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The limits of a ruler's power and the right of resistance by subjects to such power when illicitly used were commonly discussed by medieval thinkers. By the thirteenth century both issues figured prominently in treatments of the state and were, for example, discussed by such representative thinkers as Henry Bracton and Thomas Aquinas. Bracton argued that a community had the right to resist a ruler whose actions seriously harmed its well-being. Similarly Aquinas asserted that the subjects of a ruler could legitimately resist those commands which violated divine or natural law. Moreover, Aquinas added, as a last resort such a ruler could be deposed by the community. This right of
resistance by the community to the unjust exercise of a ruler’s authority was also recognized in discussions of church government. Many canonists writing before Bracton and Aquinas taught that a General Council could depose a pope for heresy or other serious crimes. These ideas did not develop in isolation from the political realities of medieval life. In the thirteenth century some English barons disobeyed commands of two kings which they considered unlawful and they would depose a third monarch in the following century. Similarly Bishop Robert Grosseteste refused to obey a command of Pope Innocent IV.

Moreover, such diverse opponents of the papacy as the Emperor Frederick II, the Colonna Cardinals, and the supporters of King Philip IV of France wished to see General Councils convened to depose reigning popes.

Such theories were intricately linked to medieval beliefs about the relationship between the ruler and the law. Everyone agreed, of course, that the ruler was bound by the universal commands of divine or natural law. The question at issue was the ruler’s relationship to the fundamental law of the particular society over which he governed. The more common view was that the ruler had an obligation to observe such laws although he could not be coerced to do so. Hence Bracton wrote that “The king should be under no man but under God and under the law.”


See Tierney, “Grosseteste,” for a full discussion of this affair.

Petrus de Vinea, Frederick II’s Chancellor, called for the convocation of a General Council to depose Pope Gregory IX in a series of letters written on Frederick’s behalf in 1289. For this see also B. Sütterlin, Die Politik Kaiser Friedrichs II und die Römischen Kardinäle 1239-1250 (Heidelberg, 1929). For the revival of Conciliar theories in 1296 as a result of the abdication of Pope Celestine V and the quarrel between Pope Boniface VIII and King Philip IV of France, see the following works: H.X. Arquillière, “L’appel au concile sous Philippe le bel et la genèse des théories conciliaires,” Revue des questions historiques, 45 (1911), 93-115; R. Scholz, Die Publizistik zur Zeit Philipp des Schönen und Bonifaz VIII (Stuttgart, 1903), pp. 108-25; L. Mohler, Die Kardinäle Jacob und Peter Colonna (Paderborn, 1914).

"Ipse autem rex non debet esse sub homine sed sub deo et sub lege, quia lex facit regem. Attribuat igitur rex legi, quod lex attribuat ei, videlicet dominacionem et potestatem. Non est enim rex ubi dominatur voluntas et non lex.” Woodbine, i, 53, fol. 5b.

"It may be said that the prince is called freed from the law as regards the coercive force of the law; for no one properly speaking is coerced by himself; but the law does not have coercive force except from the power of the prince: thus therefore the prince is said to be free from the law because no one can pass judgment concerning him if he acts against the law. Whence on Psalm 50: To you alone have I sinned, the gloss says that no man may judge the acts of the king; but as regards
By the thirteenth century, however, jurists and theologians began to teach that in extraordinary circumstances it might be necessary for a ruler to act outside the framework of existing law to defend the welfare of the entire community. These writers thus conceived of the ruler as above the law in some ways but below it in others. Medieval thinkers were, in fact, beginning to wrestle with the problem of sovereignty and they expressed themselves in different ways. For example, the Roman Law adage “Necessity knows no law” was now commonly employed by medieval thinkers to describe the extensive powers of a ruler to act extralegally for the community’s good. Similarly canonists began to claim that the pope could act outside the ordinary course of church law by his plenitude of power for the church’s good, although he could not act in opposition to the general state or well-being of the church.

The historian Ernst Kantorowicz called attention to a phrase in the Sicilian Constitutions (1231) of Frederick II describing the ruler as “Father and Son of Justice.” Such an expression accurately reflected the more common medieval view of a ruler’s power. Again, Charles McIlwain believed he found a distinction between *gubernaculum* and *iurisdiction*, that is between those powers exercised by a ruler outside the existing legal framework and those powers exercised within it, in medieval discussions of the English king’s power. Although McIlwain
overemphasized the absolutism of the royal *gubernaculum,*, he was correct in ascribing a medieval origin to the idea that a ruler did possess in emergencies the power to act outside the ordinary course of positive law for the community's welfare.11

One particularly important way of expressing this common doctrine was to distinguish between the absolute power and the ordained power (or ordinary power) of a ruler. This terminology was borrowed from those medieval theologians who likewise distinguished between the absolute and the ordained powers of God.12 In a recent article Francis Oakley demonstrated the importance this distinction as applied both to the pope and the prince played in the formulation of medieval and Renaissance political thought.13 For example, the Attorney General for Ireland in King James I's reign stated:

The King himself was pleased to limit and stint his absolute power, and to tye himself to the ordinary rules of Law ... [but we should not forget that he continues to] ... exercise a double power, viz. an absolute power, or *Merum Imperium*, when he doth use Prerogatives onely, which is not bound by positive law; and an ordinary power of Jurisdiction, which doth cooperate with the law.14

Similarly Jean Bodin's assertion that the prince was able to derogate from the ordinary right by his absolute power, though not from the laws of nature, was representative of many royalist theories in sixteenth-century France.15

Although Oakley noted that the distinction between absolute and ordained powers was employed by fifteenth-century Gallican writers in

their defense of the liberties of the French Church, they did not realize that these terms were also to be found in the writings of the late-thirteenth-century founders of that Gallican tradition, the secular masters of theology of the University of Paris. Indeed, the first theologian to apply the distinction between absolute and ordained powers to the pope seems to have been the thirteenth-century Parisian master Henry of Ghent (d. 1293). Henry’s role in the struggle of the secular masters of the University of Paris in the thirteenth and fourteenth centuries against the friars’ papal privileges, which provided the major impetus for early medieval Gallicanism, has long been recognized. However, his unique and interesting treatment of the absolute and ordained powers of the pope and the circumstances in which papal decrees were to be disobeyed has been almost completely neglected because Henry’s discussion is contained in a still unprinted tract of his which survives in only one manuscript. We have, therefore, transcribed the appropriate section of Henry’s discussion at the end of this article.
Henry of Ghent's pamphlet against the friars, written in the winter of 1288/89, dealt mainly with an earlier papal privilege to the friars and deserves attention for several reasons. We have already mentioned that Henry of Ghent seems to have been the first theologian to apply the distinction between absolute and ordained powers to the pope. He was also the first opponent of the papal grants to the friars to resurrect the older canonistic teaching that a General Council could depose a pope who harmed the church.

