiv Schmugge. Already earlier, a request for transferring the Habilitation of Gustav Radbruch, who had been dismissed from Heidelberg, had been denied.

²⁰ *Die Universität Zürich 1933-1983: Festschrift zur 150-Jahr-Feier der Universität Zürich* (Zürich 1983) 278.

bulk of the partially private correspondence (almost all of it on postcards).²¹ Stutz accepted Kuttner's articles, reviews and short notes in the canon law section of the ZRG so long as it was possible for him to do so. Also, Hans Erich Feine, Stutz's son-in-law and successor as publisher of ZRG, carried on correspondence with and visited the Kuttners in Rome at the end of 1936 and in autumn 1938.

The material circumstances of the Kuttner family in Rome were not rosy. It is not surprising that the young scholar applied to the Oxford University Roman Law scholar, Francis de Zulueta, for a stipend from the British 'Academic Assistance Council', for which Stutz again wrote a reference.²² Stephan Kuttner and his wife spent the end of 1933 and the beginning of 1934 with his parents-in-law, the Illchs, in Berlin.²³ Despite all the political upheavals in the Reich and the material difficulties, a secure future seemed to be developing for his family in Italy. Later on, Kuttner's mother and his parents-in-law were able to emigrate to Rome; his sister Renate had already done so in 1936; they all emigrated later to the USA.²⁴

However, the anti-Semitic politics of the Nazi regime also threatened the emigrants on the other side of the Alps. According to a Gestapo directive of May 3, 1933 to all foreign stations, including to the two German embassies in Rome, politically active emigrants and 'members of the Jewish "intelligentsia"' were to be watched.²⁵ Consequently, the Kuttners, as we shall see, were 'under observation' even in the Vatican.

Many Germans were among the contemporaries with whom Kuttner frequently met during the Rome years, most notably the medievalist Ernst Kantorowicz (1895-1963), Gerhart

²¹ Letter to Mrs. Stutz of October 23, 1938, UAZH.

²² Kuttner's letter of December 13, 1933, UAZH.

²³ Kuttner's letter of December 13, 1933, UAZH.

²⁴ Interview TK-SK. *Kuttner's younger sister, Renate, emigrated in 1936; his mother in 1939; his in-laws in 1941. His older sister, Marianne, had emigrated to the USA from Berlin already in 1934. [tr.]

²⁵ Dez 3 E 3 33: Emigrantenerfassung, PA AA, Rom-Vatikan, Bd. 214-1054.

Ladner (1905-1993), and Paul Oskar Kristeller (1905-1999).²⁶ Kantorowicz was to belong to the first board of advisors of the Institute of Medieval Canon Law in 1955; a spirited intellectual exchange had already existed between the two scholars. Kuttner had sent him his aforementioned article which had appeared in 1932, upon which Kantorowicz inquired about the progress of his 'major work'.²⁷ In his Berlin years Kuttner lived for a while in Westend, close to his fiancée Eva, at the home of a sister of the historian, Frau Dr. Lichtenstein.²⁸ As late as 1939, Kantorowicz and Kuttner met during a research trip.²⁹ With the Austrian Byzantine art historian Gerhart Ladner, who lived in Rome as a member of the Istituto Austriaco, the Kuttner family had, as Ladner writes in his memoirs, 'a kind of symbiotic existence'.³⁰ The paleographer and scholar of humanism Paul Oskar Kristeller,³¹ who had emigrated to Italy in 1934 and obtained his doctorate in 1937 in Pisa, was among the friends of Kuttner in Rome; as were the Roman classicist Leonardo Olschki (1885-1961), who had been forced into retirement from his Heidelberg professorship by the Nazis in 1933, the classical philologist Richard Walzer (1900-1975),³² the archeologist Lehmann-Hartleben (1894-1960), dismissed by the Nazis from Münster in 1933, and the Krautheimers.³³ Richard Krautheimer (1894-1997)

²⁶ On emigration in fascist Italy see Klaus Voigt's comprehensive, *Zuflucht auf Widerruf* (Stuttgart 1989/1993) vol. 2, especially Kristeller *sub indice*.

²⁷ Hetzenecker *Stephan Kuttner in Amerika* 189, with n. 394. Archiv SK 28861. For Kantorowicz cf. *Ernst Kantorowicz*, ed. Robert L. Benson and Johannes Fried (Frankfurter Historische Abhandlungen 39; Stuttgart 1997)

²⁸ Archiv SK 28861: Bayernallee 19, with Frau Dr. Lichtenstein.

²⁹ Archiv SK 1021 last page.

³⁰ Gerhart Ladner, *Erinnerungen*, ed. by Herwig Wolfram (Sb Wien phil.-hist. Klasse, 617; Vienna 1994) 56. On Ladner also Vian 'Un ricordo del Card. Giovanni Mercati' 479-480.

³¹ On Kristeller cf. also Vian 'Un ricordo del Card. Giovanni Mercati' 472-476.

³² Cf. Vian 'Un ricordo del Card. Giovanni Mercati' 485-486.

³³ Hetzenecker *Stephan Kuttner in Amerika* 159, with n. 498; Jürgen Petersohn, 'Deutschsprachige Mediävistik in der Emigration', HZ 277 (2003) 1-60, here 43. Voigt *Zuflucht auf Widerruf* *sub indice*. On Lehmann-Hartleben cf. <http://www.dictionaryofarthistorians.org/lehmannk.htm>.

lived as an immigrant in Rome from August 1933 to the end of 1935, before he emigrated to the USA. In 1971 he returned again to the city on the Tiber.³⁴

The scholars mentioned established a circle of friends in 1934, which they named 'Incalcata – id est collegium eruditorum nondum calcatorum'. They met monthly with their wives in the houses of members to discuss academic themes.³⁵ Short minutes exist for one year of these meetings (from March 23, 1934 to March 25, 1935), in which the Lehmann-Hartlebens, Kristellers,³⁶ Olschkis, Krautheimers, Walzers and Kuttners regularly took part. In addition from March 1935 the theologian Erik Peterson (1897-1973), a student at the Papal Institute for Christian Archeology, who like Kuttner was a convert, took part.³⁷ In 1935 Herr and Frau Löwith were inducted into the circle. The philosopher Karl Löwith (1897-1973), driven out of his associate professorship [Extraordinariat] in Marburg, had obtained a highly remunerative stipend from the Rockefeller Foundation and lived in Rome from 1934 to 1936.³⁸

In 1938 a sustained correspondence began between Kuttner and the legal historian Professor Guido Kisch (1889-1985), who had left Halle and was living in the USA. Kisch asked him about a Festschrift for the seventieth birthday of their teacher Stutz.³⁹ Kuttner must have prized Arthur Landgraf, the

³⁴ Cf. also Krautheimer's recollections in the Introduction to his collected essays (thanks to Arnold und Doris Esch for the reference). On Krautheimer cf. http://www.kunstgeschichte.uni-muenchen.de/forschung/ausstellungsprojekte/einblicke_ausblicke/biografien/krautheimer/index.html.

³⁵ On April 6, 1934 they met in the Kuttner home, Via Colonna Antonina 52.

³⁶ In the minutes for January 1935 is noted: 'Mr. Kristeller resigned (to Florence). Mr. and Mrs. Löwith accepted.'

³⁷ *L'archivio Erik Peterson all'Università di Torino: saggi critici e inventario*, ed. Adele Monaci Castagno (Alessandria 2010) 247. Vian 'Un ricordo del Card. Giovanni Mercati' 471, n. 155.

³⁸ Voigt *Zuflucht auf Widerruf* 2.397. Karl Löwith, *Mein Leben in Deutschland vor und nach 1933* (Stuttgart 1986) 89-94, for the emigrants in Rome. The Kuttners are not mentioned.

³⁹ Archiv SK 12112. *Kisch made major contributions to medieval legal history and the history of the Jews in German-speaking lands. He wrote an important work on the phenomenon of conversion amongst German Jews:

expert on scholastic theology living in Rome. In the first volume of the journal *Traditio* that he founded together with Johannes Quasten in 1943 and published in Washington, he included an article of Landgraf's written in German.⁴⁰ Naturally Kuttner also made an impression upon Alcide De Gasperi (1881-1954), the general secretary of the banned Partito Popolare, and Giorgio Levi della Vida (1886-1967),⁴¹ Professor of Arabic and Semitic Languages at La Sapienza in Rome, who had lost his Chair because of his refusal to take the oath to Il Duce. At the Institutum Utriusque Iuris Kuttner made friends with the Roman Law scholar Salvatore Riccobono (1864-1958), with whom he later collaborated in Washington.⁴²

1934

In April 1934 Stephan Kuttner obtained a position at the BAV, and with that a secure income.⁴³ He owed the position to the intervention of Cardinal Eugenio Pacelli and the special benevolence of Pope Pius XI, as well as to the recommendation of his teacher, Stutz.⁴⁴ In response to a request from the prefect

Guido Kisch, *Judentaufen: Eine historisch-biographisch-psychologisch-soziologische Studie besonders für Berlin und Königsberg* (Berlin 1973) [tr.]

