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# CARDINALIS: THE HISTORY OF A CANONICAL CONCEPT

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## I. INTRODUCTION\*

It is commonly known that in the canonical sources of ancient and early medieval times many bishops, priests and deacons throughout the Latin Church

\* In addition to the conventional sigla, abridged references will be used for the following publications: AKKR = *Archiv für katholisches Kirchenrecht*.—M. Andrieu, *Les Ordines romani du haut moyen-âge I* (Spicilegium sacrum Lovaniense 11, Louvain 1931).—Ans. Luc. = *Anselmi episcopi Lucensis collectio canonum* ed. F. Thaner (Innsbruck 1906-15).—Bonizo, *Liber de vita christiana* ed. E. Perels (Texte zur Geschichte des römischen und kanonischen Rechts im Mittelalter 1, Berlin 1930).—H. Bresslau, *Handbuch der Urkundenlehre* (2nd ed. Leipzig-Berlin 1912-31; vol. II, 2 ed. H. W. Klewitz).—H. Th. Bruns, *Canones apostolorum et conciliorum saeculorum IV.V.VI.VII.* (Berlin 1839).—J. J. Christ, 'The Origin and Development of the Term "Title",' *The Jurist* 4 (1944) 101-23.—Deusd. = *Die Kanonensammlung des Kardinals Deusdedit* ed. V. Wolf von Glanvell (Paderborn 1905).—Duchesne, LP: see LP.—V. Fuchs, *Der Ordinationstitel von seiner Entstehung bis auf Innozenz III.* (Kanonistische Studien und Texte ed. M. Koeniger 4, Bonn 1930).—*Gallia christiana in provincias divisa* edd. D. de Sainte-Marthe, B. Hauréau, P. Piolin et al. (Paris 1715-1877).—A. Gaudenzi, 'Il monastero di Nonantola, il ducato di Persiceta e la Chiesa di Bologna,' *Bulletino dell'Istituto storico italiano* 36-7 (1916).—Gothofr. = *Codex Theodosianus cum perpetuis commentariis Iacobi Gothofredi* (Lyons 1665; Leipzig 1736).—Greg. Reg. = *Gregorii I papae Registrum epistolarum* edd. P. Ewald [bks. 1-4] and L. Hartmann [5-14] (MGH *Epistolae* 1-2, Berlin 1887-99).—P. Hinschius, *Das Kirchenrecht der Katholiken und Protestanten* (Berlin 1869-95).—Kehr, IP = *Italia pontificia sive repertorium privilegiorum et litterarum . . .* ed. P. F. Kehr (Berlin 1906-35).—H. W. Klewitz, 'Die Entstehung des Kardinalskollegiums,' *ZRG Kan. Abt.* 25 (1936) 115-221.—B. Kurtscheid, *Historia iuris canonici I* (Rome 1941).—LD = *Liber diurnus Romanorum pontificum ex unico codice Vaticano* ed. Th. Sickel (Vienna 1889); *Liber diurnus ou recueil des formules usitées par la chancellerie pontificale . . .* ed. E. de Rozière (Paris 1869).—LP = *Le Liber pontificalis: texte, introduction et commentaire* ed. L. Duchesne (Paris 1886-92).—(Charles) Le Cointe, 'Institution et rang des cardinaux,' memorandum written by the Oratorian priest (1611-81) for Colbert and printed (from MS Paris, Bibl. nat. *Collection des cinq-cents de Colbert* vol. 172, fols. 52-159) in *Analecta iuris pontificii* 18 (1879) 28-55; 257-77.—J. Mabillon, *Museum italicum* (Paris 1687-9; 2nd ed. 1724).—E. Martène, *De antiquis ecclesiae ritibus* (Rouen 1700-2; 2nd ed. Antwerp 1736-8 [the best according to Andrieu]; 3rd ed. Venice 1783: cited according to the numbers of books, chapters, articles, *ordines*).—L. A. Muratori, *Antiquitates italicæ medii ævi* (Milan 1738-42); id. *Rerum italicarum scriptores* (Milan 1723-51).—NA = *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde*.—Onofrio Panvini, 'De origine cardinalium liber unicus' ed. A. Mai, *Spicilegium Romanum* 9 (1843) 469-511.—W. Peitz, 'Liber Diurnus: Beiträge zur Kenntnis der ältesten päpstlichen Kanzlei,' *Sitzungsberichte der kais. Akademie der Wissenschaften in Wien, phil. hist. Kl.* 185, 4 (1918).—G. Phillips, *Kirchenrecht* (Regensburg 1845-72; vols. 1-2: 3rd ed. 1855-7).—J. B. Sigmüller, *Die Thätigkeit und Stellung der Cardinäle bis Papst Bonifaz VIII.* (Freiburg Br. 1896).—E. Schwartz, *Acta conciliorum oecumenicorum* (Berlin-Leipzig 1914-38).—M. Giuseppe Tamagna, *Origini e prerogative de' cardinali della S.R.C.* (Rome 1790).—Thaner, *Ans. Luc.*: see *Ans. Luc.*—A. Thiel, *Epistolæ Romanorum pontificum genuinæ* (Braunsberg 1868).—L. Thomassin, *Vetus et nova ecclesiæ disciplina circa beneficia et beneficiarios* (Paris 1688 [as translated from the French original, *Ancienne et nouvelle discipline* etc. Lyons 1676-9]; used ed. Mayence 1787: cited according to the numbers of parts, books, chapters, paragraphs).—

were called *cardinales*, long before that term came to be used exclusively, or even primarily, for a specific group of dignitaries in the Church of Rome. Historians do not agree, however, as to the original meaning of the word in the language of the ancient Church. Nor do they, as a rule, explain with sufficient clearness in what sense it was first applied to those members of the Roman clergy—the priests of the ancient *tituli* or quasi-parishes; the deacons both of the papal palace and the city's *diaconiae*; and seven bishops of the metropolitan province—who eventually rose to the unique position of becoming the 'senators' and sole electors of the Pope.

The complex subject has been amply, and at times hotly, discussed. Authors of the sixteenth, seventeenth, and eighteenth centuries explained the term, *cardinalis*, in various ways.<sup>1</sup> Many construed it as originally meaning *principalis*—like the pivot (*cardo*) which governs the revolving door—and referred it to the chief incumbent, the titular and proper superior of a church, such as the bishop, the first among several priests serving the same place, and the first deacon.<sup>2</sup> Other writers held that *cardinalis* was a synonym of *intitulatus*, *fixus*, or *incardinatus*, in the general sense of a cleric permanently and firmly attached, as a hinge, to the service of a church.<sup>3</sup> Others again, reversing the image of hinge and door, insisted that the term implied attachment to a *cardo* or main church (*ecclesia cardinalis*), such as a parish church, a cathedral, or, in an eminent

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C. H. Turner, *Ecclesiae occidentalis monumenta iuris antiquissima* (Oxford 1899-1930).—F. Ughelli, *Italia sacra sive de episcopis Italiae* . . . (2nd ed. by N. Coleti, Venice 1717-22).—Wolf von Glanvell, *Deusd.*: see *Deusd.*—ZRG = *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*.

<sup>1</sup> Already Jacques Godefroy complained, *Comm. Cod. Th.* 12, 6, 7 (V, 541 Lugd.; IV, 573 Lips.): '... ubi cardinale quid sit, non magis quam quid cardinales presbyteri, diaconi, ad hanc diem scitur.' Muratori begins his dissertation, 'De cardinalium institutione,' *Antiq.* 5, 155 with the words: 'Multi multa de cardinalibus eorumque origine atque institutione commentati sunt; . . . actum agere non est mihi animus.' Select bibliographies of the period are found in Hinschius, *Kirchenr.* I, 309 and Kehr, *IP* 1, 1f.

<sup>2</sup> Onofrio Panvini, 'De episcopatibus, titulis et diaconis cardinalium liber,' in *Romani Pontifices et Cardinales S.R.E. ab eisdem . . . creati* (Venice 1557) Appendix p. 51; id. *De origine cardinalium* 481; H. Plati, *De cardinalis dignitate* (Rome 1602; 6th ed. 1836) 2, 3, 23; J. Cohellius, *Notitia cardinalatus* (Rome 1653) 3; J. B. Card. de Luca, 'Relatio romanae curiae forensis' 4, 2, in *Theatrum veritatis et iustitiae* (Rome 1671) 7, 2, 17; M. Gonzalez Tellez, *Commentaria perpetua in singulos textus quinque librorum decretalium Gregorii IX* (Lyons 1673) 1, 24, 2 ad v. *sacerdotum cardinalium*; 3, 4, 2; P. de Goussainville, note to *epp.* 1, 15 and 12, 2 in his edition (Paris 1675) of the letters of Gregory the Great (reprinted in the Maurist edition, to *epp.* 1, 15 and 14, 7; cf. *PL* 77, 461 note e; 1310 note g); L. Thomassin, *Vetus et nova Ecclesiae disciplina* 1, 2, 115, 2; J. Kleiner, *De origine et antiquitate Emorum S.R.E. Cardinalium* (Heidelberg 1767; ed. A. Schmidt, *Thesaurus iuris ecclesiastici*, Heidelberg-Bamberg-Würzburg 1773: II, 443-66) §13, and many others. The doctrine goes back as far as the glossators; cf. *Glossa ordinaria* on C. 21 q. 1 c. 5 ad v. *cardinalem*; on X. 1, 24, 2 ad v. *cardinalium*.

<sup>3</sup> C. Fleury, *Institutiones iuris ecclesiastici* (= *Institution au droit ecclésiastique*, Paris 1676; 3rd latin ed. Venice 1779) 1, 19, 2; Gothofredus *loc. cit.*; Muratori, *Antiq.* 5, 156f.; Z. B. van Espen, *Ius ecclesiasticum universum* (Louvain 1753-68) 1, 22, 1, 1; J. Devoti, *Institutionum canonicarum libri IV* (Rome 1785-9; used ed. 1830) 1, 3, 2, 22 note 4. Also De Luca and Goussainville *loc. cit.* offer this explanation, in combination with the first theory.

sense, the Church of Rome.<sup>4</sup> Behind these etymological wranglings there was an issue even more passionately disputed: the 'parochialist' theory, especially dear to Gallican writers, which contended that in olden times *cardinalis* had been more or less a name for parish rectors.<sup>5</sup>

A few authors, finally, were struck by the fact that in the letters of St. Gregory the Great the word, *cardinalis*, appears always to be used in connection with bishops, priests, or deacons appointed to a church different from that of their first ordination. In other words, according to these authors the term was always correlated, at least in the language of St. Gregory, with *incardinare* or *cardinare* in the sense of transferring a cleric.<sup>6</sup> The heralds of this interpretation, in particular Tamagna (1790) and Nardi (1830), found it a useful instrument in combating the claims of the *parrochisti*. They did not attempt, however, to explain the obvious discrepancy between the Gregorian and the medieval usage nor to connect the former in any way with the origins of the Roman Cardinalate.<sup>7</sup>

After the middle of the nineteenth century, only George Phillips (1864) and Paul Hinschius (1869) continued to give consideration, in their respective monumental treatises of Canon law, to the peculiar use of *cardinalis* and *incardinare* in St. Gregory's correspondence.<sup>8</sup> But they, too, treated it rather as an isolated phenomenon of no consequence for the general institution of the cardinalate.<sup>9</sup> The majority of modern canonists preferred to make no further mention of the problems of interpretation created by the Gregorian texts. It became usual instead to avoid all historical difficulties by a more or less hazy juxtaposition of the several common etymologies at hand: it now was held that the various connotations of *cardinalis* and *incardinatus*—such as permanently attached to a church;

<sup>4</sup> St. Robert Bellarmine, *Controversiae* 2: 'De membris Ecclesiae militantis' 1, 16 (Venice 1596; *Opera omnia* ed. Naples 1872: II, 174); Cohellius, *op. cit.* 4D; L. Nardi, *Dei parrochi* (Pesaro 1829-30) II, 403-21 (but see note 6 *infra*).

<sup>5</sup> Thus Thomassin, *op. cit.* 1, 2, 116, 1; Muratori, *Antiq.* 1, 552; 5, 155; 162B; 163C; 164f.; the anonymous author of the pamphlet, *Cosa è un cardinale?* reprinted and refuted by Tamagna, *Origini*; and several Gallicanists cited by Nardi, *loc. cit.* But see also Panvini, *De orig. card.* 482f.; Kleiner, *op. cit.* §21 (455 Schmidt).

<sup>6</sup> The *Correctores Romani* in their note on Gratian D. 71 c. 5 (Rome 1582, col. 465-6; ed. Friedberg, *Corpus iuris canonici* I, Leipzig 1879, col. 258) ad v. *cardinandum*: '... Cardinare vero, seu cardinalem constituere (quod est in fine huius capituli), ita videtur B. Gregorius accepisse, ut canonicam translationem significet...'; Panvini, *De orig. card.* 472-8; F. Florent, *Tractatus IX in IX priores titulos libri I decretalium Gregorii IX* (Paris 1641) 266-8; Cohellius, *op. cit.* 3; 4D; Le Cointe, *Instit. et rang* 29f. 33; J. Garnier, note to LD 11 ad v. *incardinari* in his edition (Paris 1680) of the *Liber diurnus* (reprinted in ed. Rozière 32); Tamagna, *Origini* I, 99-109; Nardi, *Dei parrochi* II, 396-403.

<sup>7</sup> Le Cointe 30-2 and Tamagna I, 109f. at least point correctly to some later instances of *cardinalis* in the Gregorian sense. Panvini 479f. and Garnier *loc. cit.* do not even admit it in all of St. Gregory's letters. A typical example for the disconnected parallelism of the different interpretations is found in Cohellius *loc. cit.*

<sup>8</sup> Phillips, *Kirchenr.* VI, 50-9; Hinschius, *Kirchenr.* I, 313f.

<sup>9</sup> Phillips VI, 53f. holds that the other meaning of *cardinalis*, i.e. cleric of a main church or *cardo* (cf. pp. 43-50; 54f.), runs parallel to the Gregorian usage since the sixth century. Hinschius arbitrarily grafts the derivation from *cardo* (I, 314-7) and the identification with *principalis* (319f.) on his discussion of the Gregorian terminology.

belonging to a main church or *cardo*; first ranking or *principalis* among the clerics of a church—had somehow been merged in forming name and dignity of the cardinals.

This syncretism<sup>10</sup> is still today the prevailing approach of textbooks and reference works. Several recent findings concerning the origins of the Roman cardinalate<sup>11</sup> have not as yet shaken this attitude.<sup>12</sup> The present study does not purport to present many new documents bearing on the question at issue—in fact, the majority of the pertinent texts was already known by writers of the seventeenth and eighteenth centuries. But a critical re-examination and integration of the materials will yield, it is hoped, new results as to both the history of a canonical term and the beginnings of the Sacred College.

## II. THE 'GREGORIAN' CARDINALS

The canonical usage of the Ancient Church in speaking of cardinal bishops, priests, and deacons, must be studied from the authentic papal documents: a fragment of Gelasius I (492–6), two letters of Pelagius I (555–60), and the numerous pertinent letters of Gregory the Great (590–604), preserved in his *Registrum epistolarum*. The so-called *Constitutum Silvestri*, a notorious forgery of the sixth century, has to be left aside for later consideration.<sup>1</sup> Our principal source, then, is St. Gregory's Register. Only with the help of its abundant evidence,<sup>2</sup> will a correct interpretation of the few earlier but isolated papal texts be possible.

### 1. *Episcopus cardinalis*

It has been held that St. Gregory used this expression and its equivalents, *pontifex cardinalis*, *cardinalis sacerdos*, simply as synonymous with *episcopus*

<sup>10</sup> To cite a few representative names only: R. von Scherer, *Handbuch des Kirchenrechts* I (Graz 1886) 473f.; Sägmüller, *Cardinäle* 6f.; id. *Lehrbuch des katholischen Kirchenrechts* I, 4 (4th ed. Freiburg 1934) 516; id. 'Cardinal,' *Catholic Encyclopedia* 3 (1908) 333; C. Wenck 'Das Cardinalscollegium,' *Preussische Jahrbücher* 53 (1884) 431; id. 'Kardinalat,' *Die Religion in Geschichte und Gegenwart* 3 (1st ed. 1912) 925; F. M. Cappello, *De Curia Romana* I (Rome 1911) 18; J. Forget, 'Cardinaux,' *DThC* 2 (1905) 1717f.; V. Martin, *Les cardinaux et la curie* (Bibliothèque catholique des sciences religieuses 36, Paris 1930) 20; A. Molien, 'Cardinal,' *Dictionnaire de droit canonique* 2 (1937) 1313–5; A. Dumas, in Fliche-Martin, *Histoire de l'Église depuis les origines à nos jours* 7 (Paris 1940) 154f.

<sup>11</sup> Especially by Duchesne and by Dr. Klewitz.

<sup>12</sup> See e.g. the most recent discussion in J. T. McBride, *Incardination and Excardination of Seculars* (The Catholic University of America Canon Law Studies 145, Washington, D. C. 1941) 1–13; these pages also separately under the title 'The Terms Incardination and Excardination,' *The Jurist* 2 (1942) 292–304.

<sup>1</sup> Cf. ch. V sec. 3 *infra*.

<sup>2</sup> Many of the letters were already studied by Panvini, *De orig. card.*, and almost all of them, by Thomassin. The latter included in his list (*Vet. et nova discipl.* 1, 2, 115, 6) also Greg. Reg. 4, 13 (JE 1284) of which one sentence reads in Goussainville's edition (*ep.* 3, 13): '... in alia quacumque ecclesia eum volumus cardinari.' But since the correct reading is: '... in aliam quamcumque ecclesiam ... ordinari' (cf. MGH *Epp.* 1, 247 notes e, f), this text must be dropped for our purposes.

*proprius*, to denote the ordinary pastor of a diocese.<sup>3</sup> This opinion overlooks the fact that the great pope never calls a bishop *cardinalis* when writing of him, or addressing him, with reference to his original diocese, that is, to the church of his episcopal ordination. On the contrary, the term is only applied in connection with granting or not granting a bishop ordinary jurisdiction in a foreign diocese.

Greg. *Reg.* 1, 77 (JE 1146): Gregory appoints Bishop Martin of Tainate in Corsica as *cardinalis sacerdos* (*pontifex*) to the Church of Aleria: '... quoniam ecclesia Tainatis ita est ... occupata atque diruta, ut illuc ulterius spes remeandi nulla remanserit, in ecclesiam te Alirensem, quae iam diu pontificis est auxilio destituta, cardinalem ... hac auctoritate constituimus sine dubio sacerdotem. Ita ergo ... cuncta dispone vel ordina, ut ... ecclesia Dei alterno gaudio repleatur cardinalem te suscepisse pontificem' (96, 25-97, 6 Ewald). Cf. also *Reg.* 1, 79 (JE 1147).

*Reg.* 2, 37 (JE 1191): Gregory appoints Bishop John of Alessio on the Dalmatian coast as *cardinalis sacerdos* to the Church of Squillace in Calabria: '... Propterea te Johannem ab hostibus captivatae Lissitanae civitatis episcopum in Squillacina ecclesia cardinalem necesse duximus constituere sacerdotem. ... Et licet a tua hoste imminente depulsus sis, aliam quae a pastore vacat debeas ecclesiam gubernare, ita tamen, ut si civitatem illam ab hostibus liberam effici et Domino protegente ad priorem statum contigerit revocari, in eam in qua es prius ordinatus ecclesiam revertaris. Sin autem praedicta civitas continua captivitatis calamitate premitur, in hac in qua et a nobis incardinatus es debeas permanere' (132, 30-133, 8 Ewald).<sup>4</sup>

*Reg.* 3, 13 (JE 1217): Gregory appoints Bishop Agnellus of Fondi as *cardinalis sacerdos* to the Church of Terracina: '... Et quia defuncto Petro pontifice suo te sibi cardinalem postulant constitui sacerdotem. ... Quia igitur ob cladem hostilitatis nec in civitate nec in ecclesia tua est cuiquam habitandi licentia, ideoque hac te auctoritate Terracinensi ecclesiae cardinalem constituimus sacerdotem' (172, 3-9 Ewald). ... Illud quoque fraternitatem tuam scire necesse est, quoniam sic te praedictae Terracinensi ecclesiae cardinalem esse constituimus sacerdotem, ut et Fundensis ecclesiae pontifex esse non desinas; ... ut ante dictae Fundensi ecclesiae tibi iura potestatemve nullo modo subtrahamus' (172, 26-173, 4 Ewald).<sup>5</sup> Cf. also *Reg.* 3, 14 (JE 1218).

*Reg.* 2, 12 (JE 1162): Gregory denies the petition of the clergy and people of Naples who want Bishop Paul of Nepi as their *episcopus cardinalis* ('ut eum cardinalem habere desideretis episcopum ...' 110, 16 Ewald), but entrusts to the latter the temporary admin-

<sup>3</sup> *Glossa ordinaria* on C. 21 q. 1 c. 5 (= Greg. *Reg.* 3, 13) ad v. *cardinalem*: 'idest proprium episcopum.' *Glos. ord.* on X. 1, 24, 2 (cf. on this doubtful canon ch. IV nn. 37, 75 *infra*) ad v. *cardinalium*: 'idest principalium.' Simile vii. q. i. *Pastoralis* (c. 42 = Greg. *Reg.* 2, 37); et dicuntur cardinales a cardine ... simile xxiii. dist. *Presbiter* (c. 3 = Gelasius JK 677) et lxxi. dist. *Fraternitatem* (c. 5 = Greg. *Reg.* 6, 11). Ibi exponitur *cardinalis*, idest proprius, et xxi. q. i. *Relatio* (c. 5 = *Reg.* 3, 13). See further Thomassin, *op. cit.* 1, 2, 115, 3-6, and, above all, Ewald in MGH *Epp.* 1, 97 note 3 to Greg. *Reg.* 1, 77; also Mommsen, 'Ostgothische Studien,' NA 14 (1888-9) 472; J. F. O'Donnell, *The Vocabulary of the Letters of St. Gregory the Great* (The Catholic University of America Studies in Medieval and Renaissance Latin 2, Washington, D. C. 1934) 136; McBride, *op. cit.* 5-7 (*Jurist* 2, 296-8).—As to the theory, *cardinalis* = *principalis*, it had always difficulties with the term, cardinal bishop. Bellarmine (*Controv.* 2, 1, 16) easily observed: '... nam non sunt in una dioecesi plures episcopi' (*Opp.* II, 174).

<sup>4</sup> This letter passed on into Gratian: C. 7 q. 1 c. 42.

<sup>5</sup> Gratian: C. 21 q. 1 cc. 5-6.—Phillips, *Kirchenr.* V, 462 and Ewald 173 n. 4 wrongly interpret this text as treating of a union of the two bishoprics.

istration of the vacant see with the rank of *visitor* (*Reg.* 2, 13; 18; 26: JE 1163, 1170, 1179; *Reg.* 3, 35: JE 1240).<sup>6</sup>

*Reg.* 14, 7 (JE 1920): the bishop of Euria, dispossessed of his see, has taken refuge with his clergy at Cassiope on the island of Corcyra and usurped jurisdiction over the village; Gregory upholds the rights of the bishop of Corcyra but allows the refugees to stay, provided that the bishop of Euria give a *cautio*, 'per quam promittat, nullam sibi in eo potestatem, nullum privilegium, nullam iurisdictionem, nullam tamquam cardinalis episcopus ulterius auctoritatem defendere. . .' (2, 426, 19-21 Hartmann); they are to remain as *hospites* (line 25) only, until they can return to Euria.

To understand these cases, we have to remember that the ancient Church abhorred the transfer of a bishop to another see, which appeared to the early Canon law as an adulterous violation of the spiritual marriage between the bishop and his Church.<sup>7</sup> Consequently, whenever St. Gregory found that in an orphaned bishopric an episcopal election was not possible or feasible, three ways were open to him.<sup>8</sup> (1) He could send another bishop and commit to him the temporary administration of the diocese until a proper election would take place; for these administrators, the term *visitor*<sup>9</sup> is used.<sup>10</sup> (2) He could temporarily

<sup>6</sup> Cf. Johannes Diaconus, *Vita s. Gregorii* 3, 18 (PL 75, 141); Phillips, *Kirchenr.* V, 459f.

<sup>7</sup> For the prohibition of transfers see the Councils of Nicaea c. 15; Antioch c. 21; Sardica cc. 1, 2; Chalcedon cc. 5, 20. Cf. Johannes Scholasticus, *Synagoga L. titulorum* 12 (ed. V. Benešević, *Abhandlungen der Bayerischen Akademie der Wissenschaften*, phil.-hist. Abt. Neue Folge 14 [1937] 13f. 52-5); for a Greek illustration of these rules in the tenth century see J. Compennass, 'Zwei Schriften des Arethas von Kaisareia gegen die Vertauschung der Bischofssitze,' *Studi Bizantini e Neoellenici* 4 (1935) 87-125, in particular p. 111f. The comparison with adultery is first found in a Roman synod under Pope Siricius c. 13 (Bruns 2, 280). An excellent exposé was given in the ninth century by Hincmar of Reims, *ep. de translatione episcoporum contra Actardum* (PL 126, 210-30; see also nn. 16, 27-8 *infra*).—Cf. Phillips, *Kirchenr.* V, 424-31 and note 59; L. Ober, 'Die Translation der Bischöfe im Altertum,' *AKKR* 88 (1908) 209-29; 441-65; 625-48; 89 (1909) 3-33; Fuchs, *Ordinationstitel* 78-85; Kurtscheid, *Hist. iur. can.* 112-6.

<sup>8</sup> Phillips, *Kirchenr.* V, 458-63.

<sup>9</sup> The visitor-administrator of a foreign diocese is not to be confused with a bishop visiting in his own diocese. On the latter see the Synods of Tarragona 516 c. 8 and II Braga 572 c. 1 (Bruns 2, 17; 39); Gelasius I JK 710; Pelagius I JK 984, 991. Cf. Thiel, *Epp. Rom. pont.* 495 n. 2 (on JK 710); Sdrulek, 'Visitationen,' in F. X. Kraus, *Real-Encyclopädie der christlichen Alterthümer* 2 (Freiburg 1886) 958-60. Two instances are found in St. Gregory's letters. *Reg.* 2, 19 (JE 1172): Bishop Paulinus of Taurianum, near Reggio Calabria, who had been temporarily dispossessed of his see and given various interimistic assignments (cf. *Reg.* 1, 38-9; 2, 51: JE 1108-9; 1171), is told to visit his own church 'quotiens oportunitatem tempus credideris' (116, 6-7 Ewald); in fact, we find him later again at Taurianum, cf. *Reg.* 9, 134; 13, 21 (JE 1656, 1886). In *Reg.* 9, 71 (JE 1596), Gregory enjoins upon Bishop Passivus of Fermo to consecrate an oratory at Teramo, 'si in tuae dioceseos, in qua visitationis impendis officium, memorata constructio iure constitit' (2, 90, 14-5 Hartmann). Cf. n. 43 *infra*. The Teramo case has been misunderstood by most authors as treating of the visitation of a foreign diocese, see Appendix A, *infra*.

<sup>10</sup> *Greg. Reg.* 1, 15; 76; 79 (JE 1083, 1145, 1147); 2, 13; 18; \*25-6; \*39-40 (JE 1163, 1170, 1178-9, 1192-3); 3, 24-5; 35 (JE 1228-9, 1240); 4, \*39 (JE 1311); 5, \*12-4; \*21-2 (JE 1327-9, 1336-7); 6, \*21; 38 (JE 1400, 1420); 7, \*16 (JE 1462); 9, 60; \*80-1; \*99-100; \*140; \*184-5; (JE 1585, 1605-6, 1624-5, 1665, 1712-3); 13, \*16-7; \*20-1 (JE 1880-1, 1885-6). The letters marked by an asterisk were made out according to a formulary of the chancery. *Reg.* 5, 13 and 13, 16 passed on into Gratian: D. 61 cc. 19 and 16.—Cf. Phillips, *Kirchenr.* V, 459f.; Hinschius,

unite the vacant see to a neighboring diocese: 'ecclesia . . . quam tuae ecclesiae adgregari uniriq[ue] necesse est.'<sup>11</sup> (3) He could appoint another bishop, whose own diocese had been destroyed or temporarily invaded, as the proper ordinary of the vacant diocese. Gregory termed this latter provision *incardinare* or *cardinare*, and the incardinated bishop, hence, *cardinalis*.<sup>12</sup>

Such an incardination<sup>13</sup> was the only type of transfer which did not run counter to the canonical rules, because it did not disrupt the bond between the *cardinalis episcopus* and his original bishopric.<sup>14</sup> If this bishopric had been utterly destroyed, the incardination became permanent, comparable to a second marriage after the death of the first spouse. But if the former see could be recovered, the bishop would be obliged to return and the bond with the diocese of incardination would be dissolved,<sup>15</sup> comparable to the dissolution of a second marriage in the case of presumptive death, if the first spouse survives.<sup>16</sup> At any rate, the *episcopus cardinalis* did not lose his original title by the transfer,<sup>17</sup> yet he did become the true bishop—be it permanently or upon condition—of his new diocese.<sup>18</sup> In this, and only in this, sense is it correct to say that every *episcopus cardinalis* was also an *episcopus proprius*. But the converse is not true, because the fact that a cardinal bishop was always made by incardination distinguishes him from every *episcopus proprius* who acquired his see by election and ordination.

Nevertheless, the modern editor of St. Gregory's Register maintained that the two terms, *cardinalis* and *proprius*, were interchangeably employed by Gregory

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*Kirchenr.* II, 229–32. For *visitatores* before St. Gregory see Gelasius I JK 677–8 (n. 22 *infra*); John II JK 886–8; Agapitus I JK 890.

<sup>11</sup> Greg. *Reg.* 1, 8 (JE 1075: Formio-Minturno); 2, 44 (JE 1197: Miseno-Cumae = C. 16 q. 1 c. 50); 2, 48 (JE 1202: Velletri-Tre Taverne); 3, 20 (JE 1224: Nomentum-Cures); 6, 9 (JE 1389: Regio-Carina). Cf. the form-letter LD 9 (discussed by Peitz, *Lib. diurn.* 64f.); Joh. Diaconus, *Vita* 3, 14; Phillips, *Kirchenr.* V, 351f.

<sup>12</sup> Thus correctly Joh. Diaconus, *Vita* 3, 15–6, the *Correctores Romani*, and the other writers cited ch. I n. 6 *supra*; also Phillips VI, 52f. and Hinschius, *Kirchenr.* I, 313. The assertion by Ewald (97 n. 3 to *Reg.* 1, 77): 'incardinatus in ecclesia autem dicitur primo loco ordinatus' (repeated by Bannier, *ThLL* 3, 442 s.v. *cardino*) is entirely gratuitous.

<sup>13</sup> Hinschius I, 314 n. 3 wrongly refers in this context also to Greg. *Reg.* 2, 8 (JE 1159; *ep.* 2, 7 ed. Maur.), a letter which in fact treats of the appointment of an Apostolic Vicar for Sicily, not of an incardination.

<sup>14</sup> Cf. *Reg.* 3, 13 *supra*.

<sup>15</sup> Cf. *Reg.* 2, 37 *supra*.

<sup>16</sup> The analogy between incardination and second marriage in cases of uncertain death was already drawn by Hinemar, *ep. cit.* (note 7 *supra*: PL 126, 225f.); cf. also Phillips V, 464; Hinschius I, 314.

<sup>17</sup> Cf. *Reg.* 2, 37; 3, 13.

<sup>18</sup> The permanent, if conditional, nature of the incardination was rightly stressed by Phillips V, 457f. and Hinschius I, 314 n. 4 against Florent, *op. cit.* (ch. I n. 6 *supra*) 266f. who classified the institute as a mere *commendatio ad tempus*. The incardinated bishop signs, and is addressed, with the name of the new bishopric: we find e.g. Agnellus of Fondi (*Reg.* 3, 13) after his incardination styled as *episcopus civilatis Terracinensis* (Roman synod of 595: Greg. *Reg.* 5, 57a [1, 366, 3 Hartmann]), *episcopus de Terracina* (*Reg.* 7, 16: JE 1462), *episcopus Terracinensis* (*Reg.* 8, 19; 9, 45: JE 1507, 1569).



and by Gelasius I.<sup>19</sup> But even apart from the fact that Ewald cannot cite one instance of a bishop who is called *cardinalis* in his original diocese, his reasoning is futile. An examination of the pretended arguments from St. Gregory reveals only that in some letters certain bishops who are vested with jurisdiction in foreign dioceses—be it by virtue of visitation, incardination, or union—are allowed to act with the same authority as a proper bishop (in one case: as a cardinal and proper bishop);<sup>20</sup> and that in some letters certain bishops are appointed as *cardinales*. It cannot be seen how the two premises, 'Some foreign bishops may act like *episcopi proprii*' and 'Some foreign bishops are called cardinals,' should yield any valid syllogism. On the contrary, the one letter which gives to a visiting bishop powers *tamquam cardinalis et proprius sacerdos*<sup>21</sup> clearly distinguishes between the two qualifications.

The argument from St. Gelasius is equally fallacious. In one case the Pope asks a bishop to ordain priests in a foreign diocese, 'sciturus visitatoris nomine te, non cardinalis creasse pontificis,' and another time he gives a similar injunction, 'visitatoris officio, non potestate proprii sacerdotis.'<sup>22</sup> In other words, Gelasius states that a *visitator* is neither a cardinal nor a proper bishop.<sup>23</sup> As long as the axiom stands, *ex mere negativis nihil sequitur*, it is impossible to conclude from these two texts that *cardinalis* means *proprius*. What can be seen however, from the fragments of St. Gelasius is the fact that a hundred years before Gregory

<sup>19</sup> Ewald, *MGH Epp.* 1, 97 n. 3 (to *Reg.* 1, 77): 'Cardinalem sacerdotem aut pontificem idem significare ac proprium pontificem probant epistolae . . . ubi proprius, et epistolae . . . ubi cardinalis eodem modo dicitur,' referring, besides the Gregorian texts, to Gelasius JE 679, 680 (mistakenly for JE 677, 678).—See also note 3 *supra*.

<sup>20</sup> *Greg. Reg.* 1, 76 (JE 1145) to a *visitator*: '... cunctis igitur te rebus superscriptae ecclesiae ut proprium volumus uti pontificem' (96, 15-6 Ewald); 3, 25 (JE 1229) in a case of visitation: '... ut omnia quae ad curam utilitatemque ecclesiae pertinent tamquam proprius episcopus debeat ordinare' (183, 6-7 Ewald), cf. 3, 24 (JE 1228): '... Et praeter ordinationes clericorum cetera omnia in praedicta ecclesia tamquam cardinalem et proprium te volumus agere sacerdotem' (182, 14-5 Ewald); 2, 48 (JE 1202) in a case of union: '... quaeque tibi de eius patrimonio, vel cleri ordinatione, seu promotione, vigilantia ac canonica visa fuerint cura disponere, quippe ut pontifex proprius liberam habebis ex nostra praesenti permissione licentiam' (149, 23-5 Ewald); the same formula in other cases of union: 3, 20 (JE 1224; 178, 15-7 Ewald) and 6, 9 (JE 1389: '... quippe ut proprius sacerdos': 1, 388, 10-2 Hartmann); 2, 44 (JE 1197) in the case of consumptive union: '... quaeque tibi de earum patrimonio, vel cleri ordinatione, sive promotione, iuxta canonum statuta visa fuerint ordinare atque disponere, habebis ut proprius revera sacerdos liberam ex nostrae auctoritatis consensu atque permissione licentiam' (143, 12-5 Ewald); 3, 13 (JE 1217) to a cardinal bishop: '... quicquid vero de praedictae rebus ecclesiae, vel de eius patrimonio, seu cleri ordinatione promotione et omnibus generaliter ad eam pertinentibus sollerter atque canonice ordinare facereque provideris, liberam habebis quippe ut sacerdos proprius modis omnibus facultatem' (172, 22-5 Ewald). Note the terms, *ut, quippe ut, tamquam*.

<sup>21</sup> *Reg.* 3, 24.

<sup>22</sup> Gelasius JK 677, 678 (485 f. Thiel). The first fragment passed on into Gratian: D. 24 c. 3.

<sup>23</sup> Cf. Phillips, *Kirchenr.* V, 460; VI, 51; Hinschius, *Kirchenr.* I, 313.—In *Greg. Reg.* 3, 24 (note 20 *supra*) the cumulative formula, 'tamquam cardinalem et proprium te volumus agere sacerdotem,' was evidently used in order to make clear that both rulings of Pope Gelasius did not apply to this particular case of visitation.

the Great the canonical distinction between foreign bishops as visitors and foreign bishops as cardinals was already in existence. And obviously the term, *cardinalis pontifex* was used by Gelasius in the same sense as later by Gregory, i.e. as denoting a bishop licitly transferred to another see. In this very sense we meet the expression again, after Gregory the Great, in the *Liber diurnus*,<sup>24</sup> and during the ninth century in letters of Pope Hadrian II (867–72) concerning the transfer of Bishop Actard of Nantes to the metropolitan see of Tours,<sup>25</sup> as well as in letters of John VIII (872–82) concerning the transfer of Frothar of Bordeaux to the archbishopric of Bourges.<sup>26</sup> Hincmar of Reims, perhaps the foremost canonist of the Carolingian age, was still perfectly conscious of this ancient canonical usage of *incardinare*<sup>27</sup> and *cardinalis*.<sup>28</sup>

<sup>24</sup> LD 8. Cf. Tamagna, *Origini* I, 109; Hinschius I, 314.—Peitz, *Lib. diurn.* 67f. tries to demonstrate a pre-Gregorian origin of that formula. But it appears rather to be modeled upon a combination of various Gregorian cases.

<sup>25</sup> JE 2903: '... decernimus hunc sanctissimum crebro dictum fratrem nostrum et coepiscopum Hactardum ecclesiae, quae forte suo fuerit viduata rectore, penitus incardinari' (ed. E. Perels, MGH *Epp.* 6, 2, ii, Berlin 1925, p. 708 lines 6–8; cf. lines 31–3); JE 2904: '... sciens a nobis eidem te stabiliter incardinatum' (709, 26 Perels; cf. 710, 14–5); JE 2945: '... constituimus cardinalem metropolitanum et archiepiscopum Turonicae ecclesiae' (738, 29–30 Perels). See also JE 2902, 2946, 2951 (706, 18–9; 742, 8; 744, 27 Perels).—Cf. Tamagna *loc. cit.*; Phillips V, 465f.; Hinschius *loc. cit.*

<sup>26</sup> JE 3049: '... fratrem scil. nostrum Frotharium in Bituricensem ecclesiam cardinalem fieri decernentes' (ed. E. Caspar, MGH *Epp.* 7, 1, Berlin 1912, p. 8 line 37–9, 1); JE 3054: '... in ipsa eum incardinandum necessario esse censemus' (12, 15 Caspar). See also JE 3055, 3083 (13, 13 and 20; 37, 27 Caspar).—Cf. Le Cointe, *Instit. et rang* 30–2; Tamagna *loc. cit.*; Phillips V, 467f.; Hinschius *loc. cit.*

<sup>27</sup> Hincmar violently opposed in his *ep. de transl.* (note 7 *supra*) the transfer of Actard. But he recalls in this letter (c. 7) various cases of incardination by earlier popes, to wit, that of St. Augustine of England: '... ab eodem beato Gregorio in civitate regia eiusdem gentis accepto pallio archiepiscopus est incardinatus' (PL 126, 213D–214A), and of St. Boniface: 'Winfrid cognomento Bonifacius a tertio (!) papa Gregorio Romae fuit ordinatus episcopus... aliquamdiu in civitate Agrippinensi Colonia sedit et emergente necessitate atque utilitate ad Moguntinam ecclesiam translatus, ibi est archiepiscopus regulariter incardinatus' (214A), and quotes in c. 10 the letters Greg. *Reg.* 2, 37 and 3, 13. See also his letter (A.D. 866) on the case of Ebo of Reims, c. 3: '... Sed neque necessitate cogente, propria amissa provincia secundum Calchedonenses canones, civitate in qua ordinatus fuerat captivata, pulsus ab hostibus extitit (scil. Ebo), ut alibi incardinari valeret, sicut in decretis beati Gregorii et aliorum sedis Romanae pontificum invenimus' (ed. E. Perels, MGH *Epp.* 8, 1, Berlin 1939, p. 180 lines 4–7 = PL 126, 52); the new fragment discovered by Perels, 'Eine Denkschrift Hinkmars von Reims im Prozess Rothads von Soissons,' NA 44 (1922) 43–100: '... ordinato praefato Winfrid cognomento Bonifacio a Gregorio praedecessore Zachariae et incardinato illo ab eodem Zacharia in metropoli ecclesia Mogontina' (77 NA = 125, 20–1 MGH); and the *Capitula synodica Rhemen.* (874) c. 1: '... qui vacantes ecclesiis vacantibus incardinantur' (Mansi 15, 493 B; cf. Tamagna, *Origini* I, 110 and Phillips VI, 56 n. 73).

<sup>28</sup> See his quotations from Greg. *Reg.* (previous note) and his tract *De iure metropolitano* c. 20: '... cui (scil. Bonifacio) per annos XXV in eadem praedicatione sine cardinali sede laboranti praefatorum successor Zacharias papa inter cetera in privilegio sibi directo scripsit atque firmavit ad locum' (PL 126, 201). Evidently, *sedis cardinalis* is not to be understood here as 'a cathedral' (thus Hinschius, *Kirchenr.* I, 315 n. 1) but as 'a see of incardination': for Hincmar was wont to cite the case of St. Boniface (missionary bishop

2. *Presbyter cardinalis*

In Christian Antiquity, the ordination of a cleric was essentially bound up, as we know, with his attachment not only to a diocese but also to a particular church, which was and remained, from his first orders up to the priesthood, his *titulus*.<sup>29</sup> The *intitulatio* created a bond between the cleric and the church of his ordination,<sup>30</sup> even though this bond was not as strictly indissoluble as that between a bishop and his see, because the *intitulatio* lacked the connotation of a spiritual marriage.<sup>31</sup> We therefore find in the ancient canons that the reception of a minor cleric, deacon, or priest in another diocese was not absolutely forbidden, but forbidden only without the proper bishop's consent.<sup>32</sup> Still, it follows from the permanent nature of the *intitulatio* that, like the admission of a cleric into another diocese, any change of title in his own diocese was not a matter of course, for it involved the relaxation of a canonical bond:<sup>33</sup> we may term it incardination

in 722, archbishop in 732, assigned to the see of Mayence in 748, cf. Gregory II JE 2160-1; Gregory III JE 2239; Zachary JE 2286) as an example of incardination, cf. note 27.—On the use made by Hincmar (in *ep. de translat.* 7, *ep. de iure metrop.* 20, and in Perels' fragment) of the spurious letter JE 2292, see M. Tangl, *Die Briefe des heiligen Bonifatius und Lullus* (MGH *Epp. sel.* 1, Berlin 1916) 202 n. 1; id. 'Studien zur Neuausgabe der Bonifatius-Briefe,' NA 41, 1 (1917) 72f., 75f.; Perels, NA 44, 60 n. 1; NA 48 (1929) 156f.

<sup>29</sup> Cf. the Councils of Arles 314 cc. 2, 21 (2, 107; 110 Bruns); Chalcedon cc. 6, 10, 20 (ed. E. Schwartz, *Acta concil. oecumen.* 2, 2, ii: pp. 34, 36, 39; 55-6, 59; 88-9, 91); Mileve 402 c. 4 (1, 178 c. 90 Bruns); II Arles 443 (452?) c. 13 (2, 132 Bruns); Angers 453 c. 1 (2, 137 Bruns); I Tours 461 c. 11 (2, 141 Bruns). The ancient law was stressed again in Carolingian times, cf. ch. IV note 2 *infra*.

<sup>30</sup> Cf. Hinschius, *Kirchenr.* I, 63; Imbart de la Tour, *Les paroisses rurales du IV<sup>e</sup> au XI<sup>e</sup> siècle* (Paris 1900) 63f.; M. Hofmann, 'Die Excardination einst und jetzt,' *Zeitschrift für katholische Theologie* 24 (1900) 100f.; C. V. Bastnagel, *The Appointment of Parochial Adjutants and Assistants* (The Catholic University of America Canon Law Studies 58, Washington, D. C. 1930) 17, 23f.; Kurtscheid, *Hist. iur. can.* 152; McBride, *Incardination and Excardination* (ch. I n. 12 *supra*) 66-8, 72, 99f.; J. Christ, *Titel* 120 n. 79.—*Contra*: Fuchs, *Ordinationstitel* 95f. The dissertation by J. Weier, *Der kanonische Weihetitel rechtshistorisch und rechtsdogmatisch gewürdigt* (Cologne 1936) is not available to this writer.

<sup>31</sup> The indissolubility has been exaggerated by R. Sohn, *Das altkatholische Kirchenrecht und das Dekret Gratians* (Leipzig 1918) 229-31; thus far the criticism of Fuchs 99f. is justified.

<sup>32</sup> Cf. the canons cited (n. 29) of Chalcedon, II Arles, Angers, Tours; also Innocent I JK 286 (c. 7 = D. 71 c. 2); Leo I JK 409 (c. 4), 411 (c. 9 = C. 19 q. 2 c. 1). In *Greg. Reg.* 1, 55; 81; 5, 20; 6, 20; 14, 11 (JE 1125, 1150, 1339, 1399, 1924) the technical term for this consent is *cessio*. See also sec. 3 at n. 57 *infra*.