The starting point for Henry's discussion of papal power in this treatise was the recent papal privilege to the friars Ad fructus uberes. In 1281 Pope Martin IV promulgated this decree with the intention of ending the quarrel between the seculars and mendicants over the friars' ministry. The bull's most controversial provision commanded the mendicants to remind their penitents to observe the older Conciliar statute (1215) which obliged all Christians to confess all their sins at least once a year to their parish priests. Mendicant theologians immediately argued that Pope Martin had not intended that sins confessed to friars were to be confessed again to parish priests. Rather, they contended, the pope had merely enjoined individuals to confess to their curates sins not confessed to the friars. Thus the friars' interpretation of Ad fructus uberes would have meant that most penitents would never confess all their sins to their parish priests. The secular masters, among them Henry of Ghent, retorted that the pope must have intended penitents to confess all their sins of the past year to their parish priests,

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22 Glorieux, Répertoire des maîtres en théologie de Paris au xiiième siècle, Études de philosophie médiévale, 17 (Paris, 1953), 389, dated this unedited work to the winter of 1288/89 because of its close connection with Henry's Quodlibet XII, q. 31 of Advent 1288 concerning the papal privilege, Ad fructus uberes, granted to the friars in 1281.

23 Henry of Ghent thus anticipated the tendency of such later writers as William Durandus the Younger to adopt Conciliar ideas in addition to episcopalist ones. For Durandus' theories see Tierney, Foundations, pp. 190-98 and Andreas Posch, "Die Reformvorschläge des Wilhelm Durandus jun. auf den Konzil von Vienne," Mitteilungen des Oesterreichischen Instituts für Geschichtsforschung, 11 (1929), 288-305.

24 Quodlibet XII, question 31 on which this discussion is based is entitled "Utrum confessus pec-cata sua privilegiato, privilegio Martini papae quod sic incipit Ad uberes fructus etc., teneatur confiteri eadem suo proprio sacerdoto." Quodlibeta Magistri Henrici Goethals a Gandavo, 2 vols. (Paris, 1518; rpt. Louvain, 1961), 2, fol. 518r. This work will henceforth be cited as Quodlibeta.


26 Chartularium, p. 592: "Volumus autem quod hii, qui fratribus confitebuntur eisdem, suis parrochialibus presbyteris confiteri saltem semel in anno, prout generale Concilium statuit, nichilominus teneantur, quodque idem fratres eos hoc diligenter et efficaciter secundum datam eis a Domino gratiam exhortentur." The Conciliar statute referred to in this passage is Omnis utrusque sexus promulgated by Pope Innocent III in 1115 at the Fourth Lateran General Council. This decree obliged all Catholics to confess all their sins yearly to their parish priests.
including those previously confessed to friars. For, they argued, by the mendicant interpretation Martin IV would have withdrawn parishoners from the jurisdiction of their bishops and curates. Such an act, they contended, would have subverted the church's divine structure since the jurisdiction of prelates came from Christ and not the pope.17

In the years immediately after the appearance of \textit{Ad fructus uberes}, the papacy remained silent on this question although pressed to issue an authoritative interpretation of that bull. However, with the election of a new pope, Nicholas IV, early in 1288, it seemed as if a papal decision might be forthcoming and, since Nicholas was himself a friar, that this decision would be in the friars' favor.28

The reaction of some anti-mendicant French bishops to the crisis caused by Nicholas IV's election was to affirm that the Conciliar decree \textit{Omnis}, which contained the obligation of annual confession to curates, was part of divine law which the pope could not infringe in any way.29

Apparently, these French bishops hoped in this manner to convince the new pope that he ought not to interpret \textit{Ad fructus uberes} in such a way as to remove the obligation of yearly confession to the parish priest.

Henry of Ghent could not, however, adopt so extreme a position. First of all, he had publicly and clearly stated in his earlier analysis in 1282 of the meaning of \textit{Ad fructus uberes} that the provision embodied in

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17 For the various details of the quarrel between the seculars and the mendicants during the 128os, stimulated by the papal privilege to the friars of 1281, \textit{Ad fructus uberes}, see the following studies: G. Post, "A Petition relating to the Bull \textit{Ad Fructus Uberes}," Speculum, 11 (1936), 291-37; P. Glorieux, \textit{Prélats français contre religieux mendiant: autour de la bulle \textit{Ad fructus uberes}} (1281-1290)," P. Gratien, "Ordres mendiant et clergé séculier à la fin du XIIIe siècle," \textit{Etudes françoises}, 56 (1934), 499-518; A. G. Little, "Measures Taken by the Prelates of France against the Friars (c. A.D. 1289-90)," \textit{Miscellanea Francesco Ehrle, 5, Studi e Testi, 39} (Rome, 1924), 49-66.

28 Nicholas IV, the first Franciscan pope, was elected on February 15, 1288.

29 As one of the bishops' anti-mendicant tracts expressed it; "... sicut scriptura dicit: \textit{ille cui comissa est tenetur vultum pecoris agnosceri diligenter et statum ovium suarnum considerare. Sed secundum dictorum fratrum intentum ad ignorantiam [curatus] arctaretur postquam enim subditi ad ipsum necessario recurrere non haberent et ipsum fugiendi facultas presteretur easdem. Vultum interiorem agnosceri non posset illorum qui se sibi ostendere recusarent. Istud autem procedere non potest quia de lege divina teneatur vultum pecoris agnosceri diligenter et ex dicto privilegio arctetur ad ignorantiam status ovium: nisi aliquid dicere velit contra legem et prescriptum Dei illum [quod] ille qui dedit privilegium illud instituisset. Et illud nullatenus est dicendum, "Romanus enim autem Pontifex usque ad animam et sanguinem id quod Christus, apostoli, et sancti patres diffinierunt nititur confirmare, distinctione XXV, q. 1, sunt quidem."" Taken from the \textit{Maximae rationes prelatorum traditae per archiepiscopum bituricensem}, B.N. 5120, fols. 74r-8gr, fols. 78r. For the date and contents of this treatise by Simon of Beaulieu, the Archbishop of Bourges and the leader of the anti-mendicant party among the French episcopate, see Schleyer, \textit{Anfänge}, pp. 125-26. This work was apparently included in a collection of grievances the ambassadors of the anti-mendicant French bishops showed to Pope Nicholas IV at the end of 1288. For the details of this embassy, see Schleyer, pp. 69 ff.
Omnis was not part of divine law and that it could licitly be changed by the pope. Moreover, Henry may have been aware of a danger in the bishops' position which they themselves did not sufficiently appreciate. If Pope Nicholas IV were, in fact, to ignore the warning of the French bishops and endorse the friars' interpretation of Ad fructus uberes, then these bishops would have been placed in the dangerous position of asserting that a reigning pope had, in fact, violated divine law and thus fallen into heresy.

