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and Collections of Canon Law

Selected Essays



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XIII

THE DATE OF THE CONSTITUTION « SAEPE », THE VATICAN MANUSCRIPTS AND THE ROMAN EDITION OF THE CLEMENTINES

The constitution *Saepe contingit* of Pope Clement V (1305-1314) is commonly recognized as the most important single piece of medieval legislation in the history of summary judicial procedure. A century and a half of complex developments — in papal responses, in statutory enactments, and in the often conflicting teachings of the glossators of both the civil and the canon law — had left a great number of ambiguities in the practical application of those procedures that were distinguished from the regular *ordo iudiciorum* as *de plano*, *summam* or *simpliciter cognoscere*, *sine iudiciorum strepitu*, *sine forma iudicii*, or by similar terms.¹ The constitution *Saepe* fixed once and for all the meaning of these clauses in a unified doctrine: henceforth the formalities that remained necessary and those that could be dispensed with in summary procedure were clearly defined for the theory and practice of both laws.

Given the historical importance of the constitution, it is all the more astonishing that by a quirk of textual transmission an erroneous notion on the time of its enactment should have prevailed among scholars for centuries. *Saepe contingit* forms the concluding chapter of the *Constitutiones Clementinae* (tit. *De verborum significatione*, 5. 11. 2); and in the official Roman edition of the *Corpus iuris canonici* (1582) it appears with the date appended, “Data Avinione xiiij. Kalen. Decembris, Pontificatus nostri anno secundo”. Accordingly, students of the history of civil procedure by and large have placed the constitution in Pope Clement’s second year, 19

¹ The stages of this development are discussed by CH. LEFEBVRE, *Les origines romaines de la procédure sommaire aux XII et XIII s.*, in *Ephemerides Iuris Canonici*, t. 12 (1956), pp. 149-197.

November 1306, without giving any thought to several obvious reasons why this cannot be true.² For one, the purported date is impossible in itself: Clement V did not take up residence at Avignon before 1309. The autumn of 1306 he spent mostly in Bordeaux and places close by; nearly all the letters of the second half of November that year were given from his native town of Villandraut.³ Furthermore, the constitution *Saepe* specifically refers back to an *alia constitutio nostra* concerning cases of summary procedure: this is the decree *Dispendiosam* which, as has always been known from the testimony of Johannes Andreae, was first promulgated at the Council of Vienne (1311-12).⁴ More precisely, the findings of Franz Ehrle and Ewald Müller have established that *Dispendiosam* belonged to a set of reform measures enacted in the third session of the Council on 6 May 1312.⁵

I.

With this day as *terminus a quo*, the problem of the date of *Saepe contingit* becomes part of the complicated post-conciliar history of the Clementine legislation. Between the close of the Council and the day when John XXII definitively published the *constitutiones plurimae* which his predecessor had issued "necnon in concilio Viennensi, quin etiam ante et post ipsum concilium",⁶ a process of law-making repeated itself for which Innocent IV at the first, and Gregory X at the second Council of Lyons had set the pattern: the "promulgation" in council as a preliminary stage, subject to alterations and additions, until the final text of what the pope wishes to be regarded as legislative work of the council is released

² For a select list of manuals and treatises on canonical procedure giving the wrong date (if any), see LEFEBVRE, *op. cit.*, p. 149 n. 3, p. 151 n. 8. This includes even L. WAHRMUND's editions of the treatises of Johannes Fasolus and Johannes de Lignano on summary procedure, in *Quellen zur Geschichte des römisch-kanonischen Prozesses im Mittelalter*, t. 4, Innsbruck 1925-1928, fasc. 5, p. xv; fasc. 6, pp. xii, xvii-xviii.

³ See the Benedictine edition of the *Regestum Clementis papae V*, Rome 1885-1892, Nos. 1517 ff. and the itinerary in R. FAWTIER and Y. LANHERS, *Tables des Registres de Clément V*, Paris 1948, p. 2.

⁴ JOH. ANDREA, *Glossa ordinaria*, Clem. 5. 11. 2 v. *Saepe*. This was briefly pointed out by LEFEBVRE, *op. cit.* p. 149 n. 3.

⁵ Cf. F. EHRLE, *Ein Bruchstück der Acten des Concils von Vienne*, in *Archiv für Literatur- und Kirchengeschichte des Mittelalters*, t. 4 (1888), pp. 442, 462; E. MÜLLER, *Das Konzil von Vienne 1311-1312* (= Vorreformationsgeschichtliche Forschungen 12), Münster 1934, pp. 490, 626.

⁶ JOHN XXII, *Quoniam nulla*, 1 Nov. 1317 (*prooem. Clem.*).

in the form of a topical collection, by "publication" to the universities.⁷ But what had taken only a few weeks in Lyons, 1245, and a few months in 1274, was to drag on for years after the Council of Vienne. While the post-conciliar commission charged with revising and completing the decrees⁸ was engaged in its task, unauthorized versions had already been put in circulation; the finished product of the commission's labors was ready for publication by 21 March 1314, when Clement V had read it out at a public consistory in Montoux. But before the publication could be completed by distributing copies of the collected *Constitutiones* to the universities, the Pope died on 20 April. With grave doubts remaining, among canonists and at the curia, as to whether or not the collection had been published with legally binding force,⁹ Pope John XXII

⁷ Cf. S. KUTTNER, *Die Konstitutionen des ersten allgemeinen Konzils von Lyon*, in *Studia et Documenta historiae et iuris*, t. 6 (1940), pp. 70-131, esp. 91-110; *Conciliar Law in the Making*, in *Miscellanea Pio Paschini* (= *Lateranum* 15), Rome 1949, t. 2, pp. 39-81, esp. 41-54.

⁸ P. VIOLLET, *Guillaume de Mandagout, Canoniste*, in *Histoire littéraire de la France*, t. 34 (1914), pp. 22, 60, accepts at its face value the assertion of the 17th-century writer MARCELIN FORNIER (*Histoire générale des Alpes Maritimes...*, ed. P. Guillaume, t. 2, Paris 1890, p. 111) that the revision of the decrees was entrusted to Guillaume de Mandagout. Viollet assumes that Fornier "très probablement" utilized a "témoignage contemporain de grande valeur, aujourd'hui perdu", the report of the redactor of the Cartulary of Embrun, and considers it intrinsically very convincing, since Guillaume had been one of the compilers of the *Liber Sextus*; admitting, however, that he might not have been the only one in charge of revising the decrees of Clement. The argument, based on the mere probability of Fornier's having used a 14th-century source of uncertain and unascertainable contents, is rather thin. Even if we assume that the redactor of the Embrun Cartulary said what he is supposed to have said, his information may have stemmed from the same error which we find in the title of the incunable GW 7091 (HR 5409, Rome 1478) of the Clementines (fol. 1^v): "Compilatores huius libri fuerunt Guil. Mandagoti episcopus Ebredunens. Et Berengarius episcopus Burdegaleñ. alias Biturien. postea Cardinalis, ut per Jo. an. in addi. specu. in quarta parte in ti. de electio". This title is based on a misconstruction of the passage where Johannes Andreae speaks of Guillaume de Mandagout's *Libellus de electionibus* and continues: "... quem libellum ... in quantum nova iura illum secuta, scil. Sexti, cuius praedicti ambo compilatores fuerunt, et Clementinarum, exigunt, brevissime reformavit (leg. reformavi?) ..." (*Additiones in Speculum* 4. 1 de elect.; ed. Venice 1577, t. 4, p. 83^b). The emendation "reformavi" is Schulte's and has much to recommend it, cf. VIOLLET, *op. cit.* p. 53). One can see how an omission of the comma after "fuerunt" would cause the error of GW 7091. As for Pope Clement's commission, Joh. Andreae merely speaks of "per peritiores fecit illas recenseri" (*Glos. ord. Clem., prooem. v. de cetero*).

⁹ *Glos. ord. loc. cit.*

more than three years later undertook the definitive publication in the usual form by sending it, after a few minor revisions,¹⁰ to the universities on 1 November 1317 with his bull, *Quoniam nulla*.¹¹

The question, then, is at which point in this long-drawn process the constitution *Saepe* was inserted in the Clementines for the purpose of determining by an authentic declaration the nature of the summary procedures that were envisaged in the constitution *Dispendiosam* as well as in other cases. It seems that the form in which *Dispendiosam* appears in *Clem.* 2. 1. 2 was already the result of post-conciliar revision of the original decree;¹² and *Saepe* must have been added at a late stage, as may be surmised from the fact that it was placed, not in the title *De iudiciis* behind the conciliar text which it interprets, but at the very end of the Clementines, under the catch-all title *De verborum significatione*. The most interesting piece of information on the genesis of *Saepe contingit*, however, comes from the pen of Johannes Andreae, who states in the *Glossa ordinaria* that it was he himself who had urged the enactment of such a *constitutio declaratoria* when the text of *Dispendiosam* became known:¹³

... hanc constitutionem verborum blanditiis non egentem glossandam aggredior: de cuius causa impulsiva pars fui. Ex quo enim scivi mandasse concilium Viennense, supra de iudiciis, Dispendiosam, existimans non tantum utile sed summe necessarium, verba de quibus hic loquimur declarari, dominos ac peritos curiae sollicitavi saepius pro constitutione declaratoria procuranda, quae desiderata se nunc exhibet.

¹⁰ *Ibid.*: "... et aliquas correxit et mutavit". E. FRIEDBERG, *Prolegomena*, in *Corpus iuris canonici*, t. 2 (Leipzig 1881), col. lx-lxii, remains skeptical.