⁴⁰ Arthur Landgraf, 'Studien zur Theologie des zwölften Jahrhunderts, 1: Nominalismus in den theologischen Werken der zweiten Hälfte des zwölften Jahrhunderts, 2: Literarhistorische Bemerkungen zu den Sentenzen des Robertus Pullus', *Traditio* 1 (1943) 183-222.

⁴¹ Cf. Vian 'Un ricordo del Card. Giovanni Mercati' 483-484.

⁴² See Hetzenecker *Stephan Kuttner in Amerika* 89. Salvo Randazzo, 'The Roman Legal Tradition and American Law: The Riccobono Seminar of Roman Law in Washington'. *Roman Legal Tradition* 1 (2002) 123-144. Cf. also Kuttner's memorial in *American Journal of Comparative Law* 7 (1958) 661-662.

⁴³ In a letter of May 6 Kuttner thanked Pope Pius XI for securing his livelihood and assured the Holy Father that the work 'would be an honorable service to the holy Catholic church for me'. BAV Kuttner personal papers. Pius XI had arranged for him to be paid an annual stipend out of a special fund established to underwrite his research project. Interview TK-SK.

⁴⁴ On February 22 1959, Kuttner wrote, in a letter to Father Leiber: 'Recently, I was reading through the old correspondence, which commenced with a short note from Father Zeiger (March 1934): 'His Eminence is favorably disposed

of the Biblioteca Vaticana, Giovanni Mercati (1866-1957), on February 26, 1934, Stutz provided a reference letter in which he made very laudatory comments about his former student.⁴⁵ Kuttner's official title read 'Aggregato alla Biblioteca Apostolica Vaticana', which he translated for Stutz as 'unbudgeted assistant'.⁴⁶ In an extensive letter to the Holy Father of February 21, 1934, Kuttner had clarified his situation under the German racial laws, and outlined for his patron possible canon law projects. Among them he suggested the preparation of a 'Corpus Glossarum from Gratian up to Johannes Teutonicus'.⁴⁷ Mercati supported his petition with an extensive commentary.⁴⁸ As a result Kuttner received the appointment at the Bibliotheca Vaticana in April 1934, but not staff position as scriptor. On April 17 he laid out for the library an extensive work plan; the project was planned for a period of 15 years.⁴⁹

In order to determine holdings in European libraries of the canonical manuscripts which interested him, above and beyond their printed catalogues Kuttner sent out questionnaires to all the important locations.⁵⁰ Throughout the years 1934 to 1939, moreover, Kuttner undertook several library trips in order

to support an immediate request to His Holiness. And so began my career'. Archiv PUG, Fondo Leiber, faldone 6 (Kuttner). Just how much Pacelli valued Kuttner as a canonist is revealed in a short notation of his from 1939, for which I must thank Hubert Wolf and Barbara Schüler of Münster (S.RR.SS., Stati Ecclesiastici, 1939, Pos. 576, Fasc 607, fol.11r. HS Pacelli): 'Per il caso Kuttner: Il S. P. stesso se ne interessa. Fa un lavoro che nessun altro può fare. In Europa non vi è nessuno così bene preparato'.

⁴⁵ Cf. Georg May, *Ludwig Kaas. Der Priester, der Politiker und der Gelehrte aus der Schule von Ulrich Stutz* (Amsterdam 1982) 2.321-322, for an assessment of Stutz. The letter is edited by Vian 'Un ricordo del Card. Giovanni Mercati' 492-493.

⁴⁶ Archiv SK 1018 and thank-you letter to Stutz of April 3, 1934, UAZH.

⁴⁷ ASV, Segreteria di Stato 1932, rubrica 256, fasc. 7. There also exists a detailed handwritten copy in Archiv SK 1015. Edition of the letter by Vian 'Un ricordo del Card. Giovanni Mercati' 488-491.

⁴⁸ Edition of Mercati's letter to Pius XI by Vian 'Un ricordo del Card. Giovanni Mercati' 494-499.

⁴⁹ BAV, Archivio della Biblioteca 197 fol. 1-4, and BAV, Kuttner personal papers.

⁵⁰ Archiv SK 1018.

to examine canonical manuscripts: in Italy (1935, 1937, 1939); and to France (September-October 1934, 1935, June 1937, April 1938, May-June 1939); England (1935 September-October), Belgium (1935), Austria and Czechoslovakia (1937 August-September).⁵¹ Concerning these and the progress of his efforts over the 'Corpus Glossarum' he sent extensive reports from 1934 to 1939 in Latin, which also exist in handwritten drafts and are filed in the archives of the BAV.⁵² He published academic papers on his findings from 1932 to 1940 in the ZRG KA, and in *Revue Historique de Droit Français et Etranger, Studia et Documenta Historiae et Iuris, Miscellanea Historiae Pontificiae* and *Ius Pontificium*, establishing thereby his growing scholarly reputation.⁵³

Moreover, Kuttner made himself known at international congresses. In April 1933 he took part in the International Congress of Roman Law.⁵⁴ In 1934 the 700th anniversary of the publication of the decretals of Gregory IX was celebrated in Rome. For this occasion an international congress took place from November 12-17 under the auspices of the Pope. Kuttner, who had received an invitation through the intercession of Father Ivo Zeiger, spoke there about the regula iuris 'Ecclesia de occultis non iudicat'.⁵⁵ For the participants Kuttner and his colleagues Giulio Battelli and Pietro Sella organized an exhibition of Vatican legal manuscripts at the Vatican Library.⁵⁶

⁵¹ For the trips to Austria 1937 and to Paris 1938 there are Kuttner's handwritten notations about the manuscripts he had examined and his accounts, BAV, Kuttner personal papers.

⁵² BAV, Archivio della biblioteca 197, fol. 5-67. Kuttner's drafts Archiv SK 1016. The reports of Kuttner's library trips are found separately under the call number Archiv SK 1017.

⁵³ Archiv SK 1105 (Curriculum vitae of Juli 1941). Kuttner's bibliography of the Rome years in his Festschrift in SG 11-14 (1967), here 11.xxi with Kuttner's handwritten addendum in a copy of the DHI (call number FC 93).

⁵⁴ *Congresso Internazionale di Diritto Romano (Bologna/Rom April 17-27, 1933)* (2 vol. Pavia 1934-1935).

⁵⁵ Printed in *Acta Congressus internationalis Romae 12-17 Novembris 1934*, vol. III (1936) 225-246. Cf. Vian 'Un ricordo del Card. Giovanni Mercati' 493 n. 242.

⁵⁶ Cf. Vian 'Un ricordo del Card. Giovanni Mercati' 498 n. 251.

Stephan Kuttner spoke and wrote French fluently and as a member of the Société d'histoire de droit took part repeatedly (1937, finally still in May 1939) in their Paris congresses.⁵⁷

1935

With the promulgation of the 'Nuremberg racial laws' of September 15, 1935 any career in Germany for 'non-Aryan' scholars was definitively precluded. In the middle of that year Kuttner spent a few days in Berlin, where he most probably would have spoken with Ulrich Stutz about his future. What had been planned as a habilitation thesis appeared in 1935 as a Vatican imprint under the title *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX* and is to this day an unsurpassed fundamental work in this field.⁵⁸ A joint request from Kohlrausch and Stutz for a subsidy for printing costs was denied by the German Foundation for Scholarship without explanation.⁵⁹ The author dedicated the book to Pope Pius XI. The Holy Father explicitly accepted the dedication and expressed his appreciation to the author. Kuttner expressed gratitude for this highest recognition with moving words in a letter to the Pope from Exeter dated September 5, 1935.⁶⁰

Stephan Kuttner was known as a tireless worker. Only in the third trimester is a vacation, which the young family enjoyed from June 30 to August 4, 1936, first referred to in an accounting report. A second is mentioned for September 1938.⁶¹ Instead Eva, who had a nanny, Rachele, at home, accompanied her

⁵⁷ His 1937 lecture in Paris appeared under the title 'Les débuts de l'école canoniste française', SDHI 4 (1938) 193-204.

⁵⁸ Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX: Systematisch dargestellt auf Grund der handschriftlichen Quellen* (Studi e Testi 64; Vatican City 1935, reprinted Vatican City 1973).

⁵⁹ Letters to Stutz of February 9, 1934, UAZH.

⁶⁰ ASV, Segreteria di Stato 1932, rubrica 256 fasc. 7. The letter is reproduced in the appendix.