Hence Henry of Ghent was placed in a most awkward position at the end of 1288 when he came to treat again the question of the correct meaning of Ad fructus uberes. As the most prominent defender of the position of the secular theologians at the University of Paris he could not remain silent in the debate to influence the new pope. However, the strongest argument of the anti-mendicant coalition of Parisian secular masters and French bishops had been that the privilege of Martin IV, as interpreted by the friars in their writings, could not be granted lawfully by the pope since it violated the fundamental divine struct-

50 "Ad hoc dicendum primo quo ad potestatem infringendi statutum [Omnis utriusque sexu] per commissionem in hoc scilicet quod confessi illis [fratribus] quibus facta est commissio, non teneantur proprio sacerdoti parochiali iterum confiteri, quin enim papa quo ad hoc ipsum possit infringere, non est dubium .... Quiamvis enim aliquibus videatur, si talis potestas universaliter concederetur fratribus utriusque ordinis, quod hoc esset ecclesiasticum ordine pervertiter et indirecte usum clavium a praesulis subtrahere et populum ab eorum obedientia et iurisdictione retrahere et quod hoc esset variare illud quod ordinatur est generaliter ad perpetuam ecclesiae universalis utilitatem, contra illud [distinctione] XXV, q. 2, Que ad perpetuum etc., ubi dictur quod Papa non potest contra generale ecclesiae statutum nec contra articulos fidei sed contra statutum ecclesiae quod non est iia generale bene potest dispensare. Tamen non est dubium quin dictum statutum Omn. utriusque sexu Papa posset per suam concessionem vere et proprie infringere, immo, posset per suam concessionem vere et proprie infringere, immo, posset ipsum revocare sicut ipse statuit." Quadribet 7, q. 24, Quadribet, fol. 285v.

51 The election of Pope Nicholas IV early in 1288 caused the coalition of anti-mendicant French bishops and Parisian secular masters of theology to redouble their efforts to secure a papal interpretation of Ad fructus uberes in their favor. Thus, for example, two embassies were sent to the new pope; one in 1288 headed by representatives of the bishops, and another in 1289 led by the bishop of Amiens and the archbishop of Bourges. Moreover, at a national council in the spring of 1289 the French anti-mendicant bishops enacted stringent measures against the friars and the mendicant interpretation of Ad fructus uberes. These decrees, printed in Little, "Measures", pp. 50-53, begin thus: "Istum modum procedendi in negotio quod habent prelati Franciae contra praedicatoros et minores his diebus, deliberato consilio cum magistris in theologia, magistris in decretis, et alius viris perfectos quos habere putuerunt. "Little, p. 50. In his article Little suggested that Henry of Ghent, as a close associate of the anti-mendicant French bishops, may have played a major role in the formulation of these decrees against the friars. In fact, Henry gave the opening speech to that council, edited by Schleyer, Anfänge, pp. 141-50; Hence Henry of Ghent's discussion of the correct meaning of Ad fructus uberes must be placed in the context of this renewed struggle of the French bishops and the Parisian secular masters against the friars' interpretation of that bull in order to influence Nicholas IV to act in favor of the secular coalition.
ture of the church. But Henry of Ghent could not say this now, at least prudently, since there was a real possibility that the new pope would endorse the friars' interpretation. Thus Henry wished to insinuate that the mendicant view violated the church's fundamental laws without, however, saying that the pope absolutely could not rule in favor of the mendicants.

In his discussion of 1288, therefore, Henry of Ghent was forced by circumstances to come to grips with the constitutional dilemma which had long been implicit in the protest of the Parisian secular masters against the pro-mendicant policy of several thirteenth-century popes. What was the intrinsic nature and limits of a ruler's sovereignty? How far was a ruler bound by the essential constitutional structure of the society he governed? How far did the immorality of a ruler's act invalidate its legality? These issues were only to be sharply perceived by the secular master Henry of Ghent at the end of 1288.

Henry began his discussion by distinguishing among three different types of a ruler's decrees. A first type included those acts which directly contradicted divine or natural law; for example, a ruler's command which directly harmed the welfare of his subjects. Henry called such decrees sinful and invalid and, in addition, asserted that commands of this kind were to be resisted by the community. As an example of this first type, Henry cited the case of a ruler who commanded a sword to be returned to a madman. Such an act, according to Henry of Ghent, was directly evil.52

A second type of decree did not in itself contradict divine or natural law but could have this effect in certain circumstances. Henry labelled such commands as unjust and sinful, but they were not grounds for a ruler's deposition. They were within the ruler's power and thus valid, although sinful and unjust. As an instance Henry mentioned the case of a ruler who ordered a madman's sword returned to his brother. This decree would result in evil only in circumstances where the brother

52 According to Henry of Ghent, the ruler who thus mistakenly followed the universal moral imperative to return goods to their owners by giving back the sword to the madman, thereby harmed natural or divine law by seriously injuring his subjects' welfare. Referring his audience to Aristotle's discussion of this topic in his Nicomachean Ethics, 1137b, Henry wrote: "Legislator non potest concedere privilegium aut condere statutum ad quod sequitur in ecclesia subtractio debite reverentie et obedientie inferiorum ad suos superiores aut universaliter destructio ordinis ecclesiastici, quia hoc est magnum inconveniens et contra ius naturale et divinum, contra quod legislator nichil statuere potest aut concedere aut dispensare; puta quod furioso reddendus sit gladius, existente actu in furia, quem deposuit. Si enim legislator statuens generaliter quod gladius deponenti reddendus est talis casus occurreret, ipsum legis director excipiendum a statuto generali judicaret secundum veridicam doctrinam philosophi, V Ethicorum." B.N. 3120, fol. 139rb.
could be expected to hand over the sword to the madman. Finally the third category of decrees included all those orders which did not harm subjects under any circumstances.