¹¹ On the date see *infra*, nn. 28-30. — The fullest study of the legislative history of the Clementines is that of MÜLLER, *Das Konzil von Vienne* (n. 5 *supra*), pp. 387-408, with bibliography. The *Dissertatiuncula de Concilio Viennensi* of PIETRO BALLERINI, in his *Vindiciae juris divini ac naturalis circa usuram, quae veluti liber septimus haberi possunt...* (= *De jure divino et naturali circa usuram libri sex ... t. 2*), Bologna 1747, pp. 66-77, is generally forgotten but still worth reading.

¹² JOH. ANDREAE, *Glos. ord.* is silent on this, but two independent sources — the account of Card. Jacobus Stefaneschi and the anonymous notes on Vienne of Munich MS lat. 2699 — mention a conciliar decree on summary procedure only for litigation concerning episcopal elections and benefices, whereas the text of *Clem.* 2. 1. 2 adds matrimonial cases and suits on tithes and usury. Cf. MÜLLER, *op. cit.* pp. 490 f., 626 f.

¹³ *Glos. ord. Clem.* 5. 11. 2 v. *Saepe*.

He does not reveal the source of his knowledge of the earlier decree, but the expression "ex quo enim scivi mandasse concilium Viennense" points in all likelihood to his having seen one of the unauthorized copies of the decrees that were circulated, according to his own testimony, soon after the Council.¹⁴

In any event, his démarche must have been successful before Pope Clement's commission finished its work and before publication of the *Constitutiones* was initiated in the consistory of 21 March 1314. Or is it possible, as E. Müller has cautiously suggested,¹⁵ that *Saepe* was a later addition and that it was not issued by Clement V at all? Certainly John XXII cannot have been its author: even if *Saepe* appears without inscription in some manuscripts,¹⁶ none but Pope Clement was in a position to speak in it of *Dispendiosam* as "alia constitutio nostra"; also, the three known copies of the Clementines which remain as witnesses of the publication initiated at Montoux — that is, the three copies which begin with Clement's preamble *Cum nuper*¹⁷ — all contain the constitution *Saepe*,¹⁸ and this ought to rule out the remote possibility of the latter's having been drafted during the few weeks between the consistory and the Pope's death. Even if one were not satisfied with the evidence of these manuscripts — and it must be admitted that at least two, perhaps even all of them, show signs of contamination with the vulgate (Johannine) text¹⁹ — the possibility of a post-consistorial addition could be argued only if there existed any hint of such a procedure in the general account which Johannes Andreae gives of the making of the Clementines, or in the passage where he speaks of the genesis of *Saepe contingit* in particular.²⁰

Johannes Andreae knew of the "publication" of the collected

¹⁴ *Ibid.* prooem. v. de cetero: "... tamen postea de facto fuerunt publicatae..."

¹⁵ *Das Konzil von Vienne*, p. 627.

¹⁶ Thus FRIEDBERG's MSS ADEG, cf. his note 1 *ad loc.*

¹⁷ Marburg C. 3 (= Friedberg's B), Chartres 275 (ol. 318; =F), Kassel jur. 15 (=G); cf. FRIEDBERG, *Proleg.* col. lx, lxii; H. DENIFLE, *Chartularium Universitatis Parisiensis*, t. 2, Paris 1891, No. 708, p. 169. MS Chartres 275 has escaped complete destruction in World War II: according to the classification in *Manuscrits des bibliothèques rinstrées de 1940 à 1944* (= Catalogue général..., t. 53, Paris 1962), it belongs to the category of MSS "dont on a retrouvé des restes en très bon état ou en bon état, presque complet". (Information kindly supplied by Mlle. Viellard).

¹⁸ This point has been made, although not in very clear terms, by LEFEBVRE, *Les origines romaines* (n. 1 *supra*), p. 149 n. 3.

¹⁹ See Excursus A, *infra*.

²⁰ *Glos. ord. Clem.*, prooem. v. de cetero and 5. 11. 2 v. *Saepe*.

constitutiones in the consistory;²¹ he had seen a copy or copies of the text with the preamble *Cum nuper*;²² and he was personally involved in the antecedents of the constitution *Saepe*. Evidently he took a special interest in this *constitutio declaratoria* of which he considered himself the intellectual father. In the *Glossa ordinaria* on the Clementines he introduces his comments on *Saepe* with a little preface of its own,²³ and this rather unusual form of presentation strongly suggests that he wrote and published these glosses separately, before completing and publishing in 1322 the *apparatus* on the whole body of the Clementine constitutions.²⁴ This is indeed asserted in the subscription of the Vatican MS Ross. lat. 591 (*Clementinae* with *glos. ord.*; saec. xiv), which must be based on some concrete historical information, even though the scribe puts down at the end a patently wrong figure for the year of completion:

Explicit apparatus domini Johannis Andree doctoris decretorum super clementinis. Et hanc glossam super ista decretali 'sepe' publicavit in scholis publice legendo dictam decretalem. set istum apparatus sub anno (ānis MS?) domini M.CCC°XXIX. die prima mensis Martij. (fol. 67^{vb}).

Given all these circumstances, we may safely use an *argumentum ex silentio* for corroborating the evidence of the three "Monteux" manuscripts: if *Saepe* had been of post-consistorial making, Johannes Andreae would not have failed to say so. The constitution must therefore be dated between 6 May 1312 and 21 March 1314, probably closer to the later date.

²¹ *Gl. v. de cetero*.

²² *Gl. proem. v. Quoniam nulla*: "Est sciendum quod Clemens suo exordio ad instar Innocentii iiij. et Gregorii x. narrabat..."

²³ *Gl. v. Saepe*: "Quoniam secundum Quintilianum lib. 7 de oratoria institutione, 'optimarum rerum inventio, et si lenociniis verborum destituta sit, ipsa tamen sui natura satis ornatur' (*Inst. or.* 12. 1. 30), cui bene convenit ff. de in integ. restit. l. i. in princ. (*Dig.* 4. 1. 1), hanc constitutionem verborum blanditiis non egentem glossandam aggredior..."

²⁴ For the date see H. DENIFLE, *Die Entstehung der Universitäten des Mittelalters bis 1400*, Berlin 1885, p. 443 n. 915, correcting J. F. VON SCHULTE, *Die Geschichte der Quellen und Literatur des Canonischen Rechts*, t. 2, Stuttgart 1877, p. 217, where the year 1326 is given. Denifle's argument can still be strengthened by the observation that in the *Glos. ord.* Johannes Andreae makes no use of the *Apparatus* of Jesselin de Cassagnes, completed in 1323 (cf. note 47, *infra*).

II.

When Boniface VIII published the *Liber Sextus*, he had the date of promulgation, "Romae, apud sanctum Petrum, v. Nonas Martii, pontificatus nostri anno quarto", placed at the very end of the book, after the last of the *Regulae iuris*, rather than affixed to the introductory bull *Sacrosanctae* itself.²⁵ There were precedents for such terminal dating ever since the days of Innocent IV.²⁶ With a complex piece of codification such as the Sext, this style served particularly well to bring home the point that the whole mass of statutes and decretals compiled in the book was formally to be considered a single enactment, embedded as it were in the text of the opening letter issued on that day, 3 March 1298.²⁷ Had John XXII followed the legislative example of Boniface VIII, we could expect to read a date of publication at the end of the Clementines, after the constitution *Saepe*. This time, however, the date was placed immediately after the introductory bull *Quoniam nulla*: "Data Avenione, kal. Novembris pontificatus nostri anno secundo" (1 November 1317).²⁸ In many manuscripts and in the printed editions this appears with the variant "viii. kal. Novembris" (25 Octo-

²⁵ The date after *De reg. iur.* is provided with ample glosses in JOH. ANDREAE'S *Ordinaria in Sextum*.

²⁶ For dates at the end of Innocent IV's three collections see P.-J. KESSLER, *Untersuchungen über die Novellen-Gesetzgebung Papst Innozenz' IV. in Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Kan. Abt. t. 31 (1942), pp. 213 (Coll. I), 238 f. (Coll. II), 202 (Coll. III); for the collection of Gregory X see J. H. BOEHMER, *Corpus iuris canonici*, Halle 1747, t. 2, Appendix, fol. (aa)^v after col. 368; DENIFLE, *Chartul. Univ. Par.* t. 1, Paris 1889, p. 515 n. 1 to No. 449; J. GUIRAUD, *Les registres de Grégoire X*, Paris 1892-1906, No. 576, p. 250. — By contrast, the date of Gregory IX's *Rex pacificus* is known only from the papal register (L. AUVRAY, *Les registres de Grégoire IX*, Paris 1896-1955, No. 2083; POTHAST No. 9693); it does not appear in the MSS and editions of the Decretals (cf. FRIEDBERG, *Corp. iur. can.* t. 2, col. 1-4; DENIFLE, *Chartul. Univ. Par.* t. 1, p. 154, note to No. 104).

²⁷ It is commonly taught that the same doctrine underlies already the Decretals of Gregory IX, i. e. that every text in the compilation was to be construed as issued on the day of the bull *Rex pacificus*, 5 September 1234; but the 13th-century canonists did not think so, cf. S. KUTTNER, *Quelques observations sur l'autorité des collections canoniques dans le droit classique de l'Eglise*, in *Actes du Congrès de Droit canonique... Paris, 22-26 Avril 1947*, Paris 1950, p. 311-312.

²⁸ So Friedberg's codd. AEFH (col. 1131, n. 7 *ad loc.*) and the papal register, cf. A. COULON, *Jean XXII (1316-1334): Lettres secrètes et curiales relatives à la France*, Paris 1906, No. 433.

ber),²⁹ owing probably to an early error in the manuscript tradition: there is no reason to assume that the Clementines were published for different universities on two different days,³⁰ or that the official entry in the papal Register is wrong.