<sup>33</sup> Against the consensus of canons and authors, Fuchs, *Ordinationstitel* 95f. maintains that a change of place in the diocese was nothing extraordinary. But contrary to his contention (cf. 92 n. 11) the canons of Arles (314) leave no doubt; c. 2: 'De his qui in quibuscumque locis ordinati fuerint ministri, in ipsis locis perseverent' (2, 107 Bruns), and c. 21: 'De presbyteris aut diaconibus qui solent dimittere loca sua in quibus ordinati sunt et ad alia loca se transferunt . . .' (110 Bruns). And the Council of Merida 666 c. 12 (2, 89f. Bruns) requires the bishop's permission for the transfer of *parochitani presbyteri atque diacones* to the cathedral, not because the early medieval parish was 'a sort of bishopric in itself' (Fuchs 96), but because of the principle stated above. Otherwise there would be little sense in the precept of the Council of Vaison 529 c. 1 (ed. F. Maassen, MGH *Conc.* 1, Hannover 1893, p. 56), that the junior parish clergy be educated for ordination in the

on a minor scale. This fact is not sufficiently realized by those writers who take pains to explain the *presbyteri cardinales* in St. Gregory's letters as archpriests of the cathedral or as rectors of a parish.

And yet the texts, if carefully studied, show with perfect clearness that in ancient times no priest was *presbyter cardinalis* in his original title. The critical term occurs for the first time in a letter of Pelagius I: The bishop of Nola had proposed to sell the liturgical equipment (*sacra ministeria*) of a rural parish in his diocese,<sup>34</sup> because this church was so impoverished that it could not maintain its clergy. Whereupon the Pope, rebuking the bishop, ordered him to reorganize the place as an auxiliary station (*titulus*) of his cathedral and to have it served 'per deputatos cardinales, ecclesiae presbyteros'<sup>35</sup>; obviously these priests were to become *cardinales* because detailed to the service of a new title distinct from, though depending upon, the cathedral—not in their capacity as priests of the cathedral itself.

In another case, Gregory the Great wrote to the bishop of Syracuse that a subdeacon of the cathedral, who had been promoted to the priesthood in order to serve a rural parish, be allowed to return to the city as *presbyter cardinalis*.<sup>36</sup> Again, this has nothing to do with an alleged quality of the cathedral as the bishopric's *cardo*<sup>37</sup>—the metaphor is entirely alien to St. Gregory—but indicates only that this particular rural pastor has to be re-incardinated.

A third group of cases is represented by a series of letters—one by Pelagius I and five by Gregory the Great—concerning the dedication of new oratories on

parishes themselves. Finally, if certain canons required an oath from every cleric that he remain at the place of his ordination, this does not mean (as Fuchs 86f. seems to believe) that without the oath the change of title would have been licit.—See also the criticism by D. Lindner, book review, ZRG Kan. Abt. 21 (1932) 398.

<sup>34</sup> JK 976: '... ob necessitatem aeccliesiae Sessulanae, quae Nolanae aeccliesiae esse videtur parroecchia, vendendi sibi (sic) sacra ministeria concedi ... postulasti' (ed. S. Loewenfeld, *Epistolae pontificum romanorum ineditae*, Leipzig 1885, p. 13). For *sacra ministeria* as denoting church goods, in particular sacred vessels, see St. Gelasius JK 688: 'Ecclesiastica ministeria, quae unicuique basilice fidelium deuotio deputauit. ... Et ideo ... calicem ... restituere sine intermissione' in the collection of Deusdedit 3, 117 (320 Wolf von Glanvell).

<sup>35</sup> JK 976: '... Si tanta est aeccliesiae Sessulanae penuria, ut parroecchia esse non possit, eam potius in titulum Nolanae aeccliesiae constituere, ut ... per deputatos cardinales, aeccliesiae presbyteros, ministeria (leg. misteria?) celebrentur.' (The last two commas are inserted by the present writer). For *titulus* in the sense of an auxiliary church (*Nebenkirche*, *Aussenstation*), see Fuchs, *Ordinationstitel* 9; J. Christ, *Titel* 118.

<sup>36</sup> Greg. Reg. 13, 32 (JE 1513): '... magnae benignitatis est si eum in ecclesia ubi subdiaconi est functus officio, sanctitas vestra reducere atque illic presbyterum voluerit constituere cardinalem' (2, 396 Hartmann). The letter passed on into Gratian: D. 74 c. 6.—Johannes Diaconus, *Vita* 3, 11 is not correct if he speaks of this case as if the bishop had forcibly promoted the subdeacon and as if Gregory had commanded his return: 'Item cardinales violent in parochiis ordinatos forensibus in pristinum cardinem Gregorius reuocabat ...' (PL 75, 135; interpretation accepted by Phillips, *Kirchenr.* V, 53 n. 64). Correctly Tamagna, *Origini* I, 102.

<sup>37</sup> As suggested by Joh. Diac. *loc. cit.*

the estates of lay founders.<sup>38</sup> In accordance with a formulary of the papal chancery, which eventually came to be included in the *Liber diurnus*,<sup>39</sup> both popes authorized, on the condition that a sufficient endowment of the new foundation be shown, its consecration by the local bishop, but usually forbade the erection of a baptismal font (*baptisterium*) and the installation of a *presbyter cardinalis* at the place. If the founder wished Masses to be said at the oratory, he was to apply every time to the bishop for a priest.<sup>40</sup>

This formulary was designed to safeguard, at least in the Roman metropolitan province, the parochial rights of the established public *ecclesiae baptismales* against the ambitions of wealthy private founders. Prevention of the growth of lay prerogatives in any form was the keynote of the 'Gelasian' program for churches of private foundation<sup>41</sup>—at a time when the emperors in the East as well as the bishops of Visigothic Spain already felt obliged to make certain concessions to lay founders, and when in Gaul the independence of private churches and their clergy from the parochial-baptismal organization was already well advanced.<sup>42</sup> With the first clause of prohibition, therefore, the several papal

<sup>38</sup> Pelagius JK 959; Greg. *Reg.* 2, 15 (JE 1167); 9, 58; 71; 165; 180 (JE 1583, 1596, 1692, 1707). Note that *Reg.* 9, 165 does not regard an oratory but a monastic church of private foundation. For other letters closely related to this group see nn. 40, 43a *infra*.—The entire complex of problems connected with the 'Dedication of Sacred Places in the Early Sources and in the Letters of Gregory the Great' has been recently studied by J. A. Eiden-schink, *The Jurist* 5 (1945) 181–215; 323–58.

<sup>39</sup> LD 11 (38 Rozière; 10 Sickel). Cf. Garnier's note ad v. *petitorii*, reprinted in Rozière's edition; Goetz, 'Das Alter der Kirchweihformeln X–XXXI des Liber diurnus,' *Deutsche Zeitschrift für Kirchenrecht* 5 (1895) 14–21; Peitz, *Lib. diurn.* 76; Eiden-schink, *op. cit.* 325ff. We cannot enter here the lively discussion caused by Peitz' remarkable, but generally rejected theory which makes the LD, at least in its chief portions, an official collection of pre-Gregorian origin. But there can be no doubt that form 11 belongs to those few items in the LD which existed as individual form letters in the papal chancery already before the accession of St. Gregory, cf. Rozière p. xxviif.; Goetz, *op. cit. passim*; Bresslau, *Urkunden-lehre* II, 243; M. Tangl, 'Gregor-Register und Liber Diurnus,' NA 41, 3 (1919) 752; Eiden-schink *loc. cit.* The wording of the very first letter of our group, Pelagius JK 959, shows the use of a formulary, cf. Hinschius, *Kirchenr.* I, 316 n. 2; Goetz 14ff.

<sup>40</sup> JK 959: '... Ita tamen ut in eodem loco nec futuris temporibus baptisterium construatur, nec presbiterum constituas cardinalem. Set quotiens missas sibi fieri forte maluerit, a dilectione tua presbiterum nouerit postulandum...' in Deusd. 3, 128 (323 Wolf von Glanvell). Repeated almost verbatim in Greg. *Reg. cit.* (except for 9, 71: see note 43 *infra*). In three other letters—*Reg.* 8, 5; 9, 233; 13, 18 (JE 1492, 1760, 1882)—the pertinent part of the formula is abridged: '... et cetera secundum morem.' In Pelagius JK 958 (Deusd. 3, 129: oratory founded by an abbot in his monastery) and Greg. *Reg.* 2, 9 (JE 1158: basilica founded by a deacon) the entire clause 'Ita tamen... cardinalem' of LD 11 is omitted, see note 43a *infra*.

<sup>41</sup> Gelasius I JK 630, 636 (cc. 4, 25), 643, 679–81, 704, 709 etc.; LD 10. Cf. U. Stutz, *Geschichte des kirchlichen Benefizialwesens* I (Berlin 1895) 56–64; Imbart de la Tour, *op. cit.* (note 30 *supra*) 181 n. 1; A. Galante, *La condizione giuridica delle cose sacre* I (Turin 1903) 57ff. 121ff.; M. Torres, 'El origen del sistema de las "iglesias propias",' *Anuario de historia del derecho español* 5 (1928) 169–73; Fuchs, *Ordinationstitel* 142, 160, 193; Eiden-schink, *op. cit.* 330.

<sup>42</sup> For the East see Justinian's *Nov.* 57, 2; 123, 18, and other sources cited by A. Stein-wenter, 'Die Rechtsstellung der Kirchen und Klöster nach den Papyri,' *ZRG Kan. Abt.* 19

letters sought to prevent that a private oratory be raised to a baptismal church. This results quite logically in the second prohibition: for if the oratory were to be vested with baptismal, i.e. parochial functions, it would of necessity require the service of a permanently installed priest. And indeed, in the one instance in which St. Gregory positively contemplated the concession of parochial rights, he omitted the prohibitive clause relative to the *baptisterium* and ordered expressly that the oratory should obtain a *presbyter cardinalis* for saying Mass and taking care of the faithful.<sup>43</sup> On the other hand, where no infringements from the founder's side were to be feared at all, the twofold prohibition of the formula might be left out altogether.<sup>43a</sup>

But from this connection between permitting (or forbidding, for that matter) parochial functions in oratories and the installation of a cardinal priest, it does not follow that the crucial term denotes the rector of a parish.<sup>44</sup> The priest is called a cardinal in these particular cases simply because the oratory always had, as a new foundation, so far no clergy of its own, and thus he would needs have to

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(1930) 3f. For Spain: the Councils II Braga 572 cc. 5-6; IX Toledo 655 c. 2 (2, 41 and 1, 292 Bruns). For Gaul: Councils of Agde 506 c. 21 (2, 150 Bruns); I Orléans 511 c. 25 (ed. Maassen, MGH *Conc.* 1, 8); Clermont 535 cc. 4, 15 (67 and 69 Maassen); IV Orléans 546 cc. 7, 33 (89 and 94 Maassen).—The moot question, passionately discussed ever since the appearance of Stutz' *Benefizialwesen*, whether these phenomena belong to the sphere of 'proprietary church' law (which in the case of an affirmative answer would no longer be a specifically Germanic institution, as Stutz maintained) lies outside the scope of the present inquiry. As to the East, Stutz later acknowledged (*Sitzungsberichte der Preussischen Akademie der Wissenschaften*, phil.-hist. Klasse 1930, p. 213) the existence of an autochthonous Byzantine proprietary church system. It has now been studied in detail by S. Troickij, *Klitorsko pravo u Vizantiji i u Nemanjičkoj Srbiji* (Belgrade 1935); cf. the review by F. X. Schmid, *ZRG Kan. Abt.* 28 (1939) 624-9.

<sup>43</sup> Reg. 9, 71 to Bishop Passivus of Fermo: '... Et ideo, frater carissime, ... praedictum oratorium solemniter consecrabis. Presbyterum quoque te illic (i.e. at Teramo) constituere volumus cardinalem, ut quotiens praefatus conditor fieri sibi missas fortasse voluerit vel fidelium concursus exegerit, nihil sit quod ad sacra missarum sollemnia exhibenda valeat impedire' (2, 90, 14-23 Hartmann). Cf. Hinschius, *Kirchenr.* I, 316f. Stutz, *Benefizialwesen* 62 n. 98; id. *Göttingische gelehrte Anzeigen* 1904, p. 24 n. 1; Eidenschink, *op. cit.* 341.—The next step in such a case would have been the permission to erect a *baptisterium* (cf. the forms LD 29, 30), but the Pope's first mandate was not successful and no appropriate priest was found. Therefore St. Gregory abandoned, three years later, the idea of a *presbyter cardinalis* for Teramo and directed that a certain Oportunus be first ordained sub-deacon and subsequently promoted to *pastoralis cura* (Reg. 12, 4 [JE 1855]; for further discussion of the Teramo case see Appendix A *infra*).

<sup>43a</sup> This reason at least seems the most plausible explanation of the abridgment made of LD 11 in JK 958 and Greg. Reg. 2, 9 (note 40 *supra*). In two other authorizations for the dedication of monastic oratories (Reg. 3, 58; 5, 50: JE 1264, 1365) St. Gregory did not use LD 11 at all but was satisfied with merely advising the bishop: '... ut quotiens necesse fuerit, a presbiteris ecclesiae tuae in superscripto (al. sancto) loco deservientibus celebrentur sacrificia veneranda missarum' (218, 7f. Ewald). Cf. LD 15; Goetz, *op. cit.* (n. 39 *supra*) 22f.; Eidenschink, *op. cit.* 344f.

<sup>44</sup> As was assumed by Panvini, *De orig. card.* 481f.; Thomassin, *Vet. et nova discipl.* 1, 2, 115, 6; Mabillon, *Museum ital.* II, xix; Hinschius, *Kirchenr.* I, 317; Goetz, *op. cit.* 16, 20f.; H. Schäfer, *Pfarrkirche und Stift im deutschen Mittelalter* (Kirchenrechtliche Abhandlungen ed. Stutz 3, Stuttgart 1903) 8 n. 3.

be incardinated from another *titulus* of the diocese.<sup>45</sup> But whenever a private church or oratory had already its own lower clergy and was to be provided with a priest, the latter could be ordained within the title:<sup>46</sup> in these cases, consequently, the term, *presbyter cardinalis*, was not applied.<sup>47</sup>

In the Register of Gregory the Great there is but one letter the facts of which are less evident. When the Church of Populonia was entirely without *sacerdotale officium*, i.e. destitute of its bishop and of any priest, the Pope appointed a *visitor* and directed him to ordain at the cathedral one cardinal priest and two deacons, also in the (rural) parishes, three priests.<sup>48</sup> Here the critical term, *unum cardinalem presbyterum*, seems at first sight to contain no other connotation than that of a cathedral priest<sup>49</sup>—unless the added injunction to ordain also two deacons can be interpreted as indicating not merely that the cathedral was somewhat short of deacons, but rather that it had no deacons left at all. In small bishoprics, as a rule, not more than two or three deacons were required,<sup>50</sup> and if for Populonia the Pope found it necessary, instead of simply granting the usual

<sup>45</sup> A somewhat similar explanation in Tamagna, *Origini* I, 106f.; less appropriate are the interpretations given by L. Nardi, *Dei parrochi* II (Pesaro 1830) 398 and Phillips, *Kirchenr.* VI, 58. The latter assumes that the formulary had in mind the incardination of priests from other, devastated dioceses. As Hinschius I, 316 rightly observes, this hypothesis has no foundation in the sources.

<sup>46</sup> This was required, for fiscal reasons, also by imperial legislation, cf. the much discussed statute of Emperor Honorius (398) in *Cod. Th.* 16, 2, 33 = *Cod. Iust.* 1, 3, 11: 'Ecclesiis quae in possessionibus ut adsolet diversorum, vicis etiam vel quibuslibet locis sunt constructae, clerici non ex alia possessione vel vico, sed ex eo ubi ecclesiam esse constiterit, eatenus (*om. Iust.*) ordinentur, ut propriae capitationis onus ad sarcinam recognoscant . . .'; cf. Imbart de la Tour, *op. cit.* 63 n. 2; F. Thaner, book review, *Gött. gel. Anz.* 1898, p. 302; Stutz, *ibid.* 1904, p. 44 note.—For a description of the clergy serving in churches of private estates see also St. John Chrysostom, *Hom. 18 in Act.* (PG 60, 147–9); the terms of this homily should however not be pressed (as is done, e.g., by A. Pöschl, *Bischofsgut und Mensa episcopalis* I, Bonn 1908, p. 33f. and Fuchs, *Ordinationstitel* 154f. 158) as if they were intended to convey authoritative and definite legal-canonical statements.

<sup>47</sup> Cf. the final mandate, Greg. *Reg.* 12, 4, in the Teramo case (note 43 *supra*): the subdeacon Oportunus '... ad pastorem curam debeat promoveri' (2, 350, 16–7 Hartmann). For a similar situation in a private basilica, 'quae in possessione filii et consilarii nostri, viri magnifici Theodori fundata est,' see Pelagius I JK 995: the bishop of Sabina is told to ordain one Rufinus, presented by the founder, as subdeacon and the Pope voices his intention to promote him later to the priesthood (*presbyterum faciemus*), in order that next Easter 'sacra mysteria in memorata basilica a persona competenti valeant adimpleri' (454 Thiel). Cf. further LD 41, ordination of a *presbyter* in a previously established oratory: 'Filius noster ille postulavit in oratorio instantia (*al. in substantia*) sua conservato debere sibi ordinari presbyterum . . .' (30 Sickel; 70 Rozière; see also Stutz, *Benefizialwesen* 62 nn. 99–101). Baluze's note ad v. *presbyterum*: 'cardinalem videlicet . . .' (reprinted in Rozière) misses the point of difference between LD 41 and LD 11.

<sup>48</sup> Greg. *Reg.* 1, 15 (JE 1083): '... memoratae ecclesiae visitor accedas et unum cardinalem illic presbyterum et duos debeas diacones ordinare. In parrochiis vero praefatae ecclesiae tres similiter presbiteros . . .' (16, 10–2 Ewald).

<sup>49</sup> Thus the common interpretation, from Panvini, *De orig. card.* 480 down to Hinschius, *Kirchenr.* I, 315 and McBride, *Incard. and Excard.* 4; 7.

<sup>50</sup> Cf. J. Forget, 'Diacones,' *DThC* 4 (1911) 711; Kurtscheid, *Hist. iur. can.* 53. See e.g. the fragment of Gelasius JK 673: '... diaconos in ecclesia sua secundum possibilitatem vel loci ipsius paupertatem secundum dispositam traditionem apostolorum aut tres aut V aut VII . . .' (509 Thiel).

faculty of ordination,<sup>51</sup> to issue a peremptory mandate to ordain two deacons (*debeas ordinare*), it seems most plausible that a complete lack of cathedral deacons was the situation with which the visiting bishop had to cope. It would explain, too, the need for a *presbyter cardinalis*, for it would mean that at the cathedral—any *promotio per saltum* not being contemplated in the text<sup>52</sup>—there was nobody eligible to the priesthood.

If we consider the high improbability of St. Gregory's having arbitrarily deviated from his own concept of *cardinalis*, this conjecture seems not too daring. And it becomes fully justified if we compare the text in question with that of another letter, written by St. Gregory when a similar lack of priests befell the bishopric of Nicotera. This time, the Pope stated expressly that a priest be chosen *e clero eiusdem ecclesiae*, and in significant contrast with the Populonia case, no mandate to ordain deacons is given to the visitor, nor is the prospective priest called *cardinalis*.<sup>53</sup> Thus we may safely assume that the difference of expression had a sound canonical reason: in Populonia, a priest could not be ordained *e clero eiusdem ecclesiae* but only by way of incardination—whether the candidate be selected among the deacons of other churches in the diocese<sup>54</sup> or

<sup>51</sup> As he did in other cases; cf. e.g. Greg. *Reg.* 1, 76 (JE 1145): '... in qua etiam ecclesia vel eius parrochiis diacones atque presbyteros tibi concedimus ordinandi licentiam' (93, 10-1 Ewald); 4, 39 (JE 1311): '... ei ordinandi presbyteros ac diacones, si necesse fuerit ... dedimus licentiam' (276, 2-4 Ewald).

<sup>52</sup> The exceptional character of promotions *per saltum*—somewhat underestimated by J. Tixeront, *L'ordre et les ordinations* (Paris 1925) 230-3—makes it imperative to exclude such a possibility whenever it is not expressly mentioned in a given text. Even in such instances as Greg. *Reg.* 12, 4 or Pelagius JK 995, where nothing is said about intermediate ordination to the diaconate of subdeacons who are prospective candidates for the priesthood (notes 43, 47 *supra*), we have no right to assume that *promotio per saltum* was contemplated. Similarly in Gelasius JK 668: '... si quos habes vel in acolythis vel in subdiaconibus maturioris aetatis et quorum sit vita probabilis, in presbyteratum studeas promovere' (489 Thiel), observation of the regular scale of promotion is evidently presupposed though not expressed. Cf. the Council of Serdica c. 8 (c. 12 in *Coll. I Dionysiana*; c. 13 in *Coll. Hispana and Dion. II*: ed. C. H. Turner, *Monum.* 1, 2, iii, pp. 472-3; Gratian D. 61 c. 10); Pope Siricius JK 255 (cc. 9, 10), Innocent I JK 314 (c. 5), Zosimus JK 339; also the notice on Pope Sylvester in LP I, 171 (with Duchesne's note 25 p. 190). But for a possible abbreviation of the interstices see Gelasius JK 636 (cc. 2, 3). Cf. Hinschius, *Kirchenr.* I, 111f.; Kurtscheid, *Hist. iur. can.* 158.

<sup>53</sup> Greg. *Reg.* 6, 38 (JE 1420): '... adhortamur ut de clero eiusdem ecclesiae requirere debeatis, cuius vita et mores ad hoc possit convenire et eum illic presbyterum festinetis auxiliante Domino consecrare' (1, 415, 7-9 Hartmann).—A further analogous case, *Reg.* 1 51 (JE 1121), concerning the diocese of Canosa (today united with Bari), is not helpful because the text of the pertinent letter is defective at the crucial passage: '... memoratae ecclesiae visitator accedas et \* vel duos parrochiales presbyteros debeas ordinare' (77, 12-3 Ewald). Ewald's conjecture: '... accedas et (unum cardinalem illic presbyterum et duos diacones) vel duos parrochiales ...' *rell.* (77 n. 2) is unwarranted and does not make good sense. The facts of the case must have been different from those at Populonia.

<sup>54</sup> This possibility is indicated by the mention of other *parrochiae* in the bishopric. Whether deacons were available in these baptismal churches depends upon the construction of the passage, 'in parrochiis vero praefatae ecclesiae tres similiter presbyteros ...': the adverb, *similiter*, may stand for *etiam cardinales* (then no deacons were on hand), or simply for *ordinabis quoque* (in this case, there were deacons present for promotion). See also Phillips, *Kirchenr.* VI, 52 n. 60.



from the visitor's own bishopric. His functions and position would not be different from those of the priest at Nicotera, as both of them were destined to be the sole *presbyter* each of the respective cathedral. But only the priest of Populonia, as not promoted within his title, would be a cardinal priest.

### 3. *Diaconus cardinalis*

It needs no further explanation, then, that for St. Gregory a cardinal deacon was a deacon incardinated from another diocese or *titulus*.

Greg. *Reg.* 1, 81 (JE 1150): Gregory advises Bishop Ianuarius of Cagliari, who had told him of a certain Liberatus serving as deacon in his church, that '... si a decessore tuo non factus est cardinalis, ordinatis a te diaconibus nulla debet ratione praeponi' (99, 26-8 Ewald), but that '... si ... eum post haec facere cardinalem volueris, nisi pontificis sui cessionem sollemni more meruerit, abstinendum ab eius incardinatione memineris' (100, 3-5 Ewald).

*Reg.* 4, 14 (JE 1285): Gregory recommends to Bishop Maximianus of Syracuse the deacon Felix who had left his proper diocese during certain troubles but had obtained forgiveness from the Pope. Wishing to provide for the deacon's sustenance, Gregory writes: '... in tua Syracusana ecclesia eum praevidimus cardinandum' (247, 19 Ewald); the bishop may decide whether to employ Felix as deacon or to give him only a pension.

*Reg.* 6, 11 (JE 1390): Bishop Fortunatus of Naples had asked Gregory, 'ut Gratianum ecclesiae Benefranae diaconem tuae cederemus ecclesiae cardinandum' (1, 389, 18-9 Hartmann). The permission is granted because the Church of Venafrò is at present held by the enemy and has no bishop; therefore the bishop of Naples may employ him, 'habitu licentiam diaconem illum, nostra interveniente auctoritate, ecclesiae tuae, Deo propitio, constituere cardinalem' (389, 22-4 Hartmann).<sup>55</sup>

From the clause in the first of these letters: 'if he (Liberatus) was not made a cardinal by your predecessor, he must by no means be set over the deacons ordained by you,' it has been inferred by some writers that *diaconus cardinalis* is equivalent to 'principal deacon,' i.e. archdeacon.<sup>56</sup> But the true sense of the term is made quite clear by the concluding phrase: 'if you wish to make him a cardinal, remember to abstain from any incardination, unless he has obtained from his own bishop the formal permit of transfer (*cessio*).'<sup>57</sup> Consequently this case, too, is but one of incardination,<sup>58</sup> and the Pope's prohibition to place Liberatus ahead of the other deacons, unless he had been made a *cardinalis* by the predecessor of the addressee, refers to nothing but the principle of seniority:<sup>59</sup> if the former bishop had incardinated this deacon, he would precede in orders,

<sup>55</sup> This text passed on into Gratian: D. 71 c. 5. It was correctly understood by the *Correctores Romani* (ch. I note 6 *supra*); Tamagna, *Origini* I, 104; Phillips V, 462; Hinschius I, 315 n. 5.

<sup>56</sup> Panvini, *De orig. card.* 480; Thomassin, *Vet. et nova discipl.* 1, 2, 115, 4; Ewald, *MGH Epp.* 1, 99 n. 1; O'Donnell, *Vocabulary* (n. 3 *supra*) 2; 136.

<sup>57</sup> Cf. note 32 *supra*.

<sup>58</sup> Tamagna, *Origini* I, 93f.; Nardi, *Dei parrochi* II, 403; Hinschius, *Kirchenr.* I, 315 n. 5.

<sup>59</sup> This was already noticed by Joh. Diaconus, *Vita* 3, 21, who cited our letter as instance for the fact that St. Gregory 'antiquissimum ecclesiasticae consuetudinis ordinem ... adeo studiosissime retinebat, ut nullum ... anterioribus clericis in conventu, concessu, statione, sive subscriptione praeponeret' (PL 75, 142). Hinschius II, 184 and Amanieu, 'Archidiaque,' *Dict. de droit can.* 1 (1924) 950 wrongly deny that seniority was as a rule the selective principle for the archdeaconate.

and hence in rank, the deacons ordained by the present bishop. He then would be indeed the archdeacon—not, however, for his being a *cardinalis*, but for his seniority in orders.

#### 4. Etymology

We have abstained so far from discussing our problem from the etymological angle which too often induced authors to force the texts of St. Gregory, St. Gelasius, and Pelagius into preconceived definitions. For there is no doubt that the 'Gregorian' usage of the word, *cardinalis*, is at variance with its derivation and meaning in classical language. Literally, the adjective *cardinalis* means something belonging to a *cardo*, first of all what belongs to the material pivot (or whatever tenon of a timber is inserted into the wedge of another): in this sense Vitruvius speaks of cardinal beams of the doors.<sup>60</sup> But *cardinalis* is also that which belongs to the imaginary 'hinges' of the world, and thus the ancients speak of cardinal winds or, as we do today, of the cardinal points in geography and astronomy.<sup>61</sup> In figurative speech, *cardo* and *cardinalis* stand for something central, essential, fundamental, principal, firmly established. Hence we read of the cardinal numbers in Priscianus; of the cardinal virtues in St. Ambrose; of cardinal causes and, again, of *cardinales Donatistae* in St. Augustine; of cardinal thoughts in Eustathius.<sup>62</sup> More or less in this sense, *cardinalis* seems also to be understood in some texts dealing with Roman public administration,<sup>63</sup> although the interpretation of these texts is by no means certain: it still remains puzzling, for instance, what the *officium cardinale* really meant which distinguished, in the military hierarchy of the East, the staff of two among the five imperial *magistri militum* from that of their colleagues.<sup>64</sup>

Be this as it may, the canonical usage of *cardinalis* in Gregorian language differs from all the others in that it is not associated with the notion of a *cardo*, but with the verb *cardinare*, *incardinare*, which—though itself derived from *cardo*—does not mean to make, or to use as, or to join with, a hinge. It is of importance to realize that the use of the verb in ancient speech was almost entirely restricted to, and thus shaped by, Canon law: apart from the Gregorian letters,

<sup>60</sup> *De architectura* 4, 4, 6 (ed. V. Rose, Leipzig 1899, p. 96).

<sup>61</sup> Copious references in Bannier's article, *ThLL* 3, 442f. s.v.

<sup>62</sup> Priscianus, *De figuris numerorum* 19 (ed. H. Keill, *Grammatici latini* 3, Leipzig 1855–9, p. 412 line 27); St. Ambrose, *De excessu fratris Satyri* 1, 57 (ed. P. B. Albers, *Florilegium patristicum* 15, Bonn 1921, p. 44 line 17); St. Augustine, *De civitate Dei* 9, 22 (ed. E. Hoffmann, *CSEL* 40, 1, 440, 8); *De baptismo* 1, 6, 8 (ed. M. Petschenig, *CSEL* 51, 153, 8–9); Eustathius Afer, *Versio hexaemeri S. Basilii* 3, 2 (PL 53, 892A). Cf. *ThLL loc. cit.*

<sup>63</sup> *Notitia dignitatum Orientis* 6, 70; 7, 59 (ed. E. Böcking, Bonn 1839, pp. 24, 28; ed. O. Seeck, Berlin 1876, pp. 18, 22); Cassiodorus, *Variae* 7, 31 (ed. Th. Mommsen, *MGH Auct. antiquiss.* 12, Berlin 1894, p. 218). For discussion of these two texts see Appendix B *infra*. Cf. also Joh. Cassianus, *Conlationes* 1, 20, 6: '... (nomismata) non sunt a legitimis monetariis ... nec de cardinali ac publica ... prodeunt officina' (ed. M. Petschenig, *CSEL* 13, 31, 25–32, 1).

<sup>64</sup> Cf. Appendix B *infra*. It was with regard to the relative statements in the *Not. dign.* that Gothofr. *Comm. Cod. Th.* 12, 6, 7 made the complaint quoted at the beginning of the present study.

*incardinare* is not found at all,<sup>65</sup> and *cardinare* only in one passage of Vitruvius. Because *cardo* technically is any tenon used for wedging one timber into the cavity of another, he describes as *tignum cardinatum* a beam which is joined and fastened to a structure.<sup>66</sup> In this ἀπαξ λεγόμενον with its connotation of inserting or attaching (rather than that of 'providing with a *cardo*'),<sup>67</sup> the canonical usage of (in)*cardinare*, 'to insert into another title or diocese,' had its model and origin, and with it the peculiar usage of *cardinalis* as connoting incardination.

The fundamental difference between *cardinalis* in canonical language and the same term as used in other contexts is certainly a most striking phenomenon. It is not, however, entirely unparalleled in the history of canonical terminology. If we recall the semantic changes of common nouns such as *titulus*, *feria*, *ministerium*, etc. in their peculiar application by the ancient Church, *cardinalis* appears only as one more instance of the tendency of early Canon law to create a technical language of its own.

### III. ORIGINS OF THE ROMAN CARDINAL BISHOPS AND PRIESTS

The name, *cardinalis*, is not given as an attribute to members of the Roman clergy, at least in genuine texts, before the second half of the eighth century.<sup>1</sup> By this time, however, the first signs of a decay of the Gregorian terminology are already at hand,<sup>2</sup> and perhaps for this reason even authors who are not unaware of the peculiar Gregorian usage of the word do not stop to ask whether the Roman cardinals may not owe, after all, their name to an element of incardination in their functions. In the following pages we are endeavoring to answer that question in the affirmative.

Since the early post-apostolic times, the Church of Rome was distinct from almost every bishopric of the *οικουμένη*<sup>3</sup> in that the pastoral and liturgical functions were not centered in a cathedral but distributed throughout the city among a number of churches, the *tituli*. For the Pope had no cathedral and no stable seat of his government before the end of the persecutions.<sup>4</sup> The *tituli*, at the

<sup>65</sup> Cf. ThLL 7, 848 s. v.

<sup>66</sup> Vitruv. *de archit.* 10, 15, 4: '... arrectaria duo compacta ... coniuncta capitibus transversario cardinato tigno et altero mediano inter duos scapos cardinato et lamnis ferreis relegato' (275 Rose). There is one other passage (*ibid.* 10, 14, 2) using not *cardinare*, but *intercardinare*.

<sup>67</sup> Thus Bannier, ThLL s. v.: 'cardinatus, idem quod cardine praeditus.' But see Panvini, *De orig. card.* 472 and Muratori, *Antiq.* 5, 156 for the better interpretation, *cardinatus* = *insertus*.

<sup>1</sup> Thomassin, *Vet. et nova discipl.* 1, 2, 115, 11; Hinschius, *Kirchenr.* I, 313; 318; Klewitz, *Entstehung* 149.

<sup>2</sup> See ch. IV, 1 *infra* (Pope Zachary 747).

<sup>3</sup> The well known exception was Alexandria, perhaps also Constantinople. Cf. e.g. C. H. Turner, 'The Organisation of the Church,' CMH 1, 159f.; H. K. Schäfer, 'Frühmittelalterliche Pfarrkirchen und Pfarreinteilung in römisch-fränkischen und italienischen Bischofsstädten,' *Römische Quartalschrift für christliche Altertumskunde und für Kirchengeschichte* 19, 2 (1905) 26.

<sup>4</sup> Cf. A. von Harnack, 'Zur Geschichte der Anfänge der inneren Organisation der stadtrömischen Kirche,' *Sitzungsberichte der Preussischen Akademie der Wissenschaften* 1918, II, 957-9. This distinguished the Roman situation sharply from that at Alexandria or Constantinople.

outset private houses placed at the disposal of, and since the third century made over to, the Church by their pious owners,<sup>5</sup> became definitely reorganized as centers of parochial functions—*quasi dioeceses*, as the *Liber pontificalis* terms it—at the beginning of the fourth century.<sup>6</sup> While eighteen titles were of pre-Constantinian origin, they gradually attained the number of twenty-five after the end of the persecutions. This number was considered stable, at least since the early sixth century.<sup>7</sup>

At these *tituli*, the members of the Roman *presbyterium* were domiciled<sup>8</sup> and exercised their regular priestly duties which comprised chiefly the preparation of their flock for baptism and penance and the offering of the Holy Sacrifice.<sup>9</sup> There were always two or three priests permanently assigned to each title, the senior of whom came to be known as *presbyter prior*.<sup>10</sup>

The conditions by which the priests of the titles would eventually become *cardinales* were given by another peculiar feature of the divine service in the City. While the *tituli* remained the only churches with quasi-parochial functions—as St. Innocent I wrote in 416, they had *plebem sibi creditam*<sup>11</sup>—many other churches had arisen after the great persecutions over the tombs of the martyrs. These cemeterial churches originally were entrusted each to the care of a neighboring *titulus*.<sup>12</sup> But with the destruction wrought by the Gothic and the Lombard wars in the sixth and the seventh centuries, regular service in most of the cemetery churches was disrupted.<sup>13</sup> The priests of the *tituli* remained definitely in charge—apart from their titles—only of the three great basilicas built over the tombs of St. Peter, St. Paul, and St. Lawrence, where Pope Simplicius (468–83)

<sup>5</sup> J. P. Kirsch, *Die römischen Titelkirchen im Altertum* (Paderborn 1918) 133–7.

<sup>6</sup> LP I, 164, ascribing this reorganization to Pope Marcellus (308–9): 'Hic . . . et XXV titulos in urbe Roma constituit quasi dioecesis, propter baptismum et paenitentiam multorum. . .'. It is unlikely, however, that it was accomplished during the persecutions; the confiscated churches of Rome were not restored before 311. Cf. Kirsch, *Titelkirchen* 137; J. Christ, *Titel* 104.

<sup>7</sup> The *Liber pontificalis* delights in antedating this number into the earliest times (Cletus: I, 122; Urban: I, 143; Marcellus: I, 164), but archeological evidence shows the origin of seven *tituli* only after the end of the persecutions. Cf. Kirsch 6f. 117f. 127f.; Christ 110f.; Klewitz, *Entstehung* 148. The seemingly greater number of *tituli* represented in the Roman Synod of 499 is explained by the fact that several titles were known by more than one name, cf. Duchesne, LP I, 165 n. 5; Sägmüller, *Cardinale* 6.

<sup>8</sup> Kirsch, *Titelkirchen* 175f.

<sup>9</sup> LP I, 164: ' . . . propter baptismum et paenitentiam multorum.' The individual titles were fitted with baptismal fonts not before the fourth century, cf. Kirsch 186f. For the celebration of the Holy Eucharist in the titles see Kirsch 191f.: *The fermentum*, consecrated and sent by the Pope (Innocent I JK 311 c. 5: 'De fermento vero quod die dominica per titulos mittimus': Mansi 3, 1030 B), was mixed with the species consecrated by the priest, in token of the *communio* with the Pope.

<sup>10</sup> Kirsch, *Titelkirchen* 178; Klewitz, *Entstehung* 148f. Cf. Greg. Reg. 6, 12 (JE 1391): ' . . . una cum tribus presbyteris prioribus' (I, 391, 27 Hartmann).

<sup>11</sup> JK 311 c. 5: ' . . . quia die ipsa propter plebem sibi creditam nobiscum convenire non possunt' (Mansi loc. cit.).

<sup>12</sup> Kirsch, *Titelkirchen* 200f. 212f.: the *presbyteri per diversa coemeteria constituti* in JK 311 were priests detailed from the titles. Mabillon's theory (*Mus. ital.* II, xvi) that the cemeteries themselves were 'minor titles' cannot be upheld.

<sup>13</sup> Kirsch, *Titelkirchen* 217f.

had established a schedule of pastoral services in weekly turns (*hebdomadae*), to be observed by the title priests of the pertinent ecclesiastical districts (*regiones*) of the City, *propter penitentes et baptismum*.<sup>14</sup>

Between the end of the fifth and the beginning of the eighth century—the time cannot be more closely determined—two other great basilicas were integrated in this hebdomadary system, because both of them were not among the *tituli* and yet far more important as liturgical centers than any of the *tituli*: St. Mary Major<sup>15</sup> and the basilica of Our Saviour which had been constructed by Constantine in the Lateran palace and had soon come to be considered, on account of its connection with the *episcopium Lateranense*, as the Pope's cathedral.<sup>16</sup> True, there is no written evidence for an hebdomadal service of title priests at the Lateran basilica as antedating that of the seven neighboring bishops, who appear early in the eighth century as *episcopi hebdomadarii*.<sup>17</sup> But such an original inclusion of the Lateran in the hebdomadary schedule of the *tituli* has been convincingly deduced by modern research.<sup>18</sup> Suffice it to say that no numerically equal and no topographically reasonable distribution of the twenty-five *tituli* could have been devised for four patriarchal basilicas only. Nor would it be conceivable that the principal church of Rome had been left without regular priestly services<sup>19</sup> until the eighth century.

At that time, when the liturgical functions in the Lateran were turned over to the seven bishops of Ostia, Albano, Palestrina, Porto, Silva Candida, Gabii, and Velletri, a reorganization of the *tituli* in relation to the remaining four basilicas became necessary. It is therefore to the eighth century that we probably have to look for the increase of the *tituli* from twenty-five to twenty-eight,

<sup>14</sup> LPI, 249. The distribution was: 'regio III ad s. Laurentium, regio prima ad s. Paulum, regio VI vel septima ad s. Petrum.' For the individual *tituli* involved see the chart in Klewitz, *Entstehung* 156.

<sup>15</sup> As shown by the *Ordo Romanus I* (early 8th cent.) num. 3 (ed. Mabillon, *Mus. ital.* II, 5). Cf. Phillips, *Kirchenr.* VI, 122 n. 9; Klewitz, *Entstehung* 155.

<sup>16</sup> For *episcopium* (later *patriarchium*, then *palatium*) *Lateranense* as name of the papal residence see Klewitz, *Entstehung* 182 and his reference to E. Caspar, *Geschichte des Papsttums* II (Tübingen 1933) 625, 630. For the Lateran basilica as cathedral see e.g. LP I, 249, 15: 'Hic (Simplicius) fecit in ecclesia Romana scyphum aureum', quoted by Phillips VI, 120 n. 4.

<sup>17</sup> *Ordo I Rom.* num. 8; 13 (pp. 8, 11 Mabillon). Cf. Phillips VI, 171 n. 10; Hinschius, *Kirchenr.* I, 324 n. 1; Sägmüller, *Cardinäle* 12 n.

<sup>18</sup> The ingenious thesis, which solves so many difficulties left unexplained by older historians of the Sacred College, was developed with an array of convincing arguments by Klewitz, *Entstehung* 151–8, pursuant to a brief and tentative remark by Harnack, *Die Mission und Ausbreitung des Christentums* (4th ed. Leipzig 1924) 857 n. 4. For a reconstruction of the resulting assignment, five by five, of the *tituli* to the great basilicas see Klewitz' chart p. 156.

<sup>19</sup> Not to be confused with the singing of the daily Office, which was entrusted since olden times to the monks of the three monasteries of St. Pancras, St. Stephen, and Pope Honorius; a custom renewed by Gregory III (731–41). A fourth monastery, Sts. Sergius and Bachus was included in this schedule by Paschal I (817–24). Cf. LP I, 419, 506; II, 58; Kehr, IP I, 33–4.

and for that redistribution at a ratio of seven for each basilica the result of which is recorded in a list of the eleventh century.<sup>20</sup>

By now it should be evident for what reason the senior priests of the titles and the bishops of seven suffragan sees acquired the appellative of *cardinales*. Significantly enough, the name appears for the first time in papal documents<sup>21</sup> under the pontificate of Stephen III (768–72),<sup>22</sup> whom the *Liber pontificalis* praises as a faithful guardian of ecclesiastical tradition and as having restored the old rites of the Church *in diversis clericatus honoribus*.<sup>23</sup> Pope Stephen decreed in the Roman Synod of 769 that henceforward only deacons or priests of the Church of Rome might be elected to the See of Peter, in order to make impossible for the future such a scandalous event as the elevation of the lay intruder Constantine (768) to the pontificate. On this occasion, he termed the title priests *presbyteri cardinales*.<sup>24</sup> Likewise, when he ordered that the seven hebdomadary bishops be obliged on Sundays to celebrate Mass and to sing *Gloria in excelsis* at the altar of St. Peter in the Lateran cathedral, he spoke of them as the *septem episcopi cardinales ebdomadarii qui in ecclesia Salvatoris observant*.<sup>25</sup>

<sup>20</sup> Klewitz, *Entstehung* 120, 151, 156f. (against the theory of Sägmüller, *Cardinale* 6, who dated the increase of the *tituli* as late as the 12th century). For the list mentioned above, the so-called *Descriptio sanctuarii Lateranensis ecclesiae*, see at n. 38 *infra*.

<sup>21</sup> For one possibly earlier occurrence in a liturgical text see *infra* at n. 30.

<sup>22</sup> Sometimes considered as Stephen IV (e.g. in the *Annuario Pontificio*); the designation depends upon whether or not the *papa quadriduanus* Stephen (752), who died before his consecration, is counted as Stephen II.

<sup>23</sup> LP I, 478: 'Erat enim hisdem praefatus beatissimus praesul ecclesiae traditionis observator, unde et pristinum ecclesiae in diversis honoribus renovavit ritum.'

<sup>24</sup> *Conc. Rom.* 769 actio 4: 'Si quis ex episcopis vel presbiteris vel monachis aut ex laicis contra canonum et sanctorum patrum statuta proprumpens in gradus clericorum (al. gradum maiorum) sanctae Romanae ecclesiae, id est presbiterorum cardinalium et diaconorum, ire praesumpserit et hanc apostolicam sedem invadere quilibet ex supradictis temptaverit et ad summum pontificalem honorem ascendere voluerit . . .' (ed. A. Werminghoff, MGH *Conc.* 2, Hannover 1906–8, p. 88 lines 4–8 [revised ed. of pp. 85–8]); act. 3: 'Oportebat ut . . . in apostolatus culmen unus de cardinalibus presbiteris aut diaconibus consecraretur' (86, 21–3 Werminghoff): both texts as transmitted by Deusdedit 2, 163 and 161 (269, 21–6 and 268, 11–4 Wolf von Glanvell). A parallel tradition, generally ascribed to Anselm of Lucca, was first printed by L. Holstenius, *Collectio Romana bipartita veterum . . . monumentorum* (Romae 1662) I, 259–64; repeated in Labbe, Hardouin, Coleti, Mansi 12, 719f. and used for collation by Werminghoff *loc. cit.* In fact, this text is not part of Anselm's original collection (A, as edited by Thaner), but of the posthumous recension B (MSS *Vatic. lat.* 1364 and 6381: lib. 6 c. 25; cf. P. Fournier, 'Observations sur les diverses recensions de la collection canonique d'Anselme de Lucques,' *Annales de l'Université de Grenoble* 13 [1901] 438, 441; A. Mai, *Spicilegium Romanum* 6, Rome 1841, p. 346 = PL 149, 505).—Another testimony (overlooked by Klewitz, *Entstehung* 159 n. 1; 165 n. 5) is contained in LP I, 476, 2–3: ' . . . nullus umquam praesumi laicorum neque ex alio ordine, nisi per distinctos gradus ascendens, diaconus aut presbyter cardinalis factus fuerit, ad sacrum pontificatus honorem promoveri.' For a tenth-century abstract from this passage see Werminghoff 79, 5–6; a later abstract in *Ans. Luc.* 7, 27 (375 Thaner) and Deusd. 1, 255 (146, 8–11 Wolf von Glanvell).—The three texts quoted passed on into Gratian: D. 79 cc. 5, 3, 4. From the first of them it is clear that the attribute, *cardinalis*, was meant only for the presbyters, not for the deacons, see ch. V at n. 70 *infra*.