Although at one point in his discussion, Henry of Ghent seems to have considered the possibility that a pope who endorsed the mendicant interpretation of *Ad fructus uberes* would directly contradict divine or natural law and thus merit deposition, this remark was out of character with the whole tenor of Henry’s reasoning. For elsewhere in his discussion, Henry flatly stated that he would restrict himself to a consideration of whether such a papal endorsement of the friars’ views belonged to the second or third category of a ruler’s acts, that is acts which were unjust and sinful, although to be obeyed by the subjects, or acts which were both just and licit. Henry thereby protected himself against the contingency that Pope Nicholas IV would, in fact, sanction the friars’ interpretation. Henry’s refusal to seriously consider whether such a papal act belonged to the first category of a ruler’s decrees was characteristic of the conservative attitude of most of the thirteenth- and fourteenth-century secular theologians who opposed the mendicant privileges. In the last resort, none of the men who objected to the manner in which the papal plenitude of power was exercised on the friars’ behalf would ever agree that this furnished grounds for the deposition of the pope. It was at this point in his discussion that Henry introduced the distinction between absolute and ordained powers.

33 “Secundum autem modo bene quandoque sequitur inconveniens in statuto vel privilegio existente in se iusto et equo, saltem in casu, verbi gratia, si statueretur quod gladius depositus a furioso redderetur fratri suo sano. Ex hoc enim non sequeretur inconveniens dictum nisi ex prava dispositione occulta huiusmodi sane, qua gladium sibi reddirum vel se vel alium occideret.” BN. 3120, fol. 139va.

34 Although Henry of Ghent did not explicitly refer to this third type of decree at the outset of his discussion, he did, as we shall see, assume its existence, that is, of decrees promulgated by a ruler’s ordained power which were neither unjust nor illicit.

35 “Secundum predictum modum videat ergo dominus papa an possit de potentia ordinata secundum regulam iusticie talem exemptionem populo concedere super confessione ab ipso facienda fratibus an potius posset timere illud, si eam faciat, quod supradieturn est: *Si papa et sue et fraterne saluti etc.* [D 40 c. 6].” B.N. 3120, fol. 140ra. The canonists often expressed their views on papal deposition as a gloss to this text of the *Decretum*. For this see Tierney, *Foundation*, pp. 57 ff.

36 “Statutum autem vel privilegium ad quod secundo modo sequitur inconveniens dictum, scilicet substractio debite reverentie etc., an hoc posset statuere aut concedere legislator, super hoc distinguedendum, puto, de potentia absoluta et ordinata.” B.N. 3120, fol. 139va. “Dico ergo de legislatore, qui est homo purus potens peccare et malum agere, quod de potentia absoluta bene potest statuere vel privilegium concedere ad quod sequitur secundo modo inconveniens predicturn. Et hoc ideo quid in antecedente non statim apparret inconveniens, cuiusmodi, ut puto, est privilegium fratrum secundum eorum intellectum ....” Fol. 139vb.

37 For instance, the secular master of theology William of Saint Amour, writing against the papal privileges to the mendicants in the 1250s and 1260s, consistently minimised the meaning of
Henry of Ghent defined absolute power as power used sinfully but validly. Thus unlike other theologians Henry refused to credit God with an absolute power by which he could perform acts that could not be done by his ordained power, since this implied that God could act unjustly. However, this distinction, Henry claimed, was apposite in the

these papal grants. See, for example, a typical assertion by William cited by Congar, "Aspects", p. 55: "Verum si Dominus Papa infinitus et incertus a se vel ab Ecclesia non electus, et sibi non cognitus, vel probatis prius ... concedat in generali licentiam praedicandi, confessiones audiendi, poenitentias iniuendi, in quibus maxime consistat regimen animarum, non est verisimile quod per talem licentiam in generali concessam intendat eos facere universales apostolos ... habentes sollicitatem generalem et libaram potestatem exercendi praedicta officia in omni Ecclesia christianorum, irrequisitis praesenti ecclesiasticis vel invisis; cum Dominus Jesus Christus (cuivalus est vicarius generalis propter quod debeat in sua regimine imitari, tamquam eius generalis minister ...) dum esset in carne mortali, non nisi certas personas a se electas, conversatione experertas, et in suo disciplinatu probatas, miserit ad praedictum regimen animarum videlicet duodecim apostolos ... et septuaginta duos discipulos ..." For William of Saint Amour's career and writings, see Schleyer, Anfänge, and Congar, "Aspects". In addition to these works, see also the following studies: P. Glorieux, "Le conflit de 1252-1257 à la lumière du mémoire de Guillaume de Saint-Amour," Recherches de théologie ancienne et médiévale, 24 (1957), 366-72; P. McKeon, "The Status of the University of Paris as Parens Scien

In addition to the text printed at the end of this article, Henry of Ghent referred to the absolute and ordained powers of rulers in another work, Quodlibet XIV, q. 8. In this discussion he also equated absolute power with power sinfully and unjustly used, although licit. Here, for example, Henry argued that a ruler could levy taxes by his potentia iuris and not by his absolute power. He concluded this argument by stating: "Sed bene debent cavere sibi superiores quod nihil talium statuant aut exigant quin saltern evidens sit ipsis quod sit ad communem utilitatem seu publicam, non tarnen ad privatam et ponant statuta et edicta tam rationabilia ut procedant ab ipsis non de potentia facti sed iuris, nec de potentia absoluta sed de potentia relata, pensa rationis non errante. Nec video in hoc circa clericos aut laicos respectu suorum superiorum aliquam esse differentiam, licet prelati clericiro eo quod non nullum haereditarium ius habent in suis dignitatibus sicut principes, facilius possunt deponi quam principes, et laici, nullo statuto superioris constricti, liberiorem dispositionem de bonis suis habent quam clerici, eo quod bona clericorum, communicanda sunt pauperibus utra id quod in propriis usus assumunt sicut aliqui de numero pauperum prout alias satis exposui." 2 Quodlibet, fol. 568r.

