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## A 'Quaestio' of Henricus de Segusio and the Textual Tradition of his 'Summa super Decretalibus,'

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The chief value of the manuscript then is as an early if incomplete parallel to the *Colbertinus*, and both represent a relatively late, if influential, stage in the evolution of the *Tripartita*,<sup>6</sup> but it has a few unusual features of its own. In 1.54.24-30 (the last seven canons of Pelagius) the text is laid out in extraordinary fashion, as alternating series of long and short lines, giving the effect of a series of crosses. No obvious explanation for this short-lived experiment presents itself.

The later use of the book also shows some peculiarities. It was obviously studied with care, not only because of its frequent correction, but also because a later hand has provided laconic marginal indications of content — 'De consecratione indigni episcopi' (fol. 46v), 'De frigida natura' (fol. 80v) etc. — and 'Nota' appears regularly. Other signs of the book's use are less helpful, if more striking. At some point Leo IV's letter recognizing the imperial right of veto over an episcopal election (1.60.20, D.63 c.16), Stephen V's refusal to consecrate a bishop without imperial consent (1.64.7, D.63 c.18), and c.10 of the Council of Ancyra (2.2.1, D.28 c.8), which allows for married deacons, were all but obliterated. The post-Gregorian fervor which this seems to reflect is also attested by the texts at the end which were added by other hands: Deut. 17.12-20 on obedience to priests and the qualities of just kings; Deut. 18.19, I Samuel 8.4-18 and 12.12-19 on the judgment promised to the people of Israel for their determination to have a king; in another hand, First Council of Seville c.3,<sup>7</sup> omitted in the *Tripartita*, on the celibacy of the clergy; finally in another hand again, an extract from Jerome's commentary on Amos which lists the long series of princes who persecuted the Church.<sup>8</sup>

Both as a witness to the text and as a book in use the new manuscript repays careful study.

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MARTIN BRETT

### A 'Quaestio' of Henricus de Segusio and the textual tradition of his 'Summa super decretalibus'\*

A *Quaestio* of Henricus de Segusio, better known as Hostiensis, is appended to a number of manuscripts of his *Summa aurea*,<sup>1</sup> adding a small item to his

<sup>6</sup> Until the whole manuscript transmission has been investigated this is a rash view, but it rests on the association of elaborate rubrics etc. with texts which depart further from the original than do those in manuscripts which lack rubrics, *capitulationes*, etc. Gratian, where he seems to depend on the *Tripartita*, often follows the form here treated as later.

<sup>7</sup> *Decretales pseudo-Isidorianae* ed. Hinschius 436-37, beginning: 'Placuit ut si presbiteri, diaconi . . . '.

<sup>8</sup> CCL 76.320-23: '[M]isit Amasius sacerdos ad Hieroboam — Domini necauerunt'.

\* I am grateful to Dr. Martin Bertram for sharing his knowledge of Hostiensis's manuscripts, providing bibliographical information, and saving me from several errors.

<sup>1</sup> The title, *Summa aurea*, was given to the work in the fifteenth century. The manuscripts refer to it as 'Summa super decretalibus', 'Summa copiosa', 'Caritas', or simply 'Summa'; see M. Bertram, 'Johannes de Ancona: Ein Jurist des 13. Jahrhunderts in den Kreuzfahrerstaaten', *BMCL* 7 (1977) 57 n. 54. The Roman edition of 1477 (Hain 8960) was the first to entitle the work *Summa aurea in decretales*.

known works. Although many manuscript catalogues have drawn attention to the *Quaestio*, Miroslav Boháček was the first legal historian to refer to it in print.<sup>2</sup> Subsequently, Martin Bertram has discovered numerous copies of the *Quaestio* and has provided a list of manuscripts known to him following this article. It is a slightly surprising addition to Hostiensis's *Opera omnia*. 'Quaestiones' were written for extraordinary lectures in the law schools, but, as far as we know, he did not hold a teaching position after he became bishop of Sisteron in 1244.<sup>3</sup> Although he included a number of extended discussions of legal problems in his *Summa* and *Lectura* having the form of 'quaestiones', no independently transmitted 'quaestiones' have survived. It is not surprising that Hostiensis decided to append the *Quaestio* to his *Summa*. From the middle of the thirteenth century, jurists frequently revised, augmented, and recast their works during their lifetimes. Hostiensis probably worked on his *Lectura* to the Decretals of Gregory IX from ca. 1235, while he was teaching at Paris, until shortly before his death. The printed edition of the *Lectura* contains many hints (especially the fairly frequent 'double glosses') that it had a long period of gestation, and I have recently discovered what may prove to be an early stage of his *Lectura* in Oxford, New College 205.<sup>4</sup> There may also be more evidence in the manuscripts of the *Summa* that additional material was introduced (he mentions at the end of his *Summa* that an early draft was accidentally destroyed while he was still teaching in Paris<sup>5</sup>), but to date I have found nothing.

The concluding, in some manuscripts introductory, rubric of the *Quaestio* states that 'This *Quaestio* was sent to us at the Roman Curia from Bologna after the completion of this *Summa*'. In the final sentence of the tract, Hostiensis wrote that 'this *quaestio* is from the title "De sententia excommunicationis",' and he noted wryly that if he had treated the question there at greater length, perhaps doubts would not have arisen over the solution he had proposed.<sup>6</sup> He

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<sup>2</sup> 'Le opere delle scuole medievali di diritto nei manoscritti della biblioteca del capitolo di Olomouc', SG 8 (Bologna 1962) 376 and 'Zur Behandlung juristischer Handschriften in den neueren Handschriftenkatalogen', *Studie o rukopisech* 9 (1970) 167-168.

<sup>3</sup> Before this time he had taught at Paris. Diplovatatus, *Liber De claris iuris consultis*, ed. F. Schulz, H. Kantorowicz, and G. Rabotti (SG 10; Bologna 1968) 142: 'Et fuit archidiaconus Parisiensis beneficiatus in Anglia atque prouincia legens Parisiis in decretalibus et oriundus de Secusia'. This statement is quoted from Hostiensis's comment in the *Summa* (Lyon 1537, repr. Aalen 1962) fol. 10v.