<sup>25</sup> LP I, 478: 'Hic statuit, ut omni dominico die a septem episcopis cardinalibus ebdoma-

We may take it for granted that Stephen III, the *ecclesiae traditionis observator*, would not have applied in these two instances the term, *cardinalis*, were it not in accordance with the canonical tradition of the Church. Little does it matter whether he himself coined this nomenclature for the title priests and the Lateran bishops or found it already in use, though the latter seems more likely.<sup>26</sup> What matters, is the obvious connection between the hebdomadal service of the bishops and their designation as cardinals: it was for this liturgical function permanently entrusted to them in a church outside of their own bishoprics that they became *cardinales*. And as for the priests of the *tituli*, they had nothing in common with the cardinal bishops save a corresponding liturgical service in churches not their own—the four remaining basilicas—and the name, *cardinales*. The canonical meaning of that name thus proves to be in perfect harmony with the Gregorian usage: the Roman cardinal priests and bishops were 'incardinated' for permanent (though limited) purposes into the patriarchal basilicas while remaining bound nonetheless to the churches of their original ordination.

Not from any 'cardinal' importance of the suburbicarian sees or the title churches,<sup>27</sup> nor from any eminent rank (*cardinalis-principalis*) of their incumbents, did the Roman cardinalate take its origin. Equally mistaken is the assumption that the cardinals' name originally had to do with a quality of the patriarchal basilicas as *cardines*, main churches, of the papal see.<sup>28</sup> The figurative appellation of *cardo* for a principal church, and for the Roman Church in particular, would come into use only much later.<sup>29</sup>

Denoting at the outset but a canonical status of incardination, the attributive name of the Roman cardinal priests and bishops was bound, however, to develop into a dignity. Whereas in ancient times incardinations had been known only as isolated facts prompted by particular circumstances, the 'cardinal' relations of the title priests and the seven bishops to the patriarchal basilicas were in the nature of an institution permanently connected *ex officio* with the holding of

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dariis, qui in ecclesia Salvatoris observant, missarum sollemnia super altare beati Petri celebraretur et Gloria in excelsis ediceretur.' Cf. Hinschius, *Kirchenr.* I, 323; Phillips, *Kirchenr.* VI, 171f.; Sägmüller, *Cardinäle* 12; Klewitz, *Entstehung* 127f.

<sup>26</sup> As suggested by the phrase, 'pristinum ecclesiae in diversis honoribus renovavit ritum' (note 23 *supra*), and by the possibility that the mention of cardinal priests in the second supplement of the first *Ordo Romanus* (note 30 *infra*) is older than Pope Stephen's decree.

<sup>27</sup> It is only in a much later text that the *Liber pontificalis* speaks of *cardinales tituli* (LP II, 196 on Stephen V, 885-91). Moreover, the expression is here probably a mere ellipsis for 'titles whose incumbents are cardinals'.

<sup>28</sup> For these alternative explanations see Sägmüller, *Cardinäle* 6f. 13; Hinschius, *Kirchenr.* I, 319f. They have been accepted in one or the other combination by current textbooks and reference works, e.g. those cited ch. I note 10 *supra*. Even Klewitz, who has recognized better than any other writer the fundamental connection of the Roman cardinalate with the hebdomadary service, misses the point and falls back on the common doctrine by deriving the name from the outstanding rank of the hebdomadaries in the chief basilicas (*Entstehung* 149f.). The correct view was hinted at briefly by Tamagna, *Origini* I, 111 (for the cardinal bishops) and by J. Christ, *Tiile* 116.

<sup>29</sup> See ch. IV at nn. 9ff. 38f. 106f. *infra*.

certain parochial and episcopal churches. As a consequence, the qualification as *cardinales* began to outgrow the hebdomadary functions for which the name had been given, and to obtain the connotation of a specific, exalted rank. This trend was all the more natural because the cardinal priests had, beyond their ordinary service in the basilicas, the unique and probably very old privilege of sacramental concelebration with the Pope in the pontifical Masses of Christmas, Easter, Pentecost, and the feast of St. Peter.<sup>30</sup> And of the cardinal bishops it has been noted that from the eighth century onwards they always stood out as a definite group—the *septem* as contrasted with the *forenses episcopi*<sup>31</sup>—in the Roman synods.<sup>32</sup>

But the development of the cardinalate into a distinctive dignity was rather slow. This is shown by the fact that only at the end of the tenth century the title priests began to change the style of their official signature from *Ego N. presbyter tituli N.*<sup>33</sup> into *Ego N. presbyter et cardinalis tituli N.*<sup>34</sup> (Note the incorrect position of the attribute.) And even then, the true canonical meaning of the term was occasionally recalled to memory. St. Peter Damian for instance, Cardinal Bishop of Ostia (1057–72), addressed his confrères as *Lateranensis*

<sup>30</sup> *Ordo I Rom.* suppl. II (num. 48): 'In diebus festis, id est Paschae, Pentecostes, s. Petri, Nativitatis Domini, per has quattuor sollemnitates habent colligendas presbyteri cardinales unusquisque tenens corporalem in manu sua . . .' etc. (29 Mabillon); cf. also Anselm of Lucca 6, 166 (345f. Thaner); Deusdedit 2, 114 (241f. Wolf von Glanvell); Martène, *De antiq. eccl. rit.* 1, 3, 8, 2 (I, 329f. Antw.; I, 120 Ven.). On the transmission of the 'second supplement' see Andrieu, *Ordines* 4, 472, 474, 486f. 520, 533, 540, 543 (his *Ordo III*); for a similar text mentioning the concelebration of the Roman priests, but not qualifying them as *cardinales*, see the *Ordo of St. Amand* (Andrieu's *Ordo IV*; ed. Duchesne, *Origines du culte chrétien*, 3rd ed. Paris 1902, p. 460; 5th ed. 1920, p. 480). The liturgical institution here described might be as old as the sixth century, cf. Duchesne, LP I, 139 n. 3; 246 n. 9; *Origines* (5th ed.) 185 n. 2; P. de Puniet, 'Concélébration liturgique,' DACL 3 (1914) 2473; *contra*, however, I. M. Hanssens, 'De concelebratione eucharistica,' *Periodica de re morali, canonica, liturgica* 17 (1928) 107ff. At any rate, the text of the *Ordo 'In diebus festis'* belongs to the eighth century, perhaps to its first half, and may thus be slightly older than Pope Stephen III's decrees. But there is no reason to assume with Dom D. Buennner, *L'ancienne liturgie romaine: le rite lyonnais* (Lyon-Paris 1934) 270 that the name, *cardinalis*, originated because of the concelebration. The pseudo-etymology, *cardinalis* < *ad cardines* (*cornua*) *altaris*, is of very late origin. Cf. ch. IV at n. 76 *infra*.

<sup>31</sup> *Investiva in Romam pro Formoso papa* (ed. E. Dümmler, *Gesta Berengarii*, Halle 1871) 145. Cf. Hinschius, *Kirchenr.* I, 326 n. 9; Klewitz, *Entstehung* 131.

<sup>32</sup> Cf. (for the Roman Synod of 732) Duchesne, LP I, 423; Sägmüller, *Cardinäle* 12f. On the much discussed continuity of the seven sees see now Klewitz, *Entstehung* 128–33.

<sup>33</sup> Cf. e.g. St. Gregory's Roman Synods of 595 and 600, *Reg.* 5, 57a and 11, 15 (MGH *Epp.* 1, 366–7; 2, 275); or the Roman Synods of 745 and 761 (MGH *Conc.* 2, 44; 70f.); Gregory III JE 2234 (ed. W. Gundlach, MGH *Epp.* 3, Berlin 1892, p. 706f.); Roman Synod of 853 (Mansi 14, 1021). An earlier form of subscription—*Ego ille misericordia Dei presbyter S.R.E.; Ille humilis presbyter S.R.E.*—is recorded in LD 58, 82 (107, 173 Rozière; 48, 90 Sickel). Cf. Hinschius, *Kirchenr.* I, 313 n. 2.

<sup>34</sup> Cf. Roman Synod of 993 (JL 3848): 'Bonizo archipresbyter et cardinalis s. Luciae consensi; Benedictus presbyter et cardinalis s. Stephani consensi' etc. (Mansi 19, 172). The letter JL 3802 (dated A.D. 980), where similar subscriptions occur, is not genuine: cf. Kehr, IP 5, 133 num. 1.



*ecclesiae cardinales*;<sup>35</sup> Pope Alexander II (1061–73) issued a statute for the cardinal priests with the address, *septem cardinalibus s. Petri atque cunctis aliis*,<sup>36</sup> and we find in the same century some references made to individual cardinals not by their *tituli* but by the basilica of their incardination.<sup>37</sup> Finally, the anonymous author of the *Descriptio sanctuarii Lateranensis ecclesiae* (c. 1073–1100), who of course was chiefly interested in the liturgical functions of the Sacred College, listed the seven bishops and the twenty-eight *tituli* quite correctly under the rubrics: *septem cardinales episcopi hii sunt primae sedis* (i.e. St. John Lateran)—*cardinales s. Petri*—*cardinales s. Pauli*—*cardinales s. Mariae maioris*—*cardinales s. Laurentii*.<sup>38</sup>

Nevertheless, the detachment of a 'cardinal' rank from the congenital notion of an incardinated status was destined to prevail. This development, which eventually would lead to the inclusion of the Roman deacons in the class of *cardinales*, must be viewed in its connection with three important historical factors: (1) the general transformation of ancient canonical concepts in the early Middle Ages, especially with regard to the organization of bishoprics; (2) the communication of some of the Roman cardinals' liturgical privileges to the clergy of foreign churches; (3) the accretion of jurisdictional and political powers to the Roman cardinals during the great Reform of the eleventh century. The impact of these phenomena on the concept of the cardinalate will be next considered.

#### IV. SEMANTIC CHANGES

##### 1. 'Clerici cardinis' of the Early Middle Ages

We know to what extent the fundamental differences, in social and political structure, between the Germanic and the Roman world, have left their mark on

<sup>35</sup> *Epistola* 2, 1: 'Venerabilibus in Christo sanctis episcopis, Lateranensis ecclesiae cardinalibus' (PL 144, 253). Cf. Hinschius, I, 324 n. 3; Molien, *Dict. de droit can.* 2, 1317.—Klewitz, *Entstehung* 128 incorrectly speaks of Peter Damian as using the expression, 'Lateran bishops'.

<sup>36</sup> JL 4736; Kehr, IP 1, 7 num. 9. Säg Müller's doubts, *Cardinale* 155, as to the authenticity are not justified.

<sup>37</sup> Abbot Desiderius of Montecassino, cardinal priest of the title of St. Cecilia (1058–86) and later Pope (Victor III, d. 1187), subscribes the acts of the Roman Synod of 1065 as 'cardinalis s. Petri et abbas s. Benedicti' (JL 4565). Gregory VII addresses him, *Reg.* 9, 11: 'Venerabili cardinali s. Petri et abbati Casinensi' (ed. E. Caspar, *Das Register Gregors VII.*, MGH *Epp. sel.* 2, 2, Berlin 1923, p. 598).—Cardinal Albert, priest of the title of St. Sabina, appears in 1098 as *cardinalis s. Pauli* (Kehr, IP 8, 355 num. 36). Cf. Klewitz, *Entstehung* 160 n. 1.—As late as 1154 we find in Anastasius IV (JL 9793) the expression: '... cardinalium episcoporum, qui sunt ad principalis altaris servitium deputati' (Mansi 21, 779E), and about the same time, the *Ordo Romanus XI* num. 38 speaks of 'unus de cardinalibus s. Laurentii basilicae' (135 Mabillon); cf. Phillips, *Kirchenr.* VI, 175 n. 35; 125 n. 18.

<sup>38</sup> MS *Vatic Reg.* 712, fol. 88v (ed. D. Giorgi, *De liturgia Romani pontificis III*, Rome 1744, p. 553; better in Kehr, IP 1, 3f.; Klewitz, *Entstehung* 119f.). On the approximate date of the *Descriptio* see Klewitz 123–6. Its survey of cardinals was taken over in 1160 by Johannes, deacon and canon of St. John Lateran, in his *Liber de ecclesia Lateranensi* c. 16 (ed. Mabillon, *Mus. ital.* II, 574; Ph. Lauer, *Le palais de Latran*, Paris 1911, p. 404), cf. Klewitz 118 n. 2.—Phillips VI, 124f. and Hinschius I, 335f. knew only this later list.

the institutions of the medieval Church, and how much the ancient canons were disregarded, overgrown as it were by new customs and concepts, in the formative period of the Frankish kingdom. In particular, the centralized organism of the bishoprics, so typical of Christian Antiquity, gave way to utter decentralization under the impact of a new parochial system, by which the innumerable proprietary churches (*ecclesiae propriae*) on the estates of the king and the nobility became endowed with parish rights and almost entirely withdrawn from the bishop's control. An overwhelming number of churches in private hands, on the countryside, thus stood apart from the few churches that were left to the bishop, besides his cathedral, in and around the cities. Here alone, the clergy remained fully subject to the bishop's diocesan government, distinct as a group from the rural priests and their quasi-feudal dependance upon the manorial lords.<sup>1</sup>

For expressing the essential difference between the bishop's clergy and that of the proprietary churches, the name, *cardinalis*, offered itself. To the medieval mind, the term 'cardinal priest' could not possibly have—apart from the peculiar situation of the Roman *tituli*—its old canonical sense: by the growing system of ecclesiastical benefices for the livelihood of the clergy, the ancient meaning of *titulus ordinationis* as the church of a cleric's first ordination faded away,<sup>2</sup> and with it, the reason for distinguishing between intitulated and incardinated priests. Reading the Gregorian texts without being conscious any longer of the ancient rigor in matters concerning the change of one's *titulus*, the medieval canonist could only notice what was merely accidental: the connection of *presbyteri cardinales* with cathedral and baptismal churches.<sup>3</sup> This seemed all the more legitimate since it agreed with the common, the uncanonical etymology and usage of the word 'cardinal.'

The equivocation appears for the first time in the famous instruction on some points of Canon law which Pope Zachary in 747 sent to Pippin the Short. One chapter of this instruction repeats the traditional Roman formulary for the conse-

<sup>1</sup> These fundamental aspects and effects of the proprietary church system are firmly established results of the researches conducted by U. Stutz and his school (of his numerous studies on the subject, see in particular *Benefizialwesen* [ch. II note 41 *supra*]; *Die Eigenkirche als Element des mittelalterlich germanischen Kirchenrechts*, Berlin 1895 [transl. G. Barraclough, in *Medieval Germany, Essays by German Historians*, Oxford 1938, II, 35-70]; the articles 'Pfarre, Pfarrer,' in Herzog-Hauck, *Realencyklopädie für protestantische Theologie und Kirche* 15 [1904] 239 ff. esp. 242-7; 'Eigenkirche, Eigenkloster,' *ibid.* 23 [1913] 364-77, with further bibliography)—regardless of the position one takes in the controversy (cf. ch. II note 42 *supra*) on the purely Germanic (Stutz) or nationally indifferent roots of the *Eigenkirchen*.

<sup>2</sup> Cf. Fuchs, *Ordinationstitel* 179-81. For tendencies in Carolingian times to reinstate the ancient law, see the Councils of Reims 813 c. 20 and Tours 813 c. 14 (ed. Werminghoff, *MGH Conc.* 2, 255; 288); the *Capitula a sacerdotibus proposita* 802 c. 13 (ed. A. Boretius, *MGH Cap.* 1, Hannover 1883, p. 107); Benedictus Levita, *Capit.* 1, 175 and 3, 393 (ed. H. Pertz, *MGH Leg.* 2, 2, Hannover 1837, pp. 55, 126; for Benedict's sources in these chapters see E. Seckel, 'Studien zu Benedictus Levita,' *NA* 31 [1905] 87; 41, 1 [1917] 194). Cf. Fuchs 97; 181 n. 6; also 185 n. 24; J. Christ, *Tille* 121.

<sup>3</sup> The last who took cognizance of the true concept was Hincmar of Reims, cf. ch. II notes 27-8 *supra*.

cration of newly founded private oratories, with its characteristic prohibition to raise it to a baptismal church and to install a *presbyter cardinalis* at the place.<sup>4</sup> But in another chapter, Pope Zachary uses the Latin, *presbyteri cardinales*, for rendering the Greek, *πρεσβύτεροι πόλεως*, of the thirteenth canon of Neocaesarea, as contrasted with the *πρεσβύτεροι ἐπιχώριοι* of the same canon.<sup>5</sup> Here, the priests of the episcopal city,<sup>6</sup> that is, chiefly the priests of the cathedral,<sup>7</sup> are termed cardinals, as also in a third chapter in which the proper use of liturgical garments is inculcated upon the bishop and the *presbyteri cardinales*.<sup>8</sup>

Hereafter, the use of *cardinalis* for denoting the clergy of a cathedral was rapidly spreading. From the ninth to the twelfth century we find in a good many bishoprics, mostly of Italy, the cathedral clergy styled as *presbyteri* (*diacones*, *subdiacones*, *canonici*, *clerici*) *cardinales*, or *presbyteri* (etc.) *cardinis*, *de cardine*.<sup>9</sup> The words *cardinalis* and *de cardine* had thus become interchangeable, and this is characteristic of the new meaning given to the term: the bishop's church was now metaphorically called the *cardo* of the diocese in order to derive from it, by an *ex post* etymology entirely at variance with ancient canonical language, the 'cardinal' rank of the bishop's clergy. No particular function or dignity was originally meant by this qualification. When in some of the documents in question not all, but only a few of the subscribing cathedral clerics signed their names as *cardinales*, this apparent differentiation has no deeper

<sup>4</sup> Zachary JE 2277 c. 15 (ed. W. Gundlach, MGH *Epp.* 3, 484), in conformity with LD 11, JK 959, etc. (ch. II notes 38-40 *supra*); cf. Stutz, *Benefizialwesen* 218f.—Hinschius and Schäfer (ch. II n. 44 *supra*) give to this text the inadequate interpretation: cardinal priest = parish priest.

<sup>5</sup> JE 2277 c. 4: 'de presbiteris agrorum quam obedienciam debent exhibere episcopis et presbiteris cardinalibus. Ex concilio Neocesar. c. xiii. ita continetur...' (481, 34-6 Gundlach); cf. Phillips, *Kirchenr.* VI, 55; Hinschius, *Kirchenr.* I, 315 n. 7.

<sup>6</sup> Dionysius Exiguus translates: (I) *presbyteri eiusdem urbis*, (II) *presbyteri urbis ipsius*; both the *Versio prisca* and the *Hispana* translate: *presbyteri civilatis* (cf. Turner, *Monum.* 2, 1, 136-7). Cf. also Deusededit 2, 14 (198 Wolf von Glanvell); Bonizo, *Vita chr.* 5, 15 (180 Perels).—Gratian D. 95 c. 12 uses the version of Dion. II.

<sup>7</sup> Pope Urban II (1088-99) refers to this canon with the words (Kehr, IP 1, 7 num. 11): '... iuxta concilium Neocaesariense in quo de cathedralibus presbyteris agitur' (ed. P. Kehr, 'Nachträge zu den Papsturkunden Italiens,' *Nachrichten von der Königl. Gesellschaft der Wissenschaften zu Göttingen*, phil.-hist. Kl. 1908, p. 228 num. 3; cf. Klewitz, *Entstehung* 161 n. 1).

<sup>8</sup> JE 2277 c. 1: '... ut episcopus iuxta dignitatem suam indumentis utatur, simili modo et presbyteri cardinales' (480, 40-481, 1 Gundlach). Cf. Phillips, *Kirchenr.* VI, 55 n. 68, who rightly understands this passage as treating of the cathedral canons, while Hinschius, *Kirchenr.* I, 317 n. 2 refers it to rectors of parishes because the text goes on to speak of *plebs sibi subiecta*. But as the priests of the cathedral chapter were exercising the bishop's pastoral functions in the city, they also had *plebem sibi subiectam*.

<sup>9</sup> Nearly all instances quoted in the ensuing note have been recorded, in varying selections, by Du Cange s. vv. *canonici cardinales*, *presbyteri cardinales*; Muratori, *Antiq.* 5, 158ff.; Tamagna, *Origini* I, 113-9; Nardi, *Dei parrochi* II, 408ff.; Phillips VI, 42f.; Hinschius I, 318f. Further research may well yield additional evidence.

(i) Italian bishoprics in alphabetical order: *Asti*, document of Bishop Alericus or Oldricus (924): '... consensu et consilio presbyterorum, diaconorum, seu reliquorum clericorum nostrae ecclesiae cardinalium' (Ughelli, *Italia sacra* 4, 352D).—*Bergamo*, document

significance than that of showing how little weight the attribute carried.<sup>10</sup> It could be arbitrarily added or omitted, and there are even instances of charters which refer to members of the cathedral clergy as *cardinales* in the text, but bear their signatures without that qualification.<sup>11</sup>

of Bishop Adalbert (908): '... praenominatae s. Pergamensis ecclesiae cardinalibus canonicis, presbyteris, diaconibus, subdiaconibus quoque atque custodibus' (Ughelli 4, 426A); Bishop Reginfred (1000): '... Abel eiusdem ecclesiae car(di)nis presbytero' (Ughelli 4, 438B; cf. Tamagna I, 114).—*Como*, charters of Emperors Lothar (950), Otto III (996), Arduin (1002), Henry II (1004), Konrad II (1026): '... s. Cumanae ecclesiae gregi tam de cardine quamque omnium sacerdotum' (ed. L. Schiaparelli, *I diplomi di Ugo e di Lotario* ... , Fonti per la storia d'Italia 38, Rome 1924, p. 284 lines 11–2; cf. MGH *Dipl.* 2, 618, 19–20; *Dipl.* 3, 95; 702f.; *Dipl.* 4, 60).—*Cremona*, judgment of King Berengar I (910): '... Leo archipresbyter, Petrus, Lampertus et Rapertus presbyteri, Lupus archidiaconus, Aldo, Oldepertus diacones cardinis ipsius episcopii' (Muratori, *Antiq.* 1, 125C); charters of Emperors Konrad II (c. 1037) and Henry III (c. 1040): '... quendam diaconem Henricum nomine, s. Cremonensis ecclesiae cardinalem et utilimum famulum' (ed. H. Bresslau, MGH *Dipl.* 4, Hannover-Leipzig 1909, p. 348 lines 20–1; cf. MGH *Dipl.* 5, 35).—*Florence*, document of Bishop Sichelmus (967), with an inserted document subscribed by several priests who are styled 'presbyter canonicus et cardinalis', 'presbyter et cardinalis' (Ughelli 3, 30 C).—*Ivrea*, document of Bishop Ogerius (1075): '... donamus etiam domino Taurino ibidem abbati et omnibus successoribus eius canonicas duas de ordine XII presbyterorum, ut tam ipse quam successores sui sint de ordine et officio nostrorum cardinalium' (*Historiae Patriae Monumenta* 1, Turin 1836, p. 649).—*Lodi*, document of Bishop Aldegrausus (c. 951–62): '... quo tantummodo cardinales sacerdotes, presbyteri scil. ac diaconi, subdiaconi ad comedendum convenient; ... Radbertus presbyter de cardine s. Laudensis ecclesiae' (ed. C. Vignati, *Codice diplomatico laudense*, Bibliotheca historica italiana 2, Milan 1879, num. 13 p. 19; cf. Tamagna, *Origini* I, 113, 119; wrongly referred to Laon by Phillips VI, 43 and Hinschius I, 318); document of 972: '... Landevertum nostrae ecclesiae cardinalem sacerdotem' (Vignati p. 26).—*Lucca*, document of Bishop Peter (904): '... Ego Viventius archipresbyter cardines et vicedomino ... Ego Sighardus presbyter et chardinalis et primicerius ... Ego Guntripaldus presbyter et cardinalis' etc. (Muratori, *Antiq.* 6, 407C–D); document of Bishop Peter (923): '... Andreas presbyter et cardinalis ... Benedictus presbyter et cardinalis' etc. (*ibid.* 5, 162D; both documents and several others from 907 to 925 also in D. Barsocchini, *Memorie e documenti per servire all'istoria di Lucca* 5, 3, Lucca 1841, pp. 27, 43, 108, 110, 115 etc.).—*Milan*: see notes 13ff. *infra*.—*Naples*, document of Archbishop Peter (1100): '... Sergius archipresbyter et cardenalis s. sedis Neapolitanae subscripsi' (Muratori, *Antiq.* 5, 161D); cf. also documents of 1177 subscribed by two *presbyteri cardinales*, 1183 by three *presbyteri cardinales*, 1213 by one *archipresbyter* and one *presbyter cardinalis* (Ughelli 6, 99D; 101C; 105B–C).—*Padua*, diocesan synod of Bishop Hildebert (962): '... convocata sacerdotum, levitarum, reliquorumque caterva tam ex cardine urbis eiusdem quamque ex singulis plebibus vel oraculis' (Ughelli 5, 430A); repeated in the synod of Bishop Gauslinus, 978 (Muratori, *Antiq.* 1, 549D).—*Paria*, charter of Emperor Otto I (972): '... que actenus Iohannis cuiusdam presbyteri fuit de cardine s. Ticinensis aecclesiae' (ed. Sickel, MGH *Dipl.* 1, Hannover 1879–84, p. 567 lines 18–9).—*Piacenza*, election of Bishop Guido (904): '... Ego Andreas diaconus cardinis s. Placentinae ecclesiae' (P. M. Campi, *Dell'istoria ecclesiastica di Piacenza* I, Piacenza 1651, p. 430); charter of King Charles III (883): '... qualiter inter diaconibus et presbyteris viginti et novem nostram adierunt celsitudinem, cardinales etiam s. Iustinae virginis et martyris' (Campi I, 468).—*Ravenna*: see note 12 *infra*.—*Salerno*, document of Judge Guaferius (1163): '... existentibus in eadem praesentia ... Urso et Paschasio, primiceriis et cardinalibus, Matthaео cardinali et archipresbytero, Constantino presbytero et cardinali et pluribus aliis eiusdem ecclesiae' (Ughelli 7, 401C); cf. also documents of 1176, 1178, 1187 (Ughelli 7, 403B; 404B; 415D).—*Siena*, document of

However, during the twelfth century we meet in some places with a tendency to reserve the name, as connoting a dignity, to a restricted group among the bishop's clergy, in obvious imitation of the Roman cardinalate. This trend may be best observed in Ravenna, where nothing but the inveterate spirit of rivalry with the see of Peter led to an assignment of definite *tituli* to the metropolitan cardinal priests.<sup>12</sup>—In Milan, the qualification of 'cardinal' originally served to distinguish the clergy of the Ambrosian *cardo* from the clergy of the city churches:

the cathedral chapter (1000): '... Johannes clericus & (*leg. de?*) cardine et prepositus ... Sigizo presbyter & cardine, Petrus clericus & cardine, Martinus diaconus & cardine' etc. (Muratori, *Antiq.* 5, 609A; paleographical confusion of & and *de* is very likely).—Vercelli, Bishop Atto (924–c. 950; cf. F. Bonnard, 'Atton évêque de Vercel,' *Dictionnaire d'histoire et de géographie ecclésiastiques* 5 [1931] 191) in his *Capitulare* c. 90: '... Quodsi defuerit, cardinalibus primae sedis interim suggeratur' (PL 134, 46A).—Verona, Bishop Ratherius (d. 974) in his *Itinerarium* c. 7: 'Ad quod cum titulares (= city pastors) omnes et illos de plebibus (= rural pastors) paratos, Deo gratias, invenissem; vos cardinales ... hinc manere adhuc cerno rebelles' (*Opera* edd. P. et H. Ballerini, Verona 1765, p. 447 with note 31 = PL 136, 589 with n. 1046).—Further references made by Du Cange s.v. *canonici cardinales* to cardinals in Aquileia, Benevento, Capua, Pisa can not be verified.

(ii) Much less evidence has been collected from non-Italian dioceses: *Nevers*, document of Bishop Franco (903): '... per consilium nostrorum fidelium canonicorum, scil. cardinalium et archipresbyterorum atque forensium sacerdotum' (*Gallia christiana* 13, instr. 18 col. 313E–314A).—*Orléans*, Bishop Walter's *Capitulare* (871) c. 2: 'Ut per archidiaconos vita, intellectus et doctrina cardinalium presbyterorum investigetur' (Mansi 15, 505).—On the particular feature of *cardinales archidiaconi* in Autun, Besançon, etc. see notes 23–6 *infra*. Also the 'liturgical' cardinals found in several other bishoprics outside of Italy are to be treated separately from the mere cardinals *de cardine*.—Finally, we have to eliminate some erroneous references to non-existing cardinals: i.e. to the *Lex Baiuvariorum* 1, 10 (9?) 1 (Du Cange s.v. *diaconus cardinalis*; but see ed. E. von Schwind, MGH *Leg. nat. germ.* 5, Hannover 1926, p. 279f.); to the *Capitulare* of Bishop Hatto of Basel 'c. 90' (Du Cange s.v. *cardinalis*; in fact Atto of Vercelli c. 90, see *supra*); to Laon (Phillips, Hinschius; in fact Lodi, see *supra*).

<sup>10</sup> The contrary was asserted by Muratori, *Antiq.* 5, 155; 162B; 163A, C; 164f. (also 1, 552): on the strength of the 'parochialist' theory he assumed that in medieval cathedral chapters only those clerics were *cardinales* who at the same time held parochial churches in benefice. See *infra* at nn. 35–6.

<sup>11</sup> Tamagna, *Origini* I, 116–8; examples may be found e.g. in the documents of Asti, Bergamo, Milan.

<sup>12</sup> For cardinal priests, deacons, etc. in general, see Synod of Ravenna (998): '... et subscribentes confirmaverunt ... presbyteri cardinales ecclesiae Ravennatis' (Mansi 19, 221B); document of Archbishop Walter (1141): '... assidentibus Johanne quoque Ravennatis ecclesiae archipresbytero cardinale et presbytero Fantulino cardinale ... Henrico diacono cardinale et Buniolo subdiacono cardinale' (Muratori, *Antiq.* 5, 159A). The *tituli* occur in Archbishop Walter's charter of 1122 for Bishop Dodo of Modena, which characteristically begins by aping the style of the Pope: 'Gualterius servus servorum Dei, divina gratia archiepiscopus' and creates Bishop Dodo and his successors cardinal priests of the 'title' of St. Agnes in Ravenna. It is subscribed, among others, by 'Ego Johannes archipresbyter s. Ravennatis ecclesiae et cardinalis s. Petri maioris tituli subscripsi; Ego Johannes presbyter et cardinalis s. Salvatoris manu mea subscripsi' etc. (Muratori, *Antiq.* 5, 178A). Hinschius I, 321 n. 4 correctly points to the obvious imitation of Roman institutions. I was not able, however, to verify his further reference to cardinals with *tituli* as occurring also in Naples.

it was applied to the twenty-four members of the bishop's *presbyterium* as set over against the *sacerdotes urbani*,<sup>13</sup> furthermore to the deacons, subdeacons<sup>14</sup> and, quite generally, the *ordinarii* of the Church of Milan.<sup>15</sup> The latter term included, in the early Middle Ages, the several orders of clerics peculiar to the organization of the Ambrosian cathedral,<sup>16</sup> even as elsewhere it was occasionally

<sup>13</sup> Landulfus senior, *Historia Mediolanensis* (c. 1100) 1, 3: '... Quin etiam locum in quo omnes convenirent, insignivit... ubi omnes sacerdotes urbani in sexta feria vel kalendis convenientes...' (ed. L. Bethmann and W. Wattenbach, *MGH Script.* 8, Leipzig 1848, p. 39 lines 31-2; ed. H. Bianchi in Muratori, *Rer. ital. script.* 4, 62); *ibid.* c. 4: 'At cum beatus Ambrosius supradictos sacerdotes Deo disponente ordinavit, visum est sibi ceteris cum fratribus viginti quatuor sacerdotes, qui quasi cardinales essent, debere constitui;... sic misterium ecclesiae Ambrosianae per viginti quatuor cardinales aperiretur et regeretur' (39, 57-40, 5 Bethmann-Wattenbach; 63f. Bianchi). The *sacerdotes urbani* were also called *decumani*, cf. the synodal testament of Atto of Vercelli (946): '... Item iudico et lego Aldemano consanguineo meo, archipresbytero s. Mediolanensis ecclesiae et cardinalibus et presbyteris decumanis...; et cardinales presbyteri cum primicerio decumanorum tantum habeant per unumquemque quam duo presbyteri decumani;... archipresbyter et cardinales, primicerius et decumani, qui pro tempore erunt' etc. (ed. A. Mai, *Scriptorum veterum nova collectio* 6, 2, Rome 1832, pp. 5-6). For other texts referring to *decumani* see notes 14, 16 *infra*.

<sup>14</sup> Document of 905: '... Petrus diaconus de cardine s. eiusdem ecclesiae Mediolanensis' (Muratori, *Antiq.* 1, 773B; *Hist. Patr. Monum.* 13, Turin 1873, col. 699b); Atto's testament: '... et diaconi cardinales et subdiaconi (tantum habeant) quam unus presbyter decumanus' (Mai, *loc. cit.* 5); see also his shorter testament of 948: '... ut valles illae... deveniant in iure et potestate s. Mediolanensis ecclesiae et presbyterorum seu diaconorum cardinalium atque sacerdotum decumanorum' (PL 134, 20C); document of Archbishop Aribert (1032): '... adhibitis sibi senioribus suae ecclesiae cardinalibus presbyteris et diaconibus' (quoted by Muratori, *Antiq.* 5, 158 from J. P. Puricelli, *Ambrosianae Mediolani basilicae ac monasterii... monumenta*, Milan 1645, num. 222); Aribert's testament (1034): '... faciant presbyteri, diaconi et subdiaconi cardinales de ordine s. Mediolanensis ecclesiae' (Ughelli, *Italia sacra* 4, 105A).

<sup>15</sup> Archbishop Arnulph, *Gesta archiepiscoporum Mediolanensium* (c. 1085) 1, 3: '... ut decedente metropolitano unus ex praecipuis cardinalibus, quos vocant ordinarios, succedere debeat' (ed. Bethmann-Wattenbach, *MGH Script.* 8, 7, 26; ed. Muratori, *Rer. ital. script.* 4, 8A). The *praecipui* in this text are the priests and deacons, since the entire passage is contingent upon Pope John VIII's mandate to elect the archbishop *de cardinalibus presbyteris et diaconibus* (JE 3294, see *infra* at n. 40). The clause, *quos vocant ordinarios*, refers however to *cardinalibus*, not to *praecipuis*, for the (grammatically possible) interpretation that only the highest ranking cardinals were *ordinarii* is contradicted by the sources; see the following notes.—Landulfus de s. Paulo (Landulfus iunior, c. 1136), *Hist. Mediol.* num. 34, document of 1105: 'Ordinarii cardinales s. Mediolanensis ecclesiae necnon et primicerius cum universo sacerdotio et clero Mediolanensi...' (ed. Bethmann and Jaffé, *MGH Script.* 20, Hannover 1868, p. 34 lines 9-10; Muratori, *Antiq.* 5, 158). Cf. also the synonymous expression, *cardinales de ordine* in the document of 1034, note 14 *supra*.

<sup>16</sup> There exists unfortunately no adequate study of the composition of the Ambrosian clergy with its remarkable differences, in the minor orders, from the Roman scale of ordination. (M. Magistretti, *La liturgia della chiesa milanese nel secolo IV* [Milan 1899] I, 33-41 made an uncritical attempt to harmonize the two sets of orders.) Landulfus senior, *Hist. Mediol.* 2, 35 (71 Bethmann-Wattenbach; 93 Bianchi) and the *Ordo* of Beroldus (ed. Magistretti, *Beroldus sive ecclesiae Ambrosianae Mediolanensis kalendarium et ordines*, Milan 1894, p. 35f.; ed. Muratori, *Antiq.* 4, 861f.) give the following picture: 24 priests; 7 deacons; 7 subdeacons; the *primicerius presbyterorum* (only in B, cf. note 20 *infra*); the *notarii* without

applied to cathedral canons and prebendaries as such.<sup>17</sup> But by the twelfth century, *ordinarius* became in Milan a distinctive denomination of the four leading orders only—priests, deacons, subdeacons, and notaries—and moreover the cardinal's rank was now reserved to the twenty-four *sacerdotes cardinales* and seven *diaconi cardinales* alone, as can be seen from that outstanding document of the medieval Ambrosian rite, the *Ordo* of Beroldus (after 1125).<sup>18</sup> Among the

definite number, under their *primicerius*; the *primicerius lectorum* and 16 *lectores* (i.e. the *secundicerius*, 4 *clavicularii*, and 11 *terminarii*; L has 18 *lectores*); 4 *magistri scholarum*; 12 *sacerdotes decumani* (cf. note 13 *supra*; only in L); the *cimeliarcha* and 16 *custodes* (8 *maiores*, i.e. 4 *cicendelarii* and 4 *ostiarii*; 8 *minores*); the *schola* of 20 *vetuli*. Cf. also P. Lejay, 'Ambrosien (rit)' DACL 1 (1907) 1392f.—With the exception of the *decumani* (the city priests) all these ranks were *ordinarii*, cf. document of 1053: '... Domini ordinarii eiusdem s. Mediolanensis ecclesiae, presbyteri, diacones, subdiacones, notarii, lectores, cum primiceriis, ... magistri scholarum seu (= et) custodes' as distinct from 'et presbyteri de ordine decumanorum s. Mediolanensis ecclesiae' (Ughelli 4, 107D). Also in the document of 1105 (note 15 *supra*) the *ordinarii cardinales* include the entire clergy of the cathedral as set over against the 'primicerius cum universo sacerdotio et clero Mediolanensi'. Cf. also Atto of Vercelli's shorter testament (948) in PL 134, 20D. Muratori's suggestion (*Antiq.* 5, 168) that the *ordinarii* might have been the hebdomadaries of the cathedral is entirely gratuitous.

<sup>17</sup> Ratherius of Verona, *Itinerarium* c. 6: 'Recolitis ... me praecepisse, ut duobus diebus archipresbyter et archidiaconus me absente adventantes cum ordinariis omnibus pariter residentibus discuterent' (445 Ballerini; PL 136, 587); these *ordinarii* of Verona are evidently identical with the cardinals mentioned *Itin.* c. 7 (cf. note 9 *supra*). For Novara, see the compromise between the 'Novarienses ordinarios s. Marie' and the 'ordinarios s. Iulii' before Bishop Riprandus (1040) in Ughelli 4, 703B. For eleventh-century canonical opinion see Bonizo, *Vita chr.* (c.1090-9) 5, 77, who speaks of clerics 'qui ... in quibusdam ecclesiis canonici, in quibusdam vero ordinarii, in quibusdam vero, ut Rome, cardinales nominantur' (204, 14-7 Perels), much as seven centuries after him the Ballerini, in their note 27 to Ratherius *loc. cit.* (PL 136, 587 n. 1042) point to the identity between *ordinarii*, *cardinales*, and *canonici*; cf. also G. Forchielli, 'Collegialità di chierici nel Veronese dall' VIII secolo all'età comunale,' *Archivio Veneto* 58 (1928) 81f. and Gaudenzi, *Nonantola* 401 (with reference to the expression *computari in ordine* in the anonymous tract on ecclesiastical offices, quoted n. 30 *infra*). On the 'minor clergy' of Verona cathedral, i.e. those without capitular prebends (as e.g. the *presbyteri cappellani*) see the Ballerini's prologue to their edition, pp. cxxiii-viii (PL 136, 103-6); Forchielli 82. They were probably not *ordinarii*.—Du Cange s.v. believes that *ordinarii* sometimes refers to 'dignitates quibus competit aliqua iurisdictio' (?) and sometimes to 'canonici ecclesiarum collegialium'.

<sup>18</sup> 'In primis sunt sacerdotes cardinales, prior quorum archipresbyter cum ferula sua et primatu suo praefertur in choro. Deinde septem diaconi cardinales subsequuntur, prior tamen archidiaconus cum ferula sua et primatu suo praedicto archipresbytero coniungitur' (35, 9-13 Magistretti; 861 Muratori); the subdeacons and all the subsequent orders are enumerated without qualification as *cardinales*.—For the *ordinarii* as set over against the *lectores* etc. see Beroldus: '... Item illis descendentibus, dum lectores cantant antiphonam, descendunt omnes ordinarii absque archiepiscopo usque ad medium pulpiti, et ibi ordinantur ex una parte presbyteri et notarii, idest a septemtrione; alii, scil. diaconi et subdiaconi ab austro' (41, 13-7 Magistretti; 865C Muratori); '... et lectores canunt antiphonam, et ordinarii paululum ascendunt, et finita antiphona a lectoribus, ordinarii incipiunt eandem' (41, 28-30 Magistretti; 865D Muratori). Cf. also 41, 36-7; 43, 8-35 Mag.; 865E, 866E-867A Mur.; 'In vigilia festivitatum ... vadunt ad festum ordinarii et lectores et custodes et schola s. Ambrosii et mares et feminae' (63, 35-64, 1 Magistretti; 880D Muratori).—Magistretti, *Beroldus* 149 n. 3 overlooks the *notarii* among the *ordinarii*, and in his

subsequent ranks we find there, for instance, the *primicerius sacerdotum*, originally chorbishop and overseer of the city priests,<sup>19</sup> now himself a member of the *cardo*, but not a cardinal.<sup>20</sup> Here too, it seems that the Roman usage influenced a terminology which some time before had been applied to the clergy *de cardine* in general.

In the framework of a medieval bishopric there existed, on the other hand, dignities and offices which by their very nature were always connected with rank and seat in the cathedral chapter and therefore needed no express qualification as *cardinales*. This is especially true of the archdeaconate, the most important office, next to the bishop's, in the early medieval Church. As long as there was but one archdeacon in the diocese, it would have been a tautology to call him a cardinal.<sup>21</sup> Only when in the course of time—first in France (ninth century), later in Germany and England—diocesan territories became divided into several archdeaconries, with a plurality of archdeacons both in and outside the bishop's chapter,<sup>22</sup> did the term *archidiaconus cardinalis* find its way into ecclesiastical documents:<sup>23</sup> among the various archdeacons of a diocese it would now designate

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*Liturgia della chiesa milanese* 40 n. 3 he even contends that the subdeacons were *ordinarii* only after the thirteenth century. The term is also misunderstood by A. Pöschl, *Bischofsgut und Mensa episcopalis* I (Bonn 1908) 74f.

<sup>19</sup> Landulfus sen. *Hist. Mediol.* 1, 3: '... qui primicerius vocaretur, ... qui quasi co(r)episcopus circa omnes in crimine laborantes potestatem a s. Ambrosio magistro accepit, ut quod episcopus implere per se non posset, co(r)episcopus qui primicerius vocabatur circa illos implere curiose studeret. Quin et iam locum in quo omnes convenirent, insignivit ... (etc.: cf. note 13 *supra*); deinde subepiscopus qui co(r)episcopus usque modo et primicerius vocatur ...' (8, 28–34 Bethmann-Wattenbach; 62 Bianchi). No mention of the Milanese chorbishop is made in Th. Gottlob, *Der abendländische Chorepiskopat* (Kanonistische Studien und Texte ed. Koeniger 1, Bonn 1928), where other instances of chorbishops called *coepiscopi* (p. 61f.) or *subepiscopi* (p. 35) may be found.

<sup>20</sup> Beroldus, after enumerating the first three orders (cardinal priests and deacons, cf. note 18 *supra*; and subdeacons): '... Quarto loco ponitur primicerius presbyterorum, non minor ceteris dignitate, sed minor loco; ... vice archiepiscopi poenitentes solvit et ligat; ... et si contigerit quod pretium aut denarii dantur pro pastu, similiter partem suam recipit, quantum presbyter cardinalis' (35, 14–22 Magistretti; 861 Muratori), and *passim*. (Note that the *primicerius* has ordinary vicarious jurisdiction in the internal forum.)

<sup>21</sup> Note e.g. that Beroldus, while enumerating the archpriest among the *sacerdotes cardinales*, and the archdeacon among the *diaconi cardinales* (note 18 *supra*), never uses the term, cardinal, when speaking in the course of his treatise of the archpriest or archdeacon alone. See also the testament of Atto of Vercelli (note 13 *supra*).

<sup>22</sup> On this development, see the copious literature cited by A. Amanieu, 'Archidiacre,' *Dictionn. de droit can.* 1 (1924) 962ff.; A. Koeniger, 'Archidiakon,' *LThK* 1 (1930) 616; Kurtscheid, *Hist. iur. can.* 257–61.