⁶¹ Relatio de studiis tertio trimestri anni 1936 peractis, Archiv SK 1105.

husband in 1935 on the trip to Belgium and England,⁶² and in 1937 to Paris, where Kuttner spoke on 'Les débuts de l'école canoniste française' at the invitation of Le Bras.⁶³

During her husband's other trips for the library Eva Kuttner frequently visited Germany: in July 1936 she traveled with her son Ludwig to Berlin to her parents' home (where Stephan followed in August); in the summer of 1937 to Lake Constance and after that again to her parents in Berlin.⁶⁴ Significantly, the Kuttners attended Mass only rarely at the German National Church in Rome, Santa Maria dell'Anima, to fulfill their Sunday obligation. In 1988 Kuttner remembered the spirit that prevailed in the church: 'Undoubtedly there were many pro-Nazis there, or I think at least not strongly anti-Nazi'.⁶⁵

In 1937 Kuttner, in addition to his position at the Vatican, was awarded a professorship at the Institutum Utriusque Iuris, later the Lateran University.⁶⁶ With this, so he wrote to his teacher in Berlin, 'I have again found a connection to the *vita academica*'. As was usual at that time he lectured in Latin, in the first semester 'De glossatoribus iuris canonici saeculi XII-XIV'.⁶⁷ Among his students were the future Vatican Prefect Librarian Alfons Cardinal Stickler (1910-2007) and Father Josef Kessler. Besides, in 1937 he also took part in a 'Preparatory course for advocacy before the Rota', as he confided to Stutz 'sotto voce'.⁶⁸ In fact, on December 10, 1937, he took the oath of office before the dean and paid the tuition fee of 50 Lire. Later,

⁶² Letter to Stutz of Dezember 19, 1935, Universitätsarchiv Zürich. The Kuttner couple stayed in London with Victor Wolff, the brother of his friend Konrad Wolff (1907-1989); Postcard to Stutz of August 28, 1935, UAZH. Martin Woff, father of the two Wolff brothers, was a renowned Professor of Civil, Commercial and Private International Law at Berlin.

⁶³ Postcard of August 25, 1937 from Vienna, UAZH.

⁶⁴ Postcards of October 19, 1937 and June 8, 1936, UAZH. *Eva Kuttner was at the time expecting their second child, Andreas Gratian, born October 1936 [tr.]

⁶⁵ Interview TK-SK.

⁶⁶ Cardinal Mercati had most warmly recommended Kuttner in a letter of March 31, 1937 to the Dean, BAV, Kuttner personal papers 190 P.

⁶⁷ Postcard of October 19, 1937, UAZH.

⁶⁸ Postcard of March 22, 1937, UAZH.

in the USA he would occasionally be occupied with marital cases before the Rota.⁶⁹

The first consequence of Kuttner's work on the *Corpus Glossarum* was the appearance in 1937 of his arguably most famous work, *Repertorium der Kanonistik (1140-1234): Prodromus Corporis Glossarum I*, an inventory of some 1100 canon law manuscripts on church law between Gratian and Gregory IX.⁷⁰ It was dedicated to Cardinals Giovanni Mercati and Eugène Tisserant (1884-1972). He presented a copy to the pope in an audience at Castel Gandolfo in the summer of 1937 to which Cardinal Mercati had taken him. A planned second volume (already announced in the Forward to the first) was indeed again mentioned in a report on work-in-progress, and still in 1941 announced as 'in preparation', but it never appeared.⁷¹ In an Italian memorandum of December 30, 1937 (which apparently was also to go to the Pope) Kuttner outlined extensively how the second volume should be arranged, what its contents should be and which methodological problems confronted the *Corpus Glossarum*.

1938

When on September 7, 1938 Il Duce decreed as Interior Minister that all foreign Jews had to leave the country within six months and on November 17 issued the racial laws in a 'decreto legge', the situation for the Kuttner family in Rome became increasingly more difficult, in fact life-threatening.⁷² That is

⁶⁹ Sacra Rota Romana, Rep 3887, Fasc 820 S.A. USA: Hetzenecker, *Stephan Kuttner in Amerika* 88, n. 241.

⁷⁰ Franz Gillmann's comprehensive positive evaluation of the work appears in *Gesammelte Schriften zur klassischen Kanonistik von Franz Gillmann*, ed. Rudolf Weigand (Forschungen zur Kirchenrechtswissenschaft 5.1; Würzburg 1988) xvi.

⁷¹ Archiv SK 1105.

⁷² Regio decreto legge XVI, n. 1381 and XVII, n. 1728. Cf. La Stampa, anno 72 Nr. 208 of 2. September 1938. Thanks to Mrs. Annalisa Capristo for the reference. The text of the two Decrees is given in German by Voigt, *Zuflucht auf Widerruf* 1.598-603. *They appear in English in the appendices to Renzo

probably why on August 1, 1938 Stephan Kuttner applied to Cardinal Mercati for a permanent position as 'scriptor latinus'.⁷³ His work up until then for the 'Corpus Glossarum' was 'incarico soltanto personale del Sommo Pontefice', arranged in 1934 with Tisserant, the Vice-prefect of the Library at that time. With this request for a 'scriptor' post he came into competition with Augusto Campana, with whom he was friends.⁷⁴ As his rationale Kuttner pointed to his 'situazione generale di emigrato, avendo perduto tutte le risorse di patrimonio familiare'.⁷⁵ The family, to which in the meantime had been added the sons Ludwig and Andrew, born in 1934 and 1936, were not on a bed of roses financially.⁷⁶ Kuttner's salary amounted initially to 1500 Lire, then 1800 in the year 1939; in June 1940 he was paid 2083 Lire.⁷⁷ In an urgent memorandum he writes: 'Alle mia famiglia non potrò imporre un tenor di vita più modesto de quello che abbiamo a Roma'.

From 1938 on the extreme danger for all Jewish emigrants in Italy was obvious. An Italian memo to the vice-prefect Albareda of January 13, 1939 indicates that Kuttner planned to leave Italy as quickly as possible and envisaged an academic position in England or France in order to continue further pursuit of his project from there.⁷⁸ To that end he needed a Vatican passport — as in the meantime his German passport had been marked with the notorious Jewish stamp. He writes:

Non potendo più ottenere un passaporto normale tedesco, mi occorrerà il rilascio d'un passaporto

De Felice, *The Jews in Fascist Italy: A History*, tr. Robert Miller (New York 2001). [tr.]

⁷³ BAV, Kuttner personal papers.

⁷⁴ Campana obtained the Scriptor post, vacated by the death of Borghezio, on September 1, 1938. For him cf. Marco Buonocore, 'Augusto Campana e la Biblioteca Vaticana', *Accademia dei Filopatri di: Quaderno* 18 (1998) 21-47.

⁷⁵ BAV, Kuttner personal papers. Copy, Archiv SK 1019.

⁷⁶ Archiv SK 1028.

⁷⁷ Archiv SK 1041. For the months of July/August 1940, the BAV had an additional 4000 Lira paid out to him in America.

⁷⁸ Archiv SK 1020. In it he also enumerates the harassments and degrading treatment to which he was subjected on his trip with the German passport.

diplomatico [della Santa Sede, LS], giacché tutti i paesi europei hanno delle severe restrizioni per ammettere degli 'ebrei' tedeschi, anche ad una dimora temporanea o di passaggio. . . . Il rilascio del passaporto dovrebbe comprendere mia famiglia. [As it is impossible to obtain a regular German passport anymore, I need a diplomatic passport [from the Holy See] since all European countries have severe restrictions on admitting German 'Jews', whether for a temporary residence or transit. . . . This passport should include my family.]

The Kuttner family's emigration in 1940 almost foundered for the fact that they were not issued a diplomatic passport, but rather only a 'Passport de service' which gave to the holder no diplomatic immunity.⁷⁹

1939

Protected by his work in the Vatican, Stephan Kuttner could stay in Italy for the moment despite the deportation decree and continue to pursue his research, even in France.⁸⁰ From May 19 to June 9, 1939 he again stayed in Paris on the occasion of the congress of the 'Société d'histoire de droit' and took this opportunity to study French manuscripts. But the Kuttners were registered by the 'Pubblica sicurezza' as 'ebrei stranieri con soggiorno'. Since his mother and his parents-in-law also lived in the same building, from the beginning of 1939 an official of the immigration police came regularly to the apartment to check. At the same time through a 'continuazione del soggiorno' granted on February 6 there was no threat of immediate deportation.⁸¹ Nevertheless the Kuttners had to let go of an Italian housemaid according to the racial laws. On September 25 they were

⁷⁹ In point of fact, between 1934 and 1940, the name 'Stephan Kuttner' does not appear at all in the *Annuario Pontificio*; Kuttner held no 'official' position in the Vatican.

⁸⁰ BAV, Kuttner personal papers 391 P.