<sup>4</sup> The *Lectura* is a marginal gloss to the Decretals in this manuscript. If, after further study, my preliminary conclusions are correct, I shall report on this manuscript in the next issue of the Bulletin.

<sup>5</sup> The texts of the printed editions confuse Hostiensis's statement slightly. I have taken the passage from Munich, Staatsbibl. [= Clm] 14006 and 15707: 'Ego enim licet multa habuerim contraria ac me distraxerint alia ardua negocia et diuersa, adiutorio tamen illius in quem semper speraui in omnibus suffultus uim mihi intuli, opus quasi desperatum et nimis difficile, quinimmo insufficientie mee impossibile quod in minori officio inceperam (exceperam Ed. 1574), et demum incendio amiseram, in maiori constitutus officio renouaui (reuocauit Edd. 1537, 1574), cursum operis consummaui, fidem seruauit: non ego autem, set gratia Dei mecum'.

<sup>6</sup> See lines 74-77 below.

completed the *Summa* around 1253.<sup>7</sup> From the rubric we may conclude that he was queried about the problem that he solved in the *Quaestio* after he became a cardinal in 1262.<sup>8</sup>

The manuscript tradition of the *Summa* supports the conclusions that one may draw from the rubric and the last sentence of the *Quaestio*: earlier copies of the *Summa* omitted the *Quaestio*, and Hostiensis must have sent it the stationers sometime after 1262 in order to have it added to his text (Chartres 322 was, according to Destrez, an exemplar for university scriptoria; see Bertram's list below). However, many other manuscripts contain the *Quaestio*, but not as an appendix. A third version of the *Summa* evolved in which the entire *Quaestio*, except for the last few lines, was inserted by the stationers under the title 'De sententia excommunicationis' at the place where he had first raised the issue discussed.<sup>9</sup> Late manuscripts almost invariably have this last version, as do all the printed editions.<sup>10</sup> Thus the presence and placement, or omission of the *Quaestio*, provide an important piece of evidence as to which stage of the *Summa*'s textual development a manuscript contains.

Hostiensis did not exaggerate when he stated that his first treatment of the topic was brief. Originally he had written:<sup>11</sup>

Set quid si prelati precipit clerico suo quod uadat Romam uel alio pro negotiis ecclesie, et ille non uult obedire dicens quod alii sunt ibi magis idonei uel priores <potiores Clm 28160<sup>pe</sup>> eo. Numquid hec excusatio iusta est? Non, quia ordo in legationibus non seruatur, ff. de leg. Sciendum § penult. <Dig. 50.7.5(4)>.

Set numquid excusatur propter curam rei familiaris? Non, quia communis utilitas preferenda est priuate, supra de postul. prelat. Bone i. <X 1.5.3>.

The uncharacteristic brevity of his second answer left some readers unconvinced. In response to their objections, he wrote an extended commentary, edited below, on 'utilitas publica, communis, et priuata', in which he carefully distinguished among the three terms.<sup>12</sup> His conclusion, supported by a wide

<sup>7</sup> See D. Maffei, 'Un trattato di Bonaccorso degli Elisei e i più antichi statuti dello Studio di Bologna nel manoscritto 22 della Robbins Collection', *BMCL* 5 (1975) 92 n. 86.

<sup>8</sup> C. Gallagher, *Canon law and the Christian community: The role of law in the Summa aurea of Cardinal Hostiensis* (Analecta Gregoriana 208; Rome 1978) 34-40 sums up the work of N. Didier and C. Lefebvre on what is known of his life. See also the collection of essays, *Il Cardinale Ostiense: Atti del convegno internazionale di studi su Enrico da Susa detto il Cardinale Ostiense* (Susa, 30 settembre - Embrun, 1 ottobre 1972) (Segusium: Società di ricerche e studi valsusini, 16; Susa [Torino] 1980). Most recently, E. Vodola, 'Hostiensis (Henry of Susa)', *Dictionary of the Middle Ages* 6 (1985) 298-99.

<sup>9</sup> Clm 14006 and Clm 15707 are examples of Hostiensis's text as it first circulated, as is, most likely, Paris, Ste. Geneviève 328, listed in M. Bertram's note below; Clm 24 has the question inserted under 'De sententia excommunicationis'.

<sup>10</sup> Ed. 1477 (Hain 8961), vol. 5, fol. 360v-362r; Ed. 1478 (Hain 8962), fol. 576v-577r; Venice 1480 (Hain 8963), unfoliated; Venice 1487 (Hain 8964), unfoliated; Venice 1498 (Hain 8965), fol. 383v-394r; Lyon 1537 (repr. Aalen 1962), fol. 292r; Venice 1574 (repr. Torino 1963), col. 1895-1896.

<sup>11</sup> Clm 14006, fol. 213r, Clm 15707, fol. 293r.

<sup>12</sup> For a short discussion of Hostiensis's use of these terms see K. Pennington, *Pope and bishops: The papal monarchy in the twelfth and thirteenth centuries* (Philadelphia 1984) 108.

range of canon and Roman law citations, remained the one he had given at first: a cleric may not excuse himself from carrying out the duties assigned to him by the ecclesiastical corporation to which he belonged on grounds that his private interests would be damaged. The affairs of ecclesiastical corporations were 'public', and 'utilitas publica' always took precedence over common or private.

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TEXT

Manuscripts: Amiens, Bibl. mun. 360, fol. 374r (A); Arras, Bibl. mun. 582 (474), fol. 291v (Ar); Frankfurt, Stadt- und Universitätsbibl. Barth. 8, fol. 384r (F), Kassel, Landesbibl. 2<sup>o</sup> iurid. 6, fol. 392r (K); München, Staatsbibl. lat. 28160, fol. 463v (M); Nürnberg, Stadtbibl. Cent. II 64, fol. 274r (N); Rouen, Bibl. mun. 745, fol. 340r (Ro).

Quid si episcopus precipiat clerico suo quod uadat Romam uel alio pro negotiis ecclesie expediendis, numquid excusatur clericus propter curam rei familiaris?

