

The Catholic University of America, Columbus School of Law
CUA Law Scholarship Repository

Scholarly Articles and Other Contributions

1970

A 'Consilium' of Johannes Teutonicus

Kenneth Pennington

The Catholic University of America, Columbus School of Law

Follow this and additional works at: <http://scholarship.law.edu/scholar>

 Part of the [Religion Law Commons](#)

Recommended Citation

Kenneth Pennington, A 'Consilium' of Johannes Teutonicus, 26 TRADITIO 435 (1970).

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

qu'il nous remet à tous pour le faire fructifier. Ce maître si savant enseignait la liberté scientifique. Pareil témoignage, que chacun pourrait rendre, est ici le plus bel éloge.

Université de Paris-Ouest.

PIERRE LEGENDRE

A 'CONSILIUM' OF JOHANNES TEUTONICUS*

The recently published catalogue of the University of Pennsylvania manuscript collection described a letter of a certain Johannes who was a *praepositus* of Halberstadt.¹ The letter was located on folio 43^v of MS Lat. 82. Besides this work, the manuscript also contained a canonical treatise by Arnulfus of Anagni, a notarial handbook by Johannes of Bologna and *Exempla* of notarial documents.² The manuscript can be dated in the second half of the thirteenth century; thus it seems likely that the author of the letter was the canon lawyer, Johannes Teutonicus.³ In fact, upon examining the manuscript, the text proved to be not a letter, but a *consilium* of Johannes.⁴

However, only half of the text was the work of Johannes. After Johannes had ended his *consilium* with the words 'sigillo proprio consignauj,' the text continued with a *casus conscientiae* that was taken from the *Summa de casibus* of Raymond de Pennafort.⁵ It seems unlikely, however, that Johannes himself had used Raymond's *Summa*. From Johannes' reference to an archbishop of Magdeburg, Albert of Kevernburg, as 'dominus Albertus archiepiscopus,' one may assume that Albert was still alive.⁶ Since Johannes became a *praepositus* in 1223 and

* I should like to thank Mrs. Neda M. Westlake, Curator of the University of Pennsylvania Rare Book Library, for her kind assistance, and Professors Brian Tierney, Gérard Fransen, and Stephan Kuttner for their comments.

¹ N. Zacour and R. Hirsch, *Catalogue of Manuscripts in the Libraries of the University of Pennsylvania to 1800* (Philadelphia 1968) p. 18.

² *Ibid.* Arnulfus of Anagni's *Summa* has been edited most recently by J.G.C. Joosting, 'Die *Summa Ut nos minores* nach der Leidener Handschrift herausgegeben,' *ZRG Kan. Abt.* 17 (1928) 153-227. Johannes of Bologna's *Summa* has been edited by L. Rockinger, *Briefsteller und Formelbücher* (München 1863-64; repr. New York 1961) II 603-712.

³ There was not another *praepositus* of Halberstadt named Johannes in the thirteenth century. In 1223 he became the *praepositus* of the collegial church in Halberstadt, St. Mariae, and in 1241 he advanced to the position of *praepositus* in the cathedral church. See J.F.v. Schulte, 'Johannes Teutonicus (Semeca, Zemeke),' *Zeitschrift für Kirchenrecht* 16 (1881) 107-32. S. Stelling-Michaud, 'Jean le Teutonique,' *DDC* 6.120-2. On Johannes' literary activity, see Kuttner, *Repertorium* 93-9, 357, 370-81, and Kuttner, 'Johannes Teutonicus, das vierte Laterankonzil und die Compilatio Quarta,' *Miscellanea Giovanni Mercati V* (Studi e Testi 125; Città del Vaticano 1946) 608-34.

⁴ On the *consilia* literature see Van Hove, *Prolegomena* (2nd ed.) 505-7, 558-9. Also P. Riesenbergh, 'The Consilia Literature: A Prospectus,' *Manuscripta* 6 (1962) 3-22.

⁵ Raymond's text can be found under *De voto* in *Summa de poenitentia et matrimonio* (Romae 1603; repr. Farnborough 1967) 76-7, also *Summa* (Veronae 1744) 75-6. Hostiensis also discussed this text in his *Summa aurea* (Lugduni 1517) fol. 34^v.