⁸¹ BAV, Kuttner, personal papers.

forbidden to have 'domestici cittadini italiani di razza ariana' in the house. Even the Cardinal Secretary of State had intervened for their continued employment without success in a letter to the Italian ambassador dated July 4, 1939.

The Vatican was not exempted from the surveillance of 'Jewish foreigners'. On October 26, 1939 Professor Karl August Fink, who worked at the time in the ASV for the DHI on the *Repertorium* of Martin V, wrote to Ambassador von Bergen: 'In the enclosure I have the honor to most respectfully hand over to Your Excellency the desired information about the Vatican archives and the Vatican library. Heil Hitler!'⁸² In the same spirit a Professor Friedrich Stegmüller, who had undertaken a study trip to Italy from October 10 to December 31, 1939, communicated his impressions of the BAV, which were forwarded to the Auswärtiges Amt on January 7, 1940.⁸³ It said that Mercati's attitude was 'pro-German', Albareda was 'apolitical', and further:

Among the academic officials there are two German emigrants: Kuttner (full Jew) and Vollbach (sic!) (half Jew). (...) The anti-German sentiment of this circle is being supported by the frequent visits, still even now, of the former prefect and current Cardinal Tisserant. (...) It would therefore be very welcome if junior academically qualified and politically reliable German scholars (...) could be dispatched as fellows to the Vatican.

For such a 'dispatch' Clemens Honselmann, Klaus Mörsdorf and Dr. Wurm were named. In October 1939 Dr. Bock and Professor Fink, working at the DHI, had also recommended to the ambassador to the Vatican the dispatch of the church historian Hubert Jedin 'because of his impeccable German sentiments', although he 'is encumbered with Jewishness on his mother's

⁸² Berlin, PA AA, Rom-Vatikan, vol. 214. Fink lived in Villa S.Francesco, Via dei Monti Parioli 64. His report is reproduced in the appendix.

⁸³ Berlin, PA AA, Rom-Vatikan, vol. 214. Ambassador von Bergen appropriated Stegmüller's und Fink's reports and reported to the foreign office along those lines on March 26, 1940.

side'. It goes on to say, 'his collaboration in the archive for strengthening the German influence would in fact be pressingly desirable'.⁸⁴ In his report Fink circulated the quotation of an unnamed archive official, that the BAV is 'un covo di ebrei, popolari ed antifascisti'.

1940

Italy's entry into the war on June 10, 1940 dramatically exacerbated the situation for all emigrants, particularly as now in Italy too concentration and internment camps were established.⁸⁵ In the meantime, the possibility of a professorship at the CUA in Washington was in the offing for Stephan Kuttner.⁸⁶ To that end, on the pretext of pursuing studies of manuscripts in Portugal, he traveled by train to Lisbon at the end of May with the special Vatican passport No. 97 (thus not with a diplomatic passport!), arriving on June 4.⁸⁷ The Public Security of the Ministry of the Interior, at the request of the Vatican State Secretariat, had on May 25 issued a visa for his passport, valid until December 31.⁸⁸ In his baggage he conveyed letters of recommendation from Cardinal Mercati and the prefect Albareda to the Patriarch of Lisbon, Cardinal Cerejeira.⁸⁹ In the next weeks, however, there was no thought of studying manuscripts, rather the great worry of how his family could join him speaks out in all his letters to Rome. For his Vatican special passport was not recognized by the Portuguese border officials, nor even by the papal nuncio in

⁸⁴ Berlin, PA AA, Rom-Vatikan, vol. 214.

⁸⁵ Cf. Klaus Vogt, *Zuflucht auf Widerruf* 2.15-140.

⁸⁶ See Kuttner's letter of 12.7.1940 to the Dean of the Studium Utriusque Iuris at the Lateran University asking for a 'To whom it may concern' request to the American embassy for a visa. Archiv SK 1029. This recommendation was issued to them in Italian on June 29, 1940. On July 12, 1940 Kuttner wrote to Albareda that he now had the official invitation for a teaching position at Catholic University in Washington, Archiv SK 1033.

⁸⁷ Archiv SK 1025, Letters to Albareda.

⁸⁸ AS Roma, PS A 16 fascicoli personali, 1939 b. 153.

⁸⁹ Archiv SK 1024.

Lisbon.⁹⁰ For the moment Eva Kuttner was stranded in Rome with her three children (Ludwig, b. 1934, Andreas, 1936-1969, and Susanne, just several weeks old, b. April 10, 1940). She had only a German passport issued by the German embassy at Quirinal with the obligatory 'Jewish stamp'. Once the invitation to America was official she repeatedly visited the American as well the Portuguese embassy in order to get the necessary exit papers. Kuttner remembered: 'It was really only through a lot of political undercover connections that she was allowed to leave'.⁹¹ Only on July 29 could she follow her husband with the three children, flying out in an Italian military plane from the new Aeroporto del Littorio inaugurated by Mussolini in 1928 (today's Aeroporto dell'Urbe).⁹² The State Police confirmed her departure to the Interior Ministry on August 2.⁹³ By chance the American ambassador in Rome, Philips, was also on this plane to Lisbon. But Mrs. Kuttner did not have a visa for Portugal. For that reason she and her children were interned on arrival at the Lisbon airport. Her husband tried desperately to release his family through the intervention of the Cardinal-Patriarch of Lisbon and the papal nuncio, but without success.⁹⁴ Only the fortuitous contact with a sympathetic Portuguese police officer enabled the reuniting of the family.⁹⁵

On August 8, 1940, on board the ship 'Quanza', the Kuttners left Europe.⁹⁶ Their departure came to be known in the

⁹⁰ A letter of June 21 was directed to the State Secretary Montini, Archiv SK 1026. Cf. also Kuttner's notes in Archiv SK 1027 and the letter to Albareda of July 1, Archiv SK 1030. Also cf. Kuttner's notes on the dismissive attitude of the papal nuncio toward him, Archiv SK 1033.

⁹¹ Interview TK-SK. The exact circumstances are not made clear.

⁹² Inauguration: *La Stampa*, anno 62 n. 96 of April 23 1928. Thanks to Mrs. Annalisa Capristo for the reference.

⁹³ AS Roma, PS A 16 fascicoli personali, 1939 b. 153.

⁹⁴ He depicts the scandalous behavior of the nuncio in a 'Rapporto sull'atteggiamento della Nunziatura Apostolica a Lisbona', Archiv SK 1037.

⁹⁵ Archiv SK 1025. Thomas Kuttner 'Stephan Kuttner' 47. Interview TK-SK.

⁹⁶ Kuttner wrote a thank-you letter to Cardinal Mercati on August 19, 1940 on board the 'Quanza' (noted by Paolo Vian 'Un ricordo del Card. Giovanni Mercati').

German embassy to the Holy See. In a memorandum of August 7, 1940 the ambassador notified the foreign office:⁹⁷

A Dr. Birkner appeared at the embassy to take his leave.⁹⁸ In the conversation he mentioned that the Vatican is at the current time apparently in the position to dispose of two Jews employed by them.

1. Thus Stefan(sic) Kuttner, who has been staying in Lisbon since May, has obtained a teaching post in Catholic University in Washington and is on his way there.

2. Rumour has it that they also want to shunt off Vollbach [W.F. Volbach, LS] to America.

The Byzantine scholar Fritz Volbach (1892-1988)⁹⁹ worked at the Vatican museum from 1933, after his dismissal as museum director in Berlin, until 1946. To the irritation of the Nazis, as the German emigrant newspaper the *Pariser Tageblatt* reported in its issue No. 411, he was chosen by the art commission of the League of Nations as the German representative to the Council.¹⁰⁰

A final word in conclusion: The case of the Kuttner family exemplifies on the one hand the energetic engagement of the Vatican as an ark for racially persecuted scholars in the years 1933 and following. At the same time, however, inconsistencies in the church administration come to light, such as the refusal to

⁹⁷ Berlin, PA AA, R 72076-583 (last page).

⁹⁸ Dr. Joachim Birkner worked with Hubert Jedin on the 'Concilium Tridentinum' and resided at the Priests' College at Campo Santo Teutonico. Archival material on Birkner can be found in the Archiv der Görresgesellschaft, now deposited at the Archdiocesan Archiv Köln. My thanks to Dr. Oepen for this information.

⁹⁹ Cf. Vian 'Un ricordo del Card. Giovanni Mercati' 495, n. 246. Volbach's progress reports in BAV, Archivio della Bibl. 247, fol. 277-278, 311, 356. Wolfram Kinzig, 'Wolfgang Fritz Volbach (1892-1988)', *Lebensbilder: Klassische Archäologen und der Nationalsozialismus* ed. Gunnar Brands and Martin Maischberger (Rahden and Westfalen 2012) 141-157.