In any event, the line we find at the end of the Clementines in the Roman edition, "Data Avinione xiiij. Kalen. Decembris, Pontificatus nostri anno secundo", remains incongruous: as we saw, it cannot refer to *Saepe*, but neither can it be read as a publication date in the Bonifacian style, for the collection had definitely been sent out some weeks before 19 November 1317.

On that day, however, Pope John XXII issued the constitution *Execrabilis*.³¹ One of the most important pieces of medieval legislation in the never-ending battle against the cumulation of benefices (and also a powerful instrument of papal reservations), it soon made its appearance among the *extravagantes* which copyists were in the habit of appending to the Clementine corpus. It was promptly taken up by the glossators: When Guillaume de Montlauzun wrote his *Apparatus super Clementinis* in 1319, he supplemented this commentary with an *apparatus* on three major constitutions concerning benefices, from the autumn of Pope John's second year: *Suscepti* (8 kal. Nov.), *Execrabilis* (13 kal. Dec.), *Sedes apostolica* (3 kal. Nov.).³² A few years later, in 1325, Jesselin de Cassagnes included these three pieces in his collection, with apparatus of glosses, of

²⁹ So Friedberg's CDI, the Roman edition, and all modern manuals of the history of canon law.

³⁰ This was DENIFLE's assumption, *Chartul. Univ. Par.* t. 2, No. 754, p. 211. But the evidence of Friedberg's MSS suffices to refute it: A and C are addressed to Avignon, yet have different dates; DEHI are addressed to Bologna and likewise differ in their dating, *kal. nov.* or 8 *kal. nov.* — The case of *Quoniam nulla*, then, cannot be compared with the single known instance of double entry of a letter with two different dates in the register of John XXII: *Litteras vestras*, 7 *kal. dec. an. 2* (COULON, *Lettres secrètes et curiales*, No. 450) and 7 *id. dec.* (No. 455, cf. Coulon's note, col. 367). The other instances Coulon cites, col. 208 and 629, are imaginary: *Salvator noster*, undated (No. 262; but Coulon supplies a false date, 7 *kal. iul. an. 1*, from the 16th-century printing in the *Extravagantes comm.* 3. 2. 5) = 5 *id. iul. an. 1* (No. 306); *Execrabilis*, 13 *kal. dec. an. 2* (entered only once in the register, MOLLAT, *Jean XXII (1316-1334): Lettres communes*, Paris 1904-1947, t. 2, No. 8137), same date in *Extrav. Jo. XXII* 3. un. (except for one of Friedberg's MSS: 'iii. kal. dec.') and *Extrav. comm.* 3. 2. 4 (not 'kal. dec.' as Coulon wrongly claims, col. 629).

³¹ MOLLAT, *Lettres communes*, No. 8137, see the preceding note.

³² On the date, MSS, and editions, see P. FOURNIER, *Guillaume de Montlauzun, Canoniste*, in *Histoire littéraire de la France*, t. 35 (1921), pp. 477-479. The three constitutions are MOLLAT, Nos. 8131, 8137, 8132.

twenty *Constitutiones extravagantes domini Johannis xxii.*³³ But also thereafter, the three constitutions continued their separate existence, being copied time and again into manuscripts of the Clementines.³⁴ *Execrabilis* in particular is rarely absent from even the briefest appendices in these manuscripts.

An intrusion of the date line of *Execrabilis* into the textual transmission of the Clementines themselves could thus provide a plausible explanation for the false date attached to the constitution *Saepe* in the Roman edition. But if this is to be more than conjecture, we have to probe for evidence of such a contamination in the history of the Clementine text. The false date line, this much is certain, does not appear in any of Friedberg's nine manuscripts.³⁵ An inquiry into the Vatican manuscripts is therefore justified. To be sure, with its twenty-five codices of the Clementines in the various *fondi*,³⁶ the Vatican Library offers both more and less than what the Roman editors might have seen during the late 1570's in the libraries of the city.³⁷ Still, it seems reasonable enough to limit the search to the present-day Vatican collection: if these codices should not yield substantial clues to the wrong date in the Roman edition, it is extremely unlikely that this date would be based on manuscript evidence at all.

III.

In the survey that follows, the Vatican manuscripts will be arranged according to the variations they show at the end of the Clementines. Such variations are found with regard to the presence or absence of *extravagantes* — usually one or more of the three texts of John XXII mentioned above — but also exist as regards the conciliar decree *Exivi de paradiso*, on the interpretation of the Franciscan Rule. Published by Clement V at Vienne in the third

³³ Date, MSS, and editions: FOURNIER, *Jesselin de Cassagnes, Canoniste*, in *Hist. litt.* t. 35, pp. 354-355.

³⁴ Cf. SCHULTE, *Geschichte der Quellen* (n. 24 *supra*), t. 2, p. 52; Friedberg's MSS No. 4, 5, 6, 9, 10, 13, 14, 17 of the *Extravagantes* (*Corp. iur. can.* t. 2, col. lxxvi-lxxviii); for the Vatican MSS see below, III D, E.

³⁵ See *app. crit.* n. 9 *ad loc.* (col. 1200).

³⁶ I have based this survey on the indications in the handwritten *schedario* of the late lamented L. Guizard, without searching the old inventories for possible other copies.

³⁷ The edition was completed before 1 July 1580, the date of Gregory XIII's Breve *Cum pro munere*.

session, 6 May 1312,³⁸ it was placed in the collected constitutions directly before *Saepe*, as first chapter of the title *De verborum significatione*. It is known that *Exivi* settled nothing; the bitter conflict between Spirituals and Conventuals raged on throughout most of the pontificate of John XXII and eventually moved from the field of discipline into that of dogma.³⁹ In this explosive situation, and also because it would have been impossible to expound the text of the conciliar decision without discussing Nicholas III's earlier decree *Exiit qui seminat* (1279), on which all glosses were forbidden,⁴⁰ the glossators refrained from commenting on *Exivi*; ⁴¹ and copyists often omitted the constitution from its proper place in the Clementines.

Unless otherwise marked, the manuscripts here cited are fourteenth-century, standard university copies; inscriptions and subscriptions are only noted if they are of more than routine interest.

A. *Manuscripts preserving the vulgate order: Exivi – Saepe; no date, no extravagantes.*

VAT. LAT. 1401. *Clem(entinae)* with *Glos(sa) ord(inaria)* of Johannes Andreae and additional glosses, taken mostly from the *apparatus (lecturae)* of Jesselin de Cassagnes, Guillelmus de Monte Lauduno, Paulus de Liazariis.⁴² Subscription, fol. 60^{rb}: “finit textus clementinarum scriptus et correctus per gofredum cum originali curie. Deo gratias”. Bolognese miniatures.

³⁸ *Regestum Clementis* pp. V, No. 8873.

³⁹ Cf. John XXII, *Cum inter nonnullos*, 12 November 1323 (MOLLAT, No. 20406; *Extrav. Jo. XXII* 14. 4).

⁴⁰ *Sext.* 5. 12. 3 § *Itaque sub poena*.

⁴¹ This is Zabarella's explanation, *Lectura in Clem.* 5. 11. 1, v. *Exivi* (ed. Venice 1504, fol. 192^{rb}), whose commentary was later used in the printed editions to fill the lacuna of the *Glos. ord.* for this chapter.

⁴² The works of these three (for Jesselin see FOURNIER, *op. cit.* n. 33 *supra*, pp. 353-354; for Guillaume, *id. loc. cit.* n. 32 *supra*; for Paulus, SCHULTE, *Geschichte*, t. 2, p. 247) furnish the bulk of the material also in all other MSS described below as having sets of additional glosses (unless noted otherwise). The sigla *p.* or *pau.* and *g.* or *gui(l)*. are easily recognized, but those for Jesselin appear in many different forms and spellings (cf. also SCHULTE, t. 2, p. 199; FOURNIER, *op. cit.* p. 348 n. 3); I have noted *Jecelinus*, *Jece.*, *Je.*, *Jesselinus*, *Gecellinus*, *Gescelinus*, *Genz.*, *gen.*, *Ge.* in the Vatican MSS. The form *Zenzelinus*, which has come into general use through the printed editions of the *Extravagantes Jo. XXII*, is by far the least well attested in the MS tradition.

VAT. LAT. 2506. *Clem.* without glosses; running head: "L(iber) VII".⁴³

VAT. LAT. 2507. *Clem.* with *Glos. ord.*

VAT. LAT. 13267. *Clem.* with *Glos. ord.*

PAL. LAT. 638. Quarto size. *Clem.* without glosses. Subscription: "Expliciunt constitutiones noue edite a domino Clemente papa quinto. Finis adest operis, intercedere posco laboris".

ROSS. LAT. 590. *Clem.* with *Glos. ord.* Fol. 1 missing. Prehumanistic script saec. xv. Initials with gold leaf.

ROSS. LAT. 591. *Clem.* with *Glos. ord.* Late saec. xiv. For the subscription and its significance, see *supra*, p. 432.

B. *Manuscripts omitting Exivi; no extravagantes directly appended.*

VAT. LAT. 1397. With French miniatures. — fol. 1-68^{rb}: *Clem.* with *Glos. ord.* and additional glosses.

— fol. 69^{ra}-122^{vb}: Guillaume de Montlaurun, *Apparatus* on *Clem.* ("Explicit apparatus vij. decr. clementis pape"); fol. 123^{ra}-130^{rb}: *Apparatus* on *Suscepti, Excrabilis, Sedes apostolica* ("Explicit apparatus extrauagantium domini Johannis pape xxij. amen"). Running head: "L' VII".