⁶ If Albert had died, the conventional form would have been 'quondam' or 'beate memorie.' For Albert's dates see C. Eubel, *Hierarchia catholica medii aevii* 1 (2nd ed. Monasterii 1913) 320.

Albert died in 1232, these dates establish the time limits within which Johannes must have written the *consilium*. Further, in Raymond's text, the decretal references were to the *Gregoriana*, which would indicate that the scribe copied the second recension of Raymond's *Summa* (ca. 1234).⁷ Thus a later 'patron' of the manuscript, and not Johannes, probably combined the two texts. As it is, there are only a few unimportant differences between the Penn. Lat. 82 version of Raymond's text and that in the printed editions.

Johannes had written the *consilium* in answer to a problem which the *praepositus* of Kezenounc⁸ had set to him. The question was whether women who had professed the Benedictine rule in a monastery that had been founded by a mother house that permitted the eating of flesh and the use of linens and beds could continue to practice the same lax rule at the new foundation.⁹ To this inquiry Johannes concluded that although he would not consider them to be true Benedictines — but only Benedictines in so far as they were accustomed to wear a black habit — he did think that they could continue to observe the hitherto accustomed rule.

Here, Johannes articulated a principle that was a common maxim of medieval law: that law and privilege were interpreted through custom. To illustrate how this principle might work, Johannes referred to the case of Lauterberg (*Mons Serenus*), an Augustinian monastery near Halle. Unfortunately, the incident that Johannes had in mind is not definitely ascertainable. There was, however, a letter in *Compilatio tertia* that Innocent III had written to the monks of Lauterberg in 1202.¹⁰ In this letter, Innocent had given the monks permission to break a custom of their monastery which did not permit the monks to eat meat on certain days. This was a case of privilege derogating custom, but it could be that this privilege was later rescinded, and the custom of the monastery renewed. If this hypothesis is correct, perhaps Johannes referred to this later action. At any rate, no evidence of this later event is extant.¹¹

TEXT

Most of the text of Penn. Lat. 82 is a large, gothic script, quite typical of the legal scripts of the thirteenth century. However, on the last folio the script changes abruptly. On folio 43r, in the last section of Arnulfus of Anagni's work, the script changed to a small, rather crude gothic script. After Arnulfus' treatise ended on folio 43v, Johannes' *Consilium* was written in the same script. The manuscript measures 23 x 17 cm.

Omnibus presentem paginam inspecturis Johannes indigne dictus magister ac Halberstadensis prepositus in salutis auctore salutem. Venit ad me prepositus de Kezenounc talem consultationem mihi proponens. Si mona-

⁷ For the dates of the two recensions of Raymond's *Summa*, see S. Kuttner, 'Zur Entstehungsgeschichte der *Summa de casibus poenitentiae* des hl. Raymund von Penyafort,' *ZRG Kan. Abt.* 39 (1953) 419-34. Also *Repertorium* 438-52.

⁸ I found it impossible to identify this place name with certainty. Two Benedictine monasteries in Germany seem likely: either Riesa (Rezoviensis) or Kitzingen (Kitzining, Kitzung, and various other spellings).

⁹ Cf. *Benedicti regula* 22.7 and 36.9 (ed. R. Hanslik, CSEL 75 [Vindobonae 1960] pp. 78,96).

¹⁰ 3 *Comp.* 3.24.5 (X —). Pothast 1646, dated March 22, 1202.