"Statum autem vel privilegium ad quod secundo modo sequitur inconveniens dictum, sicelit subtracitio debite reverentiae etc., an hoc posset statuere aut concedere legislator, super hoc distinguishing, puto, de potentia absoluta et ordinata. Licet enim circa Deum non contingat distinguere inter potentiam absolutam et ordinatum; Deus enim, eo quod pescare non potest, nichil potest de potentia absoluta nisi illud possit de potentia ordinata. Omnis enim potestia sua quocumque modo vadit in actu ordinata <est>. "B.N. 3120, fol. 139va. Henry of Ghent also rejected the distinction between absolute and ordained powers as commonly applied by contemporary theologians to God's powers. See, for example, Henry's statements in his Quodlibet 9, q. 11. For those thirteenth- and fourteenth-century theologians who did apply these terms to God's powers, see the list compiled by Oakley, "Jacobean Political Theology," p. 534, nn. 55-56. To Oakley's list can be added Alexander of Hales, Alexandri de Hales summna theologica, ed. B. Klumper, 1 (Quaracchi, 1945), 207. However, not all the theologians in this period accepted this distinction as applied to God's powers. For example, Bonaventure seems to have rejected this distinction at one point in his career, Sancti Bonaventurae opera omnia, ed. studio et cura patrum collegii Sancti Bonaventurae, 1 (Quaracchi, 1883), 2, 778. Those theologians who did employ the terms absolute and ordained powers in their consideration of God's powers usually mentioned the example of
case of human legislators such as the pope who could act sinfully.⁴⁰ Henry even went so far as to identify the pope's absolute power with his plenitude of power.⁴¹ Henry thus argued that the pope certainly could abolish the need for reiterated confessions by his absolute power without, however, insisting that this could only be done by his absolute power. He suggested that although such a measure did not go counter to divine or natural law by its very nature, it could seriously subvert the church's divine structure under certain circumstances. For example, Henry asserted, in the early church such a privilege would have been beneficial because of the shortage of clergy and the obedience of subjects to their bishops and parish priests. However, under present conditions, Henry seemed to say, this measure would only aggravate the already widespread disobedience of subjects to their secular clergy.⁴²

God's damning Peter and saving Judas as an instance of God's absolute power, an example Henry of Ghent employed in his tract of 1288/89. However, since Henry of Ghent identified absolute power with power used sinfully and unjustly, he thus had to deny that God possessed such absolute power. The Peter-Judas example, without the distinction between absolute and ordained powers, dates to the late twelfth century at least. See, for example, its use about the year 1170 by the theologian Peter of Poitiers, Sententiae Petri Poitaviensis, eds. P. Moore, M. Duloung, 2 (Notre Dame, Ind., 1943), 96.

40 "Dico ergo de legislatore, qui est homo purus potens peccare et malum agere, quod de potentia absoluta bene potest statuere vel privilegium concedere ad quod sequitur secundo modo inconveniens predictum." B.N. 5120, fol. 139v.b.


42 "Et sic dico quod passa de potentia absoluta potest tale privilegeum fratribus concedere quia ad ipsum ex natura talis privilegii sive per se non sequetur dictum inconveniens. Quia non sequeretur si homines in tali statu essent in quali erant ab initio homines primitive ecclesie in qua erant communnes sacerdotes. Quia tum congruebant propter magnam sacerdotum et populi devotionem quando sacerdotes non querebant circa populum que sua erant sed quod lhesu Christi, nec, e converso, populus contra sacerdoquem. Sed tum quando refregescit caritas eorum multorum et habundat iniquitas, tale inconvenientia de facili sequetur et sic per accidents, scilicet ex prava sacerdotum dispositione et populi et eorum indevatione. Unde dico quod papa posset de potentia eius absoluta modo tale privilegeum fratribus concedere, et quod plus est, puto quod posset ecclesiam modernam ad statum primitivum in quo regebatur de communi sacerdotum consilio reducere. Hoc tamen salvo quod essent semper episopi sicut tunc erant apostoli superiores alis in ecclesia et similiter curati sicut tunc erant discipuli. Quod enim ommino non essent episopi nec parochiales sacerdotes in ecclesia loco apostolorum et discipolorum, ut duo ordinis instituti a Christo in ecclesia ommino demoleirentur, magnum inconveniens esset. Et an aliquis homo purus hec poterit facere, ipse dominus papa viderit et iudicet;" B.N. 5120, fol. 139vb-140ra.
This discussion of papal abolition of a subject’s obligation to reiterate a confession made to a friar as a possible instance of the pope’s absolute power was a clever stroke. Henry of Ghent thereby left his audience with the impression that a papal ruling in the friars’ favor would be sinful and unjust without, however, quite committing himself to this view. Instead he hastened to assert that he did not intend to preclude the possibility that the pope could grant such a privilege by his ordained power. Equally, however, Henry did not assert that the pope could so act by his ordained power and it would seem that Henry himself did not believe this to be the case. Finally Henry ended his discussion by raising the question of the proper response should the pope decide in the friars’ favor. He suggested that prelates and other learned men should humbly beg the pope to revoke his decision, patiently explaining the harm it caused the church.

Several things are noteworthy about Henry of Ghent’s discussion. First Henry was the first theologian to focus clearly upon the real issue between the seculars and the medicants—the nature and limits of papal sovereignty. In discussing this, he used the same constitutional language in considering how far the pope was bound by the constitutional structure of the society he governed as his near-contemporary Bracton did in considering the powers of King Henry III.

Second, Henry of Ghent’s understanding of the distinction between the absolute and the ordained powers of the pope was unique. In contrast to earlier canonistic usage, Henry regarded absolute power as power used sinfully and wrongly. The canonists had, however, defined the pope’s absolute power as his right to act outside the ordinary course of the law to meet emergencies.

43 “Secundum predictum modum videat ergo dominus papa an possit de potentia ordinata secundum regulam iusticie talem exemptionem populo concedere super confessione ab ipso facienda fratibus an potius timere illud, si eam faciat, quod supradictum est: Si papa et sue et fraterni salutis etc.” B.N. g120, fol. 140a.

44 “Sed si forte contingere quod dominus papa fratibus tale privilegium ut affectant habere, daret et per illud moderno tempore populam a iurisdictione prelatorum universaliter eximendo reduceret ecclesiæ, in quantum tangit fraternis, ad statum primitivum, puto quod supplicandum esset ei humiliter in principio ab universis episcopis et prelatis curam habentibus quod dictum privilegium revocaret et esset ei exponendum a viris litteratis qualia inconvenientia ex hoc sequerentur. Quod si forte facere nollet, timendum esset ne satis cito schisma maximum et inobedientia subiectorum ad superiores suos orire tur nisi aliter ecclesia Dei cito providereetur.” B.N. g120, fol. 140b.