— fol. 130^{va}-132^{ra}: (separately) Clement V, *Exivi*; John XXII, *Cum inter nonnullos*, on the poverty of Christ and the Apostles (MOLLAT, *Lettres communes*, No. 20406; in *Extrav. Jo. XXII* 14. 4 with the false year "anno vii."), here correctly dated "ij. ydus nouembris... anno octauo"; followed by a "Priuilegium Ludouici Regis" (ends fol. 132^{rb}).

— fol. 133^{ra}-171^{rb}: *Extravagantes Jo. XXII* with *Glos. ord.* of Jes-selin de Cassagnes; 171^{va}-191^{vb}: more *extravv.* follow, partly with glosses.

VAT. LAT. 1399. *Clem.* with *Glos. ord.* and copious additional glosses.

VAT. LAT. 1403. *Clem.* with *Glos. ord.* Additional glosses mostly from Paulus de Liazariis.

⁴³ The designation of *Clem.* as *Liber VII* was neither official nor encouraged; cf. *Glos. ord. proem. v. in unum volumen*: "non tamen sub nomine libri, unde male dicunt qui allegant septimum librum..."; it occurs nonetheless in the MS tradition, cf. G. PHILLIPS, *Kirchenrecht*, t. 4, Regensburg 1851, p. 386f.; SCHULTE, *Geschichte*, t. 2, p. 48 n. 10. So also here and in other Vatican MSS: see Vat. lat. 1397, Barb. lat. 1494, Ross. lat. 565 (below, B); Vat. lat. 2505 (D), Borgh. 285 (E).

VAT. LAT. 2508. fols. 1-59 vellum, humanistic script *an.* 1469; preceded by 9 unnumbered paper folios, followed by a paper quire, fols. 60-68. — fol. 1-54^v (vel.) *Clem.* without glosses; only the inscription and the first three words of *Exivi* copied before “*De verborum significatione Rubrica. Sepe contingit...*” (52^{vb}). Subscription: “*Hee clementine transcriptę fuerunt per me Johannem de Criuellis de Parma in anno 1469 studentem in Jure canonico Baptisterij parmensis Canonicum et Rñi domini legati bononiensis Cardinalis Reatini*” Cappellanum et commensalem existentem”.

In the preceding paper quire, “*Jo. de Criuell’ de parma in omnibus Juuenis inter decretorum scolares licet minimus tamen indignus*” entered two orations, naming in the first (fol. <1>^r, beg. “*Quia preposterius [sic] ordo prius humana subsidia petere...*”) his teachers, Andreas Siculus (Bologna), Stefanus Costa and Franciscus de Curte (Pavia);⁴⁵ the second oration (fol. <1>^{r-v}, beg. “*Solent, Reuerende presul, Magnifice Commissarie...*”) was held on 15 October 1469 “*in collegio omnium doctorum parmen. in ecclesia Maiori astante Rñno d. episcopo parmen. Commissario et alijs officialibus...*”, to introduce a *repetitio* on c. *Cum non ab homine, de Iuditiis* (X 2. 1. 10); there follows (fol. <2>^r) a list of what “*Ordinarius uisitans debet interrogare...*”; (fol. <2>^v) a “*Prologus fiendus per promouendum ad Insignia ante decimationem punctorum*”, etc. — The material on fol. 60-68 includes a treatise *De balneis Porrete* (60^r-62^v); two *consilia* on election cases (63^r-65^v, 67^{r-v}), the second signed “*pñlipus de perusio*”, probably Philippus de Franchis of Perugia;⁴⁶ and the constitution *Illius licet inmeriti* of Calixtus III, 21 August 1456 (12 kal. sept. an. 2).

VAT. LAT. 13266. *Clem.* with *Glos. ord.*; first folios missing (beg. *Clem.* 1. 6. 3).

BARB. LAT. 1494 (XXVI. 31). *Clem.* with *Glos. ord.* and additional glosses in several hands. Running head “*L’ VII*”. Ends fol. 45^{ra} (text), 45^{vb} (gl.).

⁴⁵ Angelo Capranica, bishop of Rieti, cardinal priest of S. Croce (1460), bishop of Palestrina (1472), died 1478; see C. EUBEL, *Hierarchia catholica medii aevi*, t. 2, Münster 1914, p. 13. His legation to Bologna seems, however, to have ended in January 1468, according to EUBEL, p. 35 (App. I), No. 277.

⁴⁶ Cf. on these SCHULTE, *Geschichte*, t. 2, pp. 306, 405, 294 n. 1.

⁴⁷ Professor in Pavia (1461), Ferrara (1467), and again Pavia; died 1471 (SCHULTE, *op. cit.* p. 342).

Preceded by two unnumbered fly-leaves with various entries, among which copious notes (fol. <i>v</i>-<ii>v) taken from the "lectura super li. vj." of *Guill*(elmus de Montelauduno), by the same hand as one of the sets of additional glosses on *Clem.* — fol. 45^{va}-49^v: numerous miscellaneous entries: forms for letters, petitions, precedents and problems for disputation (45^{va} "Quidam habens duas manus, unam aridam et aliam utilem, condempnatus fuit ad amissionem unius manus..."), etc. Many of the petitions are by "Sancius de Serrio (*al.* Sarrio) aprobatus in decretis", addressed *inter al.* to Pope Urban (V) and Pope Benedict (XII); some are on behalf of this Sanchez by "Rector, doctores et uniuersi scolares (*al.* et uniuersitas) generalis studii Illerdensis" (46^r: petitions for license to remain *in studio*, licenses for benefices); a *littera testimonialis baccalaureatus* by "guillermus raymundi de monte catheno decanus ecclesie Illerd. et cancellarius generalis studii eiusdem..." attesting that "Johannes petri de serrjo", bachelor of arts of the diocese of Zaragoza, was made bachelor of medicine "sub venerabili et discreto viro Petro Cabacol in artibus et medicina magistro", dated Lérida, 3 June 1364; a petition in Catalan (47^r), "supplicação al duch faedora: Molt alt senyor, ala v̄ra altea humilment..."; etc. Prayers, incantations for various illnesses, medical notes, (46^r) verses on flebotomy, verses in praise of cheese, etc. Further study of these leaves would be rewarding for the prosopography of the University of Lérida in the fourteenth century.

PAL. LAT. 643. *Clem.* with *Glos. ord.* First folio missing. At the end, after *Saepe* (fol. 79^{ra}), the scribe may have planned to continue: "Joh'es xxii. ad perpetuam rei memoriam. Explicit". (*ibid.*) "Explicit apparatus domini Johannis Andree super constitutionibus Clementis quinti in concilio vien'. DEO GRACIAS". Provenance: Bensheim.

fol. 79^{va}: incantation against eye diseases, partly in German: "✠ In nomine patris etc. ✠ Adiuro te macula per deum altissimum per deum fortissimum ✠ per patrem ✠ et filium ✠ et spiritum sanctum viuum et verum... vt exeas et recedas et ad nichilum redeas ab oculis famuli dei N. Item te adiuro... et abii et laui et et [*sic*] vidi et credidi deo. Sancta Odilia do heilige Jungfrawe vñ senete Symeon dy geseyne dir deyn augen... ab isto periculo oculorum et ab omni periculo anime et corporis amen".

PAL. LAT. 644. After a fragment from Justinian's Digest (fol. 1-2^v), *Clem.* with *Glos. ord.* (3^r-83^{rb}) and additional glosses (only fol. 3-12).

ROSS. LAT. 565. Very elegantly written and decorated (French, saec. xiv).

- fol. 1-64^{ra}: Guillaume de Montlaurzun, *Apparatus* on *Clem.* and the three *extravagantes*. Subscription: "Explicit apparatus VII. Libri", followed by verses.
- fol. 65^r-124^{vb}: *Clem.* with *Glos. ord.* Running head "L' VII".
- fol. 125^{ra}-173^{rb}: Jesselin de Cassagnes, *Apparatus* on *Clem.* The date, 7 September 1323,⁴⁷ here follows directly upon the end of the concluding *casus* of c. *Saepe*, before the subscription:

Casus. quale sit futurum officium iudicis habentis procedere de plano et simpliciter hic cauetur. Datum auinoñ. vij. idus Septembris. Anno a natiuitate dñi m^o.ccc^o.xxiiij. Indictione xj. (*leg.* vj.) Pontificatus Sanctissimi patris domini Johannis diuina prouidentia pape xxij. anno viij.

Explicit apparatus domini Gescelini de Cassanhis iuris utriusque professoris domini pape capellani...

There follow some verses by another hand; fol. 173^{va}, in a small cursive, the beginning of a "Constitutio benedicti pape facta anno domini m^occc^oxxx^o de professis canonicis uel monachis..."; fol. 174^v a late commentary fragment.

- fol. 175^r-177^{va} (new quire): Clement V, *Exivi*, John XXII, *Suscepti*, *Execrabilis*, *Sedes* (all three dated), with the wrong subscription "Explicit Liber VII^{us} siue Constit'. Cle^m. a p^p. Jo. edit'."
- fol. 178^r-230^{va}: *Extravagantes Jo. XXII* with *Glos. ord.* of Jesselin de Cassagnes. The date, Avignon, 24 April 1325, here correctly forms the conclusion of the "Explicit apparatus magistri Jesselini de cassanis..."
- fol. 230^{vb}: "HIC INCIPIT ALIA DEC VTILIS ET RONA. Ex debito... duxerimus disponendum. Explicit hic decr' bona et utilis": the const. *Ex debito* of John XXII on the reservation of benefices, of uncertain date.⁴⁸

⁴⁷ Cf. FOURNIER, *Hist. litt.* t. 35, p. 354 and n. 2.