- Non, quia communis utilitas preferenda est priuate, supra de postulat.  
 5 prelat. Bone i.<sup>1</sup> et plurimorum utilitas unius utilitati preferenda est, vii. q.i. Scias,<sup>2</sup> in authen. de rest. et ea que parit in xi. mense § Quam ob rem,<sup>3</sup> nec prelatu utilitatem suam utilitati ecclesie preponere debet; alioquin obligatur xii. q.iiii. Quicumque<sup>4</sup> et arg. ff. de admin. tut. Tutor secundum dignitatem § i.<sup>5</sup> ff. commodati, Si ut certo § Commodatum, in fine.<sup>6</sup>  
 10 Nam et dissimulatio et fraus et negligentia talibus imputatur, arg. C. de pericul. tut. l.i. et iii.<sup>7</sup> et C. arbit. tu. Quicquid,<sup>8</sup> quia nec debet clericus occasione ordinationis propriorum negotiorum negotia ecclesie relinquere nisi relaxetur licentia impetrata, arg. vii. q.i. Presentium et c. Placuit ut nemini<sup>9</sup> et xvi. q.i. Qui uere, ibi 'et neque communicare ecclesiasticas',  
 15 etc. et c. Nos autem, ibi 'Ac si qua opera', etc. et ibi 'Nec uestrum otium', etc.<sup>10</sup>

- Set contra: quia nemo tenetur relinquere propria negotia pro alienis ut patet ff. quemadmodum testa. aperi. Set et si quis ex consignatoribus<sup>11</sup> C. de testibus, Si quando § ii.<sup>12</sup> ff. de arbit. Licet,<sup>13</sup> ff. de iudic. Si longius,  
 20 cum suis similibus.<sup>14</sup>

Solutio. Hec iura probant quod nemo tenetur relinquere propriam utilitatem pro alia priuata, nam et causa que coram arbitris et iudicibus agitur priuatorum est, porro aliud in re publica est, ut probatur lex quam aliqui in contrarium induxerunt, C. de ped. iud. Placuit, ibi 'uel publice utilitatis

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1 precipit ArFMN      6 rest.] testa. ArFKM      7 nec] enim add. AKMRo      12  
 ordinis Edd. 1480, 1487

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<sup>1</sup> X 1.5.3      <sup>2</sup> C.7 q.1 c.35      <sup>3</sup> Authen. 4.6. (= Nov. 39). 1      <sup>4</sup> C.12 q.4 c.2  
<sup>5</sup> Dig. 26.7.13(14)      <sup>6</sup> Dig. 13.6.5.3      <sup>7</sup> Cod. 5.38.1 and 3      <sup>8</sup> Cod. 5.51.7  
<sup>9</sup> C.7 q.1 c.3 and 21      <sup>10</sup> C.16 q.1 c.12 and c.30      <sup>11</sup> Dig. 29.3.7 (Set si quis ex  
 signatoribus)      <sup>12</sup> Cod. 4.20.19(15)      <sup>13</sup> Dig. 4.8.15(16)      <sup>14</sup> Dig. 5.1.18

25 ratione', etc.<sup>15</sup> Set forte non considerauerant nisi finem, et arg. ff. de incend. Nequid ex naufragiis, ante finem, ibi, 'a domino quoque possessionis', etc.<sup>16</sup>

Si enim predicta indistincte admitteretur excusatio, non inuenietur de facili qui munera publica expediret, ff. de uac. mun. l.i. circa principium.<sup>17</sup> Obedire ergo tenetur clericus, arg. C. de episc. et cleric. Si quis presbiter, ad finem, ibi, 'ex gestis negotiis',<sup>18</sup> subaudi, 'uel gerendis', ubi possit remanendi gratiam obtinere, arg. supra de offic. deleg. Si quando et c. Pastoralis § Quia uero.<sup>19</sup> Maxime secundum canones secundum quos semper obediendum est nisi id quod iniugitur aperte sit contra Deum, xxiii. q.i. Quid culpatur,<sup>20</sup> dummodo diuini cultus obsequium uel ecclesiastica utilitas hoc exposcat, vii. q.i. Quia frater,<sup>21</sup> alioquin inobediens morte morietur, supra de maior. et obed. c.ii.<sup>22</sup> Si enim sunt aliqua munera rei publice temporalis que excusationem non admittunt, ut ff. de uacat. mun. Sunt munera,<sup>23</sup> multo fortius debet hoc in munere rei publice ecclesiastice indistincte et generaliter obtinere, arg. ff. de iust. et iure l.i.<sup>24</sup> et de relig. et sumpt. 40 fun. Sunt persone.<sup>25</sup>

Dico tamen equissimum quod episcopus qui regere habet omnia, x. q.i. Regenda,<sup>26</sup> clericum releuet si detrimentum graue sibi uiderit imminere, arg. ff. ad leg. Rod. de iact. l.i. uel ii. § Equissimum<sup>27</sup> et ff. qui pot. in pig. hab. Interdum et l. sequenti.<sup>28</sup>

45 Non ignoro quod aliqui distingunt contra hanc materiam utrum priuata utilitas includatur sub communi et tunc preferitur communis, ut in iuribus signatis, supra eadem questione respon. i. et ff. pro socio, Actione § Labeo<sup>29</sup> et C. de cad. tol. l.i. § penult.<sup>30</sup> uel non includatur, et tunc preferitur priuata, quia primo tibi etiam secundum ordinem caritatis, de pen. di.iii. Sane cauendum,<sup>31</sup> et sic intelligunt iura contraria, et C. de seruit. Preses,<sup>32</sup> xix. q.ii. Due sunt,<sup>33</sup> xxiii. q.v. Si non licet.<sup>34</sup>

Alii dicunt quod si allegans priuatam utilitatem certat de dampno uitando audiendus est, et sic intelligunt contraria. Si de lucro captando audiendus non est, et sic intelligunt priora iura, ad quod pertinet C. de iure delib. 55 Scimus § Sin uero creditores,<sup>35</sup> C. de codic. l. finali § penult.<sup>36</sup>

Set hoc maxime quo ad solutionem supradicte questionis pertinet — non per omnia continent euangelium — nam semper priuata utilitas clerici sub communi ecclesiastica continetur, arg. supra eodem, Cum desideres ad