45 This is the meaning reported in earlier canonists by the Decretalist Hostiensis (d. 1271) in a work of his written about the year 1250, Lectura in Quinque Decretalium Gregorianarum Libros, 2 (Venice, 1581; rpt. Turin, 1965), 3. 35. 6, fol. 134r. Hostiensis’ discussed here whether the pope could dispense a monk from his vows of poverty and chastity while still allowing him to remain a
ruler's absolute power which was to be regularly employed by medieval and Renaissance thinkers. Henry's unique use of this distinction reflected his fundamental constitutional conservatism, for he undoubtedly was familiar with earlier canonistic uses of these terms. The ruler, according to Henry, could not, apparently, justly employ an absolute, extralegal power for the community's good since he regarded such acts as inherently evil. The ruler could, nevertheless, validly employ such power although it was wrong. Henry's conclusion that a pope or a secular ruler possessed such a sinful, but legitimate absolute power was unlikely to be adopted by later thinkers. For Henry's political theory was impractical now that it was obvious that the assumption of extralegal powers by thirteenth-century monarchs would really benefit rather than harm their communities.

Finally, although Henry of Ghent's brief suggestion that a pope who adopted a pro-mendicant interpretation of *Ad fructus uberes* merited deposition made him the first anti-mendicant medieval theologian to clearly suggest a Conciliar solution to the secular-mendicant conflict, monk: "Alii dicunt, quod licet votum sit de substantia monachatus, tamen hoc potest de plenitudine potestatis, quod non de potestate ordinata sed de absoluta, secundum quam potest mutare substantiam rei ..." Hostiensis himself adopted the distinction between absolute and ordained powers elsewhere in his commentary on the Decretals (5.31.8, fol. 72v). He asked whether the pope could both suppress and unite monasteries in a diocese without first consulting the local bishop: "... Papa potest facere sine consilio ecclesiarum ... Sed nec Papa haec, vel alios casus sibi specialiter reservatos ... consuetud expediere sine consilio fratrum, id est Cardinalium, nec istud potest facere de potestate ordinaria ... licet secus de absoluta ...."


47 Henry explicitly cited Hostiensis at one point in his discussion: "Et hoc ideo quid in antecedente non statim inconveniens, cuiusmodi, ut puto, est privilegium Fratrum secundum eorum intellec tum, dicente Ostiensae: Si quilibet po set ubi confessoris eligeret et non oportueret eum habere confessorum determinatum, hoc est ecclesias inimias iniquitatem, et contigeret inde durum articulum ecclesiasticum discipline et quamlibet esse aedificium;" B.N. 3110, fol. 139vb.

48 Some kind of emergency absolute power seems to have been presupposed by those writers in the earlier part of the thirteenth century who asserted that the pope or the prince could, in cases of extreme necessity of the community, act outside the ordinary course of law, even though these writers do not seem to have actually employed the terms absolute and ordained powers. In fact, an earlier anti-mendicant thinker at Paris, Gerard of Abbeville, seemed to credit the pope with such emergency powers in his quodlibetal discussion of about 1265. Inquiring whether the pope could dispense a nun from her vows to marry a Moslem emperor for the good of the entire church, Gerard responded: "Potest ergo papa dispensare cum tali coniugio de plentitudine potestatis et eam absolvcre a voto et ab habitu, preseruit unde eminet universalis ecclesiae maxima utilitatis et urgens ac evidens postulat necessitas ... quia publica utilitas preferenda est privata .... Non ergo bene intelligit regulas eclesiasticas, qui hoc negant causa necessitatis vel utilitatis fieri posse, quoque communis necessitatis vel utilitatis fieri posse, quoque communis necessitates aut utilitas persuaserit." Cited in Post, Studies, p. 868. For Gerard of Abbeville's doctrines, see the following studies: Schleyer, Anfüng.; Congar, "Aspects"; P. Glorieux, "Pour une édition de Gerard d'Abbeville," *Recherches de théologie ancienne et médiévale*, 19 (1937), 56-84.
Henry’s radicalism should not be overstressed. For it should also be remembered that Henry’s cautious and conservative nature precluded him from leaving his audience with the impression that he himself favored such a solution. The passage in which he expressed this view was only a brief aside. Moreover, elsewhere he explicitly admitted that the pope could abolish annual confession to the parish priest without violating divine law and so meriting deposition. Writing during the winter of 1288/89 when it appeared that the new pope, Nicholas IV, would end the secular-mendicant quarrel by endorsing the friars’ interpretation of Ad fructus uberes, Henry of Ghent deployed an entirely new argument. By insisting that the canon Omnibus was part of divine law and thus totally outside papal jurisdiction, some French bishops had merely utilized a line of argument already common to medieval thinkers. Henry rejected their view and, in fact, the main thrust of his argument lay elsewhere. His attempt to mark off an area of papal action, that area pertaining to the pope’s absolute power which, although it did not violate divine law was, nevertheless, sinful because it harmed the community’s well-being by violating its fundamental laws, was much more forward-looking and novel than the bishops’ position. It is true that Henry did not quite go so far as to assert that the pope could be deposed for actions of this kind. Nevertheless, his argument was moving in the direction of subjecting the pope to certain fundamental laws of the community he governed.

The hesitancies in Henry of Ghent’s argument should be stressed because, in the last resort, Henry, like the other thirteenth- and fourteenth-century anti-mendicant secular theologians, never called for the deposition of a pope who had favored the friars. Despite his bitter disagreement with decades of pro-mendicant papal policy, Henry of Ghent never did challenge papal headship of the church. This was in sharp contrast to the early-fourteenth-century thinker Marsilius of Padua who, also doubting the wisdom of papal policy, was led to question the very institution of the papacy. At a council held at Paris in 1290, Pope Nicholas IV announced through cardinal-legates that the friars’ interpretation of Ad fructus uberes was correct and also that the secular theologians were to cease their discussions on this subject.49 Henry of Ghent, characteristically, did not call for the convocation of a

49 The text of this council and of the reactions of the anti-mendicant coalition of French bishops and Parisian secular masters has often been printed: H. Finke, Aus den Tagen, Quellen, pp. iii-vii; idem, “Das Pariser Nationalkonzil Vom Jahre 1290,” Römische Quartalschrift, 9 (1895), 171-82. The two papal legates were the Cardinals Benedict Gaetani and Gerard of Parma.
General Council to depose Nicholas IV nor did he attack the pope's position as head of the church. Instead, he protested the novel papal ban on discussion for which he was immediately suspended from teaching by one of the legates. Henry thereupon submitted to the papal decision, retired from academic life, and died three years later.50