<sup>23</sup> *Autun*, document of 972: '... Gerardus humilis Eduorum episcopus; Rodulfus cardinalis archidiaconus ...' (*Gallia christiana* 4, instr. 35 col. 73D); document of 1034: '... S(ignum) Helmoini episcopi, Widonis abbatis, Valterii cardinati archidiaconi, Gaufredi abbatis et archidiaconi ...' (*ibid.* instr. 42 col. 79A); document of 929: '... Adso kardinalis archidiaconus subscripsit' (ed. A. Bernard and A. Bruel, *Recueil des chartes de l'abbaye de Cluny* I, Paris 1876, p. 269 num. 274; cf. A. Schröder, *Entwicklung des Archidiaconats bis zum elften Jahrhundert*, Augsburg 1890, p. 58 n. 17).—*Besançon*, document of Archbishop Hugo (1041): '... S(ignum) Gibuini cantoris et archidiaconi cardinalis. S. Roberti archi-



the *archidiaconus maior*, i.e. the one whose jurisdictional district was the episcopal city, the *cardo* itself.<sup>24</sup> But instances of this nomenclature seem to be very rare,<sup>25</sup> and still more so is the use of *archipresbyter cardinalis* in an analogous sense.<sup>26</sup>

So much for the 'cardinal' clergy in the medieval diocese. Now, the etymology *cardinalis* < *de cardine* led quite logically to a classification also of certain

diaconi et archiclavii' and several other archdeacons (ed. E. Martène and U. Durand, *Thesaurus novus anecdotorum* 1, Paris 1717, col. 166; cf. Schröder *loc. cit.*).—Toul, privilege of Bishop Udo for the collegiate church of St. Gengoul (c. 1065): '... constituimus etiam cardinalem archidiacon(at)um huius urbis ad eam pertinere, ut prepositus huius loci eum perpetuo in beneficium possideat' (quoted by Du Cange s.v. *archidiaconus cardinalis*, from *Probationes historiae Tullensis*); confirmed by Pope Alexander II in 1069 (JL 4665): '... constituimus etiam ut (add. sit?) archidiaconus ipsius civitatis secundum idem tuum decretum, ut cardinalem archidiaconatum (*leg. cardinalis archidiaconatus?*) illius civitatis ad eandem ecclesiam pertineat. Quatinus prepositus ipsius loci ...' (ed. P. Ewald, 'Acht päpstliche Privilegien,' NA 2 [1877] 209; cf. his remarks p. 210 on the difficult reading of the original). Cf. also Emperor Henry IV: '... confirmamus etiam cardinalem archidiaconatum eiusdem urbis ad ipsum cenobium pertinere, ut prepositus ...' etc. and Bishop Poppo (1105): '... ut cardinalem archidiaconatum obtineat' (both quoted by Ewald 209 n. 10). On the restoration of St. Gengoul by Bishop Udo and the privileges granted to the collegiate chapter see also *Gesta episcoporum Tullensium* c. 43 (ed. G. Waitz, MGH *Script.* 8, 645f.) and *Gallia christ.* 13, 990D. Du Cange *loc. cit.* quotes also a document, not to be verified at present, in which the *prepositus ecclesiae s. Gengulfi* signs as *archidiaconus cardinalis ecclesiae Tullensis*.

<sup>24</sup> Cf. the expressions, *cardinalem archidiaconatum huius urbis*, *archidiaconus ipsius civitatis* in the privileges for St. Gengoul. That this was only one of several archdeaconries in the diocese of Toul, is shown by the number of archdeacons signing e.g. the documents *Gallia christ.* 13, instr. 23 col. 470A (a. 1054); instr. 25, 26 col. 472A, E (a. 1076). Cf. also, for the major archdeacon in general, Schröder, *op. cit.* 58f.; Hinschius, *Kirchenr.* II, 192 n. 2; E. Baumgartner, *Geschichte und Recht des Archidiaconates der oberrheinischen Bistümer* (Kirchenrechtliche Abhandlungen ed. Stutz 39, Stuttgart 1907) 150ff.

<sup>25</sup> Du Cange s.v. *archidiaconus cardinalis* cites one more: 'Marbodus cardinalis archidiaconus ecclesiae Andegavensis'. On Marbod (Marbeuf), scholastic (1076) and archdeacon (1090–6) of Angers, later bishop of Rennes (1096–1123), author of didactic poems, lives of local saints, and very interesting letters (PL 171, 1463–1782), see Ch. Urseau, *Cartulaire noir de la cathédrale d'Angers* (Paris-Angers 1908) p. xlvf.; E. Amann, 'Marbode,' DThC 9, 2 (1927) 1939; M. Manitius, *Geschichte der lateinischen Literatur des Mittelalters* III (Munich 1931) 719–30. His signature, *Marbodus archidiaconus*, occurs frequently in the *Cartulaire noir* and in other cartularies published for the diocese of Angers (e.g. for the abbeys of St. Aubin and Ronceray, for St. John's hospital, and St. Sergius' church), but I was not able to find the form of subscription quoted by Du Cange.

<sup>26</sup> Among the documents of Autun, there is an undated charter of Bishop Agano with the signatures of four archdeacons and '... signum Ramerii archipresbyteri cardinalis, signum Rotberti archipresbyteri' etc. (*Gallia christ.* 4, instr. 45 col. 83). Since one passage of the document reads: '... auctoritate ... domini Gregorii papae, domini quoque Hugonis Lugdunensis archipraesulis et apostolicae sedis legati, et nostra' (*ibid.* 82), it can be dated as of 1082–5: Hugo of Die became Archbishop of Lyons in 1082 (cf. E. Caspar, *Das Register Gregors VII.* [ch. III note 37 *supra*] II, 592 n. 1) and Gregory VII died in 1085.—Also in this case the multiplication of archpriests was the reason for designating one of them as cardinal; as to archpriests holding archdeaconries, in particular the city archdeaconate, see Baumgartner, *op. cit.* pp. 60 n. 1, 75, 118f. 140, 151f.

churches as *cardinales*, namely of those lesser churches which immediately belonged to the bishopric or depended upon the *cardo*-cathedral, as distinct from private oratories and proprietary churches. Thus, a royal statute for Lombardy (813) spoke of *praepositi cardinalium ecclesiarum*,<sup>27</sup> and the Council of Meaux (845), of *tituli<sup>28</sup> cardinales in urbibus et suburbibus constituti*.<sup>29</sup> Both texts refer to diocesan churches under the bishop's immediate jurisdiction. In the same sense, *ecclesiae* and *cappellae cardinales* are found in other documents down to the twelfth century.<sup>30</sup> The cathedral itself, being the *cardo* of the diocese, was

<sup>27</sup> *Capitulare Mantuanum* 1, 8: 'Ut prepositi cardinalium aecclesiarum obedientes sint episcopis suis' (ed. Boretius, MGH *Cap.* 1, 195). For the correct date see F. Patetta, 'Sull'introduzione in Italia della collezione d'Ansegiso e sulla data del così detto capitulare Mantuanum duplex,' *Atti della R. Accademia delle Scienze di Torino* 25 (1889-90) 87; Carlo De Clercq, *La législation religieuse franque de Clovis à Charlemagne* (Louvain-Paris 1936) 229 n. 1.—This text and the greater part of those quoted in the following notes were already known and commented upon by Thomassin, Du Cange, Muratori, etc. Cf. also Schäfer, *Pfarrkirche und Stift* (ch. II n. 44 *supra*) 124 n. 5.

<sup>28</sup> On *titulus* as a term used in the Middle Ages for churches, in particular for churches with parochial rights depending upon the cathedral, see Muratori, *Antiq.* 5, 1003; the Ballerini in their note to Ratherius, *Itin.* c. 7 (*Opp.* 447 n. 31 = PL 136, 589 n. 1046; cf. note 9 *supra* s.v. Verona); J. Christ, *Titel* 119 n. 73. Especially on *tituli* as city parishes see Schäfer, *Frühmittelalterliche Pfarrkirchen* (ch. III n. 3 *supra*) 36 n. 3; 46; 51 n. 3.

<sup>29</sup> *Conc. Meld.* c. 54: 'Ut titulos cardinales in urbibus et suburbibus constitutos episopi canonice . . . ordinent et disponant' (ed. A. Boretius and V. Krause, MGH *Cap.* 2, Hannover 1897, p. 411). The text is correctly understood by Phillips, *Kirchenr.* VI, 48f. while Hinschius attempts to construe *cardinales* as denoting the contrast between city churches and rural churches (*Kirchenr.* I, 317 n. 3).

<sup>30</sup> *Aquileia*, charter of King Karloman (879): '... cum ecclesiis baptismalibus atque cardinalibus sive cum cellulis' (ed. P. Kehr, MGH *Urkunden der deutschen Karolinger* 1, Berlin 1932-4, p. 317 lines 10-1).—*Bergamo*, royal and imperial charters by Charles III (883), Henry II (c. 1023), Konrad II (1027): '... in monasteriis, xenodochiis, vel ecclesiis baptismalibus aut cardinalibus seu oraculis vel cunctis possessionibus' (Ughelli, *Italia sacra* 4, 417B; cf. MGH *Dipl.* 3, 632, 3-4; *Dipl.* 4, 122).—*Florence*, document of Bishop Raynerius (1023): '... ecclesiam s. Iohannis Baptistae cardinalem' (Muratori, *Antiq.* 5, 164B).—*Novara*, royal charters by Louis II (854), Karloman (877), Louis III (905): '... in monasteriis videlicet, xenodochiis, abbatiis, ecclesiis cardinalibus seu reliquis possessionibus' (ed. L. Schiaparelli, *I diplomi italiani di Lodovico III e di Rodolfo II*, Fonti per la storia d'Italia 37, Rome 1910, p. 60 lines 13-4).—*Parva*, charter of Kings Hugo and Lothar (943): '... omnesque cardinales capellas tam extra quam infra urbem' (Muratori 5, 169B; Schiaparelli, *I diplomi di Ugo e di Lotario*, Rome 1924, p. 217, 17-8).—*Piacenza*, charter of Charles III (881): '... cum monasteriis et cellis vel ecclesiis baptismalibus quae intra civitatem praedictam cardinales habentur sive quae extra civitatem existunt' (Campi, *op. cit.* [n. 9 *supra* s.v. Piacenza] I, 467 num. 19).—*Siena*, document of Bishop Raynerius (1108): '... ecclesiam s. Martini cardinalem iuxta burgum Senensis civitatis positam' (Ughelli 3, 544B).—See also c. 6 of a little anonymous tract on ecclesiastical offices (11th-12th cent.; purporting to be extracted *Ex libro ordinis Romani*), as discovered in some Italian MSS, edited, and discussed by Gaudenzi, *Nonantola* 395-404: 'Ut hi computentur in ordine qui cardinales ecclesias habuerint. Hi debent facere processionem cum episcopo . . .' (p. 397). Gaudenzi's assumption however (p. 404) that the tract actually represents fragments of a lost *Ordo Romanus* composed under Nicholas I is to be rejected; not even an Italian origin of the text is sufficiently proved.

almost never considered *ecclesia cardinalis*,<sup>31</sup> but baptismal churches (parishes) sometimes were: royal charters for Piacenza, Aquileia, and Bergamo describe *ecclesiae baptismales* as *cardinales*<sup>32</sup>—for in Italy, otherwise than in France, the baptismal churches had withstood appropriation by private land owners and remained integral parts of the dioceses.<sup>33</sup>

The clergy of these lesser 'cardinal' churches was, however, as a rule not considered to be *cardinalis*, since such clergy could not be said to be *de cardine*.<sup>34</sup> This point must be stressed against the Gallicanists of the seventeenth and eighteenth centuries, who held—as did also to a certain extent Muratori—that on the contrary the name of cardinal always designated in the early Middle Ages a parish rector, or a cathedral cleric with parochial functions.<sup>35</sup> This 'parochialist' theory of the cardinalate is based, partly on a misinterpretation of the Roman formulary for the foundation of oratories (as if *cardinalis presbyter* in these form letters meant 'pastor'); partly on a misunderstanding of the cardinalate of the Roman title priests (as if they were cardinals of their *tituli*); and, above all, upon a fallacious inference from the twofold medieval usage of *cardinalis* for

<sup>31</sup> The distinction between the *cardo* and the other churches is expressly stated, e.g. in the documents quoted n. 9 *supra* for Como and Padua. There exists one single exception to the rule stated above: deed of foundation of an hospital by Deacon Dagobert in Verona (932): '... ut sit sub potestate et cura archipresbyteri et diaconi seu et sacerdotum diaconorumque s. cardinalis Veronensis ecclesiae qui pro tempore fuerint' (ed. G. B. Biancolini, *Notizie storiche delle chiese di Verona* I-II, Verona 1749, p. 697); '... sacerdotes et clerici universi s. cardinalis ecclesiae; ... deveniant in potestatem archipresbyteri et archidiaconi et sacerdotum seu et diaconorum s. cardinalis ecclesiae' (*ibid.* 698). Cf. the Ballerini in their note cited n. 28 *supra* (a truncated reference to this piece in Phillips, *Kirchenr.* VI, 48 n. 48).—Hinschius, *Kirchenr.* I, 315 n. 1 quotes also Hincmar, *De iure metrop.* c. 20 on the *sedes cardinalis* of St. Boniface in this context, but this expression in fact means 'see of incardination', see ch. II n. 28 *supra*.

<sup>32</sup> See the charters n. 30 *supra*, rightly understood by Du Cange s.v. *ecclesiae cardinales* as referring to parochial churches. *Contra* Phillips VI, 49 n. 50, who understands *aut* disjunctively in the charter for Bergamo ('ecclesiis baptismalibus aut cardinalibus'); correctly Hinschius I, 317 n. 2: *aut* = *et*. There can be no doubt that *aut* (Bergamo), *atque* (Aquileia), and *quae cardinales habentur* (Piacenza) mean all three the same.—Cf. also Gaudenzi, *Nonantola* 400.

<sup>33</sup> On the resistance of Italian baptismal churches to the proprietary-church policy see Stutz, *Benefizialwesen* (ch. II, n. 41 *supra*) 112f.; G. Forchielli, *La pieve rurale* (Rome 1931).

<sup>34</sup> Tamagna, *Origini* I, 112ff. Nardi, *Dei parrochi* II, 395, 403ff. The distinction between *cardo* on the one, and *tituli* and *plebes* on the other hand appears very clearly in Raterius of Verona, *Itin.* c. 7 (quoted n. 9 *supra*). The assumption of E. Mayer, *Die angeblichen Fälschungen des Dragoni*, Leipzig 1905, p. 41f.; also 'Der Ursprung der Domkapitel,' *ZRG Kan. Abt.* 7 [1917] 24) that the term *cardo* designated the community of clerics in a given church is quite unfounded.—Only in one isolated case does it seem that also parish priests signed their names as *presbyteri de cardine*: document of Bishop Rudolph of Siena (1081): '... Ego Bonizo presbiter de cardine s. Laurentii subscripsi. Ego Petrus canonicus & cardine s. Petronilla ss. Cardine s. Donati et Ilariani presbiter Bonfilio ss.' etc. (Muratori, *Antiq.* 5, 175C; but for contrary evidence from Siena see n. 9 *supra*). The true medieval terminology for rectors of (collegiate) parish churches is studied in detail by Schäfer, *Pfarrkirche und Stift* 121ff. (*archipresbyter, rector ecclesiae, praelatus, praepositus*, even *abbas*; never *presbyter cardinalis*).

<sup>35</sup> References ch. I n. 5 *supra*. See also n. 10 *supra*.

both clérics and churches that are *de cardine* (as if the 'cardinal' nature of a baptismal church did entail a 'cardinal' quality of its clergy).<sup>36</sup>—

As for *presbyter de cardine* and similar terms, Rome did not hesitate, since Pope Zachary had set the fashion, to adopt the new manner of speech.<sup>37</sup> In the ninth century, Leo IV (847–55), Hadrian II (867–72), and John VIII (872–82) occasionally qualified Roman cardinals as *presbyteri cardinis nostri*—as if there were no basic canonical difference between these and any foreign cardinal cleric of the new type.<sup>38</sup> The same disregard of the peculiar status of Roman cardinal priests is revealed when John VIII, in the famous letter to Emperor Basil I which restored the communion with Photius (879), warned the Greeks that in future the Patriarch of Constantinople must always be elected, not *de laicis vel curialibus*, but only *de cardinalibus presbyteris et diaconibus Constantinopolitanæ sedis*,<sup>39</sup> and when in the same year he admonished the clergy of Milan, after the deposition of Archbishop Anspert, to proceed to a new election and to choose the worthiest candidate *de cardinalibus presbyteris aut diaconibus*.<sup>40</sup> In both

<sup>36</sup> Even modern authors do not escape this faulty syllogism; e.g. Hinschius, *Kirchenr.* I, 317f. who concludes that cardinals were not always, but sometimes parish rectors (see also n. 8 *supra* on his interpretation of JE 2277). His further thesis that almost every church could be considered as *cardo* in comparison to the next lower church is an unjustified *quid pro quo*. He even cites the Capitulare of 813 which speaks of *prepositi cardinalium ecclesiarum* (n. 27 *supra*) as an instance for archpriest = cardinal priest! (*Kirchenr.* II, 266 n. 2).

<sup>37</sup> However, it seems that the notion of *ecclesie cardinales* (i.e. *de cardine*) was not adopted in Rome. The one instance usually cited (e.g. by Phillips, *Kirchenr.* VI, 48 n. 47; Hinschius I, 318 n. 1) is LP II, 196 on Stephen V (885–91): '... reliquias ... per diversi cardinales titulos ... largitus est' (probably an elliptic expression, cf. ch. III n. 27). Or should there be one instance in Urban II JL 5351 (cf. ch. V n. 95 *infra*)?—Among the examples that follow in the text above for *presbyter cardinis* etc. we have omitted the pseudo-decretal *Ministerium archipresbyteri* (JE †1986), in which the archpriest appears as the superior of *cardinales sacerdotes*. In the later decretal collections this forged text is ascribed to 'Leo papa' or Leo III (*Coll. II Parisiensis* 6, 2; *Coll. Lipsiensis* 33, 7; *I Comp.* 1, 16, 2 = X. 1, 24, 2) while two MSS of Burchard's *Decretum* (Lucca, Cath. Chapter 124; Pistoia, Cath. Chapter 119 [ol. 140]) and one MS of Ivo's *Panormia* (Venice, Bibl. Marciana lat. IV. 51 [Valentinelli VIII. 12; wrong number given in Gaudenzi, *Nonantola* 395]) present it in their respective appendices or preliminary matter under the inscription: 'Privilegium archipresbyteri a s. Gregorio digestum (et constitutum add. Marc.); Ex libro institutionum s. Gregorii papae' (cf. Mansi 10, 444B; Gaudenzi 404; Valentinelli, *Catal.* II, 234). For a clue to its possible origin see n. 75 *infra*.

<sup>38</sup> In the Roman Synod of 853, 'Anastasius presbyter cardinis nostri, quem nos in titulo b. Marcelli ordinavimus' is deposed by Leo IV (Mansi 14, 1017B, not in JE; see also the shorter forms of the sentence as reported in the *Annales Bertiniani* an. 868, ed. G. Waitz, MGH *Script. rer. germ.* Hannover 1883, pp. 92–3; Mansi 14, 1026–7; JE after n. 2606 and n. 2635). In fact, Anastasius Bibliothecarius was, as title priest of St. Marcellus, cardinal of St. Paul's. The *Liber pontificalis* has more correctly: 'Anastasius presbyter cardinalis, tituli b. Marcelli' (LP II, 129 = X. 3, 4, 2).—Hadrian II repeatedly speaks of one of his legates as *Petrus religiosus presbyter cardinis nostri* (JE 2926–31; ed. Perels, MGH *Epp.* 6, 726, 15; 727–32); likewise John VIII, of *Petrus cardinis ecclesie nostrae* (or *cardinis nostri*) *presbyter* (JE 3139, 3141, 3273, 3275; ed. Caspar, MGH *Epp.* 7, 86, 3; 99, 8; 186, 11; 189, 3).

<sup>39</sup> JE 3271 (172, 30–4 Caspar), also in Deusdedit 4, 434 (614, 13–5 Wolf von Glanvell). Already Nicholas I had spoken in 862 (JE 2692) of '... ad honorem cardinis ipsius sanctae ecclesiae' (446, 3–4 Perels) with regard to Constantinople.

<sup>40</sup> JE 3294 (202, 32–3 Caspar).

cases, Pope John actually copied the terms from the decree of 769 on papal elections,<sup>41</sup> thus indiscriminately applying Stephen III's precise designation of the Roman title priests to the cathedral clergy of Milan and Constantinople. And yet we know that John VIII was a remarkable canonist and that on another occasion—when transferring Archbishop Frothar of Bordeaux to the see of Bourges—he used the word 'cardinal' in its very technical sense.<sup>42</sup> Considering such inconsistencies, we are not surprised to see the Pope's intimate friend, John the Deacon, betraying a similar vagueness about *cardinales* in his biography of Gregory the Great.<sup>43</sup>

Later, in the eleventh century, we find Pope Alexander II adopting the term *cardinalis archidiaconus* for the archdeacon of an episcopal city.<sup>44</sup> Still more astonishing is the peculiar use made by Urban II of *cardinalis* in dissolving certain unions of benefices. Thus in a series of letters (1092–5) concerning the restitution of the bishopric of Arras which for a long time had been united by subjection to the see of Cambrai,<sup>45</sup> and again in a letter (1097) confirming the separation of the previously united abbeys of Figeac and Conches:<sup>46</sup> in both cases the Pope intimates that from now on the restored benefices should again have each its *episcopus* (or *abbas*) *cardinalis*<sup>47</sup>—that is, its 'own and proper' bishop or abbot, as contrasted with the former administration by foreign prelates.<sup>48</sup> This was, of

<sup>41</sup> This fact has been generally overlooked, even by Caspar, *MGH Epp.* 7, 172 n. 2 and 202 n. 9.

<sup>42</sup> See ch. II n. 26 *supra*.

<sup>43</sup> While Johannes Diaconus correctly records some incardinations (*Vita* 3, 15–6; 18–20: PL 75, 139–42—including however incorrectly some cases of union in c. 15, viz. *Greg. Reg.* 2, 48 and 3, 20), his references to Roman priests under St. Gregory as *cardinales ecclesiae suae* (3, 7–8: PL 75, 133) and to *revocare in pristinum cardinem* (3, 11: see ch. II n. 36 *supra*) are anachronistic.—Cf. Nardi, *Dei parrochi* II, 403 n. 1.

<sup>44</sup> JL 4665, cf. n. 23 *supra*.

<sup>45</sup> This group of letters is reprinted in Mansi 20, 668–75. On the history of the preceding union see R. Rodière, 'Arras (diocèse)', *Dictionn. d'hist. et de géogr. ecclès.* 4 (1930) 699f. *Gallia christ.* 3, 321f. Urban II repeatedly stresses the point that the union is to be dissolved unless Cambrai can show papal letters authorizing the subjection.

<sup>46</sup> JL 5654, printed in Mabillon, *Acta sanctorum ordinis s. Benedicti*, saec. 3, 2 (Venice 1734) 406; *Gallia christ.* 1, instr. 38 p. 44f. The preceding union had been authorized by Gregory VII.

<sup>47</sup> JL 5472 to the clergy and people of Arras: '... volumus ... cardinalem episcopum vobis et ecclesiae utilem eligere' (Mansi 20, 671D); JL 5500 to the Archbishop of Reims: '... ut utraque ecclesia cardinali non destituatur episcopo' (*ibid.* 672E); JL 5512 to Lambert, the new bishop of Arras: '... ut Atrebatensi ecclesiae cardinalis restitueretur antistes; ... ut Atrebatensis ecclesia deinceps cardinalem semper episcopum sortiatur' (*ibid.* 669A, B); JL 5513 to the archdeacons, and JL 5514 to the religious superiors of the diocese: '... ut ei deinceps tanquam cardinali episcopo ... subesse et oboedire curetis' (*ibid.* 674C); JL 5518 to the Count of Flanders: '... ecce enim civitas Atrebatensis, quae in comitatu tuo principalis est, ex apostolicae sedis dignitate cardinalem recepit episcopum' (*ibid.* 675A).—JL 5654 to the Abbots of Figeac and Conches: '... placuit ... ut utrique loco, sicut ante fuerat, abbas cardinalis restitueretur' (*locc. cit.*).

<sup>48</sup> Cf. JL 5472: '... solet enim fieri ut ecclesiae persecutionis tempore suis ordinibus, suis populis, subsidiis etiam temporalibus destitutae, aliis temporaliter committantur ecclesiis, postquam vero his quibus imminutae fuerant, Deo donante, abundare coeperint, pristinam

course, a complete reversal of the Gregorian terminology. On this occasion, Pope Urban even applied the verb *incardinare* in the sense of installing the properly elected and consecrated bishop.<sup>49</sup>

## 2. 'Liturgical' Cardinals Outside of Rome

With all the blurring of the original concept, the early Middle Ages retained a notion that there was some difference between the Roman cardinals and the more or less self-styled cardinal clergy of other churches. From the second half of the tenth century onwards, certain churches secured themselves papal privileges of having among their clergy a number of cardinals *more Romanae ecclesiae*. These cardinals by papal grant were found in Magdeburg (968),<sup>50</sup> Treves (975),<sup>51</sup> Aix-la-Chapelle (997),<sup>52</sup> Besançon (1051),<sup>53</sup> Cologne (1052),<sup>54</sup> and Compostella

recipiant dignitatem' (Mansi 20, 671D).—Phillips, *Kirchenr.* VI, 58f. interprets Pope Urban's manner of speech as indicating that the people of Arras received back, as it were, their *cardo*; but this explanation would not apply to the Figeac-Conches case, for monasteries neither are nor have a *cardo*. Du Cange s.v. *abbas cardinalis* translates, *abbé en chef*—an expression which does not convey Pope Urban's idea any better.

<sup>49</sup> JL 5472: '... et electum per manum metropolitani vestri consecrari et ecclesiae vestrae incardinari studeatis' (Mansi *loc. cit.*).

<sup>50</sup> John XIII (JL 3729): '... Ceterum more Romanae ecclesiae ecclesiam tuam XII presbyteros et VII diaconos et XXIV subdiaconos cardinales, qui sandaliis et lisis utantur, habere volumus. Super hoc vero iisdem presbyteris et abbatibus ecclesiae Iohannis Baptistae in suburbio eiusdem civitatis constructae tunicis uti concedimus. Quibus exceptis et episcopis super altare in honorem b. Mauricii dedicatum missam celebrare aliquis nullo modo praesumat' (Mansi 19, 5 C). Cf. also the confirmations by Benedict VII in 981 (JL 3808) and Benedict VIII in 1012 (JL 3989). The authenticity of JL 3729, denied by some earlier authors, can no longer be doubted, cf. Klewitz, *Entstehung* 151 n. 6. On the other hand, Klewitz' assumption (p. 153) that the number of cardinal priests in Magdeburg was only seven and that the number XII in the extant text (*Liber privilegiorum s. Mauricii*, c. 1100) would be a copyist's mistake, is voided by the evidence of JL 3989 which speaks of the *numerus duodenarius* of the cardinal priests (cf. the text in Hinschius, *Kirchenr.* I, 319 n. 2).

<sup>51</sup> Benedict VII (JL 3783): '... cardinales quoque presbyteri, fratre nostro Theodorico archiepiscopo missam celebrante, dalmaticis, et diaconi una cum presbyteris schandaliis utantur; hebdomadariis quoque presbyteris ad s. Petrum missam celebrantibus suae dilectionis intuitu dalmaticis uti permittimus' (PL 137, 322B). Confirmed by Victor II in 1057 (JL 4365), but not for the hebdomadaries.

<sup>52</sup> Gregory V (JL 3875): '... decernimus in supradicta ecclesia septem cardinales diaconos et presbyteros cardinales septem huic ecclesiae deservire, ea videlicet ratione ut nullius dignitatis persona super sacrum altare Dei genetricis Mariae ibidem constitutum missam celebret, praeterquam supradicti septem cardinales presbyteri et archiepiscopus huius loci (i.e. Coloniensis) et episcopus Leodiensis qui huic dioecesi praesidet' (ed. Quix, *Codex diplomaticus Aquensis*, Aachen 1839, vol. I, 36). The *cardinales ecclesiae Aquisgranensis* are subsequently mentioned in charters of Emperor Otto III (1000, 1001), see MGH *Dipl.* 2 (ed. Th. von Sickel, Hannover 1888-93) 776, 29 and 841, 13.

<sup>53</sup> Leo IX (JL 4249): '... Statuimus denique ad honorem nostri protomartyris super sanctum praedictum altare non ministrari nisi semel in die, et nullus praesumat super id accedere ad sacrificandum nisi quem archiepiscopus huius loci ad hoc destinaverit cum consensu fratrum, scil. septem e fratribus illius congregationis qui melioris vitae eligantur et cardinales vocentur; quorum unus sit eiusdem ecclesiae decanus, et sicut est maior in

(1108).<sup>55</sup> They were clearly distinct from the rest of the respective cathedral clergy by their limited number—in general seven or twelve priests, seven deacons, sometimes also subdeacons—and by their liturgical privileges which usually included: the privilege of officiating in dalmatic and sandals on solemn occasions;<sup>56</sup> for the cardinal priests in particular the privilege of functioning as assistants at pontifical Mass,<sup>57</sup> or the privilege of hebdomadal service;<sup>58</sup> and finally the reservation of the cathedral's main altar to the cardinal priests for celebrating Mass, to the exclusion of anybody else except the bishop.<sup>59</sup> It is evident that all these provisions, even where the actual rescript did not refer expressly to the *mos Romanae ecclesiae*, reproduced the Roman title priests' prerogatives in the patriarchal basilicas:<sup>60</sup> their liturgical garb<sup>61</sup> and hebdomadary service was imitated, their right to celebrate was turned into altar privileges, and their eucharistic concelebration, into the functions of assistant priests.

The analogy of the Roman basilicas is even more stressed by the fact that such privileges were held by a few outstanding churches only; a corollary, as it were,

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congregatione, ita prior polleat dignitate. Horum itaque quicumque ibi celebraverit missam, induat dalmaticam et tunc demum audeat celebrare cum omni reverentia et religione; sandaliis quoque utantur et mitra tam ipse sacerdos quam diaconus necnon subdiaconus in festivitibus Domini et Salvatoris nostri et b. Dei genetricis' etc. (PL 143, 668D-669A).

<sup>54</sup> Leo IX (JL 4271): '... ut maius altare ecclesiae tuae matris virginis honori dedicatum et aliud ibidem apostolorum principi b. Petro addictum reverenter ministrando procurent septem idonei cardinales presbyteri dalmaticis induti, quibus etiam, cum totidem diaconibus ac subdiaconibus ad hoc ministerium prudenter electis, ut sandaliis utantur concedimus' (PL 143, 687D-688A).

<sup>55</sup> Paschal II (JL 6208): '... quod secundum Romanae ecclesiae consuetudinem septem cardinales presbyteri in ecclesia tua ordinaveris qui ad altare b. Iacobi missarum officia succedentibus sibi vicibus administrent; ... statuentes ut nec per te nec per tuorum quemlibet successorum constitutus ille sacerdotum numerus imminui debeat aut immutari; nec per aliam quamlibet personam, nisi per praefatos presbyteros aut episcopos aut Romanae ecclesiae legatos, missarum super altare b. Iacobi statuimus solemnia celebrari' (PL 163, 247). The glossator Bernard of Compostella mentions this institution, c. 1205-6; cf. Kuttner, *Traditio* 1 (1943) 315.

<sup>56</sup> See the texts for Magdeburg, Treves, Besançon, Cologne.

<sup>57</sup> Treves.

<sup>58</sup> Aix-la-Chapelle (? Gregory V speaks of *deservire*), Compostella (*succedentibus sibi vicibus*), perhaps also Cologne, cf. Wibertus, *Vita Leonis IX*: '... concessit dominus papa hoc privilegium sedi ecclesiae Coloniensis, ut ad altare s. Petri VII presbyteri cardinales quotidie divinum celebrarent officium in sandaliis' (ed. I. M. Watterich, *Pontificum Romanorum ... vitae*, Leipzig 1862, vol. I, 155).

<sup>59</sup> Magdeburg, Aix-la-Chapelle, Besançon, Compostella.

<sup>60</sup> Cf. Hinschius, *Kirchenr.* 321; Klewitz, *Entstehung* 151f. 162. The older authors all overlooked the fundamental difference between these privileged cardinals and the clergy *de cardine* of other cities.

<sup>61</sup> Occasionally the right to wear dalmatic and sandals was also granted to other prelates, e.g. to the Abbot of Fulda by John XV in 994 (JL 3853; repeated by Gregory V JL 3874 and John XIX JL 4090: revoked by Clement II in 1046, JL 4134; reconfirmed by many popes, from Leo IX in 1049 to Eugene III in 1151: JL 4170, 4364, 4557, 6972, 7462, 7631, 8244, 9439); to the Abbot of Montecassino by Leo IX in 1049 (JL 4164; repeated by Victor II JL 4368). Cf. Sägmüller, *Cardinäle* 162 n. 3; Kehr, *IP* 8, 135 num. 66; 138 num. 79; K. Lübeck, 'Der Kardinalsornat der Fuldaer Äbte,' *AKKR* 120 (1940) 33-49.

emphasizing the papal recognition of their exceptional dignity.<sup>62</sup> Magdeburg, Treves, and Cologne were metropolitan sees of primatial rank. To the shrine of St. James in Compostella countless pilgrims flocked from all over Europe, and its bishops were striving for metropolitan, even for primatial rights.<sup>63</sup> The metropolitan cathedral of Besançon treasured a precious relic of St. Stephen Protomartyr, and the Pope himself had consecrated over it the new altar which was to be reserved to seven cardinals.<sup>64</sup> The collegiate church of Aix-la-Chapelle finally, where Charlemagne lay buried, was considered a sanctuary of singular national pre-eminence.

However, the papal rescripts had created a new type of 'liturgical' cardinals which was likely to spread where similar liturgical situations existed. When Leo IX in 1049 consecrated the new church of the monastery of Saint-Remi in Reims, he decreed that Mass at its main altar, over the body of the Apostle of the Franks, be henceforth reserved *secundum morem Romanae ecclesiae* to seven priests selected among the congregation.<sup>65</sup> By an obvious analogy to Besançon, these seven privileged monks later became known as *cardinales*.<sup>66</sup>

A similar historical process is found—while no certain instances are known from Italy<sup>67</sup>—in many French cathedrals where it was customary that a select

<sup>62</sup> Cf. Klewitz, *Entstehung* 151.

<sup>63</sup> The first goal they attained under Callixtus II in 1120 (JL 6823), for the second they claimed a privilege by Anastasius IV (1153-4: JL 9808?) which later popes rejected repeatedly. Cf. Sägmüller, *Cardinäle* 59 n. 3; Klewitz 161.

<sup>64</sup> JL 4249: '... dum illud (scil. brachium s. Stephani) recondidimus infra altare quod consecravimus te praesente' etc. (PL 143, 668C).

<sup>65</sup> JL 4177: '... quatenus nulla ecclesiastici ordinis magna vel parva persona in hoc altari quod consecravimus missam celebrare praesumat, nisi Remorum archiepiscopus et huius loci abbas et cui licentiam concedat [permissa eadem licentia canonicis Remensis ecclesiae bis in anno, in Pascha scil. et in Rogationibus], septem presbyteris legitimis ad hoc officium deputatis, quos et scientia ornet, morum gravitas et vitae probitas commendet' (ed. Mabillon, *Acta sanctorum ord. s. Ben.* saec. 6, 1, Venice 1734, p. 637 = PL 143, 617). The passage in brackets is suspect of interpolation.—Anselmus monachus, *Historia dedicationis ecclesiae s. Remigii* c. 13: 'Constituit etiam quod ad altare quod . . . consecraverat, non indiscrete a quibusque sicut hactenus sacrosancta mysteria agerentur, sed secundum morem Romanae ecclesiae septem tantummodo sacerdotes qui in illa congregatione digniores haberentur, ad hoc officium deputarentur' (ed. Mabillon, *ibid.* 632; Mansi 19, 736B). Cf. Martène, *De antiq. eccl. rit.* 1, 3, 8, 3 (I, 332E Antw.; I, 120 Ven.).

<sup>66</sup> *Chronicon s. Huberti Andaginensis* (after 1119): '... nec multo post (Lambertus) electus et constitutus unus ex septem cardinalibus maioris altaris (scil. s. Remigii). Dignitas huius ordinis firmata est privilegio Romano eidem ecclesiae a domino Leone papa quando eam dedicavit. . . . Septem vero cardinales ad hunc honorem assumpti publica electione praecinxerunt in tota congregatione' (ed. Bethmann-Wattenbach, *MGH Script.* 8, 593, 17-23).

<sup>67</sup> The subject has not been investigated. Ughelli, *Italia sacra* 7, 390D writes of Bishop Alfano of Salerno (d. 1085): '... hunc sanctissimum pontificem elegisse sibi . . . ad altaris ministerium viginti quatuor canonicos, quos et presbyteros cardinales nuncupasse, quatuorque diaconos, quos similiter diaconos cardinales vocasse tradunt Salernitani scriptores. Quibus per successores pontificis fuit in posterum concessa facultas gestandi mitras sericas quas vocant de damasco.' If Ughelli had substantiated his source, we could accept the statement of the *Salernitani scriptores* as evidence for a liturgical character of the cardinalate in Salerno. (On cardinals in subscriptions of documents from that city see note 9 *supra*).—A liturgical connotation is also possible in the admission of Abbot Taurinus into the *ordo* of the twelve cardinal priests at Ivrea (*ibid.*).



number of parish priests from the city assisted the bishop at pontifical Mass on certain high feast days, and especially at the blessing of the oils on Holy Thursday.<sup>68</sup> Their number varied in the different dioceses between six, seven, twelve, and thirteen.<sup>69</sup> This custom was rooted, partly in the ancient liturgy of sacramental concelebration,<sup>70</sup> partly in a canonical obligation, frequently stressed for the parish clergy of the Middle Ages, to attend on Sundays and feast days the bishop's functions at the cathedral instead of, or at least before, celebrating the parochial Mass.<sup>71</sup> In Lyons these priests, six in number, were called *symmistae*

<sup>68</sup> Our main sources on this subject are the informations collected in various French dioceses by Martène, *De antiq. eccl. rit.* 1, 3, 8, 2 (I, 331C-D Antw.; I, 120 Ven.) and by (Jean-Baptiste Lebrun Desmarests) Sieur de Moléon, *Voyages liturgiques de France* (Paris 1718) *passim*. Cf. also P. de Puniet, 'Concélébration liturgique,' *DACL* 3 (1914) 2476; F. Cimetier, 'Cardinaux,' *Dictionnaire pratique des connaissances religieuses* 1 (1925) 1090f.; L. C. Moille, 'The Liturgy of Lyons,' *The Month* 151 (1928) 402-8; Archdale A. King, *Notes on the Catholic Liturgies* (London-New York-Toronto 1930) 130; Dom Denys Buennner, *L'ancienne liturgie romaine: le rite lyonnais* (Lyon-Paris 1934) 246f. 260-71; A. Molien, 'Cardinal,' *Dictionn. de droit canonique* 2 (1937) 1314.

<sup>69</sup> *Angers*: thirteen parish rectors of the city assist the bishop on Easter, Christmas, the feast of St. Maurice (later: St. Maurice, St. Maurilius, St. Andrew) and the blessing of the holy oils (Moléon, *op. cit.* 93).—*Chalon-sur-Saône*: seven suburban parish rectors assist at the high feasts (Martène *loc. cit.*).—*Chartres*: six priests concelebrate and co-consecrate with the bishop on Holy Thursday (Moléon 231).—*Lyons*: six priests assist the archbishop on Easter, Pentecost, Christmas at the cathedral; two priests assist the dean on any *festum duplex I classis*; six priests assist the archbishop when he pontificates on one of the high feasts at the collegiate church of St. Paul (Martène *loc. cit.*; Moléon 45-7, 51-2, 73; Buennner, *op. cit.* 246f. 260f.).—*Orléans*: twelve parish rectors assist the bishop at his installation, on Holy Thursday, and the Exaltation of the Cross; later (15th cent.) they are in number of fourteen and assist at all pontifical Masses; six canons concelebrate on Holy Thursday (Moléon 181, 196).—*Paris*: thirteen priests (10 parish rectors, the Prior of Notre-Dame-des-champs, the Prior of Saint-Jacques, and the Abbot of Saint-Victor) are to be present at the cathedral on Christmas, Easter, and the Assumption (*Cartulaire de l'église de Notre-Dame de Paris* ed. Guérard [Collection de documents inédits sur l'histoire de France, 1st ser.: Collection des cartulaires de France 4-7, Paris 1850] 1, 3; cf. Cimetier *loc. cit.*).—*Sens*: twelve, later thirteen (out of sixteen?) parish rectors assist the Archbishop on the feasts of the Dedication, St. Stephen, and the blessing of the oils (Martène *loc. cit.*; Moléon 170, 173). These priests were organized in a confraternity, called *des treize prêtres*, the statutes of which were confirmed in 1220 by Archbishop Pierre de Corbeil, cf. *Gallia christ.* 12, instr. 7 col. 363; Abbé E. Chartraire, *Cartulaire du chapitre de Sens* (Société archéologique de Sens, Documents 3, Sens 1904) 168 note.—*Soissons*: twelve parish rectors assist the bishop on Christmas, Holy Thursday, Easter (Martène *loc. cit.*; *Rituale seu mandatum insignis ecclesiae Suessionensis, tempore episcopi Niveleonis* [i.e. 1175-1207] *exaratum*, Soissons 1856, pp. 40, 63, 69, 114, 305f.).—*Troyes*: thirteen (?) parish rectors assist the bishop on certain feasts (Moléon 24, 170).—*Vienne*: six suburban priests concelebrate with the archbishop in the third Mass on Christmas and on other high feasts (later only on Christmas, Easter, Pentecost); twelve parish rectors assist on Holy Saturday and bless with the archbishop the baptismal font (Martène *loc. cit.*; Moléon 11, 15-8, 22-4, 28, 32); see especially the *Ordinale* of 1524 quoted by Moléon 17: 'suburbani signa faciant durante missa ad modum episcopi et sic in omnibus aliis maioribus festivitatis.'—

<sup>70</sup> Cf. Martène *loc. cit.*; Moléon, *op. cit.* 17, 47, 172, 181, 196, 231; Puniet *loc. cit.*; Moille, *op. cit.* 408; Buennner, *op. cit.* 269f.

<sup>71</sup> On obligations of this kind see Schäfer, *Frühmittelalterliche Pfarrkirchen* (ch. III n. 3 *supra*), for Le Mans (p. 37), Verona, Ferrara (46), Arezzo, Mayence, Cologne, Florence (47).

(*συμμύσται*)—a name later distorted by popular etymology into *six muses*.<sup>72</sup> But in other places, as e.g. in Paris, Sens, Soissons, Angers, and Troyes, the old custom resulted in qualifying these rectors of parishes as *cardinales* with regard to their liturgical functions as *presbyteri assistentes* of the pontificating bishop.<sup>73</sup> It is unlikely, however, that the new name was adopted because of any 'incardination.' Although the service of parish rectors in the cathedral on given feast days could have been thus construed, medieval France had lost the Gregorian concept, as can be seen in those dioceses where priests from the parishes or neighboring abbeys had been given truly hebdomadal duties in the cathedral and yet were not considered *cardinales*.<sup>74</sup> The cardinals of Paris, Soissons, etc. had their name rather on account of their liturgical prerogatives, which recalled the concelebration of the Roman cardinals and the status of the above mentioned cardinals by papal privilege. It is characteristic of the vagueness of this 'liturgical' cardinalate<sup>75</sup> that a new etymology was sought: the assistant priests were

<sup>72</sup> Moléon, *op. cit.* 47; Buenner, *op. cit.* 247 n. 1, 260 n. 1.

<sup>73</sup> *Paris*: preliminary note in the *Chartularium episcopi* (13th cent.): 'Isti sunt presbyteri qui nominantur presbyteri cardinales qui debent interesse, per se vel per alios, dum episcopus celebrat in ecclesia Parisiensi, in festis nativitatis Domini, pasche et assumptionis' (ed. Guérard, *Cartul. de Notre-Dame* 1, 3); cf. also *Magnum pastorale* 19, 22 (c. 1080): '... Sacerdos qui parochiae (scil. s. Martini de campis) praeerit, curam animarum ab episcopo et archidiacono suscipiet, et quotiescumque diebus festis episcopus missam cantaverit, ipse duodecimus cardinalis ministerio assistet' (*ibid.* 2, 400). Cf. Du Cange s.v. *presbyter cardinalis*; Le Cointe, *Instil. et rang* 29 (who correctly points to the corresponding functions of the early Roman cardinals); Cimetier *loc. cit.* (n. 68 *supra*).—*Sens*: notice in the *Liber precentoris* (13th cent.): 'Et quocienscumque (archiepiscopus) missam celebrat in festis annualibus in ecclesia Senonensi, debent sibi assistere duodecim presbyteri cardinales induti sacerdotalibus' (ed. Chartraire, *Cartul. du chap. de Sens* 168).—*Soissons*: notice in the *Ritual* of c. 1175–1207, for Christmas: '... deinde sic redeunt, primum ceroferarii, thuribola, ... diaconi tres, post hos XII cardinales induti sacris vestibus' (*Rituale* ed. 1856, p. 40); '... in coena Domini XII presbyteri cardinales, similiter et VII diaconi et VII ypodiaconi cum totidem acolitis' (*ibid.* 63; cf. also pp. 69, 114).—For Angers and Troyes no other sources are available at present than the report in Moléon's *Voyages* (pp. 93, 170).

<sup>74</sup> For such hebdomadaries in Auxerre see the statute and *kalendarium* of Bishop Tetricus (695) in Mabillon, *Acta sanctorum ord. s. Ben. saec. 3*, 1 (Venice 1734) 90–2 and MGH *Conc.* 1, 223. For seventh-century Verdun a similar institution is hinted at in the *Vita s. Pauli episcopi Verodun.* (Mabillon, *Acta ss. Ben. saec. 2*, 262f.—cf. however, on the poor reliability of this *Vita*, B. Krusch's note in MGH *Script. rer. merov.* 4, Hannover-Leipzig 1902, p. 566 n. 1). See also Mabillon, *Mus. ital.* II, xxxi. Among the hebdomadaries in Tours there was, according to an ancient *Rituale*, besides six dignities of the chapter, one neighboring abbot, cf. Martène, *De antiq. eccl. rit.* 1, 3, 8, 3 (I, 332D Antw.; I, 120 Ven.).—An Italian (?) parallel is found in the tract on ecclesiastical offices (n. 30 *supra*) where the rectors of the city parishes (*qui cardinales ecclesias habuerint*) are in *ordine* of the cathedral and hebdomadaries (c. 6: '... hi debent facere processionem cum episcopo et per vices septimanas tenere in sancta matre ecclesia et assidue ibidem stare': 397 Gaudenzi)—but not cardinals.