¹¹ A monk from Lauterberg wrote a chronicle in which he recorded Innocent's letter and the events surrounding the letter. The chronicle ended in 1225, and the chronicler did not

sterium aliquod feminarum sumptum et fundatum est de alio monasterio
 5 feminarum, cujus femine secundum regulam beatj Benedictj nigro habitu
 in exterioribus semper consueuerunt utj, sed tam esu carniū quam lineis
 ac lectis use sunt, tanto tempore cuius non extat memoria sine contradic-
 tione cuiusquam, professionem tamen secundum regulam beatj Benedictj
 facere consueuerunt, an licite et sine peccato illa consueta regula possint
 10 uti. Ad hoc respondeo, si femine alicuius monasterij utuntur nigro habitu
 et habent usum carniū et utuntur lineis et lectis et ab illo monasterio
 sumptum et fundatum est aliud monasterium quod eandem seruat regulam,
 tam in habitu exteriori quam in esu carniū quam etiam lectis et lineis,
 et tanto tempore use sunt cuius non extat memoria, et a prima fundatione
 15 semper tali regula use sunt, dico quod non sunt de regula beati Benedicti
 nisi quo ad exteriorem habitum. Et licet in priuilegiis contineretur quod
 essent de regula Benedicti, ad hoc ut priuilegium concordet consuetudinj,
 quia priuilegia interpretanda sunt per consuetudinem hactenus approba-
 tam — nam cum optima legum interpres sit consuetudo, multo magis est
 20 priuilegiorum interpres — oportet quod intelligatur priuilegium: quod dici-
 tur ibi de regula Benedictj intelligendum est quantum ad habitum exterior-
 rem. Preterea satis inuenimus quod consuetudo derogat priuilegio etiam
 in eodem casu ut in illo de Monte Sereno, et ideo illi qui fuerunt uisitatores
 dati ad inquirendum de statu illj monasterij, prudenter confirmauerunt
 25 regulam illam. Similiter dominus Al<bertus> archiepiscopus bene con-
 firmavit. Unde si qui aliud dicunt, cecj sunt et duces cecorum.¹² Preterea
 quando faciunt ibj professionem secundum regulam Bendictj, nec intelligunt
 nec intendunt aliud promittere nisi secundum consuetudinem ibi dudum
 seruatam, quia nemo se obligare potest nisi ad id quod corde intelligit et
 30 intendit. Unde licet promittant se seruare regulam Benedictj, non tamen
 promittunt quod in omnibus statutis suis eam seruent, et ita sufficit si in
 aliquibus, maxime in exteriorj habitu, eam seruent. Et ut nulla super hoc
 hesitatio habeatur, presentem paginam sigillo proprio consignauj.

APPENDIX: THE TEXT FROM THE 'SUMMA DE CASIBUS' OF RAYMOND DE PENNAFORT

In the text that follows, I have collated the Rome 1603 edition of Raymond's *Summa* (R) with Penn. Lat. 82 (P). I have also had an opportunity to examine the manuscripts of Raymond's *Summa* in the Munich Bayerische Staatsbibliothek. There are twenty-three manuscripts of the *Summa de casibus* in Munich, and of these I have selected six to collate with the text.¹³ I also found several

8 tamen *add. marg.*

14 sunt *supra lin.*

26 sunt *supra lin.*

mention a change in the privilege up to that date. See *Chronicon Montis Sereni* (1123-1225) ed. E. Eherfeuchter (MGH *Scriptores* 23.169).

¹² Matt. 15.14.

¹³ The catalogue lists twenty-nine; however, Clm 4595, 6020, 7208, 7821, 9664, 14789 are various *summae* on Raymond's *Summa de casibus*. Clm 9664 is the *Summa* 'Quid sit symonia,' see *Traditio* 16 (1960) 562, and 17 (1961) 541-2. Clm 5863 fol. 158r-233v is an apparatus to a metrical adaptation of Raymond's *Summa* which begins 'Omnem scientiam et doctrinam sacra scriptura transcendit'; cf. Berlin MS theol. q. 291 (Rose, *Verzeichnis der lateinischen Handschriften* No. 648).

canonical texts which are not listed in the *Catalogus codicum latinorum Bibliothecae Regiae Monacensis*, and I have noted these works after the appropriate manuscripts.

There is one interesting manuscript of Raymond's first recension, Clm 6040 (E) fol. 1r-83v. This manuscript is of particular value because a later scribe had added in the margin the changes which Raymond made in his second recension. Unfortunately, the scribe also erased a few pertinent parts of the first recension to make additions in the text proper, but he did this infrequently (e.g. fol. 9v, 14r, 14v). This manuscript also includes Tancred's *Summa de sponsalibus et matrimonio*, fol. 90r-103r.¹⁴

Another manuscript, Clm 7631 (A) fol. 1r-121r cites the *Compilationes antiquae*, but the text appears to be only that of the second recension. Except for E, all the other manuscripts have four books with Raymond's *Summa de matrimonio* as the fourth book.