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50 "Magister autem Hinricus de Gandavo, qui multa disputaverat de privilegio et de duodecim peciis librum ediderat, hiis auditis, convocat magistrorum presentiam, persuadens ipsis ut se dictis cardinalibus opponerent, dicens: "Cum liceat nobis de evangelio disputare, cur non de privilegio?" Quod cardinales minime latuit. Unde dominus Benedictus, vocans magistrum Johannem de Murro et magistrum Egidium, precepit eis quod predictum magistrum Hinricum ab officio lectionis suspenderent. Quod factum fuit." Finke, Aus den Tagen, Quellen, pp. V-VI. The Franciscan master of theology John of Murro referred to became Minister-General of his Order in 1296 and a cardinal in 1302. Master Giles of Rome ("magistrum Egidium") became archbishop of Bourges in 1295, succeeding the anti-mendicant Simon of Beaulieu who was made a cardinal and called to the Curia by Pope Celestine V in 1294. Cardinal Benedict Gaetani ("dominus Benedictus") succeeded Celestine as Pope Boniface VIII at the end of 1294.
Secima ratio talis erat. Legislator non potest concedere privilegium aut condere statutum ad quod sequitur in ecclesia subtractio debite reverentie et obedientie inferiorum ad suos superiores aut universaliter destructio ordinis ecclesiastici, quia hoc est magnum inconveniens et contra ius naturale et divinum, contra quod legislator nichil statuere potest aut concedere aut dispensare; puta quod furioso reddendus sit gladius, existente actu in furia, quem deposuit. Si enim legislator statuenti generaliter quod gladius deponenti reddendus est talis casus occurreret, ipsum legis director excipiendum a statuto generali iudicaret secundum veridicam doctrinam philosophi, V Ethiconi. Sed secundum intellectum fratrum, ut dicunt prelati, ad privilegiorum ipsorum concessionem sequitur in ecclesia subtractio debite reverentie. Ergo etc. Ergo legislator, ut papa, tale privilegium secundum intellectum et voluntatem fratrum non potest concedere. Consequens falsum est, ergo et antecedens. Consequentis falsitas patet quia tale privilegium concedendo non concedit papa nisi quod suum est cum ipse sit omnium curatus immediatus.

Dico quod maior propositio que videtur facere pro fratribus distinguenda est, quia ex aliquo, puta ex statuto vel privilegio, inconveniens aliquando sequitur dupliciter; uno modo per se et ex natura statuti aut privilegii sed ex alio ex[in]trinsecus (139rb/139v) subveniente. Primo quidem modo inconveniens non sequitur ex statuto aut privilegio nisi ipsum statutum aut privilegium in se sit inconveniens et contra divinum ius et naturam, verbi gratia, si statuitur quod gladius depositus a furioso in omnem eventum esset reddendus et ipsi existenti in furia; sequeretur enim ex hoc per se quod seipsum occideret, silicet in hora furie, vel alium.

Secundum autem modo bene quandoque sequitur inconveniens in statuto vel privilegio existente in se iusto et equo, saltem in casu, verbi gratia, si statueretur quod gladius depositus a furioso redderetur fratri
suo sano. Ex hoc enim non sequeretur inconveniens dictum nisi ex prava dispositione occulta huissusmodi sane, qua gladium sibi reddatum vellet tradere furioso ut vel se vel alium occideret.

Dico ergo quod statutum vel privilegium ad quod primo modo sequitur inconveniens dictum, scilicet substractio debite reverentie etc., non potest concedere legislator quicumque fuerit ille quia esset contra ordinem nature et divine iusticie, ut dictum est in probatione dicte maioris propositionis. Vel dicendum esset sic statuenti aut privilegium concedenti quod dicit Paulus apostolus, Gal. II: Licet angelus de cebo evangelizet nobis, propter quod evangelizatum est nobis, anatema sit; Ex tali enim statuto generali vel privilegio periclitetur ecclesia et ideo non potest: unde distinctione XL, capitolo Si papa, super illo Quia cunctos ipse est adiudicaturus, a nemine est iudicandus, nisi deprehendatur devius a fide, dicit glossa: Certe credo, quod si notorium est crimen eius quodcumque, et inde scandalizatur ecclesia et incorrigibilis fit, quod inde possit accusari. Hic tamen specialiter fit mentio de heresi, quia et si occulta esset heresis, de illa posset accusari, sed de alio occulto criminem non possit. Et tunc querit glossa: Nonquid papa posset constituere quod non possit accusari ab heresi? Responsio, Non, quia ex hoc periclitetur tota ecclesia.1

Statutum autem vel privilegium ad quod secundo modo sequitur inconveniens dictum, scilicet substractio debite reverentie etc., an hoc posset statuere aut concedere legislator, super hoc distinguendum, puto, de potentia absoluta et ordinata. Licet enim circa Deum non contingat distinguere inter potentiam absolutam et ordinatam; Deus enim, eo quod peccare non potest, nichil potest de potentia absoluta nisi illud possit de potentia ordinata. Omnis enim potentia sua quocumque modo vadit in actum ordinata. Si c> enim Deus Iudam damnnavit et Petrum salvavit de potentia absoluta et ordinata (139va/139vb) secundum regulam iusticie. Si possit Iudam salvare et eum a damnatione revocare et Petrum damnare et eum a salute repelle, hoc non potest de potentia absoluta quin etiam hoc possit de

5 MS: sed.
6 MS: concedent.
7 Gal. 18.
8 D. 40; c. 6.
9 Johannes Teutonicus, Glossa Ordinaria in the Decretum, in Decretum Gratiani ... una cum glossa (Paris, 1601), D. 40, c. 6, a fide devius.
10 MS: nonquid.
11 See above, note 9.
12 MS: persona.
13 MS: predicare.
14 MS: persona.
potentia ordinata secundum regulam iusticie, sed alterius quam presentia secundum quam unum haec tenus dampnavit et alterum salvavit. Propter hoc satis declaratur in nostri XI Quodlibet.\textsuperscript{15} Circa hominem tamen purum bene contingit distinguere inter potentiam\textsuperscript{16} absolutam et ordinatam. Homo enim purus, eo quod peccare potest, aliud potest, large accipiendo potentiam, de potentia absoluta quod non potest de potentia ordinata.