25 ratione] radicem *male* AArFKMNRo      36 Si enim sunt *et sequentes desunt* M  
38 debet hoc *om.* FN      49 tibi AArFKNRo, Edd. 1477, 1478, 1480, 1487: ibi Edd.  
1537, 1574      50 iura *om.* N, *contraria om.* FN      54 priora] prima AK      55 Sanc-  
cimus FKN      56 hoc] hic Edd.      pertinent Edd.      56-57 non per omnia AArKR:  
nam per omnia FN, nec per omnia Edd. 1480, 1478, 1487

<sup>15</sup> Cod. 3.3.4; 'uel publice utilitatis ratione in alias prouincias proficiscantur'  
<sup>16</sup> Dig. 47.9.7      <sup>17</sup> Dig. 50.5.1      <sup>18</sup> Cod. 1.3(6).20      <sup>19</sup> X 1.29.8 and 28  
<sup>20</sup> C.23 q.1 c.4      <sup>21</sup> C.7 q.1 c.18      <sup>22</sup> X 1.33.2, quoting (approximately) Deut.  
17.12      <sup>23</sup> Dig. 50.5.11      <sup>24</sup> Dig. 1.1.1      <sup>25</sup> Dig. 11.7.43      <sup>26</sup> C.10 q.1 c.4  
<sup>27</sup> Dig. 14.2.1 and 2 in fine      <sup>28</sup> Dig. 20.4.5 and 6      <sup>29</sup> Dig. 17.2.65(66).5  
<sup>30</sup> Cod. 6.51(50).1.1b      <sup>31</sup> de pen. D.3 c.18      <sup>32</sup> Cod. 3.34.6      <sup>33</sup> C.19 q.2 c.2  
<sup>34</sup> C.23 q.5 c.9      <sup>35</sup> Cod. 6.30.22.5      <sup>36</sup> Cod. 6.36.8.2

finem et c. Contingit i.<sup>37</sup> supra de penis c.ii.<sup>38</sup> supra de foro compet. Si diligenti,<sup>39</sup> xvi. q.i. Nos autem.<sup>40</sup>

60 Set potius debet quilibet omnia mala et detrimenta pati quam peccare mortaliter, supra quod metus causa, Sacris,<sup>41</sup> xxxii. q.v. Ita ne,<sup>42</sup> nec debet inobediencie notam incurrere pro aliquo commodo temporali, supra de maior, et obed. Illud,<sup>43</sup> ut tamen antiquorum reuerentie in aliquo satisfaciat distingue, si placet, inter publicam et communem et priuatam utilitatem, et dic quod publica in communi preferenda est et priuate, arg. ff. de naufrag. Ne quid.<sup>44</sup> In communi autem et priuata potest distinguui ut supra eadem, uers., 'Non ignoro'. Set cum ecclesiastica semper censeatur publica, propterea superior solutio non mutatur, et facit ad mentem huius

65 solutionis quod not. supra de renun. § Que possunt renunciari et § Et ad quid per totum, et de postulat. § Quid pertinet sub § Illud in summa et de prescript. sub rubrica de prescript. rerum immob. § Que exigantur, sub § Quartum, uer. 'Si notabis', et sequentibus usque in fine. Et not. hec questio est de sent. excomm. § Quibus ex causis, sub § Quod autem, uer.

70 'Set numquid excusatur', et licet aliqui breuitate gaudeant et diffuse tractatas materias reprehendant, si omnia hec fuissent ibi posita hec questio minus dubitationis forsitan habuisset.

Hec questio fuit nobis missa de Bononia in curia Romana post compilationem huius Summe.

#### APPENDIX:

#### *Handschriften der Summe Hostiensis mit der 'Quaestio' am Ende*

Die mit einem Asterisk bezeichneten Handschriften habe ich selber eingesehen.

\*Amiens 360 (s. XIII), fol. 374r.

\*Arras 582 (474) (s. XIII/XIV), fol. 291v.

\*Bremen, Universitätsbibl. a.139 (s. XIII), fol. 401r, mit einer aus der Vorlage übernommenen Datierung 1289, 'die sabbati post festum b. Magdalene', ebenso Hss. Nürnberg, Cent. II 64, Paris, Ste. Geneviève 329 und Venezia 2127.

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64-65 satisfacias FN, satisfiat KRo<sup>o</sup>, Edd. 1477, 1478, 1480, 1487 65 distingue] dis ArFN 66 et om. KN 67 distinguui] dis ArFKRo 69 propterea] propter hec Edd. 1477, 1478, propter hoc Edd. 1480, 1487, 1537, 1574 mutatur] imitetur Edd. 1477, 1478, committatur Edd. 1480, 1487, 1537, 1574 mentem] mentionem Edd. 1477, 1478, 1480, 1487, questionem 1537, 1574 73-79 Et not. hec questio et sequentia om. Edd. omnes 77 habuisset] Finit hec questio add. N 78-79 Hec questio — Summe ad initium questionis ponunt F<sup>o</sup>KMN 79 Summe] Explicit Summa que uocatur copiosa siue Summa caritatis rubricam add. F, Explicit iste liber, scriptor sit crimine liber. Amen. add. Ro

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<sup>37</sup> X 5.39.15 and 36      <sup>38</sup> X 5.37.2      <sup>39</sup> X 2.2.12      <sup>40</sup> C.16 q.1 c.30  
<sup>41</sup> X 1.40.5      <sup>42</sup> C.32 q.5 c.3      <sup>43</sup> X 1.33.5      <sup>44</sup> Dig. 47.9.7

Chartres 322 (360) (s. xiv), fol. 383, Vgl. Katalog und Boháček 1962 (unter Berufung auf S. Kuttner). Die heute verlorene Handschrift (mit Buch I, II in Hs. 323, ebenfalls verloren) war angeblich ein sog. exemplar für Universitätsabschriften; vgl. J. Destrez, *Scriptorium* 7 (1953) 72. In der hier als weiteres exemplar genannten Hs. \*Assisi 221 (mit Buch I, II in Hs. 219) fehlt dagegen die *Quaestio* am Ende.