¹⁰⁰ See also the record of the envoy Klee of 7.2.1935, Berlin, PA AA, R 72076-541. On Volbach the person:

Cf. <http://www.dictionaryofarthistorians.org/volbachw.htm> (July 2012).

grant diplomatic status to the Kuttner family, thereby endangering their entry into Portugal. Also noteworthy is the denunciatory conduct of German scholars in Rome in relation to their colleagues of Jewish origin. Stephan Kuttner and his family were sheltered under the personal protection of Pius XI and Pacelli. The Roman years had a decisive impact on their lives.

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Appendix

ASV, Segreteria di Stato 1932, rubrica 256 fasc. 7.

1. Kuttner's Letter to Pope Pius XI, Berlin, May 29, 1932

Beatissime Pater,

Quoniam de iuris canonici veteribus, quos decretistas vocant, glossatoribus haud dubium sit, quin semen scientiae sapientiaeque sacrarum necnon profanarum paginarum usque ad limina nostri aevi virulens sparserint, studiis huiusce materiae e vetustis manu scriptis codicibus hauriendae operam meam tenuesque vires dicavi.

At quamvis nonnulla adhuc doctorum virorum – praecipue J.F. Schultii, Thanari, Singeri – ingenio in lucem edita sint, permultos tamen anecdotos thesauros in archivis bibliothecisve absconditos esse iamdudum constat. Inter omnes Bibliothecam Apostolicam Vaticanam talium iuris canonici codicum divitem esse ab initio studiorum meorum censui. Nec vane.

Johannis Teutonici clarissimi iurisconsulti Bononiensis et canonici Halberstadiensis, qui ad Decretum Gratiani Glossam ordinariam paulo post concilium IV. Lateranense anno MCCXV^o ab incarnatione Verbi celebratum formavit, Summan super eodem Decreto fortuito casu in codice Palatino-Vaticano latino DCLVIII^o inveni. Quod opus per tot saecula omnino ignotum neminem nisi praedictum Johannem auctorem habere, qui ante Concilium IV. Lateranense, prius ideoque quam celebrem suam Glossam id composuit, in disquisitione mea non infirmis ut arbitror rationibus productis demonstravi. Magni ponderis autem hanc Summam esse opinor, quoniam vera et originalis forma Glossae ordinariae, quam innumerae additiones posteriorum auctorum ita obscurarunt, ut intricatam ad integrum restituere frustra fere videretur, nunc restitui poterit. –

Sanctitatem Vestram de studiis historicis colendis necnon de veterum codicum incognitorum exploratione maxime curare huiusquemodi operas clementissime fovere nemo est quin sciat.

Quanta sollicitudine id agat Sanctitas Vestra, ut litterae proficiscantur, e narrationibus Pauli Kehr professoris, qui Romae studiis meis semper fautor benignus exstitit, comperui. Itaque huius mei opusculi non solum Bibliothecae Apostolicae Vaticanae debitum specimen curabam transmitti, sed etiam Sanctitati Vestrae unum exemplar devotissime genuflexione dedicare ausus sum.

Utinam Sanctitas Vestra benigne munusculum hoc exiguum non dedignet accipere, supplicat atque implorat

Sanctitatis Vestrae humillimus servus
Stephan Kuttner, Juris Utriusque Doctor.
Berolini, IV. kal[endas] junii MCMXXXII.

2. Kuttner's Letter to Pope Pius XI, Exeter, September 5, 1935.

Heiliger Vater,

Durch ein Schreiben des Hochw. Mons. Tisserant empfang ich in Berlin die Nachricht, dass Ew. Heiligkeit die Gnade gehabt hat, in meinem Buche über die Kanonistische Schuldlehre zu lesen und mir Ihr Wohlgefallen aussprechen zu lassen. Auf's tiefste bewegt von diesem hohen Beweis der väterlichen Anteilnahme Ew. Heiligkeit an meiner Arbeit, und von dem unveränderlichen Gedanken beseelt, auf meinem bescheidenen Felde durch meine Forschungen nach allen Kräften zur Ehre der hl. Kirche zu wirken, fühle ich mich gedrängt, Ew. Heiligkeit als getreuer Sohn aus vollem Herzen dafür zu danken, dass mir durch Ew. Heiligkeit hohe Anerkennung die schönste Frucht meiner Bemühungen zuteilgeworden ist, und auszusprechen, mit welchem Stolz und Glück es mich erfüllt, dass ich meine Arbeit Ew. Heiligkeit habe zu Füßen legen dürfen.

Ew. Heiligkeit hat mir durch die Annahme der Widmung und durch die gnädigst gewährte Unterredung in der Audienz anlässlich der Ueberreichung meines Buches all die dankbaren Gefühle aufs höchste vermehrt, die in mir durch die Tatsache, unter dem für die Wissenschaft so segensreichen Pontifikat Ew.

Heiligkeit dienen zu dürfen, stets lebendig sind. Dass Ew. Heiligkeit mir nun noch Ihre Anerkennung in so – wenn ich dies sagen darf – warmherziger Form hat aussprechen lassen, erfüllt mich aufs neue mit ehrfürchtigstem Dank und mit dem Wunsche, durch unablässiges Arbeiten an der mir von Ew. Heiligkeit gestellten Aufgabe der Sammlung und Herausgabe eines Corpus Glossarum im Laufe der Zeit ein Werk zustande zu bringen, das des hohen Vertrauens, das Ew. Heiligkeit in mich durch die Betrauung mit ebendieser Aufgabe gesetzt hat, nicht ganz unwürdig sein möge.

In tiefster Ehrfurcht den heiligen Fuss Küssend
verharre ich als Ew. Heiligkeit
demütiger und gehorsamer Sohn
Stephan Kuttner
Exeter, den 5. September 1935.

3. Annex to the Letter of Prof. Karl August Fink of October 26,
1939 to Ambassador von Bergen

Berlin, PA AA, Rome-Vatikan, Vol. 214.

Das Vat. Archiv und die Vat. Bibliothek sind in erster Linie wissenschaftliche Stellen und daher im allgemeinen unpolitisch. Doch ist, wie schon in früheren Jahren, in der augenblicklichen Lage auch hier der Einfluß der politischen Ereignisse spürbar. Vor allem ist festzustellen, daß in dieser Hinsicht das Archiv und die Bibliothek einen durchaus verschiedenen Eindruck hervorrufen.

Der Kardinalarchivar und Bibliothekar Mercati steht der deutschen Wissenschaft und den deutschen Gelehrten mit großem Wohlwollen und Hilfsbereitschaft gegenüber und zeigt, obwohl völlig unpolitisch, eine sehr freundliche Haltung zu den deutschen Vertretern. Ebenso bringt der Präfekt des Archivs Mons. Angelo Mercati dem deutschen Historischen Institut und dem Campo Santo Teutonico über die dienstlichen Beziehungen hinaus warme Anteilnahme und überaus wohlwollende

Förderung entgegen. Das Gleiche gilt vom Vizepräsidenten Mons. Guidi, auch er wie der Präsident ein alter Freund von Paul Kehr. Im Gegensatz zur Bibliothek ist das Personal des Archivs nie politisiert worden. Mit dem gesamten Personal des Archivs stehen die Mitglieder des deutschen historischen Instituts, die von den Ausländern auch jetzt noch die meisten Archivarbeiter stellen, in einem Verhältnis freundlicher Zusammenarbeit. Die beiden Laienarchivare Batelli und Sella sind deutschfreundlich und den Fascismus (!) bejahend.

Dagegen ist in der Bibliothek der Einfluß des früheren Vizepräsidenten Tisserant noch deutlich zu spüren; er spiegelt sich vor allem wider in der auch unter politischen Gesichtspunkten betriebenen Zusammensetzung des Beamtenkörpers im letzten Jahrzehnt. Zwar ist der Präsident P. Albareda ein ruhiger, objektiver und wie es scheint unpolitischer Mann, der ganz vorsichtig einige unter rein politischen Gesichtspunkten erfolgte antideutsche Anstellungen rückgängig machte. Der dienstälteste Skriptor Carusi, der bei der Besetzung der Präsidentenstelle ostentativ übergegangen wurde, ist als deutschfreundlich anzusehen. Von den beiden belgischen Skriptoren nimmt Mons. Pelzer eine ruhige Haltung ein, während Devreesse (!) sich betont deutschfeindlich gibt. Im Kollegium der höheren wissenschaftlichen Beamten sind neben den beiden deutschen Emigranten Kuttner (Volljude) und Volbach (Halbjude), die beide eine antideutsche Propaganda betreiben, der Skriptor Berra und der Personalchef De Gasperi (!) ausgesprochene popolari und somit scharfe Gegner des Fascismus und des heutigen Deutschlands. So versteht man, wie ein Beamter des Archivs von der Bibliothek sprechen konnte als „covo di ebrei, popolari ed antifascisti“. Die antideutsche Stimmung dieser Kreise wird durch die auch jetzt noch häufigen Besuche Kard. Tisserants in der Bibliothek organisiert und gestützt, obwohl natürlich im rein wissenschaftlichen Verkehr davon wenig zu bemerken ist.