The other Munich manuscripts are Clm 9572 (B) pp. 1-237, 243-275 (book 4); Clm 17166 (C) fol. 1r-208v; Clm 26310 (D) fol. 1r-101v; Clm 9539 (F) fol. 63r-135v; this manuscript also contains a set of *casus* for 3 *Comp.* on fol. 193r-197v.¹⁵

I have not collated the following: Clm 2700 fol. 1r-88v, *finis deest*; Clm 2756 fol. 1r-154v; Clm 3218 fol. 1r-95v; Clm 7211 fol. 1v-90v, 95v-111v (book 4);¹⁶ Clm 8022 fol. 1r-142r, *glossa sine textu*, fol. 145r-276v; Clm 9663 pp. 1-593, *cum glossa*; Clm 9665 pp. 14-165; Clm 9666 pp. 1-263; Clm 12527 fol. 8r-282v;¹⁷ Clm 14062 fol. 1r-55v; Clm 14750 fol. 7r-110v;¹⁸ Clm 16096 fol. 2r-234v, *cum glossa*; Clm 18101 fol. 1r-266r, *cum glossa*; Clm 22282 fol. 174r-265r; Clm 23571 fol. 13r-297v, *initium deest, cum glossa*; Clm 23576 fol. 2v-118r, *initium deest*; Clm 26839 fol. 2r-48v, *finis deest*.

All the manuscripts with a gloss have the apparatus of Guilielmus Redonensis. Of the manuscripts collated, the text is located on: A fol. 14r, B pp. 25-26, C fol. 25r-v, D fol. 11v-12r, E fol. 14v-15r, F fol. 70v, R pp. 76-77. The consensus of ABCDEFR is indicated by Σ.

¹⁴ For a discussion of the relation of Tancred's *Summa* to Raymond's, see A. Teetaert, 'Summa de matrimonio sancti Raymundi de Penyafort,' *Jus Pontificium* 9 (1929) 54-61, 228-34, 312-22. Also for the relation of Raymond's *Summa de matrimonio* to *de poenitentia* in the manuscript tradition, see Teetaert, 'La Summa de poenitentia de S. Raymond de Penyafort,' *Ephemerides theologicae Lovanienses* 5 (1928) 49-72.

¹⁵ Most of the text is missing; it begins with 3 *Comp.* 4.12.2 (X 4.17.13), *explicit* 'Hiis auditis, adiudicat Innocentius hanc dignitatem monasterio sancti Bertini, ut semper de cetero de ipsius gremio Altiacenses monachi sibi eligant abbatem, dum tamen ibi regularis obseruantia uigeat, et persone ydonee reperiantur que in abbates eligi mereantur,' to 3 *Comp.* 5.23.10 (Professor Kuttner informs me that this corresponds to the ending of the *Casus* of Guido Brito; for which see his *Repertorium* 404f., also *Miscellanea Mercati* V 608 n.2).

¹⁶ Clm 7211 also contains Bartholomeus Brixiensis' *Ordo iudicarius (finis deest)* fol. 91r-92v, *De arbore consanguinitatis, incipit* 'Prodest igitur arborem scire graduumque noticiam habere, cum queritur de sucessione,' fol. 93v-94v.

¹⁷ On fol. 283r-285v is *De arbore consanguinitatis et affinitatis; incipit*, 'Quod pictura arboris sit authentica probatur, xxxv q. v Ad sedem, circa finem' (Johannes Teutonicus? Damasus? see Kuttner, *Misc. Mercati* V 608 n.1), *de affinitate, incipit* 'Affinitas est propinquitas uel attinentia personarum.' (Vincentius Hispanus? see Kuttner, 'Vincentius Hispanus,' *Traditio* 17 [1961] 541); the same order of the texts is found in Rouen MS 706.