\*Cues 259 (s. xiii/xiv), fol. 310v.

Frankfurt, Stadt- und Universitätsbibl. Barth. 8 (s. xiv), fol. 384r.

Kassel, Landesbibl. 2<sup>o</sup> iurid. 6 (s. xiv), fol. 392r, Ergänzung s. xiv-xv.

London, B.L. Royal 10 D IV (s. xiv), fol. 360v-361r.

—, B.L. Royal 10 E VIII (s. xiv), fol. 271r.

Mons, Ville 38/354 (s. xiv), fol. 377v.

Montefano (Marche), S. Silvestro Cod. 12 (s. xiii), fol. 436r, mit einer Schlußdatierung 1283 'in mense dec. x. kal. ianuarii'. Vgl. G. Avarucci in *Aspetti e problemi del monachesimo nelle Marche* (Fabriano 1982) I 388f, mit Zuweisung der Hs. an den Pariser Illuminator Honorius.

München, Staatsbibl. lat. 28160 (s. xiv), fol. 463v.

Nürnberg, Stadtbibl. Cent. II 64 (s. xiii), fol. 274r, mit Schlußdatierung 1289: 'Anno domini mclxxxix. die sabbati post festum beate Marie Magdalene', wie in Hs. Bremen.

Olomouc, S.A. C.O. 204 (s. xiv), fol. 212r, vgl. Boháček 1962.

\*Paris, B.N. lat. 4000 (s. xiv), fol. 264v.

\*—, Ste. Geneviève 328, fol. 540r-v, Ergänzung s. xv.

\*—, Ste. Geneviève 329, fol. 356r-v, mit Schlußdatierung wie in Hs. Bremen.

\*Reims 713 (s. xiv), fol. 335r-v.

\*Rouen 745 (s. xiv), fol. 340r.

\*Saint-Omer 199 (s. xiii), fol. 379v.

\*—, 461 (s. xiv), fol. 320r.

Schlägl, Stift 458.3 (Kat. Nr. 15) (s. xiv), fol. 333.

\*Siena, B.C. G.IV.16 (s. xiii), 5. Teil, fol. 111v-111bisr.

\*Troyes 97 (s. xiii), fol. 391r.

\*—, 98 (s. xiii/xiv), fol. 364v.

\*Venezia, Marciana lat. 2651 (s. xiii/xiv), fol. 231v.

—, Marciana lat. 2127, fol. 300, mit Schlußdatierung wie in Hs. Bremen; vgl. Valentinelli II 247f.

\*Vatikan, Arch. S. Pietro C.112 (s. xiv), fol. 270v-271r.

\*—, Bibl. Vat. lat. 2314 (s. xiv), fol. 424r-v.

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### Francesco Zabarella's Commentary on the Decretals: A note on the editions and the Vatican manuscripts

In the course of preparing the catalogue of Vatican manuscripts of the two laws, of which the first volume has now happily come off the press,<sup>1</sup> the Insti-

<sup>1</sup> *A Catalogue of Canon and Roman law manuscripts in the Vatican Library*, compiled at the Institute of Medieval Canon Law under the direction of S. Kuttner with the aid of the Deutsches Historisches Institut, Rom under the direction of R. Elze, I (Studi e Testi 322; Città del Vaticano 1986), pp. xxxiii, 334.

tute's team more than once found itself being led to surprising revisions of traditional data in the history of the *droit savant*. Cardinal Francesco Zabarella's Commentary on the Decretals of Gregory IX is a case in point. Our catalogue covers in this volume the two parts of Book I (Vat. lat. 2254-2255), the two parts of Book II (Vat. lat. 2256-2257), and Book V (Vat. lat. 2258). The description of Book IV (MS Ross. 564) will appear in another volume; no manuscript of Book III exists at the Vatican.

Since none of the known editions of the work was available in Berkeley, one of our Roman collaborators in 1985, Ann Kuttner, was asked to verify in the printed texts at her disposal the incipits, explicits, and other elements of analysis as transcribed at the Institute from the microfilms of Vat. lat. 2254-2258. 'My edition is fine [she wrote back] for *comm.* of Lj**b.** I', but for the beginnings and endings of Books II and V she noted that they did not match the editions at all.

This called for a thorough investigation which the undersigned undertook in the Fall of last year, collating portions of the manuscripts cited above with the Vatican Library's four-volume Lyons edition of 1517/1518 (reissued with new title pages in 1557/58)<sup>2</sup> and a later 1602 printing of Venice. Apart from the editorial trimmings — chapter summaries, concordances, a *repertorium*, etc. — added by the 'clarissimus utriusque iuris interpres' Jean Thierry of Langres, a scholar often engaged in editing legal works,<sup>3</sup> the Lyons text reproduces the *editio princeps* of Venice 1502. Nothing unexpected was to be found for Book I; but the probings in Books II, IV and V led to important new conclusions, briefly stated as follows in the Catalogue:<sup>4</sup>

Vat. lat. 2256: . . . This MS contains, together with Vat. lat. 2257, Zabarella's full commentary on Book II, unedited and unknown to modern authorities. What has been printed ever since 1502 in the editions of Books II-V (so also the other volumes of the 1558 edition cited at Vat. lat. 2254) is a different and much shorter *lectura* of Zabarella. Presentation of the evidence must be left for publication outside this catalogue. . . .

Vat. lat. 2257: . . . This is a continuation of Zabarella's full commentary on Book II, cf. Vat. lat. 2256, with which it forms a set. . . .

<sup>2</sup> Vol. I: '*Lectura solemniter et aurea excellentissimi iuris utriusque doctoris: domini Cardinalis zabarella: super primo decretalium: Nouissime autem tersa et emuncta per clarissimum iuris utriusque interpretem: dominum Johannem Thierry Lingonensem qui in ea summarios ante cc. et §§. affixit quatenus materie facilius comperiantur et concordantij et numeris eam efflictim miniauit: cum repertorio alphabetico: per modum conclusionum cc. nunquam adhuc tali caractere impressioni commendatum.*' Printed for Simon Vincent; colophon fol. CCCLrb: 'Lugduni per Jacobum mareschal . . .', dated 14 April 1518. The other volumes, dated 10 December 1517 (II), 18 March 1518 (III), and 20 November 1517 (IV + V), have similar baroque title pages; they all are shortened in the 1557/58 printing.