Dico ergo de legislatore, qui est homo purus potens peccare et malum agere, quod de potentia absoluta bene potest statuere vel privilegium concedere ad quod sequitur secundo modo inconveniens predictum. Et hoc ideo quid in antecedente non statim\textsuperscript{17} apparat inconveniens,\textsuperscript{18} cuiusmodi, ut puto, est privilegium fratrum secundum eorum intellectum, dicente Ostiense: Si quilibet posset sibi confessorem eligere et non oporteret eum habere confessorem determinatum, hoc esset ecclesiis nimis inuriuosum et contingere inde disarmi vinculum ecclesiastice discipline et quodlibet esse aceanalum.\textsuperscript{19} Et hoc, quam aliquid inuriuosum esset summo pontifici si non omnes universaliter obedientes essent, XC distinctione, Obedientiam et capitulis sequentibus.\textsuperscript{20} Et similiter quemandmodum inuriuosum esset episcopis si sub eorum obedientia non essent clerici secundum quod ibidem scribatur capitulo:\textsuperscript{21} Nulla ratione clerici aut sacerdotes habendi sunt, qui sub nullius episcopi disciplina et providentia gubernatur. Tales enim acephalos, id est sine capite, prisa consuetudo noncupavit.

Et sic dico quod papa de potentia absoluta potest tale privilegium fratibus concedere quia ad ipsum ex natura talis privilegii sive per se non sequeretur dictum inconveniens. Quia non sequeretur si homines in tali statu essent in quali erant ab initio homines primitive ecclesie in qua erant communes sacerdotes. Qui tunc congruebant propter magnam sacerdotum et populi devotionem quando sacerdotes non querebant circa populum que sua erant sed\textsuperscript{22} quod Ihesu Christi, nec, e converso, populus contra sacerdotem. Sed tunc quando refregescit caritas eorum multorum et habundat iniquitas, tale inconveniens de

\textsuperscript{16} MS: persona.
\textsuperscript{17} MS: statum.
\textsuperscript{18} MS: conveniens.
\textsuperscript{19} I have been unable to locate this citation in Hostiensis. But see, however, a similar statement in 5.38.11, fol. 102b, Lectura in quinque decretalium gregorianarum libros, 2 (Venice, 1581; rpt. Turin, 1965).
\textsuperscript{20} D. 93, c. 8.
\textsuperscript{21} D. 95, c. 5.
\textsuperscript{22} MS: secundum.
facili sequeretur et sic per accidens, scilicet ex prava sacerdotum dispositione et populi et eorum indevotione. Unde dico quod papa posset de potentia eius absoluta modo tale privilegium fratibus concedere et, quod plus est, puto quod posset ecclesiam (139vb/140ra) modernam ad statum primitivum in quo regebatur de communi sacerdotum consilio reducere. Hoc tamen salvo quod essent semper episcopi sicut tunc erant apostoli superiores aliis in ecclesia et similiter curati sicut tunc erant discipuli. Quod enim omnino non essent episcopi nec parrochiales sacerdotes in ecclesia loco apostolorum et discipolorum, ut duo ordines instituti a Christo in ecclesia omnino demolirentur, magnum inconveniens esset. Et an aliquis homo purus hec poterit facere, ipse dominus papa viderit et iudicet.

De hoc enim videtur loqui beatus Bernardus, libro III ad Eugenium Papam; sic inconveniens: Erras, si ut summam ita et malitii institutam a Deo existimas tuam apostolicam dignitatem. Non tua potestas sola est a Domino sed et mediocres sunt et inferiores. Idem in eodem: Honor <um> et dignitatum gradus et ordines quibuscumque suos servare positi estis. Nunc autem subtrahuntur abbates episcopis, episcopi archiepiscopis, etc. Bonane species hec? Nimirum si excusari quest opus. Sicut factitando probatis vos habere plenitudinem potestatis, sed iusticie forte non ita. Facitis hoc, quia potestis; sed utrum et debeatis, questio est. Ecce plana distinctio inter potentiam absolutam et ordinatam circa dominum papam. Quando beatus Bernardus aliquid factitando ostendit se habere plenitudinem potestatis, quam appelo potentiam absolutam, super quo dubitat an habeat potentiam iusticie, quam appelo potentiam ordinatam. Quod si ita est in exemptionibus particularibus, multo fortius ergo et in exemptione universali qua fratres volunt eximi a prelatis omnem populum subiectum illis. Secundum predictum modum videat ergo dominus papa an possit de potentia ordinata secundum regulam iusticie talem exemptionem populo concedere super confessione ab ipso facienda fratribus an potius posset timere illud, si eam faciat, quod supradictum est: Si papa et sue et fraterne saluti etc.

Unde si beatus Bernardus suo tempore sic se opposuit exemptionibus sive dispensationibus particularibus, quantum, quaeso, opponeret se modo, si viveret, universali exemptioni populi quam petunt fratres? Quid autem beatus Bernardus sentiat ex tali dispensatione profuturum
si fiat, ipsemet bene exponit ibidem, quasi ex predictis arguendo contra seipsum sic inconveniens in persona domini pape loquentis ad ipsum et ipso respondente28 (14ora-14orb): Quid inquis? Prohibes dispensare? Non, sed dissipare. Non sum29 ego tam rudis ut ignorem vos dispensatores, sed in edificationem, non in destructionem. Deinde quare inter dispensatores: ut fidelis quis inveniatur. Ubi necessitas urget, excusabilis est dispensatio; ubi utilitas provocat, dispensatio est laudabilis. Utilitas, dico, non propria sed communis. Nam cum nihil horum est, non plane fidelis dispensatio est, sed crudelis dissipatio.

Unde in talibus dispensationibus et exemptionibus faciendis contra populum in privilegio fratrum, non debet dominus papa tam intendere propriam utilitatem fratrum quam publicam totius populi.

Sed si forte contingeret quod dominus papa fratribus tale privilegium ut affectant habere, dare et per illud moderno tempore populum a iurisdictione prelatorum universaliter eximendo reduceret ecclesiam, in quantum tangit fratres, ad statum primitivum, puto quod supplicandum esset ei humiliter in principio ab universis episcopis et prelatis curam habentibus quod dictum privilegium revocaret et esset ei exponendum a viris litteratis qualia inconvenientia ex hoc sequerentur. Quod si forte facere nollet, timendum esset ne satis cito scisma maximum et inobedientia subiectorum ad superiores suos ori-tur nisi aliter ecclesia Dei cito provideetur.

Dico ergo quod loquendo de potentia ordinata secundum justicie, qua scilicet papa, concedendo tale privilegium, non peccaret si ipsum concederet, an ipse isto tempore tale privilegium concedere possit fratribus, ego non video nec assero ne forte veritati contrarier; non tamen denego ne videar ponere os in celum. Sed ipse dominus papa viderit et iudicet; sua enim interest. Et sic eo modo quo in predicto argumento: maior proposicio est vera sive antecedens est verum; vera est conclusio sive consequens. Et eo modo quo est falsa, et conclusio est falsa.

28 De consideratione, s. 4. 18, p. 445.
29 MS: sine.