Memories of Stephan Kuttner

Ludwig G. Kuttner*

Andreas Hetzenecker's superb *Stephan Kuttner in Amerika 1940 - 1964* does ample justice to my father's life as a scholar and the financial and institutional challenges he overcame in those years at Catholic University. The book's citations and sources are primarily from the Institute for Medieval Canon Law archive in Munich.¹

I will write about Stephan Georg Kuttner (SGK) as I knew him in those years at Catholic University of America. My hope is that you will get to know him better as the remarkable man he was, to supplement your expertise on his scholarly work and academic life. My memoir is based on verifiable events and mostly verifiable memories. I shall identify my opinions and conjectures.

1940-1948: The School Boy's Memories

We came to the United States because my father had been warned that he and his family were on a list of people of Jewish ancestry who were slated for internment. With considerable assistance from Montini and others in the Vatican, we all escaped via Lisbon. Even before we left, my then 25-year-old mother Eva Kuttner read to me in German about America. She told me we were going to the capital city of America, where 'Papa' would be a professor. Already at 5, I knew that a professor was a very important person.

* Ludwig Kuttner, oldest of Stephan G. Kuttner's nine children, was born in Rome, Italy in 1934 and came to America with his parents and siblings, Andrew and Susanne, in August, 1940. He served in the Marine Corps and spent his working life in the systems industry and the federal government. He gave this talk at The Catholic University of America in the School of Canon Law on October 1, 2009. The paper has been slightly revised for publication.

¹ Andreas Hetzenecker, *Stephan Kuttner in Amerika 1940-1964: Grundlegung der modernen historisch-kanonistischen Forschung* (Schriften zur Rechtsgeschichte 133; Berlin 2007).

In late August 1940 we were settled at 1600 Otis St. NE, the family home until late 1956. This was a row house, with a living room, dining room, kitchen, and enclosed back porch on the first floor, three bedrooms (the smallest of which served as SGK's study) a full bath and an enclosed back porch on the second floor, and the original basement, finished circa 1944. Until then, SGK was up early every morning to shovel coal into the furnace. He let me help.

My mother's parents, Max and Kaethe (Kate) Ilch lived with us briefly after they came to America via Spain in 1941. They were wonderful grandparents. SGK and Max Ilch enjoyed each other's company, exchanging puns, discussing the history of law, Napoleon, Bismarck and others. There was also a noticeably warm relationship between the two couples. They often played a German card game together, Skat. Sunday dinner with Opa and Oma and my parents and siblings was always festive and relaxed. We had wonderful neighbors. My father wasn't used to the kind of helpfulness and support offered by our neighbors, especially those generous families, the Shields and Wilsons.

We had a thoroughly Catholic upbringing, including our education at the new and progressive Catholic University Campus School. SGK liked the school, especially the integration of music into the daily curriculum, the small class size of no more than 27 children, and the absence of corporal punishment. He enjoyed Andy's and my stories of the school. We told my father nearly everything.

SGK did not approve of fighting. Yet he did not disagree when at dinner the night before I started kindergarten, my mother told me that people do not like the sight of their own blood. Go for the nose on the first punch without delay, she said. I did, and she was right. In the mid-1940's, a new family moved into the neighborhood. Their only child Kirk, aged 15, would torment children he caught alone in the Otis alley where we often played. Finally with Andrew as bait, four of us trapped Kirk, dragged him into Fowler's garage, whacked him until he cried uncle and for a minute or so after that for good measure. Proudly, Andrew and I told the story that night. My mother beamed. SGK said

what we did may have been necessary, but that if we started to enjoy doing that sort of thing we would become just like Kirk.

My father encouraged me to practice the piano; he and my mother insisted I take weekly lessons. I practiced as little as I could. My parents attended the annual Campus School piano recital of 1942, featuring ten or so students. I could not remember more than the first six bars. I played them four times, bowed, and sat down to a storm of applause and laughter. SGK reprimanded me, once, after the concert and never brought the matter up again. I was happy my lessons were discontinued. My father was happy that Andrew loved the piano, and on occasion, played four hands with him.

My brother Andrew and I had wonderful times with Dad. We went for walks with my father talking about what we were reading. We both read voraciously from first grade onwards, encouraged by our parents and by our teachers. SGK was very interested, and asked good questions. He even read our library books (Joseph Altsheler, Jack London, Albert Terhune) on occasion and discussed them with Andrew and me. He read all our Babar books with pleasure.

SGK, Andy, and I would sprawl on the floor to read the funnies (i.e., comic strips) together. His favorites were Mutt and Jeff, Oakey Doaks, and later in life Pogo. Years later, one had only to mention Mutt and Jeff and their rainstorm pajama fetch and he would laugh aloud. After the funnies, we would turn to the war maps to check progress.

Until 1943 or so, SGK told stories of Heinzelmann, which he wrote and illustrated in advance with fine drawings of this six-inch tall elf, his quarters in a tree trunk, and the characters in the tales.² The stories always had magic, a villain (usually a wolf, occasionally a bad troll), a violent defeat of the villain(s) by Heinzelmann, and a moral. As Dad never threw away a piece of paper, I hope the drawings survive in the Institute for Medieval Canon Law in Munich.

² Heinzelmann was a figure in the mythology of northern Germany.

During summer vacations, Andy and I would play in the Catholic University's pool with our father. He loved to swim and did so daily, usually a strong breaststroke, occasionally an odd sort of crawl in which his head and shoulders were always above water. Before we could swim we would take turns riding on his back, kicking while we held on to his shoulders. Dad came to watch us pass our swimming tests at the McKinley Tech public pool in the summer of 1943. He was always encouraging. SGK was still swimming, several times a week in the outdoor pool at Berkeley as late as early 1995.

For several summers in the '40s, my parents took the family to Beach Haven New Jersey for a week to ten days. We roomed 2 blocks off the beach, and spent the day on it, breaking only for lunch. SGK was an excellent body surfer. On calm days he would permit Andy and me to swim far out with him.

Our Parish was St. Anthony's at 12th and Monroe Street. Except when we were altar servers, we went to Mass there with my parents. My father was so devout. I remember being embarrassed because he often prayed with his arms crossed at the wrist over his heart. Occasionally we would attend Mass at the Franciscan Monastery at 14th and Quincy NE. If SGK knew that Andy and I often played guns in the Monastery catacombs with our friends, he didn't let on.

In my opinion, SGK's favorite liturgy was the Gregorian Mass at the Benedictine Priory (now the Abbey) on 14th street NE North of Michigan Avenue. During Lent he went there daily. Often Andrew and I went with him in companionable silence and would walk to school from there after Mass. At Mass Dad would sing the great Gregorian chants in unison with the Benedictine community. His good friend and fellow scholar, Father Anselm Strittmatter, always came over to say a warm hello after Mass. Whenever I hear Gregorian chant, I think of my father. The upper grades of Campus School sang regularly at the National Shrine on the Catholic University campus. SGK came to the first Mass we sang there and occasionally to later performances.

We went camping with Dad. Most memorable is our five-day camp in the summer of 1945 at Poquoson Shelter on the

Appalachian Trail. We packed in meat, canned beans and peas, apples, butter, peanut butter, bread, and cheddar cheese. When we first arrived SGK put down his large pack, and broke the jug wine of Fior di California. It was the first time I heard Dad swear in German. The next time I heard him swear, this time in English, was in 1968 as we discussed the invasion, occupation and trashing of offices at Columbia University.

From our camp, we walked and picked blackberries daily. Once we met a bear. My father quietly and calmly told us to walk back up the trail. He caught up with us five minutes later, and told us what a grand experience it was to meet that bear. He praised our behavior.

SGK was a forgiving man. Soon after we arrived in Washington, we acquired a small Steinway Grand. My father played ardently and well. By 1946 we were very poor, though I never felt that way. My parents decided the piano must be sold. I overheard that conversation. An interested couple came by, played a few notes, and said they wanted to buy the Steinway. Helpfully, I mentioned that my mother said she'd be glad to get \$800.00 out of it. My mother turned white with justifiable rage; my father gave me a hard look, and the deal was consummated. He never mentioned my costly gaffe to me.

SGK's social life in those years changed. Early on, we often had fellow émigré's, mostly academics, to dinner – usually red rice, meatballs, and Fior di California. Some of these guests would complain that they didn't get the respect here they deserved as professors, and that things had been better in Germany. Those acquaintances did not appear at all after 1942. My father hated whining.