<sup>3</sup> Thus e.g. the editions of Benedict of Piombino on the *Digestum Novum*, II (Lugd. 1517), Guido Papa (Guy de la Pape) on Bks. IV and V of the *Codex Just.* (Francof. 1576), and a collection of *Singularia* (Lugd. 1542), cited by G. Saporì, *Antichi testi giuridici . . . dell'Istituto di Storia del Diritto Italiano* (Università di Milano, Pubbl. dell'Ist. 7; Milan 1977) Nos. 230, 2231, 2823; two editions of Gratian's *Decretum* (Parisiis 1531 and 1542) cited by A. Adversi, 'Saggio di un catalogo delle edizioni del "Decretum Gratiani" posteriori al secolo xv' (SG 6 [1959] Nos. 42 and 50), etc.

<sup>4</sup> A *Catalogue* . . . I 289-90 (some minor misprints corrected).

Vat. lat. 2258: . . . This full commentary on Book V is likewise unedited and unknown (see Vat. lat. 2256) save for a brief remark by G. Valentinelli, *Bibliotheca manuscripta ad S. Marci Venetiarum* II (Venice 1869) 254 on the Marciana MSS lat. Class. IV 31 (Bk. IV), 32, and 33 (Bk. V) as being more extensive ('fusior') than the editions. At X 5.39 *de sent. excomm.*, the author includes his earlier *Repetitio* on the c.23 *Perpendimus* (fol. 288rb-303va); also in the shorter *lectura*, ed. 1557/58: *In quartum et quintum* . . . (fol. 116rb-123ra). The conclusion of the commentary is a treatise on teaching and learning the two laws (fol. 364va-371vb, with a 'sample lecture' on X 1.2.6. *Cum omnes* at the end). . . .

These necessarily terse observations were to be followed by a major study setting forth the evidence. The discrepancy in size alone is telling: thus Book II has 88 folios in the Lyons 1517 (= 1557) printing, as against 306 + 310 folios in the Vatican manuscripts; Giuseppe Valentinelli's perceptive observation on Book V in the Marciana manuscripts at Venice has already been cited above. A full study of Zabarella's work would also have to discuss the didactic method, the *stilus commenti* or *scribendi commentarios* on which he expressed himself repeatedly at length, from the great prologue down to the treatise on *ordo docendi et discendi* which he chose to make the conclusion of Book V, pegging it onto the last chapter, *De regulis iuris* c. *Indignum* (X 5.41.11) of the Decretals.<sup>5</sup> It is absent from the editions of Zabarella's *lectura*, as also apparently from the Marciana MS lat. Class. IV 36 which Valentinelli (p. 255) calls 'Francisci de Zabarellis decretalium Gregorii IX glossae sine textu'.

These findings will supersede the brief information given by Dr. Thomas Morrissey in an earlier issue of this Bulletin on Zabarella's *De modo docendi*.<sup>6</sup> His information was based on a shortened, separately transmitted version in two manuscripts at Munich and Tübingen, and he failed to recognize, apparently misled by inadequate folio indications in Valentinelli's catalogue, that the full treatise (and not merely the sample lecture on c. *Cum omnes*) actually is found in the two Marciana MSS lat. Class. IV 31 and 32 and is an integral part of the commentary, as in Vat. lat. 2258.<sup>7</sup>

What is more, when Valentinelli pointed out that the commentary 'fusior est in his codicibus quam in editionibus', he added — with a reference to Mansi's revised and enlarged edition of Fabricius's *Bibliotheca latina mediae et infimae aetatis* — that already Felinus Sandeus had noted this for the Zabarella manu-

<sup>5</sup> Other passages on didactic method, e.g.: *De testibus* c. *Fraternitatis* (X 2.24.17), *Ne clerici uel monachi* c. *Super speculam* (X 3.50.10), *De penitentis* c. *Deus qui* (X 5.38.8).

<sup>6</sup> T. E. Morrissey, 'The art of teaching law: The manuscripts of a tract by Franciscus Zabarella (1360-1417)', *BMCL* 4 (1974) 78-79.

<sup>7</sup> It begins, without separate rubric, after other comments on X.5.4.11, on fol. 364va of Vat. lat. 2258: '. . . § Quero pro conclusione huius compilationis quare autor hic . . .'. Valentinelli should have referred for the beginning to fols. 332v and 379v, respectively, in MSS lat. Class. IV 32 and 33, instead of fols. 337 and 385, which are the pages where the sample lecture on c. *Cum omnes* begins. In a recent article, 'Cardinal Franciscus Zabarella (1360-1417) as a canonist and the crisis of his age: Schism and the Council of Constance', *ZKG* 96 (1985) 196-208 at 197 n. 6, Morrissey speaks of 'three extant exemplars' of the tract, citing our Vatican manuscript together with Munich lat. 14134 and Tübingen Mc 58 as though they contained the same text, and without any mention of the commentary on Book V or the manuscripts of the Marciana.

script he owned. After a distinguished career in the Roman Rota, the learned Felino Sandei died in 1503 as archbishop of Lucca, leaving his remarkable collection of manuscripts and incunables, often annotated in his own hand, to the Biblioteca Capitolare of his see, where they are still kept today. From the additions Mansi made to Fabricius s.v. 'Zabarella' on the cardinal's works in the library of Felinus (whose thirty-fifth successor he was soon to be), the following passage is worth quoting in full:<sup>8</sup>

. . . In Codice 250 sunt in secundum Decretalium expositiones, ibi vero haec notat Felinus: 'Fuit impressa haec lectura Venetiis an. 1502, et cum volebam emere reperi quod haec MS. est longe plenior et forte in duplum, unde puto illa esse priora commentaria Zabarella, haec autem esse opus consummatum; idem reperi de lectura istius super tertio, quarto et quinto. Super primo non habebam, unde emi impressam, quam puto plenam.' . . .