<sup>75</sup> Perhaps the false decretal JE †1986 (X. 1, 24, 2; cf. note 37 *supra*) comes from circles acquainted with this institution, since it characterizes the functions of the cardinal priests who are under the supervision of the archpriest as follows: '... ministerium sacerdotum cardinalium, quod (al. qui) solemnissimum debent peragere officium in communicatione corporis et sanguinis Domini nostri Jesu Christi, ita ut (archipresbyter) vicissim eos sibi met succedere faciat' (Mansi 10, 444B).

now arbitrarily said to be *cardinales* because they officiated *ad cardines*, i.e. *ad cornua altaris*.<sup>76</sup>

### 3. The 'cardinales chori' of London

As a curious corollary to the liturgical cardinalate, we may mention here the twin dignities of one senior and one junior cardinal existing in the college of the twelve 'minor canons' at St. Paul's Cathedral in London. Originally, the minor or petty canons were a class of beneficiaries, clerics of the choir who stood in rank between the canons proper, i.e. the members of the chapter, and the mere *vicarii*.<sup>77</sup> Their name,<sup>78</sup> number, rights, and duties became fixed during the thirteenth century. By this time, they all had to be priests, and towards the close of the century we find the first of these twelve benefices coupled with the dignity of subdean in the chapter.<sup>79</sup> In the fourteenth century, however, also the second and the third of the minor canonries were raised to regular dignities, with the title of *cardinalis senior* and *junior* respectively. The functions of the two cardinals included chiefly: celebration of the funeral, anniversary, and capitular Masses; administration of the sacraments to the sick; and supervision of the choir discipline. Both received the double of the distributions due to their confrères.<sup>80</sup>

Anglican authors are inclined to date this quaint institution—which persists

<sup>76</sup> Exactly where and when this etymology originated, needs further investigation. It is first mentioned by Moléon, *Voyages* 170 (from oral tradition in Sens? from a medieval source?); repeated by the editors of the *Rituale eccl. Suession.* 305f.; by Puniet, King, Buenner, and Molien, as cited n. 68 *supra*.

<sup>77</sup> Cf. W. Sparrow Simpson, 'Charters and Statutes of the College of the Minor Canons in St. Paul's Cathedral,' *Archaeologia* 43 (1871) 165–200; id. *Registrum statutorum et consuetudinum ecclesiae cathedralis s. Pauli Londinensis* (London 1873) xxxiiff. Marion Gibbs, *Early Charters of the Cathedral Church of St. Paul, London* (Camden Third Series 58, London 1939) xxvif.

<sup>78</sup> In the twelfth century, the name was simply *clerici prebendarii de choro* (cf. Gibbs xxi n. 2); still in 1231–7 a charter sets the *canonici residentes* over against the *reliqui clerici chori medii* (i.e. vicars and chaplains) *et superioris* (i.e. minor canons) *gradus* (ed. Gibbs 86 num. 114). The first references to 'alicui paruo canonico in ecclesia b. Pauli residenti' and 'alicui de minoribus canonicis beneficiatis' are found in 1202–12 and 1231–4 respectively, cf. Gibbs pp. xxvii, 95 (num. 128), 162 (num. 206).

<sup>79</sup> Cf. Simpson *loc. cit.* and Gibbs xxviif. (with n. 8). See Dean Baldock's (1294–1305) *Statutes and Customs* 5, 1ff. (ed. Simpson, *Registrum* 66ff.).

<sup>80</sup> Dean Lisieux's (1441–56) *Statutes* 6, 18 (102–3 Simpson, ex 1289 with interpolations, cf. n. 85 *infra*). Pope Urban VI, confirming on October 22, 1378 Bishop Simon Sudbury's statute of May 11, 1374: '... De istis autem minoribus canonicis sunt duo delegati ab antiquo qui cardinales vocantur, et sunt perpetui. Qui etiam privatorum funerum et anniversariorum recipiunt proventus, et missas celebrant capitulares, ac egrotantibus ministrant ecclesiastica sacramenta, et quilibet ipsorum duorum duplum percipit omnium que superius uni minori canonico assignantur tam in pecunia quam in pane et in cervisia' (ed. D. Wilkins, *Concilia Magnae Britanniae* 3, London 1737, p. 135; cf. Simpson, *Registrum* 325–6). King Richard II, charter of incorporation of the minor canons' college, 1394 (ed. Simpson, *Archaeol.* 43, 183 = *Registrum* 327). *Statutes of the College* (1396) §35: 'De iuniore cardinale' (198 *Archaeol.* = 358–9 *Registrum*). Dean Colet's (1505–19) *Statutes* c. 7: 'Ex minoribus canonicis a decano et capitulo delegantur duo qui cardinales chori vocantur. Horum officium est circumspicere cotidie et notare omnia in choro delicta et peccata' etc.

to the present day at St. Paul's<sup>81</sup>—back to immemorial times.<sup>82</sup> But it must be borne in mind that the charters and ordinances of the twelfth and thirteenth centuries are completely silent about these *cardinales*.<sup>83</sup> Also Dean Ralph Baldock knew nothing about this nomenclature when he compiled, between 1294 and 1305, the first five books of the cathedral's old statutes and described therein the functions of the minor canons, and in particular of the *duo minores prebendati* who 'deputati sunt ab antiquo, qui privatorum funerum et anniversariorum recipiunt proventus et egrotantibus ministrant ecclesiastica sacramenta.'<sup>84</sup> No authentic text before the fourteenth century calls these prebendaries *cardinales*. To be sure, the term occurs in two 'earlier' documents: an *Iniunctio* of 1289, and a set of *Constitutiones et statuta et declarationes* allegedly dating from the time of Ralph de Diceto's deanship (1180–1202). But these two pieces are transmitted only in a much later and obviously interpolated recension, to wit, in the sixth and the seventh book of the statutes, collected and appended to Baldock's compilation in the fifteenth century by Dean Thomas Lisieux (1441–56).<sup>85</sup> The untrust-

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(ed. W. Dugdale, *The History of St. Paul's Cathedral*, 3rd ed. London 1818, p. 345; cf. Simpson, *Registrum* 222; Du Cange s.v. *cardinales chori*). For further texts mentioning the cardinals, from the fourteenth to the eighteenth century, see *Registrum* 147, 150, 282–3, 302, 305, 321, 477.

<sup>81</sup> Cf. the latest editions of the *London Diocese Book*. Canon W. Sparrow Simpson, the zealous historian and editor of the statutes, was himself for some time junior cardinal, cf. his *Documents Illustrating the History of St. Paul's* (Camden Society, new ser. 26, London 1880) xxvi note b and title page.

<sup>82</sup> Thomas Gibbons (1720–85: cf. *Dictionary of National Biography* 21, 265), as quoted from MS Harl. 980, fol. 179r by Simpson, *Registrum* xxxvif.: 'The Church of St. Paule had, before the time of the Conquerour, two Cardinalls, which office still continues. They are chosen by the Dean and Chapter out of the number of the twelve Petty Canons, and are called *Cardinales Chori*. . . . Not any Cathedral Church in England hath Cardinalls beside this, nor are any beyond seas to be found to be dignified with this title, saving the Churches of Rome, Rauenna, Aquileia, Millan, Pisa, Beneuent in Italy, and Compostella in Spayn.'—Cf. also (Maria Hackett,) *Correspondence and Evidence Respecting the Ancient Collegiate School Attached to St. Paul's Cathedral* (s. l. 1832) app. p. xi: 'This ancient and very important office is peculiar to St. Paul's throughout the Protestant World.'

<sup>83</sup> There is no mention of *cardinales* in the *Early Charters* ed. Gibbs, nor in such texts as *Constit. Henrici de Cornhill* (1243–54), *Stat. de residencia canonicorum* (13th cent.), *De oblationibus ad episcopum pertin.* (c. 1218–27) of Simpson's *Registrum* (cf. pp. 181–90).

<sup>84</sup> *Stat.* 3, 34 (48 Simpson). Parts of this text are repeated in Urban VI's bull of confirmation, but with the words 'qui cardinales vocantur' inserted, cf. n. 80 *supra*.—Also in the account for the year 1283 of the *custos braci*, Thomas Coulyng, on the daily allotments in bread to the clergy of the cathedral, we find *tres parvi prebendarii de choro* set over against the other *novem parvi prebendarii* and as receiving double rations, without any qualification as subdean or cardinals (ed. W. H. Hale, *The Domesday of St. Paul's*, Camden Soc. 69, London 1858, p. 170; cf. Hale's introd. p. xlix). See also the distributions in bread and beer for the year 1286 (pp. 172, 174) and Hale's chart for monetary distributions from the *Statuta maiora*: 'To the 30 vicars of the 30 canons—10d each; to the 3 minor canons and the *scriptor tabulae*—10d each; To nine minor canons—5d each' etc. (p. xlvii). Simpson, *Registrum* 173 n. 1 inexactly reports some of these accounts and budgets, substituting 'the subdean and two cardinals' for the three minor canons.

<sup>85</sup> *Stat.* 6, 18, in the *Iniunctio* of 1289: ' . . . Item volumus quod quatuor canonici minores [scil. duo cardinales et duo alii] diligenter chorum de die et de nocte custodiant, ita quod

worthiness of their textual shape has a parallel in the fact that at the same period several scribes felt bound to insert into Baldock's statute on the *duo minores prebendati* a clause that qualifies the two as cardinals.<sup>86</sup>

It is difficult to explain this peculiar 'cardinalate' which made its appearance so abnormally late, at an age when the common connotation of the term had long since become that of an exalted Roman dignity. In the fourteenth century, the introduction at St. Paul's of such a nomenclature for two priests, who did not even have the rank of full canons, could not be justified by the early medieval usage of *cardinalis* < *de cardine*; nor had the two petty canons any such outstanding liturgical privileges as concelebration with the bishop or the exclusive use of the main altar. But it is very likely that on account of their less solemn prerogatives with regard to funerals and their ministry of the sick; of their acting as overseers in the choir; and of their double allotments in bread, beer and money, the clergy of St. Paul's started to call the two in mockery 'our cardinals.' It would not be an un-English trait if what had begun as a nickname, finished by becoming a title of honor.

#### 4. Rise of the Roman Cardinals

An involved process of transformation shifted, during the eleventh century, the main functions of the Roman cardinal priests and bishops from liturgical duties and prerogatives to prominent participation in the government of the Church universal. This development was intimately connected with the great Reform whose phases and struggles would mold the history of a century, beginning with the accession of Leo IX (1048-54).

If already before these times usually one or the other of the cardinal bishops headed the papal chancery as *bibliothecarius*,<sup>87</sup> he held such office not by virtue of his cardinalate<sup>88</sup> but in his capacity as a bishop of the Roman metropolitan province, even as the direction of royal chanceries was generally in the hands

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defectus ministrantium in ecclesia scribant et . . . decano . . . referant' (103 Simpson). *Stat. 7, 6*, in the *Constitutiones et statuta et declarationes . . . edite tempore magistri Radulphi de Diceto decani s. Pauli*: ' . . . set tamen prima die illius mensis quo absentare se voluerit, sit in prima, et decano et capitulo absenciam intimet, [et camerario vel cardinalibus]' (127 Simpson). The passages included by the present writer in brackets are in his opinion interpolated. In the first case, we have to do with a gloss, in the second, with an afterthought caused by the precept of the *Iniunctio*. Also apart from the words, *vel cardinalibus*, the entire *Constitutiones* in *Stat. 7, 6* reflect a language and factual situation of a much later period than that of Ralph de Diceto. Their authenticity was denied as early as 1399 by Bishop Braybrooke, cf. W. Stubbs, *Radulphi de Diceto decani Londoniensis opera historica* (Rolls Series, London 1876) I, lxviii. The genuine statute on the canons' residence issued under Ralph's deanship in 1192 (ed. Stubbs, *op. cit.* II, lxx-lxxiii) is entirely different and does of course not mention any *cardinales*. Lisieux evidently delighted in attributing undatable ordinances of the past to Diceto, cf. *Stat. 6, 28; 7, 3* (109, 124 Simpson) etc.—On Lisieux as continuator of Baldock see Simpson, *Registrum* xxi.

<sup>86</sup> See the variants to *Stat. 3, 34*: *duo minores prebendati] qui cardinales appellantur add. A, cardinales BF in marg.*—listed without comment by Simpson 48 n. 2.

<sup>87</sup> For details see Bresslau, *Urkundenlehre* I, 211ff.

<sup>88</sup> The contrary is suggested, though very cautiously, by Klewitz, *Entstehung* 132.

of a bishop of the realm. And while it is true that a certain distinction seems to have been made in Roman synods, ever since the eighth century, between the other bishops of the metropolitan province and the *septem*, one would go too far in ascribing to the latter for that early period a predominant role and position.<sup>89</sup> Also, if before the reform era cardinal priests were occasionally sent on diplomatic missions,<sup>90</sup> they were not, *qua* cardinals, different from any other papal envoy. Finally, too much stress should not be laid upon the corporate jurisdiction, both contentious and disciplinary, over the clergy and laity of Rome which allegedly had been vested in the cardinal priests by a decree of John VIII (872-82): for the authenticity of this generally unsuspected text (JE 3366) is not beyond doubt,<sup>91</sup> and even if it were genuine it would account for Roman local administration only.

That the political rise of the cardinals in church government was but part of the fundamental changes brought about by the great Reform is now commonly accepted.<sup>92</sup> When Leo IX, after the rigorous elimination of simonists from the Roman clergy, ordained among his cardinal bishops and priests a number of ardent champions of the reform ideals from abroad,<sup>93</sup> he took this bold and unprecedented step of calling foreigners to the service of the Roman Church hardly for the sake of the cardinals' hebdomadary functions. Such appointments were a first symptom of new and important tasks to be assigned to the cardinal clergy in the program of the Reform popes.<sup>94</sup>

The individual steps of the cardinals' ascent to a key position of paramount import are not to be discussed here.<sup>95</sup> We know that the development was slower for the cardinal priests than for the cardinal bishops—witness the leading role assigned to the latter in Nicholas II's decree of 1059 on papal elections.<sup>96</sup> But

<sup>89</sup> For the distinction between the *septem* and the *forenses* see ch. III at n. 31 *supra*. Klewitz 133 assumes that the Seven were a sort of standing committee of the provincial synods; but any special role of the cardinal bishops in synods is not warranted by the sources before the eleventh century, cf. the examples in Sägmüller, *Cardinale* 40f. See also A. Dumas in Fliche-Martin, *Histoire de l'Église* 7 (1940) 156.

<sup>90</sup> Cf. note 38 *supra* for instances under Hadrian II and John VIII.

<sup>91</sup> Cf. ch. V at nn. 74ff. *infra*.

<sup>92</sup> See e.g. Z. N. Brooke, introduction to CMH 5 (1929) viii; J. P. Whitney, 'The Reform of the Church,' *ibid.* 30; Dumas, *op. cit.* 159.—Already Le Cointe, *Instit. et rang* 34, considered the Roman cardinalate since Leo IX an institution entirely different in its scope from the functions of earlier *cardinales*, in Rome or elsewhere.

<sup>93</sup> Bonizo, *Liber ad amicum* 5: 'Interea Romae episcopi et cardinales et abbates, per simoniacam haeresim ordinati, deponebantur. Et ibi ex diversis provinciis alii ordinabantur' etc. (ed. E. Dümmler, MGH *Libelli de lite* 1, Hannover 1891, p. 588 lines 18-20). Cf. Sägmüller, *Cardinale* 25; Brooke *loc. cit.*

<sup>94</sup> Cf. Klewitz, *Entstehung* 117.

<sup>95</sup> See the studies of Sägmüller and Klewitz, *passim*. The embittered controversy between K. Wenck and Sägmüller is more concerned with the later evolution, especially of the thirteenth century. See the various criticisms, rebuttals and rejoinders: Wenck, in *Theologische Literaturzeitung* 23 (1898) 113-6; 205; *Göttingische gelehrte Anzeigen* 1900, pp. 139-75; Sägmüller, in *Theol. Literaturzeit.* 23, 204-5; *Theologische Quartalschrift* 80 (1898) 596-614; 83 (1901) 45-93; 88 (1906) 595-615.

<sup>96</sup> Lateran Synod of 1059 (ed. L. Weiland, MGH *Const.* 1, Hannover 1893, pp. 539-41). The chief prerogatives of the cardinal bishops were: designation of the candidate (cc. 3-4);

in the second half of the eleventh century the differentiation tended to disappear: subscriptions to papal acts, advisory functions in matters of church government, participation in the judicial supremacy, were deemed essential privileges of the cardinal priests no less than of the bishops.<sup>97</sup> The schism of Guibert (Anti-pope Clement III, 1080–1100), who saw his chance in a large following among the cardinals and thus did everything to increase their constitutional position, hastened this development.<sup>98</sup> During the schism it became evident what an immense political asset the allegiance of the cardinals, both bishops and priests, was to the Pope. It is also significant that at this juncture even the most faithful adherents of the legitimate papacy did not recoil from circulating a counterfeit of Pope Nicholas' decrees such as to make the cardinal bishops' prerogatives appear common to all cardinals.<sup>99</sup>

They had truly grown in these turbulent times to be the Senators of the Church—*spirituales ecclesiae universalis senatores*, as St. Peter Damian first put it, perhaps under the influence of notions contained in the Donation of Constantine.<sup>100</sup> Even though reference was still occasionally made to their original

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in cases of emergency, election of the Pope at any place outside of Rome, together with whatever number of Roman clerics and laymen they might be able to muster (c. 7). The old controversy as to whether the 'papal' or the 'royal' text (541–6 Weiland) of the decree is the genuine one has long since been settled in favor of the former. For a summary of arguments see A. Fliche, *La réforme grégorienne* I (Louvain-Paris 1924) 314–22; Whitney, CMH 5, 37. Other problems of textual criticism, as e.g. those discussed by A. Michel, *Papstwahl und Königsrecht* (Munich 1936); id. 'Zum Papstwahlpactum von 1059,' *Historisches Jahrbuch der Görresgesellschaft* 59 (1939) 290–351; R. Holtzmann, 'Zum Papstwahldekret von 1059,' *ZRG Kan. Abt.* 27 (1938) 135–53, may be passed over for the purposes of the present study.

<sup>97</sup> For the right of subscription see Sägmüller, *Cardinäle* 70f. 216f.; Bresslau, *Urkundenlehre* II, 52; 54; Klewitz, *Entstehung* 167. (An allegedly older example, JL 3802 [A.D. 980], cited by Sägmüller 46 n. 1 and Bresslau 52 n. 2, is however spurious: see Kehr, IP 5, 133 num. 1).—Advisory functions, esp. assent to alienation of church property: Sägmüller 74; Klewitz 139 n. 5; D. B. Zema, 'The Houses of Tuscany and of Pierleone in the Crisis of Rome,' *Traditio* 2 (1944) 160.—Judicial rights: see the *Descriptio sanctuar. Later. eccl.* as quoted at n. 111 *infra*.

<sup>98</sup> Cf. Sägmüller 41; 235f.; P. Kehr, 'Zur Geschichte Wiberts von Ravenna II,' *Sitzungsber. der Preuss. Akad. der Wiss.* 1921, II, 973–88; and in particular Klewitz 167–75.

<sup>99</sup> Anselm of Lucca, *Coll. can.* 6, 12–3 (272–3 Thaner); Deusdedit, *Coll. can.* 1, 168–9 (107 Wolf von Glanvell). Cf. Sägmüller 133f.; Klewitz 165 (with incorrect references in n. 3); Michel, *Papstwahlpactum* 336, 354. The alterations made by Anselm and Deusdedit do not affect the Lateran decree of 1059 (as Klewitz 165 and 175 seems to assume, confusing them with the 'royal' or Guibertine forgery), but a synodal letter sent out by Nicholas II after the council (*Synodica generalis* JL 4405–6) and the Lateran Synod of 1060 (JL 4431a). The significant variants in the two canonists are: *Syn. gen.* c. 1 (547, 9 Weiland): *eorum* (sc. *cardinalium episcoporum*) [cardinalium eiusdem *Ans. Deusd.*—*Conc. Lat.* 1060 c. 4 (551, 5 Weiland): *cardinalium episcoporum*] *cardinalium Ans. Deusd.* (see also Weiland's remarks, *ed. cit.* 546, 550). The texts as altered by Anselm were adopted by Bonizo, *Vita chr.* 4, 87 (156, 14–5 Perels) and Gratian D. 79 cc. 1 and 9, not however by Ivo, *Decretum* 5, 80 (PL 161, 352B).

<sup>100</sup> *Contra philargyriam* c. 7 (PL 145, 540B); see also *ep.* 1, 20 (PL 144, 258D). Cf. Sägmüller, *Cardinäle* 160.

functions in the Roman basilicas,<sup>101</sup> these liturgical duties of the cardinals had become quite secondary. When, for instance, during the second half of the eleventh century abbots of Montecassino, of Vendôme, and of St. Victor in Marseille were made cardinals,<sup>102</sup> it is obvious that these prelates who resided far from Rome were never able to fulfill the hebdomadal duties.<sup>103</sup> Also the *tituli* of the cardinals had lost their old significance. They were no longer the only parishes of the city, and the parochial services were no longer performed by the cardinals themselves: for all pastoral purposes, the title churches had now their archpriests like any other parish church,<sup>104</sup> while a statute of Alexander II

<sup>101</sup> See ch. III at nn. 35-9 *supra*.

<sup>102</sup> Montecassino: Abbot elect Frederic (the future Pope Stephen IX) is made cardinal priest with the title of St. Chrysogonus in 1057 (Kehr, IP 8, 138 num. 77); Abbot elect Desiderius (the future Victor III), cardinal priest with the title of St. Cecilia in 1058 (*ibid.* 141 num. 87); Abbot Oderisius, cardinal with the same title in 1088 (*ibid.* 151 num. 132). Abbot Odoric of Vendôme becomes cardinal priest with the title of St. Prisca in 1066 (JL 4594); and Cardinal Richard (title unknown) is made Abbot of St. Victor, Marseille, in 1079 (JL 5143-4).—Cf. Hinschius, *Kirchenr.* I, 333, 335; Gregory VII, *Reg.* 7, 7-8 (ed. Caspar, MGH *Epp. sel.* 2, 468-70); Klewitz, *Entstehung* 117, 162, 173, 213, 218. Note however that the older opinion, according to which all abbots of Vendôme since the days of Odoric were 'born' cardinals of the Roman Church (thus e.g. Hinschius I, 334; Sägmüller 200), was based on the spurious privileges which Abbot Geoffrey had fabricated early in the twelfth century: cf. H. Meinert, 'Die Fälschungen Gottfrieds von Vendôme,' *Archiv für Urkundenforschung* 10 (1928) 232-325; Klewitz 205. The arrogated 'inheritable' cardinalate became a reality only in 1205 under Innocent III who, deceived by the forged evidence presented to him, granted a privilege to this effect (Potthast, *Regesta pont. Rom.* Berlin 1874, num. 2628; cf. PL 215, 749A-B).

<sup>103</sup> Klewitz 117.—But genuine appointments of foreign bishops or archbishops as Roman cardinal priests did not occur before Alexander III, in 1165 (cf. Hinschius I, 335). Allegedly earlier instances must be rejected. When Benedict VIII in 1012 (JL 3989) granted to Archbishop Waltrad of Magdeburg the distinction to have 'inter cardinales episcopos nostre sedis consortium', this meant but equal rank with the cardinal bishops and precedence before any other bishop, not appointment to a suburbicarian see (Hinschius I, 332f.; contra Sägmüller, *Cardinale* 200 n. 3). When Leo IX appointed Archbishop Hermann of Cologne in 1052 (JL 4271) chancellor of the Roman Church—Hermann's predecessor, Archbishop Pilgrim, had held the same office, cf. Bresslau, *Urkundenlehre* I, 219—and gave him the church of St. John before the Latin Gate in benefice, this did not involve any cardinalate; the said church was not even among the twenty-eight *tituli* (Hinschius I, 333, Sägmüller 200. Moreover, JL 4271 is suspect of copious interpolations, cf. Bresslau I, 220 n. 2; 231f.). Also the grant in benefice of the *cella* of *Ss. quatuor coronati* to Archbishop Theodoric of Treves in 975 (Benedict VII JL 3779: PL 137, 318C) did not make the archbishop a priest of this title nor a cardinal. If any foreign bishop ever was cardinal before the time of Alexander III, this could only have been Bishop Stephen of Metz, cf. *Gesta episcoporum Metensium*, contin. I an. 1120: '... Hic Calixti (II) ex sorore nepos... in urbe Romana ab eodem pontifice summo consecratus est et tam pallii dignitate quam cardinalis titulo honoratus' (ed. Waitz, MGH *Script.* 10, Hannover 1852, p. 544 lines 14-7; cf. Hinschius I, 637). But the reliability of the Continuator I of the *Gesta*, who wrote after 1180, is often marred 'sive negligentia sive nimio Metensis ecclesiae studio' (Waitz 532).

<sup>104</sup> Subscriptions etc. of archpriests of Roman (parish) churches from 1017 to 1160 are listed by Hinschius I, 378 n. 5. Among these, we find e.g. (1081) 'Johannes archipresbyter de s. Caecilia'. This was one of the *tituli* belonging to St. Peter's basilica. For parishes which were not cardinal titles see also the documents of Urban II in Kehr, IP 1, 72 num. 3 (cf. Klewitz, *Entstehung* 122f.) and *ibid.* 7 num. 11: 'tituli et diaconiae et parrochiae' (ed. Kehr as cited n. 7 *supra*).



(1061-73) reserved instead to the cardinal priests rights of a quasi-episcopal jurisdiction in their titles.<sup>105</sup>

With all these developments the original meaning of the name, *cardinalis*, was definitely obliterated. The name was now understood as expressing the participation of its bearers in the primacy of Peter. Whereas the concept of *cardo* heretofore had been applied to any cathedral as indicating its pivotal function in the diocese, Pope Leo IX took up in 1054 a Pseudo-isidorian metaphor: the Apostolic See as *caput et cardo* of the Church universal.<sup>106</sup> 'Like the immovable hinge,' he wrote to the Patriarch of Constantinople, 'which sends the door forth and back, thus Peter and his successors have the sovereign judgment over the entire Church. . . . Therefore his clerics are named cardinals, for they belong more closely to the hinge by which everything else is moved.'<sup>107</sup>—Still more emphatic is the explanation which Deusdedit gave in his *Collectio canonum* (1087). In one of the rare passages in which the learned Cardinal of S. Pietro in Vincoli inserted his own thoughts among the collected texts,<sup>108</sup> he eloquently declared the *cardinales* themselves to be the *cardines* who rule and guide God's people.<sup>109</sup>

Coming from the pen of a canonist who always staunchly vindicated the prerogatives of the Roman cardinal clergy,<sup>110</sup> this proud definition has more than a

<sup>105</sup> JL 4736; Kehr, IP 1, 7 num. 9. Cf. ch. III n. 36 *supra*.

<sup>106</sup> Pseudo-Anacletus (JK 14): '... Haec vero apostolica sedes cardo et caput ut factum est a Domino et non ab alio constituta, et sicut cardine hostium regitur, sic huius sanctae sedis auctoritate omnes ecclesiae Domino disponente reguntur' (ed. Hinschius, *Decretales Pseudo-Isidorianae et capitula Angilramni*, Leipzig 1863, p. 84). Cf. Phillips, *Kirchenr.* VI, 45f. Hinschius, *Kirchenr.* I, 315 n. 2. The canon passed on into Gratian: D. 22 c. 2 §6.

<sup>107</sup> JL 4302 c. 32: '... Et sicut cardo immobilis permanens ducit et reducit ostium, sic Petrus et sui successores liberum de omni ecclesia habent iudicium . . . ; unde clerici eius cardinales dicuntur, cardini utique illi quo cetera moventur vicinius adhaerentes' (Mansi 19, 653B). Almost all authors who wrote on cardinals have quoted this passage.

<sup>108</sup> We do not mean to say that interpolations and alterations of texts are rare in Deusdedit. The contrary has been shown by P. Fournier, 'Les collections canoniques romaines de l'époque de Grégoire VII,' *Mémoires de l'Académie des inscriptions et belles-lettres* 41 (1920) 353 n. 2; 354-7. But if we look in Fournier's list for interpolations which have the nature of an author's personal *dicta*, the number is very low and the passage here quoted is the most conspicuous among them.

<sup>109</sup> Deusd. 2, 160: '... Vnde deriuatiue sacerdotes et leuite summi pontificis cardinales dicuntur eo, quod ipsi quasi forma facti regi sacris predicationibus et preclaris operibus populum Dei regant atque adregant atque ad regni celestis auditum moueant et inuient. Sicut a basibus, que sunt fulture columnarum a fundamento surgentes, basilei idest reges dicuntur, quia populum regunt: ita et cardinales deriuatiue dicuntur a cardinibus ianue, qui tam regunt et mouent, quod plebem Dei, ut superius diximus, doctrinis sanctis ad amorem Dei moueant . . .' (267-8 Wolf von Glanvell). This goes far beyond St. Peter Damian, who was wont to emphasize chiefly the pre-eminence of the cardinal bishops, cf. *epp.* 1, 20; 2, 1 (PL 144, 258D-259B; 253-5). The signal difference of Deusdedit's from Pope Leo's definition was pointed out by Sägmüller, *Cardinale* 124; E. Hirsch, 'Die rechtliche Stellung des Papstes und der römischen Kirche nach Kardinal Deusdedit,' *AKKR* 88 (1908) 621; H. Grauert, 'Magister Heinrich der Poet,' *Abhandlungen der Bayerischen Akad. der Wiss. phil.-hist. Klasse* 27 (1912) 235-42.

<sup>110</sup> Some instances of this attitude are cited by Sägmüller 114, 133f. 185, 227, 239; Hirsch, *op. cit.* 596, 621f. Here follows a more complete list: In the prologue, Deusdedit points to the significance of the correspondence between St. Cyprian and the Roman priests and

rhetorical value. At about the same time, the anonymous author of the *Descriptio sanctuarii Lateransis ecclesiae* asserted that the cardinal bishops and priests have the power to pass judgment over all bishops of the Empire.<sup>111</sup> With the further development of the cardinals' right of assent to papal acts; with the eventual substitution of the Consistory for the papal synod; finally with the reservation of papal elections to the Sacred College,<sup>112</sup> the next century would see such high strung claims come true.

deacons during the vacancy of the Roman See (p. 2 lines 3-12 Wolf von Glanvell; the texts of the letters in *Coll.* 2 cc. 121-4; 126-9). Many programmatic theses are found in the *capitula* preceding the collection proper: 'Eodem esse presbiteros quos episcopos, testimonii Petri et Pauli et Iohannis; . . . Quod episcopi magis consuetudine quam dominica dispensatione presbiteris sint maiores; . . . Quod apostoli presbiterorum usi sint consilio; . . . Quod presbiteri, qui presunt, habeant ligandi et soluendi potestatem' (p. 16 lines 9-13; 16 Wolf von Glanvell; cf. *Coll.* 2, 138-43, quoting the well known texts of St. Jerome); 'Quod Romani pontifices presbiteros suos fratres et compresbiteros appellant' (p. 16, 26-7; cf. *Coll.* 2, 46 from Pseudo-Isidore); 'Quod Sardicense concilium Romane ecclesie presbiteros appellet laterales iudices' (p. 16, 30-1; in fact, the Council of Serdica c. 3b [al. 6 or 7] has only: 'mouerit episcopum Romanum ut e latere suo praesbyterum mittat': ed. Turner, *Monum.* 1, 2, iii, p. 461, 16-7; cf. Deusd. *Coll.* 1, 27); 'Quod Romani pontifices tantum cum concilio cleri sui damnauerunt sepe quos oportuit' (p. 16, 32-3; cf. *Coll.* 2, 49; 106); 'Quod absente Romano pontifice clerus eius quorumlibet causas diiudicet' (p. 17, 1-2; referring to St. Cyprian, see *supra*); 'Quod in principalibus festis cum Romano pontifice cardinales presbiteri missam celebrent' (p. 17, 20-1; cf. *Coll.* 2, 114 on concelebration: see ch. III at n. 30 *supra*); 'Inde Romani clerici locum antiquorum habent patriciorum' (p. 17, 27; cf. *Coll.* 4, 1: Donation of Constantine); 'De presbiteris qui non sunt cardinales; . . . Quod hi qui non sunt presbiteri cardinis in sinodo cathedrales sedes non habeant; . . . Quod cardinalibus non debeat preponi non cardinalis' (p. 17, 36-9; cf. *Coll.* 2, 14: *Conc. Neocaes.* c. 13, see nn. 5-7 *supra*); 'Quod absque episcoporum concilio cardinalis urbis Rome remoueri non debet' (p. 19, 10-1; as contrasted with the thesis: 'Quod [Romanus pontifex] absque sinodo episcoporum damnauerit episcopos,' p. 10, 10 [cf. *Coll.* 1, 126; 2, 60; 106; 155]).—In the collection itself, we note: the alteration of Nicholas II's decrees on elections, in favor of the entire cardinal clergy (*Coll.* 1, 168-9; see n. 99 *supra*); the rubric of *Coll.* 2, 41: 'Quod singule Romane ecclesie singulis cardinalibus ab initio commisse sint' (p. 205); the inclusion of the spurious *Constitutum Silvestri* on trials of cardinals (*Coll.* 2, 43-4; cf. Appendix D *infra*); a signal interpolation in the papal profession of faith, LD 83 (p. 181 Rozière, 92 Sickel): '... Si qua uero emisierint contra canonicam disciplinam, [filiis meorum meorum consilio] emendare...' (*Coll.* 2, 110; interpolation not noticed by Wolf von Glanvell 236, 21); the definition of the cardinalate as quoted above (*Coll.* 2, 160); the revival of Stephen III's decree on elections (*Coll.* 2, 161-3; see ch. III n. 24 *supra*).

<sup>111</sup> MS *Vatic. Reg.* 712, fol. 87v: '... praedicti VII episcopi debent assistere cum XXVIII cardinalibus totidem ecclesiis infra muros urbis Romae praesidentibus, qui potestatem obtinent iudicium faciendi super omnes episcopos totius Romani imperii in omnibus conciliis vel synodis quibuscunque accersiti vel praesentes fuerint' (ed. Klewitz, *Entstehung* 123 n. 1; cf. 186).

<sup>112</sup> For the gradually developing requirement of consent to papal acts see Sägmüller, *Cardinale* 216f.; Bresslau, *Urkundenlehre* II, 55-61; for the beginnings of the Consistory, Sägmüller 46-58, 97f. (the earliest example under Paschal II: Klewitz, *Entstehung* 202f.). The right of papal election became reserved to the cardinals by Alexander III in 1179, *Conc. III Later.* c. 1.

## V. THE ROMAN CARDINAL DEACONS

The last score of years of the eleventh century was also the time in which the deacons of the Roman Church became definitely included among the cardinals. Deusdedit coined his definition of *cardinalis* for the *sacerdotes et levitae summi pontificis*, and from the pontificate of Urban II (1088-99) onwards, subscriptions of cardinal deacons make their appearance in papal documents.<sup>1</sup> Until recently, historians in general did not realize that the cardinal dignity of the Roman deacons dates from this relatively late time.<sup>2</sup> Yet it is evident that the deacons could become *cardinales* only at an epoch which was no longer conscious of the basic canonical connotation of the term, for there was no incardination involved in their functions in the Church of Rome.<sup>3</sup> The rise of the deacons to the cardinalate thus reflects and illustrates the semantic changes of that concept itself.

1. *Original Number of the Roman Deacons*

In the Ancient Church, as is well known, the college of deacons everywhere held a position of highest importance. Besides their liturgical functions, they had the ministry of the poor, which in turn led to their assisting the bishop in the administration of his church's temporalities. Additional vicarious power in matters of jurisdiction and clerical discipline often fell to the senior deacon in his capacity as the bishop's secretary (*diaconus episcopi*). Thus we find as early as the time of the last persecutions a clearly marked separation of pastoral and administrative-jurisdictional duties in the diocese, the former being entrusted to the *presbyterium*, the latter, the domain of the deacons' college. In further development of this pattern, the manifold extraordinary assignments of the first deacon began to crystallize during the fourth century in the permanent and powerful office of the archdeaconate.<sup>4</sup>

While small bishoprics frequently had not more than two or three deacons, we find in Rome and in other great Churches their number established since the earliest times at seven, by analogy with the seven 'deacons' of the Apostolic

<sup>1</sup> Cf. the list of signatories in JL I, 657; Klewitz, *Entstehung* 184. For details see at nn. 100-1 *infra*.

<sup>2</sup> Only few authors can be cited as exceptions from the rule: Buennner, *L'ancienne liturgie rom.* (ch. IV n. 68 *supra*) 270, who however puts the origin of the deacons' cardinalate too late; V. Martin, *Les cardinaux et la curie* (ch. I n. 10 *supra*) 15; A. Molien, 'Cardinal,' *Dictionn. de droit can.* 2, 1312; Klewitz 183f.

<sup>3</sup> Incorrect are the reasons advanced by Buennner *loc. cit.* (the deacons lacked the right of liturgical concelebration) and Klewitz *loc. cit.* (the deacons did not belong to any of the main basilicas of Rome). These opinions are connected with the two authors' respective explanations of the term *cardinalis*, cf. ch. III, nn. 28, 30.

<sup>4</sup> See the summaries of the early history of the diaconate and archdeaconate, with bibliographical references, in J. Forget, 'Diaeres,' DThC 4, 703-31; H. Thurston, 'Deacons,' *Cath. Encycl.* 4, 647-53; A. Amanieu, 'Archidiaque,' *Dictionn. de droit can.* 1, 948ff. Kurt-scheid, *Hist. iur. can.* 53-6; 160-4. On the ancient *diaconus episcopi* in particular, A. Leder, *Die Diakonen der Bischöfe und Presbyter* (Kirchenrechtliche Abhandlungen, ed. Stutz 23-4, Stuttgart 1905).

community in Jerusalem.<sup>5</sup> In the third century, Pope Fabian divided the city of Rome into seven *regiones* for the discharge of the deacons' basic ministry—the care of the poor, the widows and orphans—assigning to each deacon one of these districts.<sup>6</sup> In early synodal subscriptions, the Roman deacons therefore sometimes signed their names with the number of their respective *regio* added,<sup>7</sup> and for the same reason the first *Ordo Romanus* in the eighth century qualified them as *diaconi regionarii*.<sup>8</sup> But this does not mean that the *regiones*—mere topographic units of ecclesiastical administration—corresponded in any way to titles of ordination, for the Seven were deacons of the Church of Rome, not of any particular church or title in the city.<sup>9</sup> As liturgical ministers of the Pope by virtue of their orders, and as his ministers in government by virtue of their office, they were properly termed in the official style *Diacones (-ni) Romanae ecclesiae*, which distinguished them sharply from the priests and clergy serving in the twenty-five (later twenty-eight) parochial *tituli*. Residence and *titulus* of the seven deacons, therefore, can only have been the church of the Roman Bishop himself, that is, since the fourth century, the Lateran basilica, although this title of ordination is never expressly mentioned in the ancient sources.<sup>10</sup>

It has been occasionally suggested that the Roman deacons might have been ordained and permanently attached to the cemeterial churches of the individual regions;<sup>11</sup> or that they might have belonged, each in his respective *regio*, to the clergy of one of the title churches.<sup>12</sup> Both theses lack any substantial proof. The first, moreover, reverses the true relation between deaconship and cemeterial administration: if the Seven had to do at all with the supervision of the ceme-

<sup>5</sup> Act. 6, 2-3. The ἐπὶ πλείους πνεύματος καὶ σοφίας are not expressly called deacons in the Acts, but already by the early Fathers, with regard to Act. 6, 1; 2: ἐν τῇ διακονίᾳ τῇ καθημερινῇ . . . διακονεῖν τραπέζαις. The earliest canonical statute limiting the deacons' number to seven for each diocese is *Conc. Neocaes.* c. 14.—Cf. J. Zeiller, in Fliche-Martin, *Hist. de l'Égl.* 1, 379; 2, 392.

<sup>6</sup> LP I, 148.—The often advanced opinion that Pope Fabian's seven *regiones* comprised each two of the fourteen Augustan (civil) *regiones* does not agree with the topographical facts; cf. Duchesne, LP I, 148 n. 3; L. Halphen, *Études sur l'administration de Rome au moyen âge, 751-1262* (Bibliothèque de l'École des Hautes Études 166, Paris 1907) 7f.; R. L. Poole, *Lectures on the Papal Chancery* (Cambridge 1915) 8; Harnack, *Anfänge der inneren Organisations* (ch. III n. 4 *supra*) 963f. 967-9. Cf. also Leder, *op. cit.* 178.

<sup>7</sup> Cf. the often cited *Conc. Rom.* 499: 'Cyprianus diaconus ecclesiae s. Romanae regionis VII his subscripsi' etc. (653f. Thiel; Mansi 8, 237C).

<sup>8</sup> *Ordo I Rom.* num. 1: 'Primo omnium observandum est septem esse regiones ecclesiastici ordinis urbis Romae; et unaquaeque regio singulos habet diaconos regionarios' (3 Mabillon). Cf. Hinschius, *Kirchenr.* I, 322 n. 4; Klewitz, *Entstehung* 179.

<sup>9</sup> Duchesne, LP I, 364 n. 7; Zeiller, *op. cit.* 2, 392; Harnack, *op. cit.* 967f.

<sup>10</sup> See the convincing deductions of Duchesne, 'Les titres presbytéraux et les diaconies,' *Mélanges d'archéologie et d'histoire* 7 (École française de Rome 1887) 218. Cf. H. Leclercq, 'Diaconies,' *DACL* 4, 1 (1920) 735. Klewitz, *Entstehung* 183 missed this fundamental point (cf. n. 3 *supra*).—If not ancient, at least medieval testimonies exist to the *intitulatio* of the seven deacons in the Lateran, e.g. the *Descriptio sanctuar. Later. eccl.* and Benedict VIII JL 4024 (notes 40, 91 *infra*).

<sup>11</sup> Leder, *Die Diakonen der Bischöfe* 179f. 196 n. 1.

<sup>12</sup> U. Stutz, 'Die römischen Titelkirchen und die Verfassung der stadtrömischen Kirche unter Papst Fabian,' *ZRG Kan. Abt.* 9 (1919) 310.

teries<sup>12a</sup> it was because of their diaconal office, but this office was by no means rooted in an appointment to the cemeteries.—As to the second hypothesis, it is based on a misapprehension of the Roman deacons' supra-parochial position. It would place the immediate assistants of the Pope under the command of a title priest, on an equal footing with the lower parochial clergy; and it would involve their eventual promotion to priesthood in the titles. Both implications are equally untenable. We know that in Antiquity the diocesan college of deacons was never considered subordinated to parochial presbyters: on the contrary, the priests had often reason to complain about their being eclipsed by the all-powerful deacons.<sup>13</sup> Also, the great number of popes elected from the ranks of the Roman deacons in ancient history forbids the assumption that the latter's career was normally mingled with that of the title clergy; any *diaconus Romanae ecclesiae* could legitimately have resisted promotion to priesthood in a title, even as it was uncanonical everywhere and a great offense in the Ancient Church to ordain an archdeacon priest and thus to remove him from his high office.<sup>14</sup>

It is quite another thing to ask whether the twenty-five title churches did not include among their clergy also a number of deacons<sup>15</sup>—deacons of the *titulus*, not of the Roman Church as such—for the reason that every title priest must have received at some time before his last ordination the order of diaconship. Harnack's assumption that priests of the titles were promoted directly from the order of acolythes, with but a nominal conferral of subdiaconate and diaconate, is highly improbable.<sup>16</sup> In fact the so-called Gelasian Sacramentary of the seventh or eighth century includes an *Ordo qualiter in Romana apostolicae sedis ecclesia diaconi, subdiaconi vel presbyteri eligendi sunt*, which begins with a formula for announcing the names of candidates elected for promotion:<sup>17</sup>

<sup>12a</sup> But Kirsch, *Titelkirchen* (ch. III n. 5 *supra*) 204ff. has shown that the cemeterial administration was rather in the hands of the presbyterate of the titles.

<sup>13</sup> Cf. the Councils of Arles 314 c. 15; I Nicaea c. 18; Laodicaea c. 20; the *Statuta ecclesiae antiqua* cc. 37–41 (1, 145 Bruns); Gelasius I JK 636 c. 7 (366 Thiel); the well-known complaints of St. Jerome, e.g. *ep.* 146 (ed. R. Hilberg, CSEL 56 [1918] 308–10); and Pseudo-Augustine, *Quaest. vet. et novi testam.* c. 101 (ed. A. Souter, CSEL 50 [1908] 193–8).—Harnack, *op. cit.* 972 tries to use some of these texts as arguments for his and E. Hatch's theory of the two types of constitution (diaconal-episcopal as against presbyteral) in the Ancient Church.