The fellow emigrants/refugees SGK did continue to see were all forward looking, for example: historian Ernst Kantorowicz; SGK's lifelong friend since university days, the pianist Konrad Wolff. Gerhard Ladner, another lifelong friend and collaborator, whom SGK chose to be my godfather, visited frequently. The Kitzingers of Dumbarton Oaks dined turn and turn about with us. Often we had Americans in. The ones I remember best are John and Virginia Callahan of Georgetown

University, Bernard Peebles of Catholic University, and the Willgings.

SGK's maternal cousin, Uncle Thomas 'Tommy' Schocken, often visited before he went off to war as a Sea Bee. SGK and Tommy had been close since childhood. The only two men who could tease SGK to his great enjoyment and regale him with locker room jokes were Uncle Tommy and years later my much younger brother Francis. A dignified and perceptive friend of those years and until his death was Father Anselm Strittmatter from the Priory/Abbey. SGK was also friendly with Father Dressel, a dynamic and progressive curate at St. Anthony's. Occasional dinner guests were Father Johannes Quasten, and Ludwig Schopp. These hearty and bibulous trenchermen were both instrumental in getting *Traditio* off the ground.

As I describe the visiting inhabitants of the Kuttner house, keep in mind the size of 1600 Otis Street. I can only imagine the stress the overpopulated house must have placed on my parents. Both hid that from us while it was happening. Years later SGK spoke with me about how difficult that was for them both. The house contained my parents, me, Andrew, Susanne, Angela (b.1942), Barbara (b.1944) Thomas (b.1946.), and Michael (b.1948). My Aunt Maria, one of SGK's two sisters-in-law, having left China and her husband after the war, lived with us for months in 1946 until she found employment. She had moved to Beijing in 1932 after her marriage to my father's good friend Helmut Wilhelm, a well-known Sinologist. Around 1948, Barbara (Schuhard) Hsu and her 3 children came and stayed for over a year. She and my mother had been close friends since they were young girls. Hsu Dao Lin, the husband she left on Taiwan after the Revolution, was another close university friend of SGK. As Chargé d'Affaires of the Chinese legation in Rome, Hsu helped my grandparents escape from Rome. All this seemed normal to me, because I never heard my parents complain. They were so generous.

During the CUA years, SGK brought home papers (usually proofs) several nights per week and after dinner would proof read and drink wine until long after we went to bed. Some

nights he would play the piano, first the Steinway and then the upright that replaced it. He played records, always classical music, first on a wind-up Victrola, then on an early hi-fi.

During the war, SGK was an air raid warden. Fellow Wardens were Mr. Shields and Mr. Wilson. I assume that after meetings, they enjoyed a drink or two. He loved his Warden's helmet, as he loved varieties of headgear all his life. I put it on, once. My father reacted as if I had scribbled over a final proof.

1948-1952: The High School Student's Memoir

I went to Gonzaga High School in Washington D.C. on a half scholarship. Full tuition was \$200.00 per year. SGK immediately got me a part time job as a library clerk in Catholic University's library. I worked there for two years, starting at 25 cents/hour, ending at 35. SGK and Gene Willging demanded good work because I came in 'connected'. They got it. SGK's good friend Gene Willging was the University Librarian, and they enjoyed each other's company. Occasionally my parents socialized with the Willgings, and also with the Alex Gianpietros.

During the summers of '49 and '50, almost every day after his swim, I would join SGK for lunch in the Catholic University bindery. Ferdinand Zach, an eccentric Czech Social Democrat, was the binder. He had two skilled binders working with him. All were voracious readers. The conversations were free flowing. The food always included cheese, hard salami, olives, hard bread, fruit, and sometimes wine. On rare occasions I had read the book or author being discussed. Dad or Dr. Zach would ask what I thought. If they thought I made sense they agreed. If not, they would challenge me rigorously. It was a lesson, still not fully learned 60 years later, to think before speaking.

At Gonzaga I played trombone in the band. Two years running, Dad would come down to Gonzaga and accompany the band on the piano. I took that for granted even though he hated syncopated music and was bored by marches.

All through high school, the family continued going to Mass together if possible. By then, I admired his intensity at Mass. That intense devotion continued his life long.

Saturday mornings, my father taught Andrew and me to cook breakfast. Beer scrambled eggs, and eggs bacon-spattered sunny side up were among his favorites. At lunch he relished horseradish sandwiches, tearing up blissfully.

Brian and Theresa Tierney and their small children came to the States circa 1951. Tierney's original work and scholarly achievements are now well known. What I know is that Brian was a wonderful friend to SGK, and that the Tierneys and my parents were and remained close friends. Brian had a marvelous wit and a great gusto about him, which SGK and my mother very much appreciated and enjoyed. Brian would occasionally play tennis with me. SGK himself had no interest in competitive team sports and made it clear he thought my time spent playing them was wasted.

During the post-war years, SGK had formed friendships with several of his students and collaborators; among them Phillip Hannan, who jumped at Arnhem as a Chaplain with the 82nd Airborne, Joseph Ryan from Toronto, and Frederick McManus, the liturgist. He was comfortable with and enjoyed the company of these good men who were and remained priests. Hannan became the great bishop of New Orleans. When they visited, SGK encouraged our presence as long as we spoke only when spoken to.

1952-1956: The College Man's Memoir

I went off to Holy Cross College in Worcester Massachusetts in the fall of '52. The only time I saw my parents disagree strongly in my presence was on the question of my accepting a Princeton Club scholarship to attend Princeton University or an Naval Reserve Officers Training Corps scholarship at Holy Cross. SGK supported me when I said I wanted a college where I could afford the social life. I must add that my mother not only backed off, she immediately became a

wholehearted and hospitable Holy Cross parent. SGK was fond of my good friends and roommates John McKenna and Michael Byrne and welcomed their visits to Otis Street.

Whenever the Holy Cross Glee Club visited Washington, ten or so of the singers from the Class of '56 camped at our house in the finished basement, which was free of tenants at the time. SGK was a cordial host. My classmates still speak of staying up late and talking with my father.

I was suspended in the spring of my junior year for physically restraining the Dean of Discipline Father Mac____SJ, when in a drunken rage he cursed at and attempted to assault an Italian-American classmate. The President of the College nullified the suspension but required me to move off campus to avoid Midnight Mac. My father gave me sage, sound and calming advice and reassurance throughout. My parents and I corresponded weekly. SGK's letters were in that elegant hand which the less young in this audience remember well. He always wrote to me as an adult – I recall only one admonition on a poor grade. Generally his letters were a mix of views on current affairs, personal comments, and news of my siblings. He worried about and despised Joe McCarthy, and was deeply impressed by the Senate hearings and McCarthy's ensuing censure. Several years of his letters to me were lost in the Worcester Tornado of June 1953. The rest was in boxes I brought home from Holy Cross. As SGK never threw out correspondence, it is possible our letters are in the SK Archive in Munich.

SGK spoke often and sometimes wrote to me about the Judaic roots of Christianity, and the full flowering of that tribal/national/dispersed world-wide exclusive religion into the universal inclusive Church. That transcended his cold-eyed recognition of dreadful Church misgovernance and anti-Semitism across the centuries, including the failures of Vatican I.

SGK was fascinated by Simone Weill, and had a high regard for Arthur Koestler and Christopher Dawson. He sent me a remarkable book, *Pillar of Fire* by Karl Stern, published in 1951. Stern describes his journey from Judaism to Catholicism

movingly and with profound insight. SGK would still mention that book to me forty years later.

During my college summers, my parents and the youngest eight siblings would spend eight to ten weeks on the Canadian side of Lake Memphramagog above Vermont. I would visit briefly, along with my best friend John McKenna. SGK, John, and I would have long conversations about C.S. Lewis, especially the Ransome trilogy. Thornton Wilder, with whom in later years my father conducted a correspondence, was another author whose ideas, ideals, and style were joy for SGK – as were the works of Thomas Mann. SGK loved puns and bi-lingual word play. He would laugh aloud whenever I asked him “willst du nicht eine Nachtmütze haben?” (Won’t you have a nightcap?).

In the spring of ’56, I wrote to my parents that I had met the person I would marry. SGK wrote back in several convoluted paragraphs that there were other options than marriage. Weeks later, the entire family came up to Holy Cross to see SGK receive an honorary degree *pro causa*, for my Marine Corps commissioning, and for the Holy Cross graduation ceremonies. Barbara (unaware of my plans for her at the time) was there as well. Just hours after they met, my father took me aside and told me that if she was reckless enough to marry me I should jump at the opportunity. She was and I did, in February of 1957. I would have done so regardless, but it was grand to have SGK’s total approval. My father helped me finish college with a flourish, handing me my diploma as I crossed the stage as a brand new officer of Marines.

1956-1964: The Second Kuttner Family Man’s Memoir

My family comprises Barbara and me and our descendants. SGK’s family was Eva, he and their descendants. Any married person here will appreciate that SGK recognized and respected that distinction. On Labor Day weekend of 1956, the first time Barbara and my mother walked into the Otis Street house after our engagement, they heard a Mozart piano sonata

as they walked up the porch stairs. My mother wept and embraced Barbara. It was the same sonata SGK played whenever my mother came home from the hospital with a new baby.