It seems strange that so important a piece of information in a standard work of bibliography should have escaped, except for Valentinelli, the notice of modern scholars. Perhaps this has to do with the prevailing interest in Zabarella the churchman and his role at the Council of Constance, which led students of his work to concentrate on Book I of the Commentary, where he incorporated, at *De electione c. Licet de vitanda* (X 1.6.1), his earlier, celebrated treatise *de modo tollendi hoc schisma* (the title varies); and all editions present the first book in full. Had modern writers studied with equal attention other topics of the cardinal's teaching in other books of the Decretals, they might, like Felinus, have been puzzled by the different method, format, and style in the sixteenth-century editions. (But even for the *de schismate* no modern study exists, at least in print, of manuscripts and editions that would examine the relations between several versions: as a *tractatus*, as a *consilium*, and in final recension as part of the Commentary.<sup>9</sup>)

The treatise on ending the schism is only one of several major digressions by which Zabarella, like many other late-medieval jurists, adapted and incorporated an earlier *tractatus* or *repetitio* of his into the Commentary. It is not the same with the great treatise *de ordine docendi et discendi* in the last title of the fifth book: this he planned and composed, as he tells us himself, from the outset as the conclusion of the entire work, rather than placing it in its prologue (*prohemium*).<sup>10</sup> Once more, careful readers of the printed prologue in Book I should

<sup>8</sup> Jo. Alberti Fabricii Lipsiensis . . . *Bibliotheca latina mediae et infimae aetatis* . . . ed. prima italica a P. Joanne Dominico Mansi clerico regulari . . . e MSS. editisque Codicibus correcta, illustrata, aucta 6 (Patavii 1754) 330 = *Bibliotheca latina* . . . nunc denuo emendata . . . 6 (Florentiae 1859) 619. (I have supplied quotation marks above instead of italics.)

<sup>9</sup> But Morrissey apparently investigated the origins of the treatise in his unpublished Cornell Ph.D. thesis of 1973, see his "The decree "Haec sancta" and Cardinal Zabarella", AHC 10 (1978) 145-76 at 152 nn. 37, 38; also 'Emperor-elect Sigismund, Cardinal Zabarella and the council of Constance', CHR 69 (1983) 353-70 at 355-56 and n. 2. Mansi (see n. 8) cites the *editio princeps* in the first printing of the *Consilia* from the Felinus MS 258, Pisciae 1490 (= Hain 16258, Goff Z-1). There it is cons. 150, fol. 120v-122v, as Professor Robert Somerville kindly informs me from the copy in the Pierpont Morgan Library, New York.

<sup>10</sup> Vat. lat. 2258, fol. 364va: 'Quero pro conclusione huius compilationis . . . Et hac consideratione inductus sum ad componendum sequentem tractatum de ordine docendi et discendi qui, licet hic inseratur propter id quod statim subicio, tamen si quis uoluerit a

have noticed there with suspicion that Zabarella repeatedly refers, in speaking of his method of writing, to 'quod dico de regulis iuris capitulo finali, questione ij.' (or 'q.iiij.', 'q.iiiij.' etc. as the case may be), but that the printed *Lectura* contains nothing of the sort on X 5.41.11.

Let me break off here. The major study in a 'publication outside this catalogue', announced in our description of Vat. lat. 2256, will not be written. While the volume was in the press, I learned accidentally that Dr. Dieter Girgensohn of the Max-Planck-Institut für Geschichte in Göttingen had made the same fundamental discovery as we in the course of his research for a new general work on Cardinal Zabarella. He had examined, as he wrote me, the entire manuscript tradition of the Commentary, also that of the shorter (and mostly earlier) versions. Among the appendices of the book, he will edit the treatise on teaching and studying law, having already established a provisional text on the basis of the Vatican, the Marciana, and several other manuscripts.<sup>11</sup> I am also indebted to Dr. Girgensohn for the information that on Book III — for which no Vatican manuscript was at our disposal — the printed text is that of the full Commentary; *pae* Felino Sandei, whose remarks had made us speak of a shorter *lectura* in the editions for Books II-V.<sup>12</sup>

A preliminary report by Dr. Girgensohn on his researches in the many-sided interests, activities, and writings of Francesco Zabarella is shortly to appear in the new Journal *Museum Patavinum*. We look forward to the completion of his book in a none too distant future.

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STEPHAN KUTTNER

### The Schafer Williams papers at the Institute of Medieval Canon Law

A notice in this *Bulletin* three years ago (vol. 13, pp. ix-x) announced the bequest of the papers of Schafer Williams († 21 September 1982) to the Institute. The Williams papers arrived in Berkeley late in 1985. Although the task of

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*lectura separare, licenter poterit . . . § Secundo quero . . . hec questio forte uidetur competentius locanda in prohemio, set non est ius cum sit tractatus de per se et competenter cadit hic propter dicta supra q. proxima . . .*. Separate copies, as here foreseen, exist not only in abbreviated manuscripts (such as Munich and Tübingen cited at n. 7 supra) but also in full, e.g. Vat. Ross. 1154, fol. 321rb-318rb; and probably Padua, Bibl. Capitolare C.21, cf. G. Zonta, *Francesco Zabarella (1360-1417)* (Padova 1915) 123 n. 1.

<sup>11</sup> Letter of 9 May 1986.

<sup>12</sup> *Catalogue* I 289 (Vat. lat. 2256). In our preparatory papers I find, however, a note saying that on account of both the style and the length of Book III in the Lyons edition — 246 folios as against 88 for Book II — one could suspect that here Felinus was in error.

*Additional note.* — While the *Bulletin* was in the press, a comprehensive inventory of the careers and writings of the late-medieval professors of Padua was published by A. Belloni, *Professori giuristi a Padova nel sec. XV: Profili bio-bibliografici e cattedre* (Ius Commune: Sonderhefte 28; Frankfurt 1986). For Zabarella and the several versions of the Commentary she, too, acknowledges the information made available to her by Dr. Girgensohn; see pp. 204-08; cf. p. 1.

organizing and cataloguing is not yet complete, the following description of the collection is offered as a guide to interested scholars.