¹⁸ Clm. 14750: also Bartholomeus Brixiensis' *Quaestiones dominicales* (none of the ueneriales); contains 63 abbreviated questions, fol. 125r-132v.

Ad idem Ramundus uero de predicta materia sentit sic et dicit. Aliquis uidet monasterium dissolutum et monachos splendide comedere et bibere et bene induj et huiusmodi, cogitat hunc ordinem sustinere se posse. Ingreditur, et demum ibi fit inquisitio; compelluntur ad regulam obseruandam. Iste dicit, 'non uouj hanc asperitatem que modo imponitur, nec eam uolo seruare.' Queritur utrum possit cogi. Videtur quod non, nam sicut non potest quis cogi ad totum uotum, ita nec ad uoti augmentum. Preterea idem iuris est et in parte et in toto, sed ab inicio non poterat cogi ad totum. xxxii q.i Integritas.¹⁹ Ergo nec ad partem. Preterea licite se potest quis obligare separatim ad continentiam uel ad non habendum proprium uel ad obedientiam. xxxiii q.v Quod Deo.²⁰ Ergo iste cogi non potest. Videtur contrarium: qui facit professionem secundum aliquam regulam, obligat se ad eam totaliter obseruandam, nam qui nihil excipit totum comprehendit. xix di. Si Romanorum.²¹ Preterea uel intendebat uiuere regulariter uel irregulariter. Si regulariter patet quod tenetur; si irregulariter nichilominus tenetur ut prius, quia etiam si expressisset, turpis adiectio pro non adiecta haberetur, ut extra de conditionibus appositis. c. primo.²² Preterea adiectio apposita contra naturam contractus non uiciat contractum, ut x q.i c.ii. Idem in adiectione posita contra legem. xvi q.i Si quis laicus.²³ Solutio. Indistincte dico quod iste ibi professus non potest redire ad seculum; sed utrum cogatur ibi ma-

1-2 Aliquis] Item (Item *om.* B) pone aliquis secularis Σ 2 et¹ *om.* Σ comedere] comedentes R, uiuere B 2-3 et² bibere — huiusmodi] bene indutos (induere DF) et similia (et similia *om.* R, similia *corr.* ex singula C) Σ 3 sustinere se posse] bene possum sustinere (ingredi, dicens *praem.* R) Σ 4 et demum ibi] Postea Σ inquisitio] in monasterio *add.* Σ 5 uouj] noui ABDEFR que — imponitur] quam uultis (monasterio *add.* R) imponere Σ 6 nec — seruare] nolo (non uolo DF) eam tenere (seruare F, tenere eam *tr.* B) Σ possit] potest B 7 nam *om.* A, quia BCDEFR (uotum E^{ac}) non] nullus DF quis non potest *tr.* R, quis *om.* DF, cogi quis *tr.* B totum *om.* A augmentum uoti *tr.* DF 8 Preterea] Item quia Σ et *om.* BCER 9 totum] supra eodem § Votorum *add.* Σ Integritas] Interrogas AE Preterea] Item Σ 10 licite] non *add.* A potest (licite *tr.* B) quis se *tr.* ABCDER, potest se quis *tr.* F ad² *post* non *tr.* D *corr.* 11 ad *om.* A xxxiii ex xxxii *corr.* P Deo] xxiii di. Quamquam (c. 6) *add.* Σ 11-12 Ergo — potest *om.* Σ 12 Videtur contrarium] Econtra ACEFR, contra D, sed contra B 13 aliquam regulam] regulam beati (beati *iterat* C) Benedicti Σ eam] regulam DF 14 exceptit ABCDEF totum] omnia Σ xix *corr.* ex xx P Preterea uel] Item aut (aut *om.* F) Σ 15 uel] aut Σ Si regulariter] In primo casu Σ 16 si — prius] In secundo (casu *add.* DF) idem Σ 17 turpem adiectionem B haberetur] habetur D, et teneretur regulariter uiuere (uiuere regulariter *tr.* DF) *add.* Σ ut extra] extra i AE 18 primo] i ADEFR Preterea] Item Σ apposita *post* naturam *tr.* A 19 contractum *margin.* D, contractum non uiciat *tr.* AEF ut *om.* Σ 19-20 posita] apposita BR, contra legem posita *tr.* E 20 dico indistincte *tr.* DF 21 iste ibi professus *om.* Σ seculum] ex quo fecit (ibi *add.* CR) professionem *add.* Σ ibi *om.* A 21-22 remanere DF

¹⁹ c.13.