⁴⁸ *Extrav. comm.* 1. 3. 4, not in the papal register. P. HINSCHIUS, *Das Kirchenrecht der Katholiken und Protestanten in Deutschland*, t. 3, Berlin 1883, p. 130 n. 3, and G. MOLLAT, *La collation des bénéfices ecclésiastiques sous les papes d'Avignon*, Paris 1921, p. 28, assumed that this was the constitution for which John XXII gave oral instructions to the Vice-chancellor Gaucelme de Jean on 17 kal. Oct. an. 1 (15 Sept. 1316), as reported in BALUZE's *Vitae Paparum Avenionensium*, Paris 1693, t. 1, p. 722 (citing MS Colbert 349 = Paris, B. N. lat. 3204) [= nouv. éd. par G. MOLLAT, Paris 1927, t. 2, p. 218] and by Dietrich von Nieheim (ed. ERLER, *Liber cancellariae vom Jahre 1380*, Leipzig 1888, p. 137). In later publications, MOLLAT cautiously refrained from assigning a date to *Ex debito*; see his article, *Réserve*, in *Dictionnaire de Droit cano-*

C. *Manuscripts which place Exivi at the end, outside the Clementine corpus.*

VAT. LAT. 1400. After a folio from the Digest: *Clem.* with *Glos. ord.* and additional glosses, ends fol. 60^{rb} ("Expliciunt constitutiones clementis"); fol. 60^{va}-62^{va}: *Exivi de paradiso.*

VAT. LAT. 8121. Small octavo, containing *Liber Sextus* with *Glos. ord.* (fol. 2-239^v), *Clem.* with *Glos. ord.* (241-360^v; 356^v "Explicit textus Clementinarum"); *Exivi* (361-365^v). First folios of both *Sext.* and *Clem.* missing. The glosses in both collections are written, not in the margin, but as commentary after each chapter. — Written in Bourges, 1444, by Bruno Johannis of Deventer, diocese of Utrecht, province of Cologne, *decretorum doctor*, for his *Reverendissimus dominus*, Petrus de Monte, bishop of Brescia (1442-1457), legate *a latere* in France of Pope Eugene IV, in the fourteenth year of his pontificate; *Sext.* completed on 17 August, *Clem.* on the feast of the Conversion of St. Paul: thus the lengthy subscriptions (fol. 239^v and, with verbal variants, fol. 365^v). Owned later by Master Bernard of Perugia, O. P. (fol. 239^v, saec. xv), then by Master Leonard de Mansuetis, of the same Order and city (fol. 1^v, saec. xv).

PAL. LAT. 642. *Clem.* with *Glos. ord.* (fol. 1-52^{rb}; gloss ends 52^{vb}), followed by *Exivi* (ends 56^{vb}). Completed in Pavia, 11 August 1460; humanistic-gothic script.

(For separate tradition of *Exivi*, joined with *extravagantes*, see also Vat. lat. 1397, Ross. lat. 565 [*supra*, B]; Vat. lat. 1398 [*infra*, E]).

D. *Manuscripts preserving the vulgate order, Exivi - Saepe, with the constitution Execrabilis appended and dated Avignon, 13 kal. dec. an. 2.⁴⁹*

VAT. LAT. 1402. *Clem.* with *Glos. ord.* and additional glosses. Ends fol. 57^{rb}: "... nec etiam irritandus. Idem [*sic*]"; "Explicit

nique, t. 7, fasc. 39 (1960), col. 636, also his *Un recueil d'extravagantes*, in *Revue de droit canonique*, t. 4 (1954), p. 248, where *Ex debito* appears as No. 38 of the collection of MS Vat. lat. 1171 (fol. 73-74: "Data Aven. etc."). — An early date, September 1316, seems out of the question: Guillaume de Montlauzun did not include *Ex debito* in his commentary (1319) on the *extravagantes* of 1317 on reservation of benefices, nor did Jesselin de Cassagnes incorporate it into his *Extrav. Jo. XXII* (1325); the constitution is not even discussed in the glosses of either of the two writers. This argues for a date *post* 1325.

⁴⁹ The scribe of Pal. lat. 643 (without *Exivi*, see above, B) may have contemplated this addition, too.

apparatus domini Johannis andree super Clementinis. Deo gratias"; fol. 57^{va}-58^{vb}: "Johannes episcopus seruus seruorum dei ad perpetuam rei memoriam. Execrabilis... Data auinionis xiiij. kll. decembris pont. nostri anno secundo etē." (no gloss).

VAT. LAT. 2505. — Fly-leaf (fol. 1): "Diligenter Nota (*supra lin.*) substitutionum materiam secundum dy. Quod substitutionum sunt due species... dic quod non. D. Dy. Dy.": the *summula* of Dinus de Mugello on testamentary substitution;⁵⁰ also some scattered entries. — fol. 1^v: moral and theological questions, "Primo queritur utrum a precepto soluendi (soluendo MS) decimas aliquis absoluator per contrariam consuetudinem. Et uidetur quod sic... (ends:) et a precepto circumcixionis". (No legal sources cited).

— fol. 2-64^{rb}: *Clem.* with *Glos. ord.*; fol. 64^{va}-66^{ra}: *Execrabilis* with date, no gloss; subscribed "Explicit vij. liber Decretalium Domini Johannis pape xxij." — that is, considered by the scribe as part of the Clementines.

ARCH. S. PETRI A. 38. This codex, interesting in many respects, came to St. Peter's from the library of Cardinal Giordano Orsini (d. 1438).⁵¹

— fol. 1-131^{vb}: *Liber Sextus* with the *Glos. ord.* and very copious additions of Johannes Andreae; to a large extent, but not always, identical with the glosses of his *Novella in Sextum* and much richer than the *Additiones* in the printed editions of the *Glos. ord.*⁵² Some of the glosses from the *Novella* are further expanded;⁵³ and some are preceded (especially in the title *de regulis iuris*,

⁵⁰ F. C. VON SAVIGNY, *Geschichte des römischen Rechts im Mittelalter*, t. 5, 2nd ed., Heidelberg 1850, p. 464.

⁵¹ The Orsini coat of arms under a red hat is on fol. 1^r. In the inventory of the cardinal's books bequeathed to the Basilica, we find an entry, "Sextus et Clementine in eod. volumine et pulcri": F. CANCELLIERI, *De secretariis veteris basilicae Vaticanae Liber I*, t. 2, Rome 1786, p. 908^b; this is our codex.

⁵² The relation between the *Additiones* and the *Novella in Sextum* in the MS tradition has never been examined; the observations by SCHULTE, *Geschichte*, t. 2, pp. 218-219, are inadequate.

⁵³ Thus e. g. *Sext. De prebend. et dign. c. Cum in ecclesia* (3. 4. 25) v. *licet*: "Hic factum narrat—litteras. Jo. an. (= *Novella ad loc.*) Dictum arci(diaconi) placet Jo. kald. quod plene prosequitur de concess. preb. in iiij. obiectione" (fol. 75^v). No work of Johannes Calderini on the *Sext* is known; but among his many monographic treatises (cf. SCHULTE, *op. cit.* p. 250f.) there might have been one *De concessione prebende non vacantis*. His *repetitiones* on two decretals in that title (X 3. 8. 6 and 15) are printed in the *Repetitionum in Universas fere Iuris canonici partes... volumina sex*, Venice 1587, t. 4, fol. 240^{vb}-246^{rb}.

fol. 119ff.) by the words “Epy(logus) dicit”, “Epi. ponit”, introducing a short summation of a given gloss of the *Ordinaria*.⁵⁴ Still other additions, some of them citing the *Novella*, are signed G(uillelmus de Montelauduno), Pau(lus de Liazariis), *Lapus* (see also “... et de hiis uide hic latius in nouella”, unsigned, fol. 75^{vb}).

- fol. 132^{r-v}: The forged *Professio fidei* of Boniface VIII, entered somewhat later (pre-humanistic gothic script, saec. xiv ex./xv in.) on the originally blank leaf, with the gloss “Quamuis hanc professionem legerem (legero MS)...”. This hitherto unknown copy, which could well be older than any of those seen by modern scholars, gives a text with several scribal blunders, but nonetheless serves to correct in part Finke’s edition of the gloss.⁵⁵

⁵⁴ Cf. JOH. ANDREAE, *Novella in quinque decretalium libros*, prol. n. 9: “Venientes ad glossas invenient alia tria...: Primo scil. epilogum..., idest breuiloquum modum summationis ipsarum. Secundo...” (ed. Venice 1581, t. 1, fol. 2^{vb}); and cf. S. KUTTNER, Introduction to the reprint of the *Novella*, Turin 1963, t. 1, p. xii.