<sup>14</sup> See e.g. St. Jerome, *Comm. in Ezech.* 14, 48: '... Certe qui primus fuerit ministrorum ... iniuriam putat si presbyter ordinetur' (PL 54, 484B); Leo the Great JK 487 c. 2; 489 c. 1; 493 c. 4; 509 c. 2; Greg. *Reg.* 2, 20–2 (JE 1173–5).—On the case of the archdeacon Aetius of Constantinople in the correspondence of Leo the Great see C. Silva-Tarouca, 'Nuovi studi sulle antiche lettere dei Papi,' *Gregorianum* 12 (1931) 583–90 who advances serious arguments against the authenticity of JK 487–9 (= *epp.* 111–3 Ballerini).

<sup>15</sup> This was affirmed in passing by Mabillon, *Mus. ital.* II, xvii; cf. also H. Achelis, 'Diakonen,' *Realencyklopädie für protestantische Theologie und Kirche* 4 (1897) 602; Forget, 'Diacres,' DThC 4, 711; J. Bilz, 'Diakon,' LThK 3, 274; Kurtscheid, *Hist. iur. can.* 54.—Forget (followed by Bilz and Kurtscheid) claims that these deacons were called *stationarii* and that about the year 520 their total number was one hundred (source? the reference to Mabillon *loc. cit.* is not to the point).

<sup>16</sup> Harnack, *Anfänge der inneren Organ.* 987. For criticism see Stutz, *op. cit.* 303f.

<sup>17</sup> *Sacram. Gelas.* 1, 20 (ed. H. A. Wilson, *The Gelasian Sacramentary, Liber sacramentorum Romanae ecclesiae*, Oxford 1894, p. 22); cf. Muratori, *Liturgia Romana vetus* (Venice 1748) I, 512.

Mensis primi, quarti, septimi et decimi, sabbatorum die in XII lectiones ad s. Petrum ubi missas celebrantur, postquam antiphonam ad introitum dixerint, data oratione annuntiat pontifex in populo dicens: 'Auxiliante Domino Deo et salvatore nostro Iesu Christo.' Iterum iterum (*sic*) dicit: 'Auxiliante Domino Deo et salvatore nostro Iesu Christo eligimus in ordine diaconii *sive* presbyterii *illum* subdiaconum *sive* diaconum de titulum *illum*. Si quis autem habeat aliquid contra hos viros. . . .'

With varying alterations and interpolations this text passed on into many similar *Ordines* of the early Middle Ages.<sup>18</sup> Now, whatever the Gallo-Frankish elements of the *Sacramentarium Gelasianum* may be (e.g. in the ordination prayers immediately following upon the *annuntiatio*),<sup>19</sup> this particular portion positively belongs to an old Roman liturgy of ordination<sup>20</sup> and proves that the title priests were recruited from among the deacons of the titles. In view of this (generally overlooked) piece of evidence, even the spurious *Constitutum Silvestri* may be trusted, in this respect at least, as correctly describing the Roman situation of the early sixth century—the time of its fabrication—when it states: 'Et diaconi non essent plus nec amplius per parocciarum examen nisi duo' and distinguishes these 'parochial' deacons from the seven deacons of the Roman Church.<sup>21</sup>

## 2. The Deacons and the 'diaconiae'

Toward the end of the seventh century, the historical picture becomes blurred by the appearance of a new type of churches in the city: the *diaconiae* which are for the first time mentioned as *monasteria diaconiae* under the pontificate of Benedict II (684–5).<sup>22</sup> It seems that they were sixteen in number during the

<sup>18</sup> E.g. those edited by Martène, *De antiq. eccl. rit.* 1, 8, 11, nos. 2, 3, 4, 7, 11 (II, 92, 108, 118, 140, 176 Antw.; II, 33, 38, 42, 50, 63 Ven.); Muratori, *op. cit.* II, 408; M. Gerbert, *Monumenta veteris liturgiae Alemannicae* (S. Blasii 1777–9) II, 40f. (= PL 138, 1004); also in the *Codex s. Eligii* and the related MSS, on which Dom Ménard based his edition (Paris 1642) of the Gregorian Sacramentary (= PL 78, 220f.—see also Ménard's annotations nn. 737–9). Variants from Gerbert and from Martène's *Ordines* 2–4 are given by Wilson, *Gelasian Sac.* 24f. It may be regretted that M. Andrieu has excluded the 'Gelasian' *Ordo* of ordination and its offsprings from his investigations on the early medieval *Ordines Romani*, with the exception of Gerbert's text and of Martène's *Ordo VIII* (cf. Andrieu, *Ordines* 21, 104, 180, and the numerous MSS referred to in the *Index initiorum* s.v. 'Mensis primi, quarti, septimi'). But in the latter, the entire *annuntiatio* is missing (cf. Martène, *op. cit.* II, 142 Antw.; II, 51 Ven.). A critical appreciation of the various forms of the *annuntiatio* must therefore await further research; the reprint of Ménard's text and the synoptic table of the Gelasian and some other texts in P. de Puniet, *Le Pontifical Romain I* (Louvain-Paris 1930) 282–5, 286–90, are no sufficient substitute for a critical discussion.

<sup>19</sup> These prayers are derived from the so-called *Missale Francorum* (ed. Muratori, *Lit. Rom. vet.* II, 667), cf. Wilson, *op. cit.* 22, 24f. For Gallican elements in general see Wilson's introduction and all modern writers on the *Sacr. Gelas.*

<sup>20</sup> Its historical and chronological relation to the considerably different *Ordo* of Saint-Amand (ed. Duchesne, *Origines du culte chrétien* app. vii: a *recueil excentrique* in the words of Andrieu, *Ordines* 492) cannot be studied here.

<sup>21</sup> *Const. Silv.* c. 6 (ed. P. Coustant, *Epistolae Romanorum pontificum*, Paris 1721, app. col. 48; Mansi 2, 625). For details see at nn. 57ff. *infra*. Baronius, *Annales ecclesiastici* an. 112 num. 9, though mistaken about the authenticity of the canon, gives a correct interpretation of its meaning.

<sup>22</sup> LP I, 364. Cf. Duchesne *ibid.* n. 7; id. *Les titres presbytéraux et les diaconies* (n. 10 *supra*) 236; Sägmüller, *Cardinäle* 10.—Outside of Rome, *diaconiae* are found as early as the

eighth century; Hadrian I (772–95) added two more *diaconiae* in the city proper, and three in the suburb of St. Peter.<sup>23</sup> Under Leo III (795–816), nineteen are mentioned in the city, and four *iuxta b. Petrum*, but afterwards only eighteen *diaconiae* altogether remained throughout the Middle Ages.<sup>24</sup>

This simultaneous existence of seven Roman deacons and eighteen diaconal churches is very puzzling. Most authors have been seduced by the term, *diaconiae*, to take a relationship between the deacons, the regions, and these churches—in analogy to the priests and their titles—for granted from the outset, and consequently to assume an increase in number of the regional deacons from the seventh or eighth century onward, so as to match the number of the *diaconiae*.<sup>25</sup> But in truth the organization of the *diaconiae* was, until the late eleventh century, entirely distinct from that of the college of the *diaconi Romanae ecclesiae*.<sup>26</sup> Duchesne showed that the diaconal churches and monasteries had nothing to do with the regional division of the city: we have e.g. as many as eight *diaconiae* in *regio II*, and none in *regio VII*.<sup>27</sup> From the first *Ordo Romanus* as well as from the *Liber diurnus* we have positive evidence that the titular of a diaconal establishment was the so-called *dispensator* or *pater diaconiae*,<sup>28</sup> that is, the office was not connected with a determinate sacred order.<sup>29</sup> To be sure, occasionally one or the other Roman deacon might have been given a *diaconia* in benefice, but such cases were exceptional.<sup>30</sup> As late as the eleventh century, we find other persons, even cardinal priests, as *rectores*, *augmentatores*, *dispensa-*

time of Gregory the Great, cf. *Reg.* 5, 25 for Pesaro (JE 1338); 10, 8 for Naples (JE 1775); 11, 17 for Ravenna (JE 1806). See J. Lestocquoi, 'Administration de Rome et diaconies du VI<sup>e</sup> au IX<sup>e</sup> siècle,' *Rivista di archeologia cristiana* 7 (1930) 265f.

<sup>23</sup> LP I, 504 lines 18–9; 505, 27–506, 6; 509, 29–30; cf. Duchesne's commentary I, 364 n. 7; 519 n. 70; 520 nn. 79–81; 522 n. 110; Sägmüller *loc. cit.* and Lestocquoi *op. cit.* 262, 284–8.

<sup>24</sup> LP II, 18ff. Cf. Duchesne's commentary II, 42 n. 74 and 43 n. 79; *Les titres* 237ff. Lestocquoi 288.

<sup>25</sup> Thus the earlier writers and Phillips, *Kirchenr.* VI, 67–72; Hinschius, *Kirchenr.* I, 322f.; Sägmüller, *Cardinale* 10 and *Cath. Encycl.* 3, 334.

<sup>26</sup> This was Duchesne's fundamental discovery, cf. LP I, 364 n. 7; 'Les régions de Rome au moyen-âge,' *Mélanges d'archéol. et d'hist.* 10 (1890) 144. It has been adopted since by Lestocquoi, *op. cit.* 267, 273; Klewitz, *Entstehung* 180f. 185f.; A. Dumas in Fliche-Martin, *Hist. de l'Égl.* 7, 158.

<sup>27</sup> Duchesne, LP I, 364 n. 7 (a topographical survey is found in *Les titres* 237ff.).

<sup>28</sup> *Ordo I Rom.* num. 4 (6 Mabillon); LD 95 (231 Rozière; 123 Sickel). Cf. Duchesne *loc. cit.*; Lestocquoi, *op. cit.* 276f. Klewitz, *Entstehung* 180. Earlier writers usually held that the *pater* or *dispensator* was only an assistant of the deacon in charge of the *diaconia*, cf. e.g. Mabillon, *Mus. ital.* I, 150; II, xvii; Phillips VI, 68f.; Hinschius I, 322. But the *Ordo I Rom.* clearly speaks of the *pater diaconiae cum subdito sibi presbytero et mansionario*.

<sup>29</sup> Lestocquoi, *op. cit.* 281–3 goes too far, however, in deducing from certain inscriptions that the *dispensatores* or *patres* were originally laymen: their liturgical functions are unmistakably described in the *Ordo I Rom. cit.* See also the objections of Klewitz, 'Montecassino in Rom,' *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 28 (1937–8) 43 n. 2.

<sup>30</sup> The only instance is found in a short list of the Popes from John X to John XV, by Archbishop Sigeric of Canterbury (c. 990): '... Item Iohannes tituli (sic) s. Mariae qui vocatur in Domnico (sic) sedit annos VIII m. I d. V' (John XII: 955–64); '... Item Benedictus diaconiae s. Theodori sedit annos I et dimidium, dies XII' (Benedict VI: 972–4), published by Duchesne, LP II, xv; cf. also Dumas *loc. cit.* (n. 26 *supra*).

tores of diaconal churches,<sup>31</sup> and still later, Urban II speaks of 'clerici diaconiarum quibus diaconi non prae fuerint.'<sup>32</sup> The name of *diaconia*, misleading as it may be, is therefore to be explained otherwise: it indicates only that these institutions, created in the seventh century to succeed the dispensaries (*annonae*) of imperial Rome,<sup>33</sup> were destined to carry on the charitable activities which in the early Church had been the foremost function of the diaconal college, but of which the Roman deacons eventually had to be relieved with the increase of their duties as ministers of the Pope. Suffice it to recall how often deacons were absent from Rome for years, on permanent missions as apocrisaries or as rectors of patrimonies of the Roman Church.

The preceding observations are corroborated by the fundamental fact that throughout the early Middle Ages there appear never more than seven *diaconi S.R.E.* in synodal or papal documents,<sup>34</sup> and that also the literary sources—with one specious exception—know but seven deacons of the Roman Church.<sup>35</sup> It was only toward the end of the eleventh century that the deacons became connected with, and their number determined by, the *diaconiae*.<sup>36</sup> In describing the Mass of the Pope at St. John Lateran, the anonymous author of the *Descriptio sanctuarii Lateranensis ecclesiae* mentions the 'archidiaconus Romae cum VI diaconibus palatinis . . . et alii XII diacones regionarii.'<sup>37</sup> He gives however the total of these (19) deacons only as eighteen, and in listing later their eighteen *diaconiae*, he adds at the first of them, S. Maria in Domnica, the words: 'ubi est archidiaconatus.'<sup>38</sup> This shows that by this time the Roman archdeaconate was about to become permanently united with one of the deaconries, and in fact the archdeacon has disappeared, since the pontificate of Paschal II (1099–1118), from all documentary sources.<sup>39</sup>

<sup>31</sup> Examples in Klewitz, *Entstehung* 186f.; also *Quellen und Forsch.* 28, 42f. Note also a document of 1017 in Hinschius, *Kirchenr.* I, 378 n. 5.: 'Petrus archipresbyter de diaconia s. Christi martyris Eustachii. . .'

<sup>32</sup> Kehr, IP I, 7 num. 11; text quoted from ed. Kehr (cf. ch. IV n. 7 *supra*) by Klewitz 187.

<sup>33</sup> Cf. Lestocquoi, *op. cit.* 262f. 267, 270.

<sup>34</sup> Klewitz, *Entstehung* 181 (with references in n. 2); 185 n. 3 (for the time of Gregory VII).

<sup>35</sup> Cf. Nicetas Paphlago, *Vita s. Ignatii Constantinop.*: Στέφανος μὲν καὶ Δονάτος ἐπίσκοποι τοῦ πάπα Ῥώμης, καὶ Μαρίνος εἰς τῶν ἐκτὸς διακόνων σὺν αὐτοῖς (Mansi 16, 261E); Photius, *Erotemata* 6: Σβυμαχὸν ὡς ἓνα τῶν ἐκτὸς διακόνων ὄντα (PG 104, 1225B)—both quoted by Phillips, *Kirchenr.* VI, 72 nn. 34–5; Hinschius I, 323 n. 4.

<sup>36</sup> Duchesne, *Les régions de Rome* (n. 26 *supra*) 144. Klewitz, *Entstehung* 182f. tentatively suggests that this development may have begun at the time of Stephen III (but admits p. 185f. that this remains uncertain). Lestocquoi, *op. cit.* 273 puts the decisive period too late, at the twelfth century.

<sup>37</sup> See the text from MS *Vat. Reg.* 712, fol. 87v in Klewitz, *Entstehung* 176.

<sup>38</sup> 'Isti XVIII diaconi totidem ecclesias habent infra muros civitatis' (*ibid.*); fol. 88v: 'Diacones sunt X et VIII. S. Mariae in Domnica, ubi est archidiaconatus. . . ' (120 Klewitz; Kehr, IP I, 4).

<sup>39</sup> Cf. Klewitz 176, 189f.—Consequently, the *Descriptio* fol. 88v classifies only five deaconries as palatine (*palatii*), the sixth being merged with the archdeaconate; the five are St. Lucia in Septisolio, Sts. Cosmas and Damian, St. Hadrian, St. George in Velabro, St. Mary in Cosmedin (*in schola Graeca*). The emendation 'S. Theodori palatii', made by Kehr, IP I, 4 and Klewitz 120 (for the faulty reading 'S. Theodorici' in the MS) in order to bring up the number to six, is not warranted. (ist keine fundation! palatii steht in der Hs.)



In the new system as recorded by the *Descriptio*, the six *palatini* with the archdeacon obviously represent the original college of the Roman deacons, the new name being easily explained by their traditional administrative and liturgical service in the Lateran palace.<sup>40</sup> On the other hand, the twelve new *diacones regionarii* must have been substituted for an equal number of *dispensatores* in the respective diaconal churches.<sup>41</sup> Yet, prior to the recent researches of Dr. Klewitz, textbooks usually taught the contrary, namely that the original college was somehow increased in the early Middle Ages to a number of twelve *regionarii*, and that subsequently seven *palatini* were added.<sup>42</sup> For origin and appearance of the latter this theory could, however, offer no explanation, even as it disregarded the counter-evidence: the archdeacon's inclusion among the *palatini*, and the constant number of seven deacons proper before the time of the *Descriptio*. The misleading factor which accounts for the older theory is the name *diacones regionarii*: for in the eighth century (*Ordo I Romanus*) it designated the Seven, and in the eleventh century, the Twelve. But the regional functions of the original *diacones Romanae ecclesiae* had ceased long before, with the establishment of the *diaconiae*; and name and number of the twelve new *regionarii* are probably connected with the then relatively recent division of the city, for purposes of military-municipal administration, into twelve *regiones*, the first traces of which appear in the second half of the tenth century and which has nothing to do with the old ecclesiastical seven regions.<sup>43</sup>

While everything thus points to the end of the eleventh century as the time in which the number of Roman deacons was brought up to nineteen (eighteen), our reconstruction of the historical process seems to be contradicted by Johannes Diaconus (d. before 882), who in his biography of Gregory the Great speaks of the *diacones apostolicae sedis* as 'quorum . . . decem et novem plenitudine redundaret.'<sup>44</sup> Taken at its face value, this testimony would indicate that the set-up which we know from the *Descriptio* was already complete at the end of the sixth century.<sup>45</sup> But this cannot be true, for the *diaconiae* did not exist at this early

<sup>40</sup> *Descriptio* fol. 87v: '... qui in palatio legere debent evangelium et in ecclesia Lateranensi' (176 Klewitz). The attempt of P. Fabre, *Étude sur le Liber censuum de l'Église romaine* (Paris 1892) 153 n. 1, to identify the palatine deacons with the seven *iudices palatini* is unfounded. Cf. Sägmüller, *Cardinale* 27 n. 1.

<sup>41</sup> Klewitz 178-81; Dumas *loc. cit.* (n. 26 *supra*).

<sup>42</sup> See e.g. Phillips VI, 71f.; Hinschius I, 323; Sägmüller, *Cardinale* 10; *Cath. Encycl.* 3, 334. All these writers start from the incorrect assumption that originally there had been one *diaconia* in each of the seven *regiones* (see also Phillips VI, 67; Hinschius I, 312). Entirely gratuitous is an assertion by Panvini, *De episcopatibus* (ch. I n. 2 *supra*) 63; Victorelli in A. Chacon's *Vitae et gesta summorum pontificum* (ed. Ughelli, Rome 1630) I, 46; Tamagna, *Origini* I, 145, and others, to the effect that there had been fourteen (!) regional deacons and that Gregory III (731-41) had added four (!) palatine deacons.

<sup>43</sup> On these twelve new *regiones* and their probable origin in the *scholae militum* of the Byzantine era see Duchesne, *Les régions de Rome* 126-34; LP II, 253 n. 7; Poole, *Papal Chancery* (n. 6 *supra*) 173-5; Halphen, *Études sur l'admin. de Rome* (n. 6 *supra*) 10-5. On the other hand, the addition of twelve *regionarii* might be simply the result of a policy of filling up the remaining *diaconiae* after six of them had been assigned to the *diaconi palatini*.

<sup>44</sup> *Vita s. Greg.* 3, 7 (PL 75, 133).

<sup>45</sup> Thus e.g. Hinschius, *Kirchenr.* I, 312, 323; Kurtzschid, *Hist. iur. can.* 244.

time, nor would their incumbents have been *diacones apostolicae sedis*. Likewise, the number of nineteen cannot be explained by adding to the seven deacons proper the deacons of the *tituli*:<sup>46</sup> these too could not have been termed deacons of the Apostolic See; besides, their number cannot have been as low as twelve.

It has been repeatedly suggested that John the Deacon may simply have dated back the diaconal organization of his own time by three centuries, ascribing it to the pontificate of Gregory the Great.<sup>47</sup> This theory seems to be supported by good evidence, namely by the existence of nineteen *diaconiae* in the ninth century. But even so the difficulties remain unsolved. According to this theory, we should have to admit that the original Seven, plus twelve other 'regional' deacons, were as early as the ninth century in charge of the *diaconiae*, and that the Twelve were as much *diacones apostolicae sedis* as the old college of seven Roman deacons. Both assumptions are incompatible with all the other historical evidence concerning the *numerus clausus* of the Roman deacons proper and the administration of the diaconal establishments by *dispensatores* or *patres* in the early Middle Ages. Certainly John cannot have confused the college of the *diacones Romanae ecclesiae*, of which he himself was a member, with the local *dispensatores*.

The critical passage therefore should be given quite another interpretation. When Johannes Diaconus states:

Solis diaconibus apostolicae sedis super hac quodammodo parte (i.e. promotions to bishoprics) parcebat. Quorum cum decem et novem plenitudine redundaret, ipse Bonifacium, Florentium et Epiphanium consecravit,

he did not mean to speak at all of nineteen diaconal offices but meant to say that nineteen different personalities successively belonged, during the fourteen years of St. Gregory's pontificate, to the college of the (seven) *diacones apostolicae sedis*, and that three of them had been ordained deacons by that Pope himself.<sup>48</sup>

<sup>46</sup> As suggested by Achelis, *Realencykl.* (n. 15 *supra*) 4, 602. E. Caspar, *Geschichte des Papsttums* II (Tübingen 1933) 404 n. 8 wrongly refers this remark to *diacones regionarii*.

<sup>47</sup> Kleiner, *De orig. et antiq. card.* (ch. I, n. 2 *supra*) §19 (p. 454 Schmidt); Nardi, *Dei parrochi* II (Pesaro 1830) 403 n. 1; Caspar, *Papsttum* II, 777; Klewitz, *Entstehung* 183.

<sup>48</sup> The phrase 'quorum cum decem . . . consecravit' is awkward Latinity, to say the least. Grammatically, the translation 'of whom he ordained, while he had as many (*redundaret*) as nineteen if taken all together (*plenitudine*) . . . ' cannot be challenged. The entire passage, however, is badly composed and invites misinterpretation: in the preceding paragraphs, John the Deacon speaks of various Roman priests, subdeacons and monks whom St. Gregory promoted to the episcopate, adding that in this respect the Pope spared his deacons 'somewhat' (*quodammodo*). Now, if no full stop is made after that statement—the Maurist edition has a colon—the reader is invited to believe that the words 'ipse Bonifacium . . . consecravit' likewise refer to episcopal consecrations and modify the *quodammodo* (in this way they are understood by Sägmüller, *Cardinäle* 194). But if that were true, the sentence 'solis diaconibus . . . parcebat' would lose its sense, because also for each of the other classes of clerics promoted to bishoprics not more than three or four names are mentioned (three priests, four subdeacons, three monks). Besides, there are no historical records of a bishop Florentius or a bishop Epiphanius under St. Gregory, and the deacon Boniface became Pope in 607 (see the following chart, num. 11). Therefore, either the entire passage of the *Vita* on the deacons has to be discarded as untrustworthy, or it must

How far can this statement be trusted? The Register of St. Gregory's letters yields information only about the following members, eleven or twelve, of the diaconal college during his pontificate (see table on the next page):<sup>49</sup>

1. Honoratus the deacon was apocrisiary to the court of Constantinople (*Reg.* 1, 6), presumably already before the accession of St. Gregory (cf. Ewald, *MGH Epp.* 1, 8 n. 6; on Gregory's apocrisaries in general see Caspar, *Papsttum* II, 404 n. 5). He is first mentioned in 584, as notary under Pelagius II (JK 1052 ed. Hartmann, *MGH Epp.* 2, 441, 10). His identity with the Honoratus who was made archdeacon in September 591 (*Reg.* 2, 1) can be neither proved nor disproved. Ewald 101 n. 2 adduces against the identity the fact that in letters of the second and third years (*Reg.* 2, 36; 3, 7) the *apocrisiarius* is never styled *archidiaconus*. On the other hand, it is quite possible that Honoratus was nominally appointed archdeacon in 591 and returned temporarily to his diplomatic post but never began his archdeaconal functions: for the death of Honoratus (or of both of them, if there were two) must have occurred between *Reg.* 3, 7 and *Reg.* 3, 55, i.e. before the first mention of Cyprianus as deacon. Otherwise we would arrive at a college of eight deacons for that date. A successor for Honoratus in Constantinople was named in *Reg.* 3, 51-2: Sabinianus (nr. 7).

1a(2). Even if this Honoratus was not the apocrisiary serving as early as the accession of St. Gregory, he must have been an old member of the college, according to the principle of seniority governing the appointment of archdeacons in the Ancient Church; cf. ch. II at n. 59 *supra* and, for the Roman archdeacons in particular, Caspar, *Papsttum* II, 792; Klewitz, *Entstehung* 179.

2(3). Anatolius succeeded Sabinianus (nr. 7) as apocrisiary in Constantinople (*Reg.* 7, 27). He is mentioned as deceased in *Reg.* 12, 6: 'dilectissimae memoriae Anatolius diaconus' (352, 32 Hartmann).

3(4). The death of Servusdei is recorded in *Reg.* 9, 8: 'dilectissimum quondam filium nostrum Servumdei diaconum' (46, 16-7 Hartmann). He had served under St. Gregory's predecessor, cf. *Reg.* 13, 22: 'sanctae memoriae decessoris mei temporibus per Servumdei diaconem, qui tunc ecclesiastici patrimonii curam gessit' (388, 30-1 Hartmann).

4(5). On the difference between the two Bonifaces see Hartmann, *MGH Epp.* 1, 287 n. 2 (to *Reg.* 5, 6, as against Ewald, *ibid.* 39 n. 3), also the *Index nominum* s.v. (2, 478); Caspar, *Papsttum* II, 404 n. 6. The first Boniface is mentioned in St. Gregory's *Dialogi* 3, 20: 'huius nostri Bonifati (sic) diaconi adque dispensatoris aecclesiae', as having relatives in the province of Valeria (ed. U. Moricca, *Fonti per la storia d'Italia* 57, Rome 1924, p. 187 lines 8-10; on the meaning of *dispensator ecclesiae* see Caspar II, 776). He became St. Gregory's third successor as Boniface IV (LP I, 317: 'natione Marsorum de civitate Valeria'). H. K. Mann, *The Lives of the Popes in the Middle Ages* 1, 1 (London-St. Louis 1902) 269 remains uncertain. There is some confusion on the two Bonifaces in Mann 263 n. 2 and Moricca 187 n. 1.

5(6). Laurentius was deposed in September 591 'propter superbiam et mala sua quae tacenda duximus' (*Reg.* 2, 1: 101 Ewald).

6(7). In the letters the promotion of Epiphanius, who came from the province of Isauria, is not spoken of before *Reg.* 5, 35. But in his *Homiliae in Evangelium* 39, 10, St. Gregory mentions the presence of his deacon Epiphanius (PL 76, 1300B; cf. Hartmann, *MGH Epp.* 1,

be read as referring to the promotions of the three said clerics to deaconship (as is done by Peitz, *Lib. diurn.* 61; Caspar, *Papsttum* II, 404 n. 8). This interpretation is borne out in fact by St. Gregory's register; see the following chart.

<sup>49</sup> The figures in the chart indicate the first and the last mention of the several deacons in the letters, with year and number. The period during which any one belonged with certainty to the college of deacons is indicated by a straight line; dots ( . . . ) are used where the duration of a diaconate after its last (or before its first) mention in the Register remains unascertainable.

Name	Evidence from St. Gregory's register	Pope
1 Honoratus apocrisarius	1, 6—3, 7...	Bonif. IV (608-15)
1a (2) Honoratus archidiaconus	...2, 1...	
2 (3) Anatolius	1, 11—11, 29 (d. bef. 12, 6)	
3 (4) Servusdei	1, 42—4, 34... (d. bef. 9, 8)	
4 (5) Bonifatius (i)	1, 50—9, 72	
5 (6) Laurentius archidiaconus	—2, 1	Sabinianus (604-6)
6 (7) Epiphanius	(subdiac. 3, 1-2) diac. (bef. 3, 39)—5, 35—14, 3...	
7 (8) Sabinianus	3, 51—8, 6	
8 (9) Petrus	(subdiac. 1, 1—3, 39) diac. 3, 54—6, 24... (9, 11?)...	
9 (10) Cyprianus	3, 55—9, 65...	
10 (11) Florentius	(subdiac. 3, 15...) 9, 8...	Bonif. III (607)
11 (12) Bonifatius (ii)	(defensor 1, 25—11, 58...) 13, 41—14, 8—	

316 n. 2). Now, the last of the forty homilies was delivered the second Sunday after Pentecost, i.e. May 31, 593 (cf. Ewald 251, note to *Reg.* 4, 17a; also B. Steidle, *Patrologia*, Freiburg 1937, p. 231f.). The ordination of Epiphanius to the diaconate and *Hom.* 39 must have preceded that date and, therefore, the first letter (*Reg.* 3, 39) of June 593. (Incidentally, the career of Epiphanius is additional proof against the date of 592, found in most textbooks for the completion of the *Homiliae*: since he was still subdeacon in September 592 [*Reg.* 3, 2], *Hom.* 40 cannot have been delivered in that year on the second Sunday after Pentecost.)

7(8). Upon St. Gregory's election—he had been Roman deacon himself—there can have been no more than six deacons left. Sabinianus, his future successor, whose old age is occasionally emphasized (cf. Caspar, *Papsttum* II, 405), may have been one of them—if Honoratus is but one person. Otherwise, he may have been made deacon in Gregory's first year, to fill up the college. In the third year (*Reg.* 3, 51–2), he succeeded Honoratus as apocriary in Constantinople, which post he held until *Reg.* 7, 25.

8(9). Petrus (MGH *Epp.* 2, 503: *Index nominum* nr. 16 s.v.), known as St. Gregory's interlocutor in the *Dialogi*, held during his subdeaconship important posts as *rector patrimonii* of Sicily (590–2: *Reg.* 1, 1–2, 38) and of Campania (592: *Reg.* 3, 1–39). Before St. Gregory's pontificate, he had been Roman *defensor* in Ravenna (*Reg.* 3, 54 and 6, 24: 213, 2–4 Ewald and 402, 11 Hartmann; cf. Hartmann 308 n. 2 to *Reg.* 5, 28 and Caspar, *Papsttum* II, 395 n. 2; 404 n. 8). His identity with the 'dilectus filius noster' Petrus in *Reg.* 9, 11 is but an attractive conjecture of Hartmann 2, 49 n. 5. According to a pious legend reported by Johannes Diaconus, *Vita* 4, 69 (PL 75, 222A), but already rejected by Baronius, *Annal. eccl.* an. 604 num. 22, he would have died shortly after St. Gregory, in 604.

9(10). Cyprianus succeeded Petrus as *rector patrimonii* in Sicily: *Reg.* 3, 55; 4, 6–8, 7. His return is mentioned in *Reg.* 9, 15. Cf. Ewald 214 note to *Reg.* 3, 55.

10(11). Of Florentius no more is known than one mention as subdeacon and one as deacon.

11(12). For this Bonifatius the *defensor* (and *primicerius defensorum* since *Reg.* 8, 16) see Hartmann 1, 287 n. 2; Caspar, *Papsttum* II, 449; 464. His ordination to the diaconate and diplomatic mission as apocriary followed upon the death of Anatolius. Boniface III's pontificate lasted only a few months, from February 19th to November 12, 607.

Now it is arithmetically possible that eight or seven more deacons—the number would depend upon whether Honoratus the archdeacon and Honoratus the apocriary were or were not the same person—appeared and disappeared again during these fourteen years.<sup>50</sup> But such an assumption is highly improbable in the absence of any record, and we have no basis for assuming that John the Deacon had at his disposal source materials on the Gregorian administration other than those contained in the *registrum*.<sup>51</sup> For he did not even fully avail

<sup>50</sup> As the diagram shows, the presence of seven deacons is not documented by written evidence for the years 1–2, 5–8 (9?), 10–14. Thus there would be room, theoretically speaking, for many more—under the fanciful supposition that none of those mentioned in the Register was a deacon before his first appearance in the letters, and that every one died immediately after his last mention in a letter.

<sup>51</sup> The contrary, viz. that John possessed such information from archival sources lost to us, was held—not only with regard to the deacons but for every point on which the *Vita* is at variance with the Register—by Peitz, *Lib. diurn.* 58ff. esp. 60, 61 n. 2, 62 n. 3; id. *Das Register Gregors I.* (Ergänzungshefte zu den Stimmen der Zeit, 2nd ser. 2, Freiburg 1917). This hypothesis has been rightly rejected by most writers, cf. e.g. E. Posner, 'Das Register Gregors I.' NA 43, 2 (1921) 288–93; Caspar, *Papsttum* II, 329 n. 3 (with further bibliography); 404 n. 8.—If the differences between Johannes Diaconus and the Register (which, after all, is avowedly his chief source) consisted only of a surplus of information in the *Vita*, Peitz'

himself of the information obtainable from this source: witness his failure to mention the deacon Peter among those ordained by St. Gregory himself. We therefore have to conclude either that John made an uncontrollable mistake in his statement about the nineteen deacons—and this would not be the only blunder in his biography<sup>52</sup>—or that the text of the passage is faulty in the archetype of the manuscripts on which the extant editions of the *Vita* are based.<sup>53</sup> John might for instance originally have written *decem vel novem*. Since he overlooked Peter, he might as well have overlooked one more, or confused the two Bonifaces; and he might have been doubtful about the identity of Honoratus as we still are nowadays. This would account for 'ten or nine' instead of 'twelve or eleven'; and a copyist's error (*decem et novem* for *decem vel novem*) has much transcriptional probability, especially if his mind was distracted by the number of the Roman *diaconiae*. Future critical examination of the manuscript tradition may support or destroy such a conjecture, but it is certain that John the Deacon's text as it now stands makes no historical sense.

### 3. The Deacons as Cardinals

As long as the genuine canonical concept of *cardinalis* remained alive and undisturbed by extraneous etymologies, the Roman deacons could not be qualified as *cardinales diaconi*: they were not incardinated in any other church different from their title of ordination, the Lateran basilica. It is therefore significant that the oldest document attributing to the Roman deacons the name of cardinals—and paradoxically the very first text to connect that name with any class of Roman clerics at all—should be a notorious forgery: the so-called *Constitutum Silvestri*.<sup>54</sup> Purporting to be the decree of a Roman Synod presided over by Pope St. Sylvester and Emperor Constantine in 324, the *Constitutum* belongs to a group of spurious documents known as the Symmachian forgeries, all of which

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theory could be defended. But John not only gives at times less than the Register (e.g. on the deacon Peter, see the text above) but sometimes manifestly blunders: he names e.g. (*Vita* 3, 7) among the Roman priests whom Gregory ordained bishops, *Bonifacium Rhegii*. Now, Bishop Boniface of Reggio appears in the letters from 592 on (*Reg.* 3, 4) and 'Bonifatius presbyter titulo s. Xisti' subscribes as late as 600 the acts of a Roman synod (*Reg.* 11, 15 275, 17 Hartmann)!

<sup>52</sup> See the preceding note, also ch. II n. 36; IV n. 43 *supra*.

<sup>53</sup> For the various editions see the Bollandists' *Bibliotheca hagiographica latina* I (Brussels 1898-9) num. 3641; A. Potthast, *Bibliotheca medii aevi* (2nd ed. Berlin 1896) II, 1349, where also some MSS are mentioned. For collations made of some MSS see the Bollandists' *Acta Sanctorum* mart. II (3rd ed. Paris-Rome 1865) 121; the Maurists' *praefatio generalis* to the Works of St. Gregory (= PL 75, 17-20: criticism of Goussainville's edition, Paris 1675) and their preface to the *Vita* (num. 12 = PL 75, 39: on MSS collated and consulted).

<sup>54</sup> The classical proof of the spurious nature of the *Constitutum* remains the dissertation of P. Coustant, *Epistolae Romanorum pontificum* (Paris 1721) app. cols. 37-44 (reprinted PL 8, 841-5); see also his *praefatio generalis* pp. lxxxv. (num. 97-9) and, of modern authors, in particular F. Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande* (Graz 1870) 411ff.; Duchesne, LP I, cxxxiii-v. The first to deny the authenticity of the decree, at least in its Pseudo-Isidorian form (n. 63 *infra*) was Hincmar of Reims, *De presbyteris criminosis* cc. 21-4 (PL 125, 1103-6). Cf. Coustant 39-40; Mansi 2, 615 n. 1.

were fabricated and circulated during the first years of the sixth century<sup>55</sup> by overzealous followers of Pope Symmachus (498–514), to strengthen his position which had been so greatly compromised during the schism of Laurentius. Among canonical collections, the *Constitutum Silvestri* appears for the first time in the *Collectio Sanblasiana*, the collection of MS *Vatic. lat.* 1342, and, in abridged form, in the *Theatina*—all dating from the sixth century.<sup>56</sup> As far as we can judge from the printed texts, the pertinent canons read:<sup>57</sup>

(c.3) Postea autem fecit gradus in gremio synodi, ut non presbyter adversus episcopum, non diaconus adversus presbyterum, non subdiaconus adversus diaconum, non acolythus adversus subdiaconum, non exorcista adversus acolythum, non lector adversus exorcistam, non ostiarius adversus lectorem det accusationem aliquam. Et non damnabitur praesul nisi in LXXII. Neque praesul summus a quoquam iudicabitur; quoniam scriptum est: 'Non est discipulus super magistrum.' Presbyter autem nisi in XLIV testimonia non damnabitur. Diaconus autem cardine constructus urbis Romae nisi in XXXVI non condemnabitur. Subdiaconus, acolythus, exorcista, lector, nisi, sicut scriptum est, in septem testimonia filios et uxores habentes, et omnino Christum praedicantes. Sic datur mystica veritas (47–8 Coustant; 623–4 Mansi).

<sup>55</sup> Cf. Duchesne *loc. cit.*; id. *L'église au VI<sup>e</sup> siècle* (Paris 1925) 124; G. Pfeilschifter, *Der Ostgotenkönig Theoderich der Grosse und die katholische Kirche* (Kirchengeschichtliche Studien 3, 1–2, Münster 1896) 65; K. Silva-Tarouca, 'Beiträge zur Überlieferungsgeschichte der Papstbriefe des 4.–6. Jahrhunderts,' *Zeitschrift für katholische Theologie* 43 (1919) 665. The suggestion of a later date, seventh or eighth century, made by A. Gaudenzi, *Nonantola* 335, 337f. 353f. 359f. was rightly rejected by W. Levison, 'Konstantinische Schenkung und Silvester-Legende,' *Miscellanea Francesco Ehrle* (Studi e Testi 38, Rome 1924) II, 181 n. 4.

<sup>56</sup> For these collections and the MSS by which they are represented, see Maassen, *Geschichte* 411ff. 504ff. (506); 512ff. (515); 526ff. (530); Duchesne, LP I, cxxxiv–vii (with a stemma of later MSS: p. cxxxv and n. 1); Mommsen, *MGH Gesta Rom. pont.* 1 (Berlin 1898) xxii; Gaudenzi, *op. cit. passim*; Turner, *Monum.* 1, 2, i, p. viii; id. 'Chapters in the History of Latin MSS of Canons: VI,' *Journal of Theological Studies* 31 (1931) 9–20; Silva-Tarouca, *op. cit.* 664f.; L. Schiaparelli, *Il codice 490 della Biblioteca capitolare di Lucca e la scuola scrittoria lucchese* (Studi e Testi 36, Rome 1924) 15; Schwartz, *Acta conc. oecum.* 2, 2, ii, p. vi ff. and xv; id. book review, *ZRG Kan. Abt.* 20 (1931) 599f.; id. 'Die Kanonessammlungen der alten Reichskirche,' *ZRG Kan. Abt.* 25 (1936) 53ff.; E. Lowe, *Codices latini antiquiores* I (Oxford 1934) 34 and 44; H. Wurm, *Studien und Texte zur Dekretalensammlung des Dionysius Exiguus* (Kanonistische Studien und Texte ed. Koeniger 16, Bonn 1939) 87–9; 265; id. 'Decretales selectae ex antiquissimis Romanorum Pontificum epistulis decretalibus,' *Apollinaris* 12 (1939) 44; 47.

<sup>57</sup> A critical edition does not exist. The parallel edition from two slightly different MSS by P. Crabbe (Cologne 1538) is reprinted in Labbe, Hardouin, etc. and in Mansi 2, 217ff. The latter adds variant readings from a *Codex Lucensis*, probably MS Lucca 490 of the *Coll. Sanblasiana*. The best edition is that by Coustant, *Epp. Rom. pont.* app. 43–52, from MS Paris, B.N. lat. 3836 (ol. Colbert 784; cf. Coustant p. lxxix, app. 37–8). Eusebius Amort, *Elementa juris canonici veteris et moderni* (Ulm 1757; used ed. Ferrara 1763) I, 378–85 printed the *Constitutum* as part of his (generally overlooked) edition of the *Coll. Diessensis* (8th–9th cent.; MS Munich lat. 5508). Coustant's text is given above; of the variants recorded by him, or resulting from Mansi and Amort, only the following may be noted as they bear on the 'cardinal' passages:—(c. 3) cardine constructus] cardine constrictus *Mansi* 1, in cardine constitutus *Amort*, cardinalis *Mansi Luc.*—(c. 11) diaconus cardinalis] subdiaconus cardinalis *var. Coust. Mansi* 2.—The *Coll. Theatina* omits in c. 3 the critical words and reads: '... diaconus autem (nisi) in XXXVII non condemnabitur' (ed. Duchesne, LP I, cxxxiv, col. 2 n. 1).

(c.6) Et diaconi non essent plus nec amplius per paroeciarum examen nisi duo, et *diacones cardinales* urbis Romae septem (48 Coustant; 625-6 Mansi).

(c.7) Ita tamen Silvester clara voce dicebat ad coepiscopos, ut a subdiacono usque ad lectorem omnes subditi essent *diacono cardinali urbis Romae*, in ecclesia honorem repraesentantes tantum; pontifici vero presbyteri, diaconi, subdiacones, acolythi, exorcistae, lectores in omni loco repraesentent obsequium, sive in publico, sive in gremio ecclesiae, tamquam pontifici (*ibid.*).

(c.11) Ut nullus ex laica persona ad honorem acolythus usque ad episcopatum sublevaretur, nisi prius fuisset lector annis XXX, deinde . . . et in subdiaconatu esset annos quinque; deinde ad diaconatus honorem pertingeret fixus, rogantibus XXX presbyteris examen, ut esset *diaconus cardinalis*, quia a prima sede erat constitutum ut serviret annos septem . . . (50 Coustant; 627-8 Mansi).<sup>58</sup>

The four canons show all the barbarous Latinity of the fake, all its notorious ignorance in matters canonical, let alone the fantastic rule on the number of witnesses required for the trials of ecclesiastics.<sup>59</sup> This also accounts for the forger's untechnical and wavering use of the terms *diaconus cardine constructus*, *diaconus cardinalis*: untechnical, because at that time the canonical concept *cardinalis* < *incardinatus* was as yet unmistakably distinct from the everyday meaning of the word; wavering, because the *Constitutum* uses it to designate, now the deacons of the pope's cathedral (cc. 3, 6, 11), now the archdeacon alone (c. 7).<sup>60</sup>

Nevertheless, the clumsy forgery contributed to spread the uncanonical usage of the term 'cardinal.' The Symmachians resorted to it again in the so-called *Gesta Polychronii* which they presented as acts of a Roman Synod of 433.<sup>61</sup> In the ninth century, Pseudo-Isidore took over the third canon of the *Constitutum Silvestri*<sup>62</sup> and dressed it up with several interpolations, among which the most conspicuous is the insertion of *cardinalis* also in the passage concerning the trials of presbyters.<sup>63</sup> From now on the text was bound to appear to the uncritical mind of later generations<sup>64</sup> as proof for a very early existence—at least as old

<sup>58</sup> For the relation of c. 11 to c. 6 of the pseudo-Sylvestrian 'Synod of the 275 (*al.* 270) Bishops' (ed. Ch. Poinsel, 'Un concile apocryphe du pape saint Sylvestre,' *Mélanges d'archéol. et d'hist.* 6 [1886] 5; cf. Mansi 2, 1083A) and to LP I, 171, 15ff. (on St. Sylvester's decree concerning interstices) see Duchesne, LP I, pp. cxxxix and 190 n. 25 (counting *Syn.* c. 6 as c. 5).

<sup>59</sup> See Appendix C *infra*.

<sup>60</sup> On the latter canon (c. 7) Panvini, *De episcopatibus* etc. (ch. I n. 2 *supra*) 63 based his conviction that originally the archdeacon alone among the Roman deacons had been cardinal.

<sup>61</sup> *Gesta Polychronii* c. 2 = *Gesta de Xysti purgatione* c. 8: 'Et subscripserunt . . . episcopi vero LXXVI et duo diacones cardinales Romani et tres presbyteri . . .' (Coustant, *Epp. Rom. pont.* app. col. 122; Mansi 5, 1073A).

<sup>62</sup> *Excerpta ex synodalibus gestis s. Silvestri* cc. 2-4 (449 Hinschius).—Duchesne, LP I, cxxxv n. 1 and H. Grisar, *History of Rome and the Popes in the Middle Ages* (author. engl. trans. London 1911-2) III, 218 erroneously deny a transmission of the *Const. Silv.* in Pseudo-Isidore.

<sup>63</sup> *Excerpta* c. 3: 'Presbyter autem cardinalis nisi quadraginta quatuor testibus non damnabitur, diaconus cardinarius constructus urbis Romae nisi in XXXVI non condemnabitur. . . .' For details see Appendix D *infra*.