The collection consists largely of microfilm of MSS, especially those Williams studied in the course of his work on the Pseudo-Isidorian Decretals, the *Collectio Lanfranci*, and the *Constitutum Constantini*. In many cases, there are partial transcriptions, notes, and photocopies, and, for the Pseudo-Isidorian MSS, collations of readings with those of Vat. lat. 630. There are books and offprints Williams collected over the years related to his work on early canonical materials, as well as a small number of items reflecting other historical interests (i.e. Latin American), and copies of his own articles and reviews. Among William's papers are drafts of articles and lectures, transcriptions of texts, various teaching materials, personal scholarly notes, and correspondence.

In the list of MSS below, symbols are used to indicate holdings related to each MS:

- c = collation with Vat. lat. 630 (printed description of latter, with variants recorded by hand)
- f = microfilm
- n = notes and/or partial transcription, correspondence
- p = photographs or photocopies (loose *exempla* unless otherwise noted).

For over sixty additional manuscripts there are notes and/or collations only; a list of these is on file at the Institute.

#### Manuscripts

- Angers, Bibl. Mun. 367: c, f, n, p.
- Avesnes, Soc. Archéol. et Hist.: c, f, n.
- Avranches, Bibl. Mun. 146: c, n, p.
- Baltimore, Walters Art Gallery 28: n, p.
- Berlin (East), Deutsche Staatsbibl., Phillips 1764: f, n.
- Bern, Bürgerbibl. 292: f, n, p.
- , —, 294: f, p.
- Besançon, Bibl. Mun. 643: f, n, p.
- Brescia, Queriniana B.II.13: c, f, n.
- Bruxelles, Bibl. Royale 1312: f, n.
- , —, 5219-31: f, n, p.
- , —, II.2496: f, n.
- Cambrai, Bibl. Mun. 485 (453): p.
- Cambridge, Corpus Christi College 130: f, n.
- , Trinity College B.16.44: f, n, p.
- Chicago, University of Chicago Library, Wandel 16: n, p.
- Durham, Cathedral Library B.IV.18: f, n, p.
- Firenze, Bibl. Naz. Cent., Conv. Sopp. J.III.18: c, f, n, p.
- Freiburg im Breisgau, Universitätsbibl. 8: n, p.
- Hereford, Cathedral Library O.8.VIII: f, n.
- Ivrea, Bibl. Cap. 83: c, f, n, p.
- Köln, Erzdiözesan-Archiv (Dombibl.), 113: c, f, n.
- , —, 114: c, f (sample only), p.

- Leipzig, Universitätsbibl. II.7: c, f, n, p.  
 —, —, II.8: c, f, n.  
 London, BL Cotton Claudius E.V: c, f, n.  
 —, BL Royal 9.B.XII: n, p.  
 —, Lambeth Palace Library 351: f, n, p.  
 Madrid, Bibl. Nac. 12187: c, f, n.  
 Milano, Bibl. Ambrosiana A.87 inf.: c, f, n, p.  
 Modena, Bibl. Cap., Ord. I no. 4: c, f, n.  
 Montpellier, Bibl. de la Faculté de Médecine H.3: f, n, p.  
 —, —, H.13: n, p.  
 Monza, Bibl. del Duomo, H.3.151: c, n, p.  
 New Haven, Yale University Beinecke Library 442: c, f, n.  
 New York, Pierpont Morgan Library, 640: n, p.  
 —, —, 641: n, p.  
 Paris, Bibl. Assem. Nat. 27: c, f, n.  
 —, BN lat. 2777: p.  
 —, BN lat. 3839A: n, p.  
 —, BN lat. 3852: c, f, n, p.  
 —, BN lat. 3854: c, f.  
 —, BN lat. 3856: c, f.  
 —, BN lat. 4280AA: c, f, n.  
 —, BN lat. 9629: c, f, n, p.  
 —, BN lat. 12445: f, n, p.  
 —, BN nouv. acq. 2253: n, p.  
 Pistoia, Bibl. Cap. 102: c, f, n, p.  
 Praha, Národní Museum, XII.D.2: c, f, n.  
 —, Národní a Universitní Knihovna, IV.B.12: c, f, n.  
 —, —, VI.D.9: c, f, n.  
 Reims, Bibl. Mun. G.166: f, n.  
 Rennes, Bibl. Mun. 134 (112<sup>1</sup>): c, f, n.  
 Rouen, Bibl. Mun. E.23: f, n.  
 —, Bibl. Mun. E.27: c, f, n, p.  
 —, Bibl. Mun. E.78: f, n.  
 Saint Omer, Bibl. Mun. 189: c, f, n, p.  
 Sankt Gallen, Stiftsbibl. 670: c, f, n, p.  
 Stuttgart, Württembergische Landesbibl. HB.VI.105: c, f, n.  
 Toulouse, Bibl. Mun. I.9: f, n.  
 Vatican, Bibl. Apost., Ottob. lat. 93: c, f, n.  
 —, —, Reg. lat. 1054: c, f, n.  
 —, —, Ross. lat. 584: f.  
 —, —, Vat. lat. 630: f, n.  
 —, —, Vat. lat. 1341: c, f, n, p.  
 —, —, Vat. lat. 4873: n.  
 Vendôme, Bibl. Mun. 91: c, f, n, p.  
 Venezia, Bibl. Naz. Marciana, lat. IV.48: c, f, n, p.  
 Wien, Österreichische Nationalbibl. lat. 411: n, p.  
 —, —, lat. 2133: c, f, n.

Of special interest are typescripts of two major texts: the *Collectio Lanfranci* (a draft edition) and the Pseudo-Isidorian Decretals as they appear in Vat. lat.

1341. There are also extensive multiple collations of Pseudo-Isidore texts. The books and offprints from William's library and copies of his own work have been integrated into the Institute's collection; a handlist of these items, as well as a detailed list of material on the medieval MSS, will be available for consultation.

Scholars interested in making use of the Schafer Williams papers should contact the Director of the Institute. The microfilms will be covered by the usual stipulations governing the loan of Institute films; all other material would have to be used in Berkeley. Access to correspondence apart from those items in the MSS files is subject to some restriction.

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