²⁰ c.4.

²¹ c.1.

²² X 4.5.1 (1 *Comp.* 4.5.1).

²³ c.42.

nere, distinguo aut erat peritus iuris aut ignarus. Si peritus, non potest recedere quia intelligitur se obligasse non ad id quod fiebat, sed ad id quod fieri debebat. Si ignarus subdistinguo: aut enim fuit ei explanata asperitas
 25 regule, et tunc idem est quod in iuris perito, aut non fuit, et tunc si credebatur eos regulariter uiuere, et ad illam asperitatem se uoluit obligare, non ad maiorem et hoc expressit, non coetur ibi manere, sed transibit ad alium ordinem quem ualeat sustinere. Si uero non expressit, credo quod ibi debeat manere. Nec potest allegare dolum nec deceptionem quia melior
 30 sua conditio, sed potest magis imputare fatuitati sue quia non examinavit ut debuit; hec probantur extra de regularibus. Super eo. Consultj.²⁴ et xx q.iii Constituit.²⁵ extra de hiis que ui metus causa fiunt. Cum dilectus.²⁶ extra de conuersione coniugatorum. Ex parte. Veniens.²⁷ Vel dic indistincte quod debet manere, quia dolus aliorum uel simplicitas
 35 uouentis non excusat in talibus.

Cornell University.

KENNETH PENNINGTON, JR.

PANORMITANUS ON THE DECRETUM

An unfinished, and hitherto unknown *Commentary on the Decretum* by Nicholas de Tudeschis, known as Panormitanus or Abbas Siculus, has recently come to light in the Biblioteca Capitolare Feliniana at Lucca.¹ His authorship is attested explicitly both at the beginning and at the end of the manuscript, as well as at the end of various chapters, and also by the general similarity in style to his other writings. Panormitanus' reputation, as great in his own lifetime as it is

22 distinguo *corr.* ex distingue P iuris peritus *tr.* BDF ignarus] non E Si peritus] In primo casu Σ 23 ad id² *om.* ABE 24 Si ignarus] In secundo (casu *add.* DEFR) Σ subdistingue DF enim *om.* Σ ei *om.* BF, *supra lin.* *Decorr.* 24-25 explanata — regule] regula explanata et asperitas eius DF 25 idem] id AE est *om.* ACER fuit *om.* Σ 26 uiuere regulariter *tr.* DF uoluit se *tr.* Σ non] et *praem.* DFR 27 hoc] hec F 28 ualeat] ualebit DF ibi *om.* ABCDFR 29 Nec] et non D nec²] uel BDF 30 sua] eius ADF sed] et ADER imputari BR sue fatuitati *tr.* ADF quia] quod C 31 probantur hec *tr.* ABCDEF, probatur hoc R extra — Consultj] extra iii de regularibus. Consulti, extra i eodem, Super eo AE, extra de regularibus et transeuntibus ad religionem. Consulti. Super eo B 32 et *om.* Σ extra iii AE de his — fiunt] quod metus (et metus B) causa Σ 33 Cum dilectus] c. ult. AE extra iii AE Ex parte] i. et *add.* R Veniens *om.* BCDF 34 remanere Σ 35 uouentis] nouitj R talibus] ut dictum est *add.* Σ

²⁴ X 3.31.9 (1 *Comp.* 3.27.9) and X 3.31.20 (3 *Comp.* 3.24.7).

²⁵ c.5.

²⁶ X 1.40.6 (3 *Comp.* 1.23.3) and X 3.32.14 (3 *Comp.* 3.25.1).

²⁷ X 3.32.16 (3 *Comp.* 3.25.3).

¹ Cod. 160, fol. 250^v-263^v, in a good hand; I am most indebted to the archivist for having supplied the information which led to the discovery of this work.