⁵⁵ On the so-called *Professio* of Boniface VIII (also on MSS, editions, and earlier bibliography) see M. SOUCHON, *Die Papstwahlen von Bonifaz VIII. bis Urban VI. und die Entstehung des Schismas von 1378*, Braunschweig 1888, pp. 193-205; G. BUSCHBELL, *Die Professiones fidei der Päpste*, in *Römische Quartalschrift für christliche Alterthumskunde und für Kirchengeschichte*, t. 10 (1896), at pp. 291-297, 421-438; idem, *Die römische Ueberlieferung der Professiones fidei der Päpste*, *ibid.* t. 14 (1900), pp. 131-136; II. FINKE, review of Souchon, in *Göttingische gelehrte Anzeigen*, 1890, pp. 960-968, at pp. 965ff.; idem, *Aus den Tagen Bonifaz VIII.* (= Vorreformationsgeschichtliche Forschungen 2), Münster 1902, pp. 54-65. The *Professio* was fabricated probably in the circle of Guillaume de Nogaret, c. 1310, but none of the MSS that have come to light antedate the reform councils of the early 15th century (FINKE, *Aus den Tagen*, p. 61f.). The copy in Arch. S. Petri A. 38 might be older but cannot be dated with certainty on palaeographic grounds; at any rate it represents a tradition which is independent from the context of conciliar controversy (Pisa and Constance) in which the *Professio* appears elsewhere. — The set of glosses in our MS is the same as that which FINKE edited in *Acta Concilii Constantiensis*, t. 2, Münster 1923, pp. 682-688, from several 15th-century MSS, with a shorter version from one MS printed in the opposite columns. The edition does not quite measure up to the usual excellence of Finke’s work. At some points separate glosses and their lemmata are conflated into one continuous text (e. g. p. 685^b, gl. v. *Non deseram*: “... di. IIII ‘cathecuminum’ custodire et palam confiteri...” should be separated; *custodire* is a new lemma of the text; likewise in gl. v. *Conciliis*: “... in suis titulis pontificum, videlicet Leonis primi...”, where *pontificum* is a new lemma). Several glosses are truncated by omission, usually but not always indicated by dots (...). The omitted passages are, however, often of particular interest for determining the glossator’s sources. From St. Peter’s MS, it can be established that the anonymous writer, in addition

- fol. 133^{ra}-197^{rb}: *Clem.* with *Glos. ord.* ("Finiunt constitutiones Clementis v."; "Explicit apparatus domini Johannis Andree super clementinis. Jo.") and a considerable stratum of additional glosses, beg. "Dic quod hic non est aliqua inculcatio..." (ad gl. *prooem.* v. *ethymologias*). They represent a forgotten work of Johannes Andreae himself: the *Additiones* or *Apostillae* to his *Glossa ordinaria* on the Clementines, a work of which Zabarella still knew ("post perfectum suum commentum... nonnullas apostillas adiecit super hoc toto volumine") but which has escaped all later writers. It is here enriched by some further additional gloss material.⁵⁶
- fol. 197^{va}-198^{rb}: *Execrabilis*, with its date, no gloss.

E. *Manuscripts with two or three extravagantes appended.*

BORGH. 285. *Clem.* without glosses, inscribed "Incipit liber septimus decretalium". Ends in the vulgate order *Exivi-Saepe* (fol. 24^{rb} "Explicit liber septimus decretalium"), followed by John XXII, *Sedes*, *Suscepti*, *Execrabilis*, each with its proper date, fol. 24^{rb}-26^{ra}.

VAT. LAT. 1398. — fol. 1-54^{vb}: *Clem.* (omitting *Exivi*) with *Glos. ord.* and additions by Baldus de Ubaldis (*bal.*, *bald.*), a heretofore unknown product of his canonistic activities.⁵⁷

- fol. 55^{ra}-57^{vb} (another hand): Clement V, *Exivi*, with rubric *De verb. sign.* and scattered glosses by Baldus (same hand as above); fol. 57^{vb}-58^{vb}: John XXII, *Suscepti*, *Execrabilis*, with their dates, no glosses.

- fol. 59^{ra}-59^{rb} (added leaf): "*Circa constitutionem predictam sc. Execrabilis Infrascripte dubietates et questiones emergerunt que fuerunt per conditorem earum interpretate et ad quamlibet*

to Gratian and the Decretals, used two books which were not normally in the hands of professional canonists of the later Middle Ages: the *Liber Pontificalis* and the *Pseudo-Isidorian Decretals* (the latter, from a MS of Hinschius's class C). To demonstrate this in detail would require a special study which must be left for another occasion.

⁵⁶ Joh. Andreae's *Apostillae in Clem.* and the further glosses of this MS will be discussed in an article to appear in the forthcoming volume of *Études* in honor of Gabriel Le Bras. — The quotation above is from Zabarella's prologue of his *Lectura in Clem.* (ed. Venice 1504, fol. 2^{rb}; printed also in SCHULTE, *Geschichte*, t. 2, p. 553).

⁵⁷ On Baldus as a canonist, see SCHULTE, *Geschichte*, t. 2, p. 276; G. CHEVRIER, *Baldi de Ubaldis*, in *Dictionnaire de Droit canonique*, t. 2 (1937), col. 41.

earum responsum prout patet in fine uniuscuiusque. prima dubietas talis. In quibusdam ecclesis, puta auinioñ. leodixum et similibus... huius includantur". These 18 *dubia* with official responses "per conditorem earum (*leg. eius*)" appear also, with a shorter rubric, in a collection of John XXII's *extravagantes*, in MS Vat. lat. 1171 (No. 48, fol. 84^v-86^v),⁵⁸ and also at the end of the *Apparatus* of Guillaume de Montlaurun on *Execrabilis* as printed in the *Extravagantes communes* 3. 2. 4.⁵⁹ — fol. 59^{rb}-59^{va}: Benedict XII, *Ceca cordis*, 18 December 1335.

(For separate tradition of the sequence *Exivi-Suscepti-Execrabilis-Sedes*, see also Ross. lat. 565 [*supra*, B]).

Of the manuscripts here reviewed,⁶⁰ 19 present the Clementines without *extravagantes* added (7 in the vulgate order, 9 without *Exivi*, 3 with *Exivi* displaced); 5 manuscripts add *extravagantes* (3 add *Execrabilis* alone, 1: *Sedes-Suscepti-Execrabilis*, 1: (*Exivi*)-*Suscepti-Execrabilis*), all five ending with *Execrabilis*,⁶¹ and consequently with the date of the latter. But in none of the Vatican manuscripts can we trace a contamination of this date with the constitution *Saepe*. For a clue to the date line in the Roman edition we have to turn to the history of the incunabula.

IV.

The first printing of the Clementines, *Constitutiones Clementis pp. V vna cum apparatu dni. Jo. Andree*, appeared in Mainz, Johann Fust and Peter Schoeffer, 25 June 1460 (GW 7077 [HC 5410]). It placed *Exivi* (fol. 49^r-50^v) outside the Clementine corpus (colophon, fol. 48^{vb}) — there was, as we have seen, good manuscript precedent for this — and added to this the constitution *Execrabilis* (fol. 51^{ra-va})

⁵⁸ MOLLAT, *Un recueil d'extravagantes* (note 48 *supra*), p. 248.

⁵⁹ I have not examined the MSS nor the editions (Hain 11595 [Rome 1475]; Paris 1517) of the *Apparatus* on the three constitutions from which the glosses of *Extrav. comm.* 1. 6 un., 3. 2. 4, 3. 3 un. are taken. The considerably shortened edition in the *Repetitionum in Vniversas fere Iuris Canonici partes... volumina sex*, Venice 1587, t. 6, pt. 2 (fol. 1-2^{vb}, 23^{vb}-26^{va}), does not include the *dubia* and *responsiones*.

⁶⁰ Not including the incomplete MS, Vat. lat. 13264, which breaks off fol. 54^v in *Clem.* 5. 9. 2.

⁶¹ Unusual combinations are found for the separate tradition of *Exivi* among the "pure" MSS: *Exivi-Cum inter nonnullos* (Vat. lat. 1397), *Exivi-Suscepti-Execrabilis-Sedes* (Ross. lat. 565); cf. *supra*, B.

with its date, and Benedict XII, *Ad regimen* (= *Extrav. comm.* 3. 2. 13; fol. 51^{va-b}).⁶²

Except for the Benedictine constitution, which was not resumed in later printings, GW 7077 set a pattern: the appendix consisting of *Exivi* and *Execrabilis*, with the date Avignon, 13 kal. dec. an. 2 at the end, was reprinted with the Clementines fifteen times between 1467 and 1483: GW 7078-7081, 7085-7094, 7096;⁶³ only five printings appeared that end with *Exivi* alone: GW 7082-7084, 7095, 7097.⁶⁴ Meanwhile, the thought of publishing the Clementines together with a larger number of *extravagantes* caught the fancy of printers: not so much in connection with Jesselin's glossed compilation of *Extravagantes Johannis XXII* — the *Gesamtkatalog der Wiegendrucke* cites only one example of this combination⁶⁵ — as with a selection of truly "extravagant" constitutions by various popes.

While printings of the classical model, *Clem.* with *Exivi* and *Execrabilis* appended, continued to appear — more precisely, in the same year 1476 which saw between 2 May and 10 September the four printings GW 7087-7090 — Nicholas Jenson published at Venice a new edition, prepared by Alexander Nevus (de Nevo), doctor of both laws and professor of *ius pontificium* in the University of Padua (GW 7098 [Hain 5417], *sine die*). Nevo returned *Exivi de paradiso* to its correct place in the Clementine corpus (fol. 2-70^{rb}) and shifted *Execrabilis* to ninth place in a series of twenty divers *extravagantes* which begins with Boniface VIII, *Iniuncte nobis* (= *Extrav. comm.* 1. 3. 1) and ends with John XXII, *Sedes* (= *ibid.* 1. 6. 1) (fol. 70^{va-77^{rb}}).⁶⁶ But at the end of the Clementines, immediately after the last word of *Saepe contingit*, he left the terminal date stand which

⁶² The Vatican Library copy, with numerous marginal notes saec. xvi, is kept among the MSS (Vat. lat. 2704); last folio missing.

⁶³ Four of these are in the Vatican Library: GW 7080 (HC 5412), Mainz 1471: Stamp. Ross. 296. — GW 7081 (HC 5413), Strasbourg 1471: Stamp. Ross. 934. — GW 7085 (Hain 5416), Rome 1473: Incun. S. 49. — GW 7091, vol. I (HR 5409), Rome, c. 1478: Incun. S. 155 (vol. II, *Extrav. Jo. XXII* with *Glos. ord.* [Hain 4556]: Incun. Prop. II. 231).