<sup>64</sup> Not only to the glossators and the authors of the sixteenth century, but even to some modern writers: e.g. McBride, *Incarn.* and *Excarn.* (ch. I n. 12 *supra*) 5; P. Pisano, 'Cardinale,' *Enciclopedia Italiana* 8 (1930) 989.



as the time of St. Sylvester—of the Roman cardinal deacons and priests. Chiefly instrumental in spreading such a notion were the canonical collections which transmitted the *Constitutum*—mostly in the Pseudo-Isidorian recension—from the ninth century down to Gratian.<sup>65</sup> But also apart from the canonists, the effects of the Pseudo-Sylvestrine-Isidorian terminology can be seen: e.g. in the *Annales Fuldenses* (late ninth century)<sup>66</sup> or in the pompous eulogist of Emperor Otto I, Liudprand of Cremona (d. 972).<sup>67</sup>

Still, officially the Roman deacons remained but *diacones ecclesiae Romanae* until the eleventh century. 'Ego N. diaconus Romanae ecclesiae' was the style of their synodal signatures,<sup>68</sup> and simply as deacons, not as cardinals, were they referred to in papal letters and by Roman writers.<sup>69</sup> When Stephen III in the Roman Synod of 769 spoke of 'unus de cardinalibus presbiteris aut diaconibus,' he certainly did not mean to extend—although the construction would be grammatically possible—the attribute, *cardinalis*, to the Roman deacons: witness another passage of the synodal acts where the pertinent text reads: '... in gradus clericorum sanctae Romanae aecclisiae, id est presbiterorum cardinalium et

<sup>65</sup> C. 2 q. 7 cc. 2, 10 + C. 2 q. 4 c. 2 (= *Const. Silv.* c. 3); D. 93 c. 5 (= *Const. Silv.* c. 7). The complex textual history of these canons is by no means clarified in the apparatus of Friedberg's edition. For *Const. Silv.* c. 3, the Pseudo-Isidorian tradition is represented by at least five different families of texts, the archetypes of which are the *Coll. Anselmo dedicata*, Burchard's *Decretum*, Ivo's *Tripartita*, the *Coll. V librorum*, and the *Coll. LXXIV titulorum* respectively (Gratian belongs to the last mentioned group); there are further three traditions independent from Pseudo-Isidore (Angilramnus, Cardinal Atto, and the Frankish capitularies). For *Const. Silv.* c. 7, three families of texts are found, headed by the *Coll. Ans. dedicata*, Burchard, and Anselm of Lucca respectively (the latter being the ancestor of Gratian's text). *Const. Silv.* c. 6 is only transmitted by Deusdedit 2, 43. See appendix D *infra*.

<sup>66</sup> *Ann. Fuld.* an. 885: '... et omnium presbyterorum et diaconorum cardinalium ... scripta destinavit' (ed. F. Kurze, MGH *Script. rer. germ.* Hannover 1891, p. 104; cf. Pertz, MGH *Script.* 1, Hannover 1826, p. 402, 48–50). The pertinent portion of the Annals was written before 888 by Meginhardus, cf. Kurze p. vii.

<sup>67</sup> Liudprand, *Historia Ottonis* c. 1: '... nuntios s. Romanae ecclesiae, Iohannem videlicet cardinalem diaconem et Azonem scriniarium ... regi ... destinavit' (ed. J. Becker, *Die Werke Liudprands von Cremona*, 3rd ed. MGH *Script. rer. germ.* Hannover-Leipzig 1915, p. 159 lines 7–11; cf. ed. Pertz, MGH *Script.* 3, Hannover 1839, p. 340, 6–8; repeated in E. Dümmler, MGH *Script. rer. germ.* Hannover 1877). And so forth, we read of Roman cardinal deacons in cc. 6, 10, 20, 21, 22 (pp. 163, 1 and 13–4; 166, 26–8; 167, 5–11 and 20–1; 173, 24–5; 174, 5–7 and 23 Becker) and even in the inserted 'original' documents: the imperial synod of November 963 (c. 9: 166, 3–5 Becker), the speech of the Emperor (c. 11: 168, 1 Becker), his letter to Pope John XII (c. 12: 168, 33–4 Becker), and the synodal message to the Pope (c. 14: 171, 1 Becker). But we must remember that the 'originals' are all studded with interpolations in Liudprand's customary, flowery style; see Becker's notes, *passim*, and his introduction, p. xxi.

<sup>68</sup> References to sources are found in Klewitz, *Entstehung* 181 n. 2.

<sup>69</sup> It is impossible to list here every reference or address to a Roman deacon in the papal letters of the early Middle Ages. They may be easily checked in the Indices of the several volumes of *Epistolae* in the MGH (but it should be noted that these Indices sometimes use the incorrect lemma *cardinalis diaconus*). As for Roman writers, see in particular Johannes Diaconus, *Vita s. Greg.* 3, 7 (discussed in sect. 2 *supra*); see also the Greek writers quoted n. 35 *supra*.

diaconorum.<sup>70</sup> Nor can it be argued that the somewhat younger *Ordo IX Romanus*<sup>71</sup> in its paragraph on the consecration of the Pope comprises the Roman deacons among the cardinals:

(c.5) Summus namque pontifex quando benedicitur, eligitur unus de cardinalibus, de qualicumque titulo fuerit, tantum ut a praecessore sit pontifice ordinatus aut presbyter aut diaconus, nam episcopus esse non poterit . . . (92 Mabillon).

For, the construction of the passage is logically defective. The clause 'tantum ut' *rell.* envisages the election of a priest or deacon ordained by a previous Pope, in reminiscence of Stephen III's decree and in particular of the lay intruder Constantine who had been ordained deacon and priest within two days by the Bishop of Palestrina. But the preceding clause, 'eligitur unus' *rell.*, with its correlation of cardinals and *tituli*, can of necessity apply only to a title priest. The sentence thus suffers from a change of subject and cannot be adduced as an instance for *diaconus cardinalis*.<sup>72</sup> And so wherever the higher ranks of the Roman clergy are named together, the added qualification of the presbyters or the Lateran bishops as cardinals cannot be referred to the deacons.<sup>73</sup>

There is only one isolated document, allegedly of the ninth century, which seems to prove the contrary: the fragment discovered by Baronius of a so-called *Constitutio de iure cardinalium* by Pope John VIII (872-82).<sup>74</sup> This text

<sup>70</sup> Texts ch. III n. 24 *supra*.

<sup>71</sup> Ed. Mabillon, *Mus. ital.* II, 89-94; Martène, *De antiq. eccl. rit.* 1, 8, 11, 9 (II, 151-3 Antw.; II, 54-5 Ven.).—The chronological problems connected with *Ordo IX* (Andrieu's no. XXXVI) are unsolved. Most authors attribute it to the early ninth century; cf. the references in Klewitz, 'Die Krönung des Papstes,' *ZRG Kan. Abt.* 30 (1941) 111 n. 50. The assumption of J. Kösters, *Studien zu Mabillons römischen Ordines* (Münster 1905) 2f. that its section on the papal consecration and enthronization had been inserted only at the time of Leo IX (1048-54) has been rightly rejected by most writers. The thesis is disavowed by the MSS; and particularly the clause 'nam episcopus esse non poterit' would hardly have been written under a Pope who formerly had been bishop of Toul. If the passage is genuine—as we must assume until the contrary be proved from the earliest MS, St. Gall 614 (9th cent. second half: Andrieu, *Ordines* 487)—one would be inclined to assign the text to the agitated times after the pontificate of Formosus (891-6). For the reasons which induced the later canonists, Anselm of Lucca 6, 43 (289 Thaner) and Deusdedit 2, 113 (240, 20 Wolf von Glanvell) to suppress this passage, see F. Wasner, 'De consecratione, inthronizatione, coronatione Summi Pontificis,' *Apollinaris* 8 (1935) 100 n. 59; 250 n. 251.

<sup>72</sup> As is done by Buenner, *L'ancienne liturgie rom.* (ch. IV n. 68 *supra*) 270 n. 3.

<sup>73</sup> Besides *Conc. Rom.* 769 and *Ordo IX* the following instances are found: LD 118 (app. IV), dating of the tenth century (cf. Garnier's note and Hinschius, *Kirchenr.* I, 318 n. 3): 'Ego N. s. Romanae ecclesiae diaconus vel presbyter vel episcopus cardinalis electus' (261 Rozière; not in Sickel). In this form of papal profession of faith the addition of the word *cardinalis* became necessary because a suburbicarian bishop cannot be simply called *S.R.E. episcopus*; in earlier forms, which do not envisage the election (transfer) of a bishop to the Holy See, the adjective is lacking (see e.g. LD 83).—Clement II JL 4134 (an. 1046): 'Totus pene mundus noverit quod specialissimas dignitates nostri episcopi ac cardinales presbyteri atque diacones habeant' (PL 142, 580D).

<sup>74</sup> JE 3360; ed. Baronius, *Annal. eccl.* an. 882 num. 8f. whence Mansi 17, 247-8 and all other editions are derived (cf. Kehr, IP 1, 6 num. 8).—The *Constitutio* should have been discussed by Klewitz, since it represents the most serious objection against his (basically correct) view, *Entstehung* 183: 'Der Terminus diaconus cardinalis ist vor dem 9. Jahrzehnt

sanctions, among other prerogatives of the title priests, their hebdomadal service and a relative share in the offerings at the great basilicas, adding the restrictive clause: 'salva semper cardinalium diaconorum prisca consuetudine.'<sup>75</sup> Absolutely speaking, such a terminology at variance with the strict canonical concept of cardinal would not be astonishing in John VIII.<sup>76</sup> But for several reasons the authenticity of the statute, although never challenged heretofore, is more than doubtful. The only extant MS (Rome, Biblioteca Vallicelliana C. 24) dates from the sixteenth century; according to Baronius it was transcribed from a Vatican MS which however can no longer be traced.<sup>77</sup> In the eleventh century, both Alexander II and Urban II in their important decrees dealing with the rights of cardinal priests made no mention of such an earlier statute and of the sweeping jurisdictional privileges it contains.<sup>78</sup> Nor did Deusdedit, that most solicitous advocate of the cardinals' prerogatives,<sup>79</sup> have any information about this text, notwithstanding the systematic researches which were conducted during the Gregorian reform in the archives, in order to unearth older papal documents showing the rights of the Roman Church and its clergy.<sup>80</sup>

The *Constitutio* cannot withstand internal criticism any better. It gives the title priests as a body unlimited right of disciplinary jurisdiction over the Roman clergy, and of contentious jurisdiction over suits between the clergy and the laity.<sup>81</sup> As early as the ninth century such an infringement upon the traditional disciplinary and judicial powers of the archdeacon and the deacons' college—let alone the then flourishing civil jurisdiction of the palatine judges<sup>82</sup>—is hardly

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des 11. Jahrhunderts aus Originalen päpstlicher Urkunden nicht zu belegen.' If JE 3366 were genuine, it would not matter whether or not the original is lost.

<sup>75</sup> 'Item sancimus de parochiis nostris, quantumque pontifici competit, pontificali beneficio vos in perpetuum possidere et in principalibus ecclesiis iuxta primatum vestrae consecrationis vicissim officia divina peragere et earum oblationibus, salva semper cardinalium diaconorum prisca consuetudine, aequaliter participare. . . .'. Mann, *Lives of the Popes III* (London-St. Louis 1906) 347 is mistaken in holding that this section of the statute 'seemingly' refers to the cardinal bishops. For the correct interpretation see Hinschius, *Kirchenr. I*, 321 with n. 1.

<sup>76</sup> Cf. ch. IV at nn. 38-41 *supra*.

<sup>77</sup> See Kehr, IP 1, 5 (before num. 1). Baronius' footnote *loc. cit.* is unfortunately defective: '... reperitur in Vaticanae bibliothecae monumentis: Liber canonum inscriptus num.'

<sup>78</sup> Alexander II: JL 4736 (cf. ch. III at n. 36; IV at n. 105 *supra*); Urban II: Kehr, IP 1, 7 num. 11 (ed. Kehr, *Gött. Nachr.* 1908, p. 228 num. 3; cf. Klewitz, *Entstehung* 161 n. 1). It is therefore not correct when Klewitz 160 speaks of these Popes as having further developed (*weitergebildet*) the statute of John VIII.

<sup>79</sup> Cf. ch. IV nn. 109-10 *supra*.

<sup>80</sup> On these researches see P. Fournier and G. Le Bras, *Histoire des collections canoniques en occident II* (Paris 1932) 7-14; 31f. 46.

<sup>81</sup> 'Itemque . . . vos convenire mandamus (cf. n. 83) et ob vestram et inferiorum clericorum vitam et mores et qualitates et habitus vestium perscrutando, et qualiter quilibet praepositi se erga subditos habeant, vel quod subditi suis praepositis non obediant, et ad quaeque illicita amputanda, clericorum quoque et laicorum querimonias quae ad nostrum iudicium pertinent, quantum fieri potest, definiendas.'

<sup>82</sup> On the *iudices palatini* see Sigmüller, *Cardinale* 18-24; S. Keller, *Die sieben römischen Pfalzrichter im byzantinischen Zeitalter* (Kirchenrechtliche Abhandlungen ed. Stutz 12, Stuttgart 1904); Halphen, *Etudes sur l'administr.* (n. 6 *supra*) 37-48; Th. Hirschfeld, 'Das

conceivable. Still more suspect is the fact that, for the discharge of the judicial functions, one passage of the statute prescribes semi-monthly meetings of the presbyters at one or the other title, *diaconia*, or any church whatsoever; while another passage prescribes meetings for the same purpose twice a week at the Lateran palace.<sup>83</sup> The latter passage further includes a reference: 'iuxta decreta praedecessoris nostri Leonis quarti,' but the only extant decree of Leo IV which could be cited here contains nothing of the kind.<sup>84</sup> In fact, there is no instance known under or after John VIII which would show the cardinal priests acting as a court of justice.<sup>85</sup>

Other clauses of the *Constitutio* equally arouse suspicion: it says that those among the title priests who are professed religious should take care of Roman monasteries destitute of their abbots and even appoint new abbots.<sup>86</sup> Yet, monks as priests of the Roman *tituli* are not found at that early date. It further says that the priests shall be possessed in the parishes, by papal grant, of all that is due to the Pontiff.<sup>87</sup> But as far as the *tituli* are concerned the priests held all such rights and revenues already by common law, and there existed no other parishes in Rome at that time. Finally, the clause which describes the hebdomadal service in the major basilicas as following the order of seniority among the

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Gerichtswesen der Stadt Rom vom 8. bis 12. Jahrhundert,' *Archiv für Urkundenforschung* 4 (1912) 419-562.—Halphen's assumption (p. 45 n. 6) that at times a Roman deacon might have been also *primicerius notariorum*, i.e. one of the palatine judges, is unfounded; cf. Bresslau, *Urkundenlehre* I, 199 n. 6; Becker, *Liudprand* (n. 67 *supra*) 166 n. 1.

<sup>83</sup> 'Itemque ex nostra praesenti constitutione bis in mense vel eo amplius vel apud illum vel illum titulum, sive apud illam vel illam diaconiam, sive apud alias quaslibet ecclesias vos convenire mandamus et ob vestram et inferiorum . . . (rell. n. 81) definiendas.' And then: ' . . . Propter sollicitudinem autem ecclesiarum et eorum clericorum, earumdem disciplinam sive laicorum querimonias definiendas bis in hebdomada ad sacrosanctum palatium, iuxta decreta praedecessoris nostri Leonis quarti, vos convenire mandamus.'

<sup>84</sup> Leo IV JE 2633: 'Precipimus ut in nostra absentia nec ecclesiasticus nec palatinus ordo deficiat. Sed recurrentibus diebus, tamquam si nos hic fuissetis, omnes nobiles ad Lateranense palatium recurrant et quaerentibus ac petentibus legem ac iustitiam faciant' (ed. A. de Hirsch-Gereuth, MGH *Epp.* 5, 599). Sägmüller, *Cardinale* 23 and Hirschfeld, *Gerichtswesen* 450 consider *nobiles* a collective noun for *ordo ecclesiasticus* and *ordo palatinus*, and therefore would have it include also the cardinals. This interpretation is untenable. Even Sägmüller must admit that a reference to JE 2633 in the *Constitutio* is not more than a slight possibility (pp. 23, 36 n. 3). In fact, JE 3366 regards the cardinal priests, but JE 2633, the palatine judges.

<sup>85</sup> Among the judicial documents gathered by Hirschfeld, *Gerichtswesen* 456ff. there is none coming from the cardinals before the twelfth century (compare p. 456 n. 4 with 458 n. 3: *iudices palatini*; see also 493ff.). Nonetheless Hirschfeld 449-51 upholds judicial functions of the cardinals, even of the deacons and bishops (!), on the strength of the *Constitutio*. The examples given by Sägmüller 30 n. 5 for cardinals as judges side by side with the *iudices palatini* in the eleventh century (JL 4075; Kehr, IP 2, 66 num. 40) are not to the point, because these were judgments rendered by the Popes themselves with the several cardinals and curial officers only assisting.

<sup>86</sup> 'Item monasteria abbatibus viduata et abbatum nostra praecedente conscientia substitutionem his qui sunt inter vos vel fuerint monasticae professionis disponenda committimus.'

<sup>87</sup> Text in n. 75 *supra*. For the interpretation see Hinschius, *Kirchenr.* I, 320 n. 3.

title priests<sup>88</sup> is at variance with the established assignment of determinate *tituli* to determinate basilicas.

All this evidence speaks against the genuineness of the *Constitutio de iure cardinalium* and for its being fabricated at a later time, when the original functions of the *tituli* and their presbyterate were waning, but when, on the other hand, the jurisdictional powers of the cardinal priests had been greatly increased and extremist tendencies were rampant to push these powers still farther. That would bring us down at least to the time of Guibert's schism (1080-1100) and to a schismatic cardinal as the possible author of the *Constitutio*.<sup>89</sup> By this time, the qualification of the Roman deacons as *cardinales* was no longer a startling manner of speech, as it would have been three centuries before, under John VIII.

In the course of these centuries we have witnessed the decay of the canonical terminology regarding cardinals. Outside of Rome, *cardinales diaconi* were nothing unusual among the self-styled cardinal clergy of Italian cathedrals, and even among the 'liturgical' cardinals created abroad by papal privileges since the late tenth century.<sup>90</sup> With the original meaning of the term obliterated, it was to be expected that it should become applied to the deacons of the Church of Rome, too.

The first authentic papal document to do so dates from 1018. It is a privilege made out by Benedict VIII for the Cardinal bishop of Porto, granting to him and his successors the island of St. Bartholomew in the Tiber, with all its churches, houses and appurtenances in perpetual freehold, together with full powers of ordination extending over all the Trastevere, with the sole exception that there shall be no power of ordaining any one to be 'cardinalis presbyter, vel cardinalis diaconus vel subdiaconus vel acolythus sacri palatii Lateranensis.'<sup>91</sup> This charter, in that it surrenders a considerable part of the Pope's episcopal jurisdiction in his own diocese, is typical of the alarming disintegration of diocesan unity in the very city of Rome during that period. Even more sweeping rights, for instance, were granted a few years later (1026) by John XIX to the Bishop of Silva-Candida for St. Peter and its suburb<sup>92</sup>—which eventually led to a clash

<sup>88</sup> Text in n. 75 *supra*.

<sup>89</sup> Perhaps even later: one clause of the statute compares the cardinal priests to the seventy elders in Num. 11, 16; otherwise this simile is not applied before St. Bernard of Clairvaux, *De consideratione* 4, 4 (PL 182, 778B).

<sup>90</sup> Cf. ch. IV nn. 9ff. and for the liturgical cardinals, *ibid.* nn. 50 (Magdeburg), 52 (Aachen); no cardinal deacons were created, however, for Treves, Besançon, Cologne, Compostella.

<sup>91</sup> JL 4024 (cf. the text in PL 139, 1621B; some editions—e.g. *Bullarium Taurinense* 1, 527—omit the words 'cardinalis presbyter vel'). The privilege was later confirmed by John XIX and Leo IX (JL 4067, 4163). Klewitz, *Entstehung* 183 (cf. n. 74 *supra*) overlooks this text; but even if the original is lost, we have the authenticated transcript made from it under Gregory IX (Auvray, *Les registres de Grégoire IX*, Paris 1890ff. num. 3553), cf. Kehr, IP 2, 20 n. 10.

<sup>92</sup> JL 4076, including the possession of monasteries and churches; ordaining powers for St. Peter and the *civitas Leonina*; the right to pontificate in Holy Week and to baptize on Holy Saturday in St. Peter's; jurisdiction and judicial powers in all these churches, etc. (see Hinschius, *Kirchenr.* I, 330f.). Later confirmed by Benedict IX and, to a limited

between the sees of Silva-Candida and Porto.<sup>93</sup>

On the background of such abnormal conveyances we cannot expect much canonical precision as to the nomenclature for members of the Roman clergy. Still, Pope Benedict VIII's mention of *cardinalis diaconus s. palatii Lateranensis* remains an *obiter dictum*. For the greater part of the eleventh century, the official style, *diacones s. Romanae ecclesiae*, continued unchanged.<sup>94</sup> Even Gregory VII who in his earlier career occasionally had signed his name as 'Hildebrandus S.R.E. cardinalis subdiaconus'—one of the very rare instances of a Roman cardinal subdeacon<sup>95</sup>—did not qualify, during his pontificate, the Roman deacons as cardinals.<sup>96</sup> Also the author of the *Descriptio* avoided the term for the deacons: a signal precision in full accord with his correctness in relating the cardinalate of the bishops and priests to their respective basilicas of incardination.<sup>97</sup> Only when *cardinalis* had definitely become, toward the end of the century, a dignity connoting participation in the supreme government of the Church, were name and dignity extended almost by intrinsic necessity to that class of Roman clerics who had formed a body of ministers to the Pope since the earliest times.<sup>98</sup>

It is significant for the political reasons connected with this development that the deacons of Anti-pope Clement III (Guibert) were the first to change their official signature into *diaconus cardinalis*.<sup>99</sup> As for the legitimate papacy, the

extent, by Victor II (JL 4110, 4366).

<sup>93</sup> The controversy broke out about the *insula Lycaonia*, which was mentioned in both privileges. Leo IX in 1049 decided in favor of Porto (JL 4163; cf. Kehr, IP 2, 20f. num. 12-3). However, some seventy years later (c. 1120-4) Silva-Candida, which had been vacant since 1074 because of the depopulation resulting from malaria (cf. Klewitz, *Entstehung* 138ff.), was united by Calixtus II to Porto (Kehr, IP 2, 21 n. 14).

<sup>94</sup> See e.g. John XIX JL 4076 to the Cardinal bishop of Silva-Candida: '... aliquem diaconorum nostrorum ministrare' (PL 141, 1130B); references to synodal subscriptions are found in Klewitz, *Entstehung* 181 n. 2.

<sup>95</sup> See Klewitz 190f. (references in n. 3) who also shows that Sägmüller, *Cardinale* 11 nn. 1-2, is wrong in assuming that the appellative, *cardinalis*, was occasionally used by Roman acolythes, and by the *mansionarii* of St. Peter's. Klewitz fails however to discuss the following isolated instances of cardinal subdeacons: Urban II in 1088 to Lanfranc of Canterbury (JL 5351): '... dilectissimus filius noster Rogerus cardinalis ecclesiae nostrae subdiaconus' (PL 151, 287A; cf. Hinschius I, 320 n. 1—although *cardinalis* may here belong to *ecclesiae*) and Calixtus II in 1123 (JL 7045): 'Data per manum Hugonis S.R.E. subdiaconi cardinalis' (PL 163, 1280C; cf. Sägmüller 11 n. 1; on the subdeacon Hugo see Bresslau, *Urkundenlehre* I, 246). Note also that among the liturgical cardinals created in other metropolises by papal privilege there were twenty-four cardinal subdeacons in Magdeburg (ch. IV n. 50 *supra*).

<sup>96</sup> References in Klewitz 183 n. 5. It may be added that the letters JL 5079 ('Data per manum Johannis S.R.E. diaconi cardinalis') and 5256 ('Data p.m. Cartan' S.R.E. diaconi cardinalis et cancellarii') are not genuine, cf. Bresslau, *Urkundenlehre* I, 239 n. 6.

<sup>97</sup> Cf. nn. 37-8 and ch. III n. 38 *supra*. Klewitz, *Entstehung* 183, 186.

<sup>98</sup> This may also be connected with, and was at least supported by, the revival of the *Constitutum Silvestri* in the canonical collections (*Coll. LXXIV tit.*; Anselm; Deusdedit) of the Gregorian era. Deusdedit was the first to speak of the *levitae summi pontificis* as cardinals, ch. IV n. 109 *supra*.

<sup>99</sup> Kehr, *Zur Geschichte Wiberts* (ch. IV n. 98 *supra*) 987; Klewitz, *Entstehung* 184.

new style was introduced, first for the seven deacons proper, by Urban II (1088–99).<sup>100</sup> Under his successor Paschal II (1099–1118) we find the cardinalate extended to all eighteen papal deacons; that is, the twelve ‘regionals’ of comparatively recent origin advanced to equal rank with the old palatine college. Moreover, in the same pontificate the new cardinals began to add to their signatures, each the name of his *diaconia*: ‘Ego N. diaconus cardinalis sancti (-ae) N.’<sup>101</sup>—as if the newly acquired diaconal churches could simply be likened to the presbyteral *tituli* and the episcopal sees of the other cardinals. The full assimilation of the cardinal deacons to their senior colleagues was thus accomplished. The original meaning of the term *cardinalis* was definitely extinct.

The later history of the Sacred College lies beyond the range of this study, for the concept of a cardinal underwent no further change. To be sure, the clerics of some metropolitan cathedrals continued to style themselves as *cardinales* until the sixteenth century,<sup>102</sup> but this anachronism had no longer any canonical significance. Compared with the Senate of the Roman Church, their cardinalate—as the glossators have put it<sup>103</sup>—was worth as much as the royal dignity of the king of chess.

#### APPENDIX A (cf. ch. II nn. 9, 43, 47)

##### THE DIOCESE OF TERAMO (APRUTUM, INTERAMNA)

The origins of the diocese of Teramo are shrouded in darkness. Of the place itself, *castrum Aprutii*, we hear for the first time in St. Gregory’s letter *Reg.* 9, 71 (JE 1596):

<sup>100</sup> Cf. the list of subscriptions in JL I, 657; Klewitz *loc. cit.* and p. 185 n. 3.—In announcing his election to the Archbishop of Salzburg, Urban II still contrasts *omnes cardinales* with *omnes diaconi* (JL 5348, cf. Klewitz 184); but in the simultaneous letter to Abbot Hugo of Cluny (JL 5349) he already mentions among his electors: ‘S.R.E. episcopi et cardinales, . . . abbas vero Casinensis cardinalis diaconus ceterorum diaconorum, P. (*leg.* R.) quoque cardinalis tituli s. Clementis omnium cardinalium’ (PL 151, 285A).

<sup>101</sup> Also for this step the fashion had been set by Guibert, cf. Kehr *loc. cit.*; Klewitz 184, 189. Subscriptions of cardinal deacons with the *diaconia* appear in Paschal II’s letters from the beginning of his pontificate (cf. the list in Klewitz 218–21 nos. 2, 3, 4, 14, also JL I, 702f.), not only in 1116 (thus Hinschius, *Kirchenr.* I, 322 n. 2). But the new style was not yet firmly established: subscriptions reading simply *diaconus cardinalis* are numerous as well under Pope Paschal (see JL *loc. cit.*; also Klewitz 187 for the deacon Theobald). The deacon Johannes of St. Mary in Cosmedin (the future Gelasius II) occasionally used even to sign as ‘Johannes diaconus de titulo (!) Cosmidin’ (1107, February 24–September 1: JL I, 702).

<sup>102</sup> E.g. Ravenna, Naples (Hinschius I, 319 n. 7); the cardinals of Compostella even after the statute *Non mediocri* of Pius V (February 17, 1567) which reserved the name of cardinal to the Sacred College: Gonzalez Tellez, *Commentaria . . . decretalium Greg. IX* (Lyons 1673) 1, 24, 2 ad v. *sacerdotum cardinalium* treats the dignity as still persisting. For the non-catholic cardinals of London see ch. IV n. 81 *supra*.

<sup>103</sup> Johannes Teutonicus, *Glossa ordinaria* on C. 32 q. 2 c. 1 ad v. *principem mundi*: ‘. . . vel ad derisionem dicitur (diabolus scil.) princeps talium, sicut dicitur rex schacorum, vel cardinalis Ravennas, non tamen simpliciter est rex vel cardinalis . . .’; frequently repeated, e.g. by Prospero Fagnani, *Commentaria in libros decretalium* (Rome 1661) 1, 5, 3 num. 14: ‘. . . dicuntur cardinales sicut dicitur rex scaccorum, ut inquit glos. in c. Pudorem in ver. Principem mundi, 32 q. 2’ (I, 277).

Bishop Passivus of Fermo was ordered by the Pope in November or December, 598, to consecrate an oratory built in honor of St. Peter by 'Anio comes castri Aprutiensis Firmensis' at his castle or village (*castrum*) if, says the Pope, 'in tuae dioeceseos, in qua visitationis impendis officium, memorata constructio iure consistit' (2, 90, 11-6 Hartmann). The bishop was also to install a cardinal priest at the oratory,<sup>1</sup> but evidently he did not find a worthy candidate. For, three years later (October or November, 601), St. Gregory writes to Passivus (*Reg.* 12, 4; JE 1855) that Aprutium has been for a long time destitute of pastoral care; 'ubi diu quaesivimus quis ordinari debuisset, et nequaquam potuimus invenire' (350, 9-11 Hartmann). The bishop now shall call upon a certain Oportunus and, if he sees fit, ordain him subdeacon, 'et post aliquantum tempus, si Deo tum placuerit, ipse ad pastorem curam debeat promoveri' (350, 15-7 Hartmann).

Historians have gone far astray in interpreting these two letters as dealing with a visitation by the bishop of Fermo in the diocese of Teramo.<sup>2</sup> In fact, St. Gregory expressly speaks of the oratory as situated in *tua dioecesi*, and of Count Anio as *comes castri Aprutiensis Firmensis*; that is, the place was at that time known as *Aprutium Firmense*: Teramo in the diocese or territory of Fermo. (The reading '... Aprutiensis Firmensis territorii' in the Maurist edition is interpolated, but substantially more to the point than Hartmann's impossible construction<sup>3</sup> of *Firmensis* as referring to the person of Anio, 'a native of Fermo').—Also in *Reg.* 12, 4 the Pope does not speak of *ecclesia Aprutina*<sup>4</sup>—which indeed would mean 'the bishopric of Teramo'—but only of *Aprutium*; see also *Reg.* 12, 5 (JE 1856), addressed: 'Oportuno de Aprutio'. Nor does St. Gregory contemplate Oportunus as prospective bishop, but only as a future choice for *pastoralis cura*; a qualification which applies to bishops as well as to rectors of baptismal churches. In fact, *Reg.* 9, 71 shows that Count Anio's oratory was soon to obtain parochial functions.<sup>5</sup>

In Pope Hilary's Roman Synod of 465 a Bishop Praetextatus *Interamnanus* was present (160 Thiel), and among the signatories of Pope Symmachus' Synods of 501 and 502, Felix *episcopus Interamnensis* is found (667, 693 Thiel). Mommsen, in the valuable *Index locorum* appended to his edition of Cassiodorus' *Variae*, declined a decision as to which of the three ancient *Interamnae* (-nia)—namely *Int. Lirenas Sucasena* in Campania; *Int. Praetuttianorum Picensi* (= Teramo); *Int. Nahars Umbriae* (= Terni)—would be meant in these texts.<sup>6</sup> Lanzoni, without giving his reasons, decided for Terni.<sup>7</sup> Indeed this seems the only possible solution. The obscure place in Campania was never a bishopric; Teramo was not yet a bishopric a hundred years after Symmachus as we must conclude from St. Gregory's correspondence; but for the early origins of Terni (founded by St. Peregrinus?) there exists an old literary tradition.<sup>8</sup> It must have been the Bishops of Terni who sat in the Roman synods of the fifth and sixth centuries.

<sup>1</sup> Cf. ch. II n. 43 *supra*.

<sup>2</sup> To name only the more recent representatives of the *opinio communis*: Phillips, *Kirchenr.* V, 459 n. 8; 462 n. 15; also VI, 57; Hinschius, *Kirchenr.* I, 313 n. 4; Ewald in his summaries (JE 1596, 1855); Hartmann, MGH *Epp.* 2, 90 n. 2; Peitz, *Lib. diurn.* 76; Kehr, IP 4, 311 num. 1-2; F. Lanzoni, *Le origini delle antiche diocesi d'Italia* (Studi e Testi 35, Rome 1923) 257.

<sup>3</sup> MGH *Epp.* 2, 90 n. 2.

<sup>4</sup> JE 1855, Hartmann 2, 350 and Kehr incorrectly use this form in calendaring the letter.

<sup>5</sup> Cf. ch. II n. 43 *supra*.

<sup>6</sup> MGH *Auct. antiquiss.* 12, 505: 'parum liquet. . .'

<sup>7</sup> *Op. cit.* 261, wrongly ascribing in note 4 his own opinion to Mommsen.

<sup>8</sup> Cf. Gams, *Series episcop.* 730; Kehr, IP 4, 18.



At the present state of research, there exists no historical evidence for Teramo as a diocese before the ninth century; i.e. before a letter written by Pope John VIII to John, the *reverendus Aprutiensis antistes*.<sup>9</sup>

#### APPENDIX B (cf. ch. II n. 63)

##### OFFICIUM CARDINALE, PRINCEPS CARDINALIS

It might be permissible to ask whether the abundant evidence for *cardinalis* <(in)-*cardinare* in ecclesiastical administration should not induce the student of late Roman history to reconsider the current interpretations of the scanty texts in which the crucial term is found with reference to secular administrative institutions. From the *Notitia dignitatum* we learn that in the military hierarchy of the East two of the five imperial *magistri militum*—to wit, the second *magister militum praesentalis* (Master in Presence, scil. of the Emperor) and the *magister militum per Orientem*—have each a bureau (*officium*) which is termed *cardinale*,<sup>10</sup> while each of the respective staffs of the three other *magistri* 'in numeris militat et in officio deputatur'.<sup>11</sup> As the five Masters were equal in rank and command,<sup>12</sup> the reason for this discrimination remains unexplained to the present day.<sup>13</sup> But ever since Gothofredus the text itself has been understood as referring to *officia cardinalia* in the sense of bureaus consisting of a proper, permanent and ordinary personnel of their own, and as set over against those which are merely composed of soldiers detailed for office work from the troops.<sup>14</sup> This common explanation, however, appears to be contradicted by the fact that the *cardinale officium* obtained its chief subordinate official, the foreman or *princeps*, from another agency: like the *principes* serving on the staffs of prefects, governors, and other high ranking dignitaries, the head of the bureau of a *magister militum* was sent from the *schola agentium in rebus*, i.e. from the body of officials that stood under the jurisdiction of the *magister officiorum*.<sup>15</sup> The *princeps* of a 'cardinal' office therefore was, strictly speaking, outside the *officium*,<sup>16</sup> and thus it could be well argued that the *Notitia* speaks of a *cardinale officium*, in contradistinction to an office entirely manned by career soldiers from the ranks, with a meaning exactly opposite

<sup>9</sup> The lost letter (Kehr, IP 4, 311 num. 4) is mentioned in the same Pope's letter JE 3310 (Kehr 312 num. 5); ed. Caspar, MGH Epp. 7, 204, 13.

<sup>10</sup> *Not. dign. Or.* 6, 70; 7, 59 (24 and 28 Böcking; 18 and 22 Seeck).

<sup>11</sup> *Not. dign. Or.* 5, 67 (first Master in Presence: 20 Böcking; 14 Seeck); 8, 54 (*magister mil. per Thracias*: 32 Böcking; 25 Seeck); 9, 49 (*magister mil. per Illyricum*: 35 Böcking; 30 Seeck).

<sup>12</sup> E. Stein, *Geschichte des spätromischen Reiches* I (Wien 1928) 367; contra R. Grosse, *Römische Militärgeschichte* (Berlin 1920) 186f. See also Stein's review in *Byzantinische Zeitschrift* 25 (1925) 386f.

<sup>13</sup> Gothofr. *Comm. Cod. Th.* 12, 6, 7; and, more recently, A. E. R. Boak, 'Officium,' PWK 17, 2 (1937) 2049.

<sup>14</sup> Gothofr. *loc. cit.*; Böcking, *Not. dign.* I, 205 n. 50; Mommsen, 'Ostgothische Studien,' NA 14 (1888-9) 472; O. Karlowa, *Römische Rechtsgeschichte* I (Leipzig 1885) 877; Boak *loc. cit.*

<sup>15</sup> Karlowa, *op. cit.* 881; J. B. Bury, *History of the Later Roman Empire* (London 1923) I, 31f.; Boak, 'The Master of the Offices in the Later Roman and Byzantine Empires,' in *Two Studies in Later Roman and Byzantine Administration* (University of Michigan Studies, Humanistic Series 14, New York 1924) 72; id. PWK 17, 2054; and in particular Stein, *Geschichte* I, 367, citing Marchi, in *Studi giuridici in onore di C. Fadda* 5 (1906) 381f. 393f. See also Stein, 'Untersuchungen zum Staatsrecht des Bas-Empire,' ZRG Rom. Abt. 41 (1920) 195ff. 212.

<sup>16</sup> Bury, *op. cit.* 32. It is not correct when Mommsen *loc. cit.* asserts that the two *magistri militum* in question had 'einen eigenen Princeps'.

to that assumed by the common opinion: namely with reference to the 'civil servants'<sup>17</sup> incardinated from the *magisterium officiorum* into the bureau staffs of certain military officials.

Another instance is found in the State Papers of Cassiodorus (c. 537). Among the various formulae of the Ostrogothic royal chancery he records a form letter dealing with the *comitiacum officium*, i.e. the constabulary force or agency established for dispatching, serving, and executing royal orders. The letter in question (Var. 7, 31) states that not only at the king's residence in Ravenna but also in Rome 'necesse sit partem ibi esse comitiaci officii' and continues by commissioning a subordinate official, 'ut quia principem cardinalem obsequiis nostris deesse non patimur, tu eius locum vicarii nomine in urbe Roma sollemniter debeas continere.'<sup>18</sup> Why is the foreman of the *comitiaci*—the chief provost marshal<sup>19</sup>—styled in this text as *princeps cardinalis*? Mommsen, who considered the *comitiaci* a Gothic variety of the *agentes in rebus*, consequently held that their *princeps* was none but the foreman of the *schola agentium* (that is, ultimately, the head of the bureau of the *magister officiorum*) and that he was *cardinalis* because he essentially and properly belonged to this *officium*, in contradistinction to officials detached to it from other departments.<sup>20</sup> Professor Stein, who accepts Mommsen's premise as to the nature of the *comitiaci*, but who moreover holds that the *principes* of the *schola agentium* were at the same time *principes* of the bureaus of the several praetorian prefectures in the Empire, prefers to explain *princeps cardinalis* as the office chief of the central prefecture (*praefectura praetorio in comitatu*), in contrast with the *principes* of any *pars officii* outside the residence.<sup>21</sup> However, if Seeck be right, the *comitiaci* were not *agentes in rebus* but originally officials of the *comes* or *magister militum*, and as such immediately subject to the king.<sup>22</sup> In this case, one could assume that the chief of the staff of *comitiaci* was called *cardinalis* for the simple reason that the Ostrogothic king, since Theodoric, held himself the dignity of an imperial *magister militum praesentalis*<sup>23</sup> and was therefore entitled to an *officium cardinale*, whatever that meant, under the *Notitia dignitatum*.

But the text admits also of another explanation. We know that the seat of many high ranking officials had been transferred, along with the center of administration, from Rome to Ravenna, while deputies (*vices gerentes*) were appointed in the old capital.<sup>24</sup> Thus the chief provost marshal who now appeared as *princeps cardinalis* of the constabulary at the court of Ravenna may originally have been *princeps comitiaci officii* in Rome:

<sup>17</sup> For the civil nature of the service rendered by a *princeps officii*, even of a military official, see Stein, ZRG 41, 198 ('Die Stellung . . . ist . . . durchaus die eines friedlichen Kanzleibeamten'); for parallel instances in which military-administrative positions were filled, not by officers from the ranks, but by members of the *schola agentium*, see *ibid.* 213f.

<sup>18</sup> Ed. Mommsen, MGH Auct. antiquiss. 12, 218, 23-6.

<sup>19</sup> Hinschius, Kirchenr. I, 319 n. 9 speaks of him as *praefectus urbis*.

<sup>20</sup> Mommsen, Ostgothische Studien 470f. Cf. also Gothofr. loc. cit. and Muratori, Antiq. 5, 156 (he understands the 'cardinal' principate as *stabilis dignitas* and *ordinaria auctoritas*, contrasted with mere vicarious power). Mommsen's view on the *comitiaci* is shared by Bury, op. cit. I, 458 n. 2 and by Stein, cf. the following note.

<sup>21</sup> Stein, ZRG 41, 219f. 226; 232-4; id. Untersuchungen zum Officium der Prätorianer-präefektur seit Diokletian (Wien 1922).

<sup>22</sup> O. Seeck, 'Comitiaci,' PWK 4, 1 (1900) 715-6; Boak, Master of the Offices 73. Contra Stein, book review, Byzant. Zeitschr. 25 (1925) 174.

<sup>23</sup> Cf. Bury, op. cit. I, 413; 457f. Assunta Nagl, 'Theoderich,' PWK 2nd ser. 5, 2 (1934) 1749.

<sup>24</sup> Cassiod. Var. 11, 4-5; 12, 25. Cf. Mommsen, Ostgoth. Stud. 463; Boak, Master of the Offices 43.

for the addressee of Cassiod. *Var.* 7, 31 is told to take 'eius locum vicarii nomine'. With the transfer of the *principatus in urbe Roma* (the term is used in the rubric of the formula) the *princeps* had become incardinated in the royal residence, and therefore *cardinalis*.

The tentative interpretations presented here of the two crucial texts are, to be sure, of a purely hypothetical nature. But it may be said in favor of this hypothesis that it is not less well founded than the current explanations. On the contrary, it has the advantage of linking the term *cardinalis*, in the rare instances where it is found with texts treating of state administration, with the established usage in the, at least, somewhat related field of church government, rather than with cosmographical, arithmetical, or theological locutions.<sup>25</sup>

#### APPENDIX C (cf. ch. V n. 59)

##### THE PSEUDO-SYLVESTRIAN RULE OF SEVENTY-TWO WITNESSES FOR A BISHOP'S TRIAL

The Symmachian forgers resorted to the rule that a bishop could be tried only on the testimony of seventy-two witnesses in *Const. Silv.* c. 3 and again in another of their productions, the *Gesta Marcellini papae* (or 'Synod of Sinuessa').<sup>26</sup>

(c. 6) . . . ut intra hos LXXII testimonia ipse iudex, ipse reus, ipse semetipsum praesentia eorum innocentem se servaret et infidelem se damnet: quoniam in LXXII libra occidua<sup>27</sup> reparationem resurgit annus (31 Coustant; 1253E-4A Mansi).

(c. 12) . . . quoniam duodecim unciae in libra probabitur sensus, et in LXXII comparatus damnabitur praesul (34 Coustant; 1256C Mansi).

Both the *Const. Silv.* and the *Gesta Marcell.* may or may not have been influenced by the fact that Bishop Macedonius of Constantinople had been deposed, in 360, *παρουσία ἐπισκόπων* ('praesentibus episcopis LXXII'), according to the *Chronicon Paschale*,<sup>28</sup> and that a certain ex-bishop Chronopius is spoken of in *Cod. Theod.* 11, 36, 20 (an. 369) as having been first condemned by seventy bishops: 'Quoniam Chronopius ex antistite idem fuit in tuo, qui fuerat in septuaginta episcoporum ante iudicio, et eam sententiam provocatione suspendit . . .'.<sup>29</sup> Also St. Augustine's *Breviculus collationis cum Donatistis* 2, 14, 26 may be quoted in this connection: '... et recitatum est a Donatistis concilium ferme septuaginta episcoporum contra Caecilianum apud Carthaginem factum, ubi eum absentem condemnauerunt'.<sup>30</sup> But it is not correct when these texts, which mention seventy or more bishops sitting as judges in synodal trials, are adduced as instances of a procedure

<sup>25</sup> For these locutions see ch. II nn. 61-2 *supra*.

<sup>26</sup> On these *Gesta* see Coustant, *Epp. Rom. pont.* p. lxxxiv f.; app. col. 27f. Duchesne, *LP I*, cxxxiii f. The text given above is Coustant's, app. col. 31ff. Chief variants from Mansi 1, 1253ff. (cf. also Coustant 34 note i):—(c. 6) hos] horum.—praesentia] in praesentia.—et] aut.—reparationem] in reparationem.—(c. 12) unciae] unciis.—sensus] census.—comparatus] comparentibus.

<sup>27</sup> On *libra occidua* cf. Gothofr. *Comm. Cod. Th.* 11, 36, 20 (V, 308 Lugd.; IV, 322 Lips.); Binius' note d in Mansi 1, 1260; Coustant 30 note b. See also *Gesta Marcell.* c. 3: 'Hi omnes electi sunt viri libra occidua qui testimonium perhibent videntes eum (se vidisse eundem Mansi) Marcellinum thurificasse' (30 Coustant; 1252D Mansi).

<sup>28</sup> *Chron. Pasch.* Olymp. 285 (ed. Dindorf, *Corpus Script. Histor. Byzant.* Bonn 1832, p. 294 = PG 92, 736).

<sup>29</sup> Ed. Mommsen-Meyer (Berlin 1905) I, 651. Cf. Gothofr. *loc. cit.*; Hinschius, *Kirchenr.* IV, 794, n. 6.