That same weekend my parents had a betrothal party for us. I came up from Quantico. SGK's mother came in from St. Louis for the festivities, as did Dorothy Mackinnon, Barbara's mother, from New York. I seem to remember some of SGK's friends who came: Father Philip Hannan, Gene Willging, Bernard Peebles, Father Dressel, Father John Tracey Ellis, Father Anselm Strittmatter, the Gianpietros, John and Sally Kelly, the Shields, and the Tierneys. My parents were excited and happy to introduce Barbara. Callow, I took all this attention as our right. Now I know it was a generous gift. We were married February 23 1957, and soon moved to Camp LeJeune. North Carolina; thence to Fort Sill, Oklahoma for artillery school. SGK's first grandchild was born in Lawton, Oklahoma on December 1, 1957. My father was attentive and fussed over Ann Kuttner, now a professor of Art History at the University of Pennsylvania. He welcomed her with comparable enthusiasm to Berkeley as a graduate student. SGK II arrived Jan 21, 1959. My father was both abashed and delighted at our choice of name, and was an active handler of each child when we visited.

During my 3 years of active duty in the Corps, my correspondence with SGK, while much less frequent, continued. SGK saw little of me from '56 to '59, given my United States Marine Corps duties and deployments. He saw much more of Barbara and the grandchildren, who spent considerable time with my parents and siblings during my longer deployments. He was demonstratively interested in my family. SGK was pleased when I resigned my regular commission in 1959.

We moved to Tuckahoe New York. I went to work with IBM in the City and also attended New York University Law School at night. My father was not happy with my decision to leave law school when I didn't make law review. Soon after we moved to Tuckahoe, our son Nicholas was born. Less than two years later our daughter Elizabeth was born there. SGK was

frequently in New York City, staying with us in Tuckahoe, a lively visitor and attentive grandfather. The children called him Papa. Often he would bring a colleague, e.g. Joseph Ryan, Gerard Fransen, Edwin Quain, along. SGK would sometimes visit Konrad Wolff in Manhattan, and then on to our house along with Konrad's wife Ilse Bing and her dog. SGK found it amusing that, while he and Konrad could and did play with our children, the children were at Ilse's request kept away from the dog, as she feared they might contaminate him. These were the years he began to work closely with John T. Noonan. The Noonans and my parents became lifelong friends and collaborators, especially at the University of California, Berkeley.

In 1962 we moved to Chevy Chase Maryland, close again to SGK and my mother. My youngest brothers Francis and Philip were in the upper grades at Blessed Sacrament grammar school. In 1963, Ann started first grade there. SGK demurred from going with me to Home and School Association meetings but was amused at the suggestion.

SGK was enthusiastic about the marriage of Susanne to John T. Potts in the early 60's. John became and remained a close friend of SGK. Another cause for celebration was the marriage of Andrew and Marlis Keller. After Andrew's untimely death in 1969, Marlis became like a daughter to both my parents. With those families as with ours he was a devoted and enthusiastic grandfather, called 'Papa' by all the grandchildren. Sundays, we and the Potts and the Andrew Kuttner family would visit my parents for brunch. He enjoyed being patriarch then and did until his death. By August 1964 our six children had been born.

SGK's work was increasingly consuming, though he still wanted to know what Barbara and Andrew and Susanne and John and I thought of a variety of matters ecclesial and political. SGK was enthusiastic about the second Vatican Council. His knowledge of the issues, officials, and personalities involved, was wide and deep. He was especially hopeful about the prospect of due process becoming integral to Church governance. He never let on he knew the author of the Letters from Vatican II

until years later.³ He considered John XXIII a gift of God. SGK was disturbed by the encyclical *Humanae Vitae*, and even more disturbed by the harsh treatment Patrick Cardinal O'Boyle, archbishop of Washington, D.C., meted out to his conscience-driven priests who dissented from the encyclical. My brother Andrew and our good friend Joseph 'Joe' Hennessey, Monsignor Joseph Ryan's nephew, led the effort as attorneys to mediate this terrible situation. SGK was proud of Andrew. He sometimes met with Andrew and Joe (both now deceased) to plan strategy and explore how canon law might be used to help the situation. My father admired Lawrence Cardinal Sheehan's more measured and thoughtful handling of the issue when he was Archbishop of Baltimore.

In 1963, Hannah Arendt's *The Banality of Evil* was published. SGK and I both read it with great interest. The conversations that followed ranged across related issues. SGK pointed out that by the time German Jews fully understood what was happening, armed resistance was impossible. When we learned more fully about the Warsaw uprising, the heroic Polish resistance was reassuring to me and moving for my father.

In 1964, the Riggs family established an endowment at Yale for Roman Catholic Studies. Sargent Shriver called SGK to ask for a list of qualified candidates for the first Riggs chair holder. My father told me that after he sent Shriver the list, he got a call from Shriver. 'Goddammit Steve why isn't your name on the list?' The years at Catholic University were at an end.

The Oldest Son Looks Back

My parents were and remained ardent and practicing Roman Catholics until their deaths. Their lives, their actions, their correspondence, all make it clear they were not and did not see themselves as 'wandering Jews'. Hetzenecker's work makes

³ Francis X. Murphy (1915–2002) was a theology professor at the Pontifical Lateran University. He wrote 'Letters from Vatican II' about the Second Vatican Council, published in *The New Yorker* magazine under the pseudonym Xavier Rynne.

this clear in SGK's professional life. His family, his friends and acquaintances know of his deeply Catholic private life. My father was raised a Lutheran and became a convinced Catholic. He was comfortable with his antecedents but never accepted the notion of Jews as intellectually superior. He knew too many first-rate minds who, whatever their origins, were not 'Jewish'. During those years at the Catholic University my father did whatever was necessary to make sure he joined my mother for dinner every night without fail. My younger siblings have exactly the same memory of our family dinners during his years at Yale and Berkeley. He did not place his work above his family.

I have some opinions and conjectures about my father, which only increase my respect for him. I believe SGK periodically suffered from clinical depression. I believe he self-medicated for years with alcohol, usually wine, mostly at night. Yet his character and determination drove him through recurring episodes of depression during which he continued to work and achieve uninterruptedly. When forced to confront the unintended consequences of his self-medication, he cut back his alcohol intake substantially and immediately. Those are the outward manifestations of an iron will, moral rigor, and ruthless self-discipline. That decisive change enhanced the rest of his life and all his relationships. I am grateful for that and admire him for it.

Much that occurred during the 1960's repelled SGK. He agreed that the academy had in too many places grown smug. He did not accept that an excuse for the destructive counterculture of that era. This was a delicate subject for any public discussion in Berkeley. However, with friends and family, SGK spoke of that counterculture and its manifestations with scorn and sadness. The second time in my life I heard him swear (this time in English) was about Mark Rudd and his followers' occupation of Columbia University and the violence of Rudd and the Weathermen.

The decades in Berkeley were rich and satisfying, surrounded as SGK and my mother were by the love and friendship not only of many I have mentioned, but also of others whom I have not until this moment, among them Ken Pennington, Bob Somerville, Robert Benson, Ludwig Schmutge,

Giles Constable, and Peter Landau. I apologize for any distress I may have caused by leaving others out of this paper. You all enriched my father's life with your friendship.

At Berkeley Christmases, the Christmas tree candleholders my father first designed and made on Otis Street were still in use. In that respect, as in so many others, the best personal elements of those years at Catholic University remained with him until his death. The father I knew and remember did his level best to apply the values and principles of his scholarly life to his private life. Much more often than not, he succeeded. If you remember nothing else of this essay, remember that.

Hereford, Arizona

Select Bibliography of Essays and Books for 2012-2013

Compiled by Melodie H. Eichbauer

Abbreviated Titles

Bridging the Medieval-Modern Divide: Medieval Themes in the World of the Reformation, ed. James Muldoon (Catholic Christendom, 1300-1700; Farnham 2013) = *Bridging the Medieval-Modern Divide*

Canon Law, Religion, and Politics: Liber amicorum Robert Somerville, ed. Uta-Renate Blumenthal, Anders Winroth, and Peter Landau (Washington D.C. 2012) = *Canon Law, Religion, and Politics*

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Der Einfluss der Kanonistik auf die europäische Rechtskultur, Bd. 3: *Straf- und Strafprozessrecht*, ed. Orazio Condorelli, Franck Roumy, and Mathias Schmoeckel (Norm und Struktur: Studien zum sozialen Wandel in Mittelalter und Früher Neuzeit 37.2; Köln-Weimar-Wien 2012) = *Einfluss der Kanonistik*

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