⁶⁴ One of these in the Vatican Library: GW 7082 (Hain 5414), Rome 1472: Incun. S. 8 and Stamp. Ross. 1835.

⁶⁵ GW 7091, see note 63 *supra*.

⁶⁶ Vatican Library copy: Stamp. Ross. 492 (fol. 1 missing). For identification of the *extravagantes* see the notice in GW, t. 6, col. 715. There are 10 of Boniface VIII, 3 of Benedict XI, 2 of Clement V, and 5 of John XXII, including *Suscepti*, *Execrabilis*, and *Sedes*. — For Alexander de Nevo see SCHULTE, *Geschichte*, t. 2, pp. 330-331, 304 n. 4.

until then had properly appeared on the last page of every earlier edition (and manuscript) that ended with *Execrabilis*: "Data aui-
nione xiii. kal. decembris pont. nostri anno secundo" (fol. 70^{rb}). Whether this was carelessness or — more probably — a humanist's conjectural "reconstruction" of a closing line to match the end of the *Liber Sextus*⁶⁷ we cannot tell any more; but after this it is rather amusing to read the claim to *exactissima diligentia* which follows then and there in the colophon.⁶⁸

Nevo's text with its terminal date was faithfully copied in the editions to follow; not only in nine printings which adopted his arrangement of *extravagantes* (GW 7099-7107),⁶⁹ but also in the recension prepared three years later, with 29 *extravagantes* appended, by Petrus Albignanus Trecius J. U. D. of Padua (GW 7108): its text of the Clementines is a "seitengetreuer Nachdruck" of GW 7098.⁷⁰ Albignani's arrangement was reproduced as such eight times (GW 7109-7116), and nineteen times in editions which combine in two volumes Sext, Clementines, and the 29 *extravagantes* (GW 4864, 4886+7117, 4888-4903, 4905).⁷¹ Finally, it was with Nevo's dating that the Clementines appeared as tome II in the three-volume edition of Jean Chappuis (Paris, Rembolt, 1500-1501: GW 4904 [HC 3627]), which fixed the definitive arrangement of the *Extravagantes Johannis XXII* and 74 *Extravagantes communes* (tome

⁶⁷ See *supra*, at n. 25.

⁶⁸ "Opus clementinarum ere atque industria Nicolai Jenson gallici Uene-
tiji impressum feliciter explicit: vna cum apparatu dñi Joannis Andree: per
excellētissimum iuris utriusque doctorem dñm Alexandrum Neuum ius pon-
tificium in patauino gymnasio ordinarie legentem exactissima diligentia emen-
datum. M.cccc.lxxvj".

⁶⁹ Three exist in Vatican Library copies: GW 7101 (Hain 5428), Venice 1482: Incun. IV. 76 (2). — GW 7102 (Hain 5432), Venice 1484: Incun. IV. 7 (1). — GW 7103 (HC 5434), Venice 1485: Incun. IV. 244, IV. 258.

⁷⁰ So the notice in GW, t. 6, col. 722. The Vatican Library copy of GW 7108 (HC 5424), Venice 1479, is Stamp. Ross. 302.

⁷¹ The Vatican Library has two of these: GW 4886+7117 (Hain 3616+
H 5445), Venice 1490-1491: bound in one in Incun. S. 101. In this edition,
instead of the usual distribution — vol. I, *Sextus*; vol. II, *Clem.* and *Extrav.* —
the *Extravagantes* appear at the end of vol. I (GW 4886), and the Clementines
alone form vol. II (GW 7117). — GW 4888 (H 5446, HC 3618), Venice 1491:
Stamp. Ross. 2288, with some handwritten entries saec. xv in vol. II: fol. 52^v-
<53<sup>rtuanus, "Habita diligenti", Rome, 27 March 1471, to the *jurisconsulti* of
Mantua, on the const. *Ambitiosae* of Paul II (= *Extrav. comm.* 3. 4. un.); after
fol. 57 (ult.) a note on papal dates, and Pius II, const. *Auctoritate apostolica*,
1461, 15 kal. dec. an. iv, forbidding ordinations without dimissorial letters, etc.</sup>

III) as it was repeated in other sixteenth-century printings, to be eventually adopted in the official Roman edition of 1582.

The *Correctores Romani* thus gave Nevo's mistake, which had been carried from one printing to another for a hundred years, the stamp of authenticity. We do not know who was in charge of the Clementines among the members of the Roman commission, since in contrast to the fair amount of information we possess on the materials used, the methods applied, and the persons engaged in the *emendatio* of Gratian's Decretum,⁷² practically nothing is known of the work of the *Correctores* as regards the other parts of the *Corpus iuris canonici*. It is commonly said that the task of editing was in the hands of Francisco Peña (Pegna), Auditor of the Rota, and Sixtus Fabri O. P., Master of the Apostolic Palace, at least as far as the Decretals of Gregory IX are concerned. This is somewhat exaggerated in the case of Peña; for Fabri it is altogether wrong.⁷³ But whoever may have been responsible for the Clementines, we must conclude that he did his work from printed books, without bothering to collate the extant manuscripts.

EXCURSUS A

On the "Monteux" Text of the Clementines, with a Note on the Commentary of Pierre Bertrand

I. The observation that of the three manuscripts which begin with Pope Clement's preamble *Cum nuper* — Marburg C. 3, Chartres 275 (318), Kassel jur. 15 (= Friedberg's B, F, G) — at least two show signs of contamination with the vulgate text (cf. at note 19 *supra*; MÜLLER, *Das Konzil von Vienne*, p. 404) is not new but needs some further comment.

1) Cod. F presents both *Cum nuper* and John XXII's *Quoniam nulla* at the beginning (cf. FRIEDBERG, *Corp. iur. can.* t. 2, col. <1129-30> n. 1).

2) Cod. B omits in *Clem.* 1. 1. 1 (*De summa Trin. c. Fidei*) the sentence "textum vero b. Mathei—exponi" of the original version which John XXII, according to Johannes Andreae (*gl. Clem.* 1. 1. 1 v. *aperuit*), had canceled before the final publication of 1317. At this point, it is interesting to note that the original phrase is present, not only in the

⁷² For bibliography, see A. VAN HOVE, *Prolegomena* (= *Commentarium Lovaniense in Codicem iuris canonici* I, 1), 2nd ed. Malines-Rome 1945, p. 347 n. 6.

⁷³ See Excursus B, *infra*.

two Monteux texts FG, but by an inverted contamination also in some MSS of the vulgate (ADE, cf. Friedberg's n. 9 *ad loc.*) Friedberg drew from this the conclusion that the glossator "contendit quidem nec tamen probavit" the change made by John XXII (*Prolegomena*, col. lxii; cf. MÜLLER, *op. cit.* p. 412); he does not consider the possibility of contamination of the MSS. It is certain that Johannes Andreae had seen copies of the Monteux text (cf. at note 22 *supra*).

With the scanty information we possess on the extent of John XXII's revisions, two other possible cases of contamination remain, however, doubtful:

3) In *Clem.* 1. 2. 1 (*De rescr. c. Abbates*) all three Monteux MSS contain, with the vulgate, the passage "nec occasione locorum—haberent", provided we can rely on Friedberg's critical *apparatus* (but it should be remembered that of his nine MSS he collated CDEHI and FG only for passages in which he found variants in A or B; cf. *Proleg.* col. lxiv). Johannes Andreae and Jesselin de Cassagnes characterize this sentence as a post-conciliar addition; the latter is also quoted on this by Cardinal Pierre Bertrand (see below, II). But whereas Joh. Andreae's statement, "iste versus non fuit de prima compilatione concilii" (*gl.* 1. 2. 1 v. *nec occasione*), might well refer to the *compilatio* of Monteux, it could also refer to the original form of the conciliar decrees, and this seems to have been Jesselin's understanding, for he attributes the passage inserted "post concilium Viennense" to the men "quibus iste constitutiones in melius reformande commisse fuerunt", that is, to Pope Clement's commission. The passage may therefore actually have been in the Monteux text.

4) In the original text of *Clem.* 3. 11. 2 § 1 (*De relig. domibus c. Quia contingit § Ut autem*) the prohibition of giving hospitals to secular clerics in benefice was followed by a further clause, according to Joh. Andreae: "... in prima tamen editione concilii hoc fuit prohibitum: 'nec laicis habentibus filios vel uxorem ex qua possent verisimiliter filios procreare talia loca conferentur', quod postea fuit sublatum" (*gl.* 3. 11. 2 v. *saecularibus*, fin.) — but here too, the words "in prima editione concilii" are ambiguous. None of the three Monteux texts — again, if we can trust Friedberg's selective *apparatus* — contains the canceled passage.

II. The remark of Cardinal Pierre Bertrand on a post-conciliar insertion in c. *Abbates* (*Clem.* 1. 2. 1) has long been known from its publication by BALUZE, *Vitae Paparum Avenionensium*, Paris 1693, t. 1, p. 683 (nou. éd. par G. MOLLAT, Paris 1927, t. 2, p. 170). But Baluze's text, as taken from the cardinal's *Apparatus super Sextum et Clem.* in Paris MS lat. 4085 (cf. MOLLAT, t. 2, p. 285), that is, from the short version, is unsatisfactory: by omitting the final clause and the siglum of Jesselin de Cassagnes, it gives the wrong impression of being an original observation by Pierre Bertrand; by omitting a word in the first sentence, it arrives at an impossible grammatical construction; and by attaching

the gloss to a wrong lemma, it leads to a false notion on the extent of the post-conciliar interpolation.