<sup>30</sup> Ed. M. Petschenig, CSEL 53 (1910) 75. Cf. Gothofr. *loc. cit.*

with so many witnesses, i.e. as furnishing a factual basis to the claims of the Symmachian forgers.<sup>31</sup>

From the ninth century onwards, however, the Roman Church considered the 'Sylvestrian' number of seventy-two witnesses against bishops as canonical. Evidence of this are the following papal letters: (1) Leo IV (JE 2599, an. 847-8) to the bishops of Brittany;<sup>32</sup> (2) a lost letter of Benedict III (JE 2671\*, an. 855-8), quoted along with JE 2599 by: (3) Nicholas I in 862 (JE 2708) to King Solomon of Brittany;<sup>33</sup> (4) Nicholas I's great epistle to Emperor Michael on the Photian affair, in 865 (JE 2796), where not only *Const. Silv. c. 3* ('Fecit gradus rell. . . super magistrum') but also several other texts from the Symmachian forgeries are quoted.<sup>34</sup> Cf. also the papal legates in the first Photian Synod (861), act. 4: 'Item apocrisarii dixerunt: "Canon s. Siluestri docet ut episcopus non condemnatur nisi in LXXII testibus" . . .'.<sup>35</sup>

#### APPENDIX D (cf. ch. V n. 65)

##### NOTES ON THE MEDIEVAL TRANSMISSION OF THE CONSTITUTUM SILVESTRI

The literary and textual history of the *Constitutum Silvestri* (= CS) cannot be written before the countless MSS of unprinted, or uncritically printed, canonical collections preceding Gratian<sup>36</sup> are again accessible. The following notes have the much more limited purpose of showing, as far as printed information allows, the diversified forms of transmission of those three canons which perpetuated the 'Sylvestrian' usage of *cardinalis*: CS cc. 3, 6, 7. The fourth pertinent canon (c. 11) may be left aside since it had no influence to speak of. For the parallel text on interstices in the pseudo-'Synod of the 270 Bishops' (c. 6 *al.* 5) does not contain the term *diaconus cardinalis*, and it was this latter text, not CS, which served as model to the note in LP I, 171, 15ff.<sup>37</sup>—which in turn was paraphrased in Pseudo-Isidore's *Excerpta ex synodalibus gestis s. Silvestri* (= PsI) c. 7.<sup>38</sup>

In describing the medieval tradition of CS cc. 3, 6, 7, the early collections (6th-8th cent.) which reproduce the integral form of the *Constitutum* are not considered. They have been studied by Maassen, Duchesne, Turner, and others.<sup>39</sup> The complications of

<sup>31</sup> Thus Wolf von Glanvell, *Deusdedit* 609 n. 27, confusing moreover Chronopius with the notorious Chromatius, and the *Conc. Cp.* of 360 (on which see Hefele-Leclercq, *Histoire des conciles* I, 2, Paris 1907, pp. 956-9) with the Ecumenical Synod of 381.

<sup>32</sup> Ed. Dümmler, *MGH Epp.* 5, 2 (Berlin 1899) 593, 34-594, 5. Cf. Gratian, C. 2 q. 4 c. 3.

<sup>33</sup> Ed. Perels, *MGH Epp.* 6, 2, i (1912) 621, 1-6.

<sup>34</sup> 466, 24-9 Perels and *passim*; cf. Coustant, app. cols. 37-8; Perels 464 n. 3, 465 nn. 1-3 etc.

<sup>35</sup> *Deusd.* 4, 431 (609, 14-5 Wolf von Glanvell).

<sup>36</sup> Reference is made once for all to P. Fournier and G. Le Bras, *Histoire des collections canoniques en occident depuis les fausses décrétales jusqu'au Décret de Gratien* (Paris 1931-2).

<sup>37</sup> Duchesne, LP I, cxxxix; 190 n. 25.

<sup>38</sup> Hinschius, *Decretales Pseudo-Isidorianae* 450.

<sup>39</sup> Cf. ch. V n. 56 *supra*.—Still less can we enter here upon a discussion of the peculiar, abridged form which the Collection of Chieti (6th cent.) gave to the pseudo-Sylvestrian statutes (ed. Duchesne, LP I, cxxxiv col. 2 n. 1; for one signal variant, the omission of 'cardine constructus' in CS c. 3, see ch. V n. 57 *supra*). The text of the *Theatina* had a medieval tradition of its own which is largely unexplored. It influenced a passage of the LP (see n. 42 *infra*) and c. 51 of the so-called *Poenitentiale II Vallicellianum* (cf. E. Seckel, 'Studien zu Benedictus Levita: VII,' NA 35 [1909] 139 n. 5); it even reappeared, transmitted

source history begin only when we first meet with selections and transformations. On the other hand, CS cc. 14–16 are included in the analysis<sup>40</sup> because we shall find them frequently contaminated or combined with c. 3.

### I. The Fourfold Tradition of CS c. 3

#### A. The Frankish Capitularies

1. *Capitula excerpta de canone* (c. 806): 'Fecit hos gradus in gremio synodi—mystica veritas' (ed. Boretius, MGH *Cap.* 1, 133, 41–134, 8).—Source: *Collectio Andegavensis*, according to C. De Clercq, *Législation religieuse franque* (ch. IV n. 27 *supra*) 156 n. 1.

2. Ansegisus, *Capitularia regum Francorum* (827) 1, 133: 'Fecit hos gradus—mystica veritas' (411, 29–38 Boretius).—Source: *Cap. exc. de can.*

3. Benedictus Levita, *Capitularia* (after 847) 1, 302: 'Fecit hos gradus—mystica veritas' (ed. Pertz, MGH *Leg.* 2, 2, 63).—Source: Ansegisus. Cf. E. Seckel, 'Studien zu Benedictus Levita: VI,' NA 31 (1905) 103 and n. 2.

Leading variants:

(CS c.3) Postea autem fecit gradus] Fecit hos gradus *Cap. Ansg. Ben.*  
testimonia] testimoniis *Ansg. testibus Ben.*  
constructus] constitutus *Cap. (var.) Ansg. Ben.*  
urbis Romae] in urbe Roma *Cap. Ansg. Ben.*  
in XXXVI] triginta septem *Cap. Ansg.*  
testimonia] testimoniis *Ansg. Ben.*

#### B. Cardinal Atto and Deusdedit 4, 329

1. Atto, *Capitulare* (c. 1073–6) rubr. *Ex decretis Silvestri* c. 1: 'Non presbyter adversus—det accusationem aliquam.' c. 2: 'Non dampnabitur episcopus—exorcista, lector, in duobus vel tribus testimoniis.' c. 5: 'Nulli omnino clerico licere causam in publico examinare, nec ullum clericum ante iudicem laicum stare placet.' c. 8: 'Testimonium—recipiat' (ed. A. Mai, *Scriptorum veterum nova collectio* 6, 2, Rome 1832, p. 70).—Sources: (c. 1) CS c. 3, first sentence; (c. 2) *id.* rest abridged; (c. 5) *Syn. 270 episc.* c. 5 (ed. Poissnel, *Mélanges d'archéol. et d'hist.* 6 [1886] 5; cf. Mansi 2, 1082D; Duchesne, LP I, cxxxix [c. 4]); (c. 8) CS c. 14.

2. Deusdedit, *Coll. can.* (1087) 4, 329: (a) 'Nulli omnino—stare placet.' (b) 'Testimonium—recipiat.' (c) 'Clericus inferioris ordinis non det aliquam accusationem adversus potiozem' (567 Wolf von Glanvell).—Sources: (a–b) Atto cc. 5, 8; (c) free summary of CS c. 3, probably indirectly, as found in Atto c. 1.

Leading variants (only Atto collated for CS c. 3):

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by channels unknown, in a southern French law book of the early twelfth century, i.e. in the respective appendices of the London and Cambridge MSS of the *Liber Tubingensis* (cf. H. Kantorowicz, *Studies in the Glossators of the Roman Law*, Cambridge 1938, p. 120f. with bibliography; ed. p. 270). Unfortunately, both Kantorowicz's discussion and edition of this piece suffer from his failure to take cognizance of the full text of the canon in *Coll. Theat.* as published by Duchesne.

<sup>40</sup> CS c. 14: 'Testimonium clerici adversus laicum nemo recipiat.' c. 15: 'Nemo enim clericum quemlibet in publico examinet, nisi in ecclesia.' c. 16: 'Nemo enim clericus vel diaconus aut presbyter propter causam suam quamlibet intret in curiam, quoniam omnis curia a cruore dicitur et immolatio simulacrorum est: quoniam si quis clericus in curiam introierit, anathema suscipiat, nunquam rediens ad matrem ecclesiam. A communione autem non privetur propter tempus turbidum' (50f. Coustant; 629–30 Mansi).

(CS c. 3) Postea autem—ut non] Non At.

Et non damnabitur praesul] Non damnabitur episcopus At.

LXXII] testibus add. At.

quoniam scriptum—super magistrum] om. At.

Presbyter autem *rell.*] presbyter urbis Romae nisi quadraginta quattuor, diaconus cardinalis nisi triginta sex, subdiaconus, acolythus, exorcista, lector, in duobus vel tribus testimoniis *paraphr.* At.

(Syn. 270 *episc.* c. 5) causam quamlibet] causam At. *Deusd.*

examinare nisi in aeclesia] examinare At. *Deusd.*

stare] placet add. At. *Deusd.*

The combination of passages from CS and Syn. 270 *episc.* is a peculiar feature of Atto's abstract. Of the eight chapters composing his rubric *Ex decr. Silv.*, four (cc. 1–3, 8) are taken from CS (cc. 3, 4, 14); and three (cc. 4–6) from the Synod (cc. 3, 5, 7 Poissnel; cc. 2, 4, 7 Duchesne). One canon in Atto (c. 7 'Nullo schemate monachus . . .') remains uncertain.—*Deusdedit's* adherence to Atto is unusual, since in other portions of his work he follows the PsI tradition for CS (see *Da infra*).

### C. The Angilramnus Tradition

1. Pseudo-Angilramnus, *Capitula* (after 846), first series c. 51 §2: 'Neque praesul summus—super magistrum' (ed. Hinschius, *Decr. Pseudo-Isid.* 766). 2nd ser. c. 13: 'Presbyter non adversus—Christum praedicantes.' c. 14: 'Testimonium—suscipiat.' c. 15: 'Nemo enim clericum—nisi in ecclesia et reliqua' (768 Hinschius).—Sources: (1st ser. c. 51) CS c. 3, third sentence; (2nd ser. c. 13) CS c. 3; (cc. 14–5) CS cc. 14–5.

2. Council of Mayence (888) c. 12: 'Presbyter non adversus—uxores et filios habentes' (Mansi 18, 67f.).—Source: Angilr. 2nd ser. c. 13.

3. Pseudo-Theodore of Canterbury, *Capitula* (early 10th cent.) c. 39: 'Presbyter non adversus—Christum praedicantes' (ed. J. Petit, *Opp. Theod.* I, Paris 1677 = PL 99, 947D).<sup>41</sup>—Source: perhaps *Conc. Mog.* according to E. Seckel, 'Zu den Akten der Triburer Synode 895: II,' NA 20 (1895) 329 and n. 4; but Angilr. (not mentioned by Seckel) may be as likely.

4. Anselm of Lucca, *Coll. can.* (c. 1083) 3, 88–9 incorporates Angilramnus' *Capitula* in their entirety; the canons here discussed are printed in Thaner 165; 167.

Leading variants (Anselm's readings not listed):

(CS c. 3) quoniam scriptum est] quia dicente Domino *Ang.* c. 51

(CS c. 3) Postea autem—ut non presbyter] Presbyter non *Ang.* 2, 13. *Conc. Th.*

non subdiaconus adversus diaconum] om. *Ang.* (ed. *tantum?*)

damnabitur praesul] dampnetur pr. *Ang.* condemnabitur pr. *Conc. Th.*

in LXXII] LXXII testibus *Ang.* in triginta duo *Th.* (ed. *tantum?*)

praesul summus a quoquam iudicabitur] summus iudicab. a quoq. *Th.* (ed. *tantum?*)

Presbyter autem] in cardine constitutus add. *Ang. Conc. Th.*

nisi in XLIV testimonia non] non nisi in XLIV (quadr. duobus *Conc.*) testibus *Ang.*

*Conc.* nisi in quadr. et quattuor testibus (non?) *Th.*

<sup>41</sup> Further reprints from Petit's spurious publication: F. Kunstmann, *Die lateinischen Pönentialbücher der Angelsachsen* (Mainz 1844) 121; Royal Record Commission, *Ancient Laws and Institutions of England* (London 1840) 311. The true origin of the forgery, composed on Frankish soil more than two centuries after Theodore's death, has been demonstrated by F. W. H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle 1851) 16f. and, with a detailed analysis, by Seckel as cited above, NA 20, 296–301; 328–51. See also P. Fournier, 'De l'influence de la collection irlandaise . . .,' *Nouv. Revue histor. de droit français et étr.* 23 (1899) 46.

Diaconus—condemnabitur] *om. Th. (ed. tantum?)*  
autem cardine constructus] *cardinarius constitutus Ang. Conc.*  
XXXVI] XXVI *Ang. Conc.*  
nisi . . . non] *nonnisi Conc.*  
lector] *ostiarius add. Conc. Th.*  
in septem testimonia filios et uxores habentes] in VII testes (testibus *Conc. Th.*) non  
condemnabitur. Testes autem sine aliqua sint infamia ux. et fil. hab. *Ang.*  
*Conc. Th.*  
et omnino Christum praedicantes] *om. Conc.*  
Sic—veritas] *om. Ang. Conc. Th.*  
(*CS c. 14*) recipiat] *suscipiat Ang.*  
(*CS c. 15*) examinet] *examinare praesumat Ang.*  
nisi in ecclesia] *et reliqua add. Ang.*

The most signal variants of this tradition are its interpolations, especially the attribution of the title 'cardinal' to the *presbyter* and the lengthy insertion concerning the qualification of the seven witnesses. With both these novelties *Angilr.* became a model for *PsI* (see *infra*). On the other hand, the insertion of *ostiarius* in *Conc. Mog.* may be derived in turn from *PsI*; it is also the only reading which would support Seckel's otherwise doubtful assumption that *Conc. Mog.* is the source of Pseudo-Theod.—Many of the omissions in the latter text are probably due only to Petit's carelessness, especially those of a homoeographic nature. Also the one startling omission in *Angilr.* may be caused by homoeography on the part of Hinschius because this clause is not missing in the texts derived from *Angilr.*—Note that *Angilr.* evidently planned further abstracts ('... et reliqua') from *CS*.

#### D. The Pseudo-Isidorian Families

*PsI* (c. 847–52), *Excerpta quaedam ex synodalibus gestis s. Silvestri papae c. 2*: (a) 'In qua et consensus—audeat inferre,' (b) 'et ut presbyter non adversus—super magistrum.' c. 3: 'Presbyter autem cardinalis—in septem testibus non condemnabitur.' c. 4: 'Testes autem—Christum praedicantes.' c. 5 (a) 'Testimonium—nemo recipiat.' (b) 'Nemo enim clericum—nisi in ecclesia.' (c) 'Nemo enim clericus—in curiam,' (d) 'nec ante iudicem—dicere praesumat,' (e) 'quoniam omnis curia—anathema suscipiat' (449–50 Hinschius).—Sources: (c. 2, a) *LP I*, 171, 10–11; (b) *CS c. 3*, as from *Angilr.* 2nd ser. c. 13; (cc. 3–4) *id.*; (c. 5, a–b) *CS cc. 14–5*, probably as from *Angilr.* 2nd ser. cc. 14–5; (c) *CS c. 16*, first clause; (d) *LP I*, 171, 12–3; (e) *CS c. 16* continued.

Leading variants:

(*CS c. 3*) Postea—in gremio synodi] In qua et consensus (*var. etiam consensu et*) sub-  
scriptione omnium constitutum est, ut nullus laicus crimen clerico audeat inferre  
(*cf. LP: Hic constituit ut nullus laicus—inferre*)  
ut non presbyter] et ut presb. non  
damnabitur praesul] dampnetur pr. (*cum Angilr.*)  
LXXII] testibus *add. (cum Angilr.)*  
iudicabitur] iudicetur  
Presbyter autem] cardinalis *add. (cf. in cardine constitutus add. Angilr.)*  
in XLIV testimonia] quadr. quatuor testibus (*cf. Angilr.*)  
autem cardine constructus] *cardinarius constructus (var. constitutus, cf. Angilr.)*  
lector] *hostiarius add.*  
in septem testimonia filios et uxores habentes] in septem testibus non condemnabitur.  
Testes autem et accusatores sine aliqua sint infamia ux. et fil. hab. (*cum Angilr.*)  
Sic—veritas] *om. (cum Angilr.)*

(CS c. 15) examinet] examinare praesumat (*cum Angilr.*)

(CS c. 16) causam suam] causam

intret in curiam] nec ante iudicem cinctum causam dicere praesumat *add.* (*cf. LP:*

Hic constituit ut nullus clericus . . . in curia introiret nec ante iudicem cinctum causam diceret nisi in ecclesia)

immolatio simulacrorum est] immolatione simulacrorum

quoniam si quis clericus] Et si quis cler. accusans clericum

nunquam rediens—turbidum] *om.*

The skilful composition made from CS, Angilr. and LP is a good specimen of the Pseudo-isidorian method. The dependence on the interpolations of Angilr. in CS c. 3—and, we may presume, on his combination of CS cc. 3, 14, 15—betrays the well known origin of the Frankish forgeries of the ninth century in a common workshop. PsI expands one of these interpolations ('*Testes autem et accusatores sine aliqua . . .*'), continues the excerpts from CS (as planned by Angilr. c. 15: '*. . . et reliqua*') with CS c. 16, and refines the whole composition by inserting two passages from LP.<sup>42</sup>—In the following, five distinct families of texts derived from PsI are described.

#### a. Class Headed by the *Collectio Anselmo dedicata*

1. *Coll. Ans. ded.* (c. 882–96) 3, 143 (137?): 'Ut autem cardinalis presbyter—in septem testibus non condemnabitur' (*cf. Friedberg, Corp. iur. can.* I, 465–6 nn. 25–42; Wolf von Glanvell, *Deusd.* 206 note to c. 43). 4, 150: 'Testes autem . . .' (? *cf. Wolf von Glanvell loc. cit.* who does not specify the contents of this canon).—Sources: (3, 143 or 137) PsI c. 3; (4, 150) PsI c. 4?

2. *Deusdedit, Coll. can.* 1, 89: 'Neque praesul summus—super magistrum' (74 Wolf von Glanvell). 2, 43: (a) 'Presbyter cardinalis—condemnabitur.' (b) 'Testes autem—praedicantes.' (c) 'Et constituit ut diaconi non essent amplius—Rome VII' (206 Wolf von Glanvell).—Sources: (1, 89) PsI c. 2, last sentence; (2, 43, a) *Ans. ded.* 3, 143; (b) PsI c. 4 (*Ans. ded.* 4, 150?); (c) CS c. 6.

3. Bonizo, *Vita christ.* (c. 1090–9) 4, 68: 'Neque presul summus—super magistrum' (141 Perels).—Source: PsI c. 2, last sentence or *Deusd.* 1, 89.<sup>43</sup>

Leading variants (for *Coll. Ans. ded.* as far as ascertainable from Friedberg's notes to Gratian):

(PsI c. 2) quoniam scriptum est] quoniam sicut scr. est *Deusd.*

(PsI c. 3) Presbyter autem cardinalis] Ut autem cardinalis presbyter *Ans. ded.* Presb. card. urbis Rome *Deusd.* (*cf. Atto*)

<sup>42</sup> For the sources which in turn were used in LP, see Duchesne I, 189 n. 20 (for 'Hic constituit ut nullus laicus—audeat inferre'): *Coll. Theatina*: 'Placuit eis et ad omnem Christianorum populum Romanorum ut nullus laicus audeat clerico crimen ingerere . . .'; and *ibid.* 190 n. 23 (for 'Hic constituit ut nullus clericus—causam diceret nisi in ecclesia'): CS c. 16 and *Syn.* 270 *episc.* c. 4 (c. 5 Poinsel).—Incidentally, we observe that the note on Pope Julius I in LP I, 205, 5: 'Hic constitutum fecit ut nullus clericus causam quamlibet in publico ageret (*al. diceret*) nisi in ecclesia' is also composed on the same basis (CS cc. 15–6; *Syn.* c. 5; LP *Silv.*).

<sup>43</sup> No specific source can be assigned to another passage in Bonizo, in the course of his catalogue of Roman Pontiffs (4, 33): ' . . . hic constituit ut Romanus presul a nullo iudicetur, et ut presbiter non condemnetur nisi sub quadraginta (*sic*) testium certa comprobatione, et ut minoris ordinis aliquis maiorem se non possit accusare, et ut clericus ante laicos non iudicetur . . .' (124, 16–9 Perels), which may be a free summary of CS cc. 3, 15, or (as Perels 124 n. 3 suggests) of PsI cc. 2, 3, 5.



quadraginta quatuor testibus] in quadr. quat. test. *Deusd.*

cardinarius constructus] cardinarius constitutus *Ans. ded. Deusd.* (cf. var. *PsI*)

XXXVI] XXVI *Ans. ded. Deusd.* (cum *Angilr. et nonnullis codd. PsI*)

(*CS c. 6*) Et diaconi non essent plus nec amplius] Et constituit ut diac. non essent ampl.

*Deusd.*

diacones cardinales] diaconi card. *Deusd.*

It is peculiar to *Deusdedit* that he, alone among all medieval canonists, combines the *PsI* tradition (which he follows in 1, 89 and 2, 43, a-b) with a direct use of *CS c. 6*. For still other traditions of *CS* adopted by him elsewhere, see *B supra* and sec. III *infra*. Wolf von Glanvell, who fails to recognize the source of 2, 43, c, lets the canon begin with the words: 'Silvester papa in concilio CCLXXVII episcoporum dixit:'—but this is evidently only the inscription (the same as for 1, 89), not part of c. 43.—In singling out the sentence 'Neque praesul summus' etc. as a separate canon, *Deusd.* was preceded only by *Angilr. c. 51*. But the latter can not have been his source, as the readings of *Deusd.* come from *PsI*.

### β. Class Headed by Burchard

1. Burchard, *Decretum* (c. 1008-12) 1, 151: 'In consensu et subscriptione—nisi in LXX duobus idoneis testibus' (PL 140, 593).—Source: *PsI c. 2*.

2. Ivo, *Decretum* (c. 1093-6) 5, 264: 'In consensu—idoneis testibus' (PL 161, 405).—Source: Burchard, cf. P. Fournier, 'Les collections attribuées à Yves de Chartres,' *Bibliothèque de l'École des chartes* 58 (1897) 31.

3. Ivo, *Panormia* (c. 1095-6) 4, 90: (a) 'In consensu—inferre' (PL 161, 1201). (b) see 83C *infra*.—Source: (a) Ivo *Decr.* first sentence (= *PsI c. 2, a*).

Leading variants:

(*PsI c. 2*) in qua et consensus subscriptione] In consensu et (et om. *Ivo P.?*) subscriptione *Burch. Ivo D. P.* (cf. var. *PsI*)

crimen clerico audeat] episcopo vel alicui in ordinibus posito crimen aliquod possit *Burch. Ivo D.P.*

et ut presbyter non—LXXII testibus] aliam ex alio fonte lectionem dat *Ivo P.* (cf. 83C *infra*)

testibus] idoneis testibus *Burch. Ivo D.*

Neque praesul summus—super magistrum] om. *Burch. Ivo D.P.*

Burchard changes *PsI* by a further interpolation (in the sentence: '... ut nullus laicus crimen clerico audeat inferre'); he omits, on the other hand, the last sentence forbidding a trial of the Pope. *Ivo Decr.* follows Burchard entirely, while *Pan.* is strangely conflated from two different traditions, tacking the second part of *PsI c. 2* from Anselm of Lucca's text (δ) onto the β-tradition of the beginning.

### γ. Class Headed by the Tripartita

1. Ivo, *Coll. tripart.* (c. 1093-4) pt. 1 c.?: 'Iam fatus papa—sepultum fuit' (cf. Fournier, 'Les collections...', *Bibl. Éc. ch.* 57 [1896] 654).—Source: *PsI c. 1* (449 line 7 Hinschius: '... Iam factus papa')—c. 6 (450, 5 Hinschius).

2. Ivo, *Decr.* 6, 334: 'Presbyter autem cardinalis—anathema suscipiat' (PL 161, 513-4).—Source: *Tripart.* (cf. Fournier, *Bibl. Éc. ch.* 58, 44) = *PsI cc. 3-5 in toto*.

Leading variants (*Ivo Decr.* only):

(*PsI c. 3*) quadraginta quatuor] in quadr. quat.

cardinarius constructus] cardinalis constitutus

(*PsI c. 4*) praedicantes] timentes [praedicantes] (*sic ed.*)

### δ. Class Headed by the *Collectio LXXIV titulorum*

The great variety of selections and combinations of portions from PsI in this class makes a separate treatment of three series of texts, headed by *Coll. LXXIV tit.* (= *Csqt*) cc. 60, 61, and 69 respectively, advisable. The series will be numbered 1A, 2A etc.; 1B, 2B etc.; 1C, 2C etc.

1A. *Csqt* (c. 1050) c. 60: (a) 'Nullus laicus—inferre.' (b) 'Testimonium—nisi in ecclesia' (cf. Fournier, 'Le premier manuel canonique de la réforme du XI<sup>e</sup> siècle,' *Mélanges d'archéol. et d'hist.* 14 [1894] 161-2; Thaner, *Ans. Luc.* 128, notes [speaking of 'Coll. minor'] to c. 23).—Sources: (a) PsI c. 2, a; (b) PsI c. 5, a-b; cf. Thaner *loc. cit.* (Fournier's observation, 'Ps. Silv. c. 2 à c. 5' is not correct).

2A. Anselm of Lucca, *Coll. can.* (c. 1083) 3, 23: 'Nullus laicus—nisi in ecclesia' (128 Thaner).—Source: *Csqt*.

3A. Ivo, *Pan.* 4, 89: 'Nullus laicus—nisi in ecclesia' (PL 161, 1201).—Source: *Csqt* or *Ans. Luc.* (Fournier, *Bibl. Éc. ch.* 58, 304 mentions *Csqt* c. 68 [*sic*] only and believes that the canon is lacking in *Ans.*).

4A. *Collectio XIII partium* (c. 1090-1100) 9, 171, according to Friedberg, *Corp. iur. can.* I, 627-8 n. 66 (without details).

5A. Gratian (c. 1140) C. 2 q. 7 c. 2: 'Nullus laicus—inferre' (483 Friedberg). 11 q. 1 c. 9: 'Testimonium—nisi in ecclesia' (628 Friedberg).—Sources: (2 q. 7 c. 2) probably Ivo *Pan.* 4, 89, a; (11 q. 1 c. 9) *id.* b.

Leading variants (without *Coll. XIII part.*):

(PsI c. 2) In qua—constitutum est] Silvester papa in generali residens synodo dixit  
*inscr. Csqt. Ans. Ivo P.* Item Silv. pp. *inscr. Grat.*

ut nullus] Nullus *Csqt. Ans. Ivo P. Grat.*

crimen clerico audeat inferre] crim. aud. cler. inf. *Csqt. Ans. Grat. aud. inf. crim. cler. Ivo P.*

(PsI c. 5) Testimonium] autem *add. Csqt. Ans. Ivo P.*

recipiat] auscipiat *Csqt. Ans. Ivo P. (cf. Angilr.)*

Nemo enim clericum quemlibet in publico] Clericum vero queml. nemo in publ. (in publ. nemo *Ivo P.*) *Csqt. Ans. Ivo P.* Nemo cler. queml. in publ. *Grat.*

The use of different sources for PsI c. 2 in Ivo *Pan.* (see β3 *supra*) leads to a duplication of the rule 'Nullus laicus crimen clerico audeat inferre,' which appears in 4, 89 as taken from *Ans. Luc.* and in 4, 90, as from Burch. and Ivo *Decr.*—Friedberg's notes on the sources of Gratian go far astray. For 2 q. 7 c. 2 he cites (483-4 n. 9) Burch. and Ivo *Decr.* both of which belong in their readings to a different class (see β *supra*). For 11 q. 1 c. 9 he cites (627-8 n. 66) Burch. 2, 204; Ivo, *Decr.* 6, 278; Ivo, *Pan.* 4, 89; *Coll. XIII part.* 9, 171. The first two references are not at all to the point: Burch. 2, 204 and Ivo, *Decr.* 6, 278 ('Ex concilio Triburiensi: Testimonium laici adversus clericum nemo suscipiat') express the reverse of the Pseudo-sylvestrian rule ('Test. clerici adv. laicum . . .'), purportedly from another source.<sup>44</sup>—On the other hand, Friedberg wrongly denies ('... immerito citatur') the presence of our canon in *Ans. Luc.* 3, 23 and contends (627-8 n. 70 v. *nemo clericum*) that a part of it (i.e. PsI c. 5, b) is found in the non-existing canon 'Ans. Luc. 8, 171'. Here as elsewhere (cf. Kuttner, in *Studia et documenta historiae et iuris* 6 [1940] 290 n. 22) Friedberg fell victim to his belief in a spurious seventeenth-century compilation posing as Anselm's text.—Note that Gratian's readings in some

<sup>44</sup> *Ex conc. Trib.* is a pseudepigraph of Burchard's invention, cf. V. Krause, 'Die Akten der Triburer Synode von 895,' NA 17 (1892) 82; Seckel, 'Zu den Akten der Trib. Syn. 895: I,' NA 18 (1893) 408. The canon itself is inspired by Angilr. or PsI.

points are closer to PsI than to the intermediary collections (vv. *Testimonium, recipiat, nemo enim clericum*).—Friedberg's reference to *Coll. XIII part.* cannot be verified at present.

1B. *Csqt* c. 61: 'Nemo clericus—anathema suscipiat' (cf. Fournier, *Mél.* 14, 162; Thaner, *Ans. Luc.* 424–5 notes to c. 149).—Source: PsI c. 5, c-e.

2B. *Ans. Luc.* 7, 149: 'Nemo—suscipiat' (424–5 Thaner).—Source: *Csqt*.

3B. Ivo, *Pan.* 4, 30: 'Nemo—suscipiat' (PL 161, 1189).—Source: *Csqt* or *Ans. Luc.*; cf. Fournier, *Bibl. Éc. ch.* 58, 304.

4B. Gratian C. 11 q. 1 c. 33: 'Nullus clericus—dicere presumat' (635 Friedberg). c. 10: 'Si quis clericus accusans—anathema sit' (629 Friedberg).—Source: probably Ivo *Pan.*

Leading variants:

(*PsI* c. 5) Nemo enim] Nemo *Csqt. Ans. Ivo P.* Nullus *Grat.*

aut] vel *Csqt. Ans. Ivo P. Grat.*

cinctum] *om. Ans. cinctus Ivo P. (ed. tantum?) civilem Grat.*

causam dicere] causam suam dicere *Csqt. Ans. (cum CS et nonnullis codd. PsI) caus. dic. suam Grat.*

quoniam omnis curia—et immolatione simulacrorum] *om. Grat.*

a cruore] quasi a cr. *Ivo P.*

et immol. simulacr.] *om. Csqt. Ans. Ivo P.*

Et si quis] Si quis *Grat.*

anathema suscipiat] anath. sit *Grat.*

Gratian, even as in the preceding case (5A) splits the canon in two. In view of all the liberties he took with his text, as he was wont to do, it cannot be said with certainty whether *Ans.* or Ivo served him as model—though the latter is more likely, as will be seen from 5C *infra*. At any rate, there is no reason to assume with Friedberg (629–30 n. 91; 635–6 n. 320) that the two canons are based on different sources.

1C. *Csqt* c. 69: (a) 'Presbyter adversus—dare accusationem.' (b) 'Presul autem—LXXII testibus.' (c) 'Presbyter autem cardinalis—sint infamia' (cf. Fournier, *Mél.* 14, 162; Thaner, *Ans. Luc.* 136 notes to c. 43).—Sources: (a–b) PsI c. 2, b; (c) PsI cc. 3–4.

2C. *Ans. Luc.* 3, 43: 'Presbyter adversus—sint infamia' (136 Thaner).—Source: *Csqt*.

3C. Ivo *Pan.* 4, 90: (a) see §3 *supra*. (b) 'et ut presbyter adversus—dicere accusationem'. 4, 91: 'Praesul autem—sint infamia' (PL 161, 1201).—Sources: (4, 90, b) *Csqt* c. 69, a, or *Ans. Luc.* 3, 43, a; (4, 91) *ibid.* b–c.

4C. Cardinal Gregory, *Polycarpus* (c. 1109–13)<sup>45</sup> 5, 1, 28: 'Quot testibus—sint infamia' (? cf. Friedberg I, 465–6 nn. 19–42; 485–6 nn. 59–60; readings not always clear).—Source: *Ans. Luc.*?

5C. Gratian C. 2 q. 7 c. 10: 'Clericus adversus—ferre non valet' (485 Friedberg). 2 q. 4 c. 2: 'Presul non dampnetur—sint infamia' (466 Friedberg).—Sources: (q. 7 c. 10) uncertain, see below; (q. 4 c. 2) Ivo, *Pan.* 4, 91.

Leading variants (without Grat. 2 q. 7 c. 10; for *Polyc.* as far as ascertainable from Friedberg's notes):

(*PsI* c. 2) et ut presbyter non adversus . . . det accusationem aliquam] Presbyter (et ut presb. *Ivo P.*) adversus . . . nullo modo aliquam presumat dare (dicere *Ivo P.* dare presumat *Polyc.*) accusationem *Csqt. Ans. Ivo P. Polyc.*

<sup>45</sup> Cf. Klewitz, *Entstehung* 165, who thus narrows the time limit, 1104–13, assumed by Fournier-Le Bras II, 170.

Et non dampnetur praesul] Presul autem non dampnetur (damnabitur Ivo P.) Csgt.

Ans. Ivo P. Polyc. (?) Presul non dampn. Grat.

in LXXII] cum LXXII Grat.

Neque praesul summus—super magistrum] om. Csgt. Ans. Ivo P. Polyc. Grat. (cf. Burch. Ivo D.)

(PsI c. 3) nisi XLIV] nisi in LXIII Ans. Polyc. Grat. nisi in XL Ivo P.

dampnabitur] deponatur Grat.

diaconus cardinarius constructus] diac. (autem add. nonnulli codd. Ans. Ivo P.) cardinalis Csgt. Ans. Ivo P. Polyc. Grat.

XXXVI] XXVI testibus Csgt. Ans. XXVII testibus Ivo P. Polyc. Grat. (cf. XXVI Angilr. Ans. ded. Deusd. et nonnullos codd. PsI)

condempnabitur] damnabitur Ivo P.

sicut scriptum est] om. Csgt. Ans. Ivo P. Polyc. Grat.

condempnabitur] condemnabuntur Ivo P. (ed. tantum?)

(PsI c. 4) uxores—praedicantes] om. Csgt. Ans. Ivo P. Polyc. (?) Grat.

Among the several omissions only that of the final sentence of PsI c. 2 ('Neque—magistrum') has a precedent: Burch. 1, 151 ( $\beta$  *supra*). In the  $\delta$ -tradition, however, it may be rather explained by the fact that all the collections of this group transmit the very similar rule of CS c. 20: 'Nemo iudicabit primam sedem . . .' (52 Coustant); see Csgt c. 8; Ans. Luc. 1, 19 and 4, 40; Ivo, *Pan.* 4, 5; Grat. C. 9 q. 3 c. 13 (Friedberg I, 609–10 n. 189 cites also Polyc. 1, 16 [18] 5; *Coll. Caesaraugust.* 5, 2; and Deusd. 4, 41).—For the source of Gratian 2 q. 4 c. 2 nothing can be argued from common variants in numerals (Grat. has 64 witnesses for priests, instead of 44, in common with Ans.; but 27 for deacons, with Ivo *Pan.*). The decisive factor which determines his dependence upon Ivo is the choice of the peculiar segment 'Presul (autem) non dampnetur (damnabitur)—sint infamia' from PsI cc. 2–4, common to Grat. and *Pan.* 4, 91 alone. But Gratian does not follow the  $\delta$ -tradition (Csgt. c. 69, a; Ans. Luc. 3, 43, a; Ivo, *Pan.* 4, 90, b), nor Burchard or the *Tripartita* ( $\beta$ ,  $\gamma$ ) for the portion 'et ut presbyter non adversus episcopum . . . non ostiarius adversus lectorem det accusationem aliquam' of PsI c. 2. Instead, he presents a strangely inverted text of his own in 2 q. 7 c. 10:

Unde Silvester papa. Clericus adversus exorcistam, exorcista adversus acolitum, acolitus adversus subdiaconum, subdiaconus adversus diaconum, diaconus adversus presbiterum, presbiter adversus episcopum accusationem dare aut testimonium ferre non valet.

Friedberg's notes, as usual, are confusing rather than helpful. He cites (485–6 n. 59) as parallel texts: Burch. 1, 151 (to whom he wrongly imputes a false inscription: *Ex conc. Carthag.*—in fact, Burch. has *Ex decretis Sylv. pp.*); Ivo, *Decr.* 5, 264; and Polyc. 5, 1, 28. He does not indicate that Burch. and Ivo have a positively different text ( $\beta$ ); and we must assume a different order of text also for Polyc. since it belongs to the Csgt-Anselm class, as shown by the one variant 'dare praesumat accusationem' which Friedberg cares to register (n. 60). Unfortunately we do not know the beginning of the canon in Polyc.: the words *Quot testibus* given by Friedberg are obviously only the first words of the rubric, for similar rubrics are found in PsI, Anselm, Ivo, and Gratian.<sup>46</sup> Unless, therefore,

<sup>46</sup> PsI c. 3 rubr.: 'Quot (Quod Hinsch.) testibus damnari possint singuli ordines ecclesiastici.' Ans. Luc. 3, 43 rubr.: 'Ut inferiores gradus superiores non accusent et in quot testibus episcopus, presb. diac. subdiac. et ceteri condemnandi sunt' (variant as recorded in Thaner 136 note b). Ivo, *Decr.* 6, 334 rubr.: 'Sub quot testibus cuiusque ordinis accusatio fieri debeat.' *Pan.* 4, 91 and Grat. 2 q. 4 c. 2 rubr.: 'Quot testibus episcopus vel presb. vel reliqui clerici sint convincendi (sunt communicandi *Pan. ed.*).'

another source turns up for C. 2 q. 7 c. 10, we have to conclude that Gratian himself composed the singular wording of this canon—a procedure which is in line with his velleities in the handling of texts as known from other instances (cf. e.g. Seckel, NA 20, 317–8; Kuttner, *Studia et docum.* 6, 290–3).

#### e. The Collection in Five Books

*Coll. quinque libr.* (c. 1080–6) 2, 10, 6: 'Silueri pape c. II: In consensu et subseptione—super magistrum' (cf. Wolf von Glanvell, 'Die Canonessammlung des Cod. Vatic. lat. 1348,' *Sitzungsberichte der kaiserl. Akademie der Wissenschaften in Wien*, phil.-hist. Klasse 136, 2 [1897] 20).—Source: PsI c. 2; not Burch. 1, 151 (as Wolf von Glanvell assumes) where the concluding sentence is lacking (see  $\beta$  *supra*).

The preceding analysis of five classes of texts derived from PsI is graphically summarized in the table on the following page.

### II. The Tradition of CS c. 6

Deusdedit, *Coll. can.* 2, 43, c: 'Et constituit ut diaconi—Rome VII' (206, 12–3 Wolf von Glanvell).—Source: CS c. 6, while Deusd. 2, 43, a–b are derived from PsI (for CS c. 3), see IDa2 *supra*.

### III. The Threefold Tradition of CS c. 7

A. *Coll. Ans. ded.* 4, 160: 'Ita autem dicebat—tantum pontifici' (cf. Friedberg, *Corp. iur. can.* I, 321–2 nn. 51–65).—Source: CS.

B1. Burchard, *Decr.* 2, 224: 'Ita fratres iubet—in gremio ecclesiae' (PL 140, 662).—Source: CS.

B2. Ivo, *Decr.* 6, 299: 'Ita fratres—ecclesiae' (PL 161, 506).—Source: Burch.

C1. *Ans. Luc. Coll. can.* 7, 57: 'Ut a subdiacono—ecclesiae' (386–7 Thaner).—Source: CS.

C2. Deusd. *Coll. can.* 2, 44: 'Ut a subdiacono—ecclesiae' (206 Wolf von Glanvell).—Sources: *Ans.* and Burch.

C3. Gratian D. 93 c. 5: 'A subdiacono—ecclesiae' (321 Friedberg).—Source: *Ans. Luc.* Leading variants:

(Cs c. 7) Ita tamen Silvester—dicebat ad coepiscopos] *om. Ans. Deusd. Grat.* Ita autem dic. Silv.—*coop. Ans. ded.* Ita fratres iubet auctoritas divina et affirmat Burch. Ivo

ut] *om. Grat.*

lectorem] lectores *Grat.*

essent] sint Burch. Ivo *Ans. Deusd. Grat.*

urbis Romae] viro reverentissimo *Ans. Deusd. Grat.*

honorem repraesentantes tantum] repraes. hon. tm. *Ans. Deusd. repraes. ei honorem Grat.*

pontifici vero] porro pontifici *Ans. Deusd. Grat.*

presbyteri, diaconi—lectores] presbyter, diaconus—lector, abbas (abba *Deusd.*), monachus Burch. Ivo *Deusd.* presbyter, presbytero diaconus, diacono subdiaconus, subdiacono acolytus, acolyto exorcista, exorcistae lector, lectori ostiarius (hostiario abbas *add. Grat.!*), abbati monachi (monachus *Grat.*) *Ans. Grat.*

repraesentet] repraesentet Burch. *Grat.* praesentent *Deusd.*

tamquam pontifici] *om. Burch. Ivo Ans. Deusd. Grat.* tantum pontifici *Ans. ded.* (cum nonnullis *codd. CS*)

The three classes are clearly distinguished by their treatment of the beginning (Ita tamen Silvester ...) which is replaced in the Burchard class by another introductory

PsI	α				β			γ		δ					5 lib.
	Ans. ded.	Deusd.	Bonizo	Burch.	Ivo D.	Ivo P.	Trip.	Ivo D.	74 tit.	Ans. Luc.	Ivo P.	Polyc. <sup>7</sup>	Grat.		
2 In qua et consensus— constit. est ut nullus laicus—inferre et ut presb. non adv.— det accus. aliquam.	—	—	—	—	—	4, 90a	—	—	—	—	—	—	—	—	—
Et non dampn. praeaul— in LXXII testibus.	—	— <sup>1</sup>	—	1, 151	5, 264	—	—	—	60a	3, 23a	4, 80a	—	2 q. 7 c. 2	—	—
Neque praeaul summus— super magistrum.	—	—	—	—	—	—	—	—	69 { a b	3, 43 { a b	4, 90b 4, 91a	5, 1, 28 { a b	(2 q. 7 c. 10) 2 q. 4 c. 2a	—	2, 10, 6
3 Presbyter autem card.— non condempnabitur.	3, 143 (137?)	—	4, 68	—	—	—	—	—	—	—	—	—	—	—	—
4 Testes autem—sint inf. uxores—praedicantes.	4, 150? 2, 43 <sup>2</sup>	—	—	—	—	—	1, c. <sup>3</sup>	—	69c	3, 43c	4, 91b	5, 1, 28c	2 q. 4 c. 2b	—	—
5 Testimonium clerici— nisi in ecclesia.	—	(4, 329b) <sup>3</sup>	—	—	—	—	—	—	—	—	—	—	—	—	—
Nemo enim clericus— dicere praesumat,	—	—	—	—	—	—	—	—	60b	3, 23b	4, 89b	—	11 q. 1 c. 9	—	—
quoniam omnis curia— immol. simulacr.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Et si quis clericus—anath. suscipiat.	—	—	—	—	—	—	—	—	61	7, 149	4, 30	—	11 q. 1 c. 10	—	—

<sup>1</sup> But see the summary Deusd. 4, 329(c): B2 *supra*.

<sup>2</sup> But see the summary Bonizo 4, 33: n. 43 *supra*.

<sup>3</sup> Canon continues with CS c. 6.

<sup>4</sup> PsI cc. 1-6.

<sup>5</sup> Only first sentence (CS c. 14), not from PsI: cf. B2 *supra*.

<sup>6</sup> Coll. XIII part. (84A) omitted.

<sup>7</sup> Presence or absence of other canons uncertain.

phrase of free invention, but altogether omitted in the Anselm class. The most remarkable variants of the latter are: the qualification of the cardinal (arch-)deacon as *vir reverentissimus*, substituted for the original *urbis Romae*, and the interpolations (*presbytero . . . diacono . . .* etc.) in the final clause. Deusdedit, however, sides here with Burchard, and we thus have another piece of evidence for the variety of sources which he consulted for rendering CS (Atto, PsI-Ans. *ded.* and CS itself: see IB2; Da2; II *supra*; Ans. Luc. and Burch.). Gratian, as usual, introduces some peculiar changes of his own. Of all this, Friedberg's apparatus gives but a very blurred and incomplete account.

Tedious as details of textual criticism may sometimes appear, they are the only means of establishing the often complicated lineage of the early medieval collections of Canon law. They are in particular indispensable for determining—as far as it can be done without manuscript research—the sources of Gratian's all-important work. Friedberg's 'critical' edition has left this problem not only unsolved but even untouched. It will not be easy in every case to substitute for his indiscriminate listing of older collections a well-reasoned choice of those which really may have served Gratian;<sup>47</sup> it will be less difficult to record the variant readings with accuracy and completeness where Friedberg is disappointing in both. At any rate, the standard edition of the *Corpus iuris canonici* is a work that sooner or later will have to be done all over again.

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<sup>47</sup> For an example of methodical criteria to be followed see also the study of E. Perels, 'Die Briefe Papst Nikolaus I.', NA 39 (1914) 43ff. esp. 125-30.