The text printed below is that of the hitherto unknown long version of Book I of the *Apparatus* in a codex which in 1557 belonged to Jacques Spifame, bishop of Nevers, and is now at Washington, Catholic University MS 195, acquired from H. P. Kraus, New York, in 1959. (On the *Apparatus*, its MSS and its two recensions see P. FOURNIER, *Le Cardinal Pierre Bertrand, Canoniste*, in *Histoire littéraire de la France*, t. 37 [1938], pp. 110-118; Fournier knew the long recension only for Books II and V, Paris MS lat. 4085A: at the time he wrote, the only trace left of Spifame's MS was in a bookdealer's sales catalogue [L. Gougy, c. 1920-22], and Fournier thought that it probably contained the short recension). A detailed study of the Washington MS must be left for another occasion.

(fol. 54^{va}) *Nec uero*^a: hic uersus^b usque ad uerbum 'si quis' fuit post concilium Viennense additus per illos quibus iste constitutiones in melius reformande commisse fuerunt. Vnde per hoc dicas ipsas ligare a tempore missionis domini Iohannis pape, non a tempore prime publicationis, ut^c plene dixi supra in prohemio. Geze.^d

EXCURSUS B

Francisco Peña, Sixtus Fabri, and the Roman Edition of the Decretals

Manuals and other reference works of the history of canon law invariably tell us that among the *Correctores Romani* it was Peña and Fabri who were in charge of editing the Decretals, especially the Decretals of Gregory IX; cf. AE. L. RICHTER, *Lehrbuch des katholischen und evangelischen Kirchenrechts*, Leipzig 1842, § 79 n. 9 (= 8th ed. by R. DOVE and W. KAHL, Leipzig 1886, t. 1, p. 263); G. PHILLIPS, *Kirchenrecht*,

^a *Nec uero*] *Nec* *W*(ashington), *Nisi ubi B*(aluze). — The reference is to the words "*Nec (uero) occasione ... haberent*" (continues: "*Si quis*"), i. e. to the same passage as the gloss of Joh. Andreae *ad loc.* According to *B*, also the end of the preceding sentence, "*nisi ubi et coram ... gubernatoribus hoo liceret*" would be a post-conciliar insertion. But in *W* our gloss is preceded by two glosses on this very passage (v. *gubernatoribus*, v. *lice<re>t*); thus the lemma of *W* must be correct, even if the variant "*Nec uero occasione*" is not attested in Friedberg's *app. crit.* ^b *uersus om. B*. — Probably an oversight, since the masculine gender is retained in the predicate "*fuit additus*". ^c *ut plene et rell. om. B*. ^d Geze. (=Gezelinus) in *rubro W*. — The work of Pierre Bertrand is composed of ample quotations from other glossators, together with the author's own observations and comments, always with the respective names (in red, *W*) given at the end.

t. 4, Regensburg 1851, p. 344; SCHULTE, *Geschichte*, t. 2, p. 23; FRIEDBERG, *Corp. iur. can.*, t. 2, col. xli; R. VON SCHERER, *Handbuch des Kirchenrechts*, t. 1, Graz 1886, p. 271 n. 19; F. LAURIN, *Introductio in Corpus juris canonici*, Freiburg-Vienna 1889, p. 153f.; VAN HOVE, *Prolegomena* (note 72 *supra*), p. 361; A. M. STICKLER, *Historia iuris canonici latini*, t. 1, Turin 1950, p. 250; P. TORQUEBIAU, *Les Décrétales de Grégoire IX (Corpus iuris canonici, II)*, in *Dictionn. de Droit can.* t. 4 (1949), col. 631.

The only information on the share of Francisco Peña (1540-1612), auditor of the Rota, comes from a note of ANTONIO AGUSTÍN, in his *Dialogi de emendatione Gratiani* 1. 20, where he places him at the end of the roster of *Correctores Romani*: "Franciscus Pegna Hispanus, cuius sunt additiones Decretalium sine nomine, quia templum Dianae incendisse visus est" (ed. Paris 1672, p. 238; ed. Duisburg 1677, p. 343). The sarcastic remark has often been criticized, so by BALUZE in his note *ad loc.* (ed. Duisburg, p. 695f.); by F. FLORENT, *Praefatio de methodo et auctoritate collectionis Gratiani* (1641), in *Opera juridica*, Paris 1679, t. 1, p. 55; J. H. BOEHMER, *Corpus iuris canonici*, Halle 1747, t. 2, p. xxviii n. 98 (p. xxix); C. S. BERARDI, *Gratiani canones genuini ab apocryphis discreti*, Venice 1777, t. 1, p. xxxvii; see also H. LAEMMER, *Melematum Romanorum Mantissa*, Regensburg 1875, p. 65 n. 1 (p. 66). But whether unjust or not, Agustín's remark attributes to Peña only the marginal notes in the Roman edition of the Decretals, not the recension of the text itself.

The name of Sixtus Fabri, O. P., Master of the Apostolic Palace from 1580 to 1583, General of the Order 1583-1589 (d. 1614), was first connected with the editing of the Decretals by QUÉTIF and ECHARD, *Scriptores Ordinis Praedicatorum*, Paris 1719-1723, t. 2, col. 266b: "Jussu Gregorii XIII Decretales summorum Pontificum et Extravagantes ad codices MSS. recensuit, quae deinde correctiores prodierunt". AE. L. RICHTER, *De emendatoribus Gratiani*, Leipzig 1835, pp. 50-51, took it up from there, pointing to the mention made of Fabri in Gregory XIII's Breve *Cum pro munere pastorali* of 1 July 1580. From Richter's *Lehrbuch* of 1842 (see *supra*), where the source of attribution is no longer given, the statement about Fabri made its way into the modern standard works, being passed from one to another without citation of any evidence.

But Richter, as well as the learned Dominicans before him, had misunderstood the relevant passage in Gregory XIII's *Cum pro munere*:

...adhibitis nonnullis ex fratribus nostris sanctae Romanae Ecclesiae Cardinalibus, adiuncto etiam aliquorum doctrina et pietate insignium virorum studio, Decretum Gratiani nuncupatum absque glossis, necnon idem Gratiani Decretum cum Decretalibus Gregorii Papae Noni praedecessoris nostri, Sexto, Clementinis et Extravagantibus... revidendi, corrigendi et expurgandi curam demandauimus. Cum autem ipsum Decretum absque glossis a praefatis a nobis deputatis iam totum emendatum et correctum ac nonnullis annotationibus illustratum existat, ipsiusque maior pars a dilecto filio Paulo Con-

stabili, tunc sacri nostri Palatij Apostolici Magistro, una cum dictis Decretalibus felicitis recordationis Gregorii Noni praedecessoris nostri iam impressis, recognita et approbata sit, reliquum vero eiusdem Decreti una cum annotationibus praedictis, tam absque glossis quam ipsum totum cum glossis, Sextumque et Clementinas simul et Extravagantes a dilecto filio Sixto Fabri, eiusdem Palatij nostri Apostolici Magistro, recognoscenda omnia et approbanda, in officina populi Romani... imprimi et impressa diuulgari iusserimus, ... (*Decretum Gratiani*, ed. Rom. fol. a 2; ed. Friedb. col. lxxix).

What the Pope has to say, then, is this: (1) All of the *Decretum* without glosses is now (1 July 1580) on hand as emended and annotated by the *correctores*; (2) the major part of this text has been examined and approved (*recognita et approbata*) by the former Master of the Palace (1573-1580), Paolo Constabili, together with the *Decretales Gregorii IX*, which are already printed; (3) orders have been given that the remainder of the *Decretum* without glosses, as emended and annotated, as well as the entire *Decretum* with its glosses, the *Sextus*, the *Clementinae*, and the *Extravagantes* be examined and approved by the present Master of the Palace, Sixtus Fabri, and then printed in the *Officina Populi Romani*.

(The whole *Corpus* with its glosses was published two years later, in 1582, and often reprinted; the text of the *Decretum* without glosses [= 1] appeared only in 1584, in a Roman and a Venetian printing: cf. A. ADVERSI, *Saggio di un Catalogo delle edizioni del "Decretum Gratiani" posteriori al secolo XV*, in *Studia Gratiana*, t. 6 [1959], Nos. 78 and 81, also p. 422. Quétif and Echard saw a copy of the Venice 1584 edition with the title, "*Decretum Gratiani emendatum et notationibus illustratum. Major pars a F. Paulo Constabili Sacri Palatii apostolici magistro Gregorii XIII iussu editum*" [*sic*]: *Scriptores O. P.* t. 2, col. 255^b; not mentioned in ADVERSI, *loc. cit.*).

Sixtus Fabri thus never occupied himself with the edition of the Decretals of Gregory IX; in fact, they were already printed when he took office as Master of the Palace. It was his predecessor Constabili, Master of the Palace from 1573 to 1580, General of the Order from 1580 to his death in 1582 (QUÉTIF-ECHARD, col. 255^a), who was connected with the Roman edition of the Decretals; Fabri was put in charge only where Constabili had left off: for the remainder of Gratian and for the post-Gregorian books. But what is more, neither of the two had anything to do with the recension of the text ("ad codices MSS. recensuit", as QUÉTIF-ECHARD, t. 2, col. 266^b would have it). Gregory XIII's Breve speaks of *recognoscere et approbare*, and from the context it is clear that the first of these terms is to be taken in its literal meaning, "to examine", "to review". As one would expect from the successive Masters of the Apostolic Palace, their function was that of pre-censorship: to examine, certify, and approve the finished text for printing and publication.