

✓
TOME XXXI

N° 1

Mars 1981

REVUE
DE
DROIT CANONIQUE

*PUBLIÉE AVEC LE CONCOURS DU
CENTRE NATIONAL DE LA RECHERCHE SCIENTIFIQUE*

COLLOQUE 1980
DE L'INSTITUT DE DROIT CANONIQUE

*LE COUPLE DANS
LA COMMUNAUTÉ ECCLÉSIALE*

UNIVERSITÉ DES SCIENCES HUMAINES
DE STRASBOURG
REVUE TRIMESTRIELLE
MCMLXXXI

81/465

UNIVERSAL POPE OR SERVANT OF GOD'S SERVANTS:

The canonists, papal titles, and Innocent III

1. - From John the Deacon in the ninth century to the present, historians have admired Gregory the Great for introducing the title "servant of the servants of God" into the diplomatic style of the popes' formal correspondence. Other bishops before him had occasionally used similar phrases, but Gregory's expression was perfectly coined in its conciseness to become a set chancery style and convey at the same time a strong spiritual message. Its sublime humility made a striking contrast with the proud title of "ecumenical patriarch" which the bishops of New Rome has adopted and which in sixth-century vocabulary carried (or at least implied) the meaning of "universal patriarch" (1). Already Pope Pelagius II had protested against this titlature, and Gregory never ceased to castigate it as arrogant, contrary to the mandate Christ had given his apostles, offensive to the primacy he had bestowed upon Peter, and an insult to all the brother bishops (2).

The genuine personal humility of Gregory the Great is beyond every doubt, as is his personal commitment to the Petrine office—*ut*

(1) JOHANNES DIACONUS, *Vita Greg. M.*, 2,1, in PL, t. 75, col. 87A. The literature is immense. A general reference will suffice here to the pages of Erich CASPAR, *Geschichte des Papsttums*, t. 2, Tübingen, 1933, p. 452-465, and of Louis BRÉHIER, in *Histoire de l'Eglise*, ed. A. FLICHE and V. MARTIN, t. 5, Paris, 1938, p. 64-68. For Gregory's use of *servus servorum Dei* and its antecedents, Karl SCHMITZ, *Ursprung und Geschichte der Devotionsformeln*, in *Kirchenrechtl. Abhandlungen*, ed. U. STUTZ, t. 81, Stuttgart, 1913, p. 120-139, collected the source material.

(2) The chief texts of Gregory are *Reg. ep.* 5,37 (JAFFE-EWALD 1360), 5,41 (JE 1354), 5,44 (JE 1357), 7,30 (JE 1476), 8,29 (JE 1518), 9,156 (JE 1683). Pelagius II's lost letter (JK 1058) is cited by Gregory in *ep.* 5,41 and 44: MGH, *Epistolae*, t. 1, pp. 332, 339, ed. L. HARTMANN.

et humilitatem teneamus in mente et tamen ordinis nostri dignitatem seruemus in honore (3) It seems therefore beside the point to speculate whether the new papal style was intended as a sort of inverted superlative and a political move to counter the ambitious titulature of Constantinople. It is also beside the point to argue that he overreacted against a title which for the Byzantines meant no more than "patriarch of the Empire" (4). Such *double entendre* of ecumenical/imperial, ecumenical/universal must have been precisely what he found intolerable when he insisted that the patriarch's assumed title was not a trifling matter of nomenclature (*nomen frivolum, stultum vocabulum*) (5). For he looked beyond the imperial *oikoumenē* to a universal Church (6) whose only head is Christ; therefore the assumption of a "universal" title by any individual was for him as horrifying as the pride of Lucifer: "I will ascend above the heights of the clouds, I will be like the Most High" (Isai. 14.14) (7). It was thus only consistent if he always repudiated this title also for the pope himself. Although the Roman bishop had been addressed as universal pope at the Council of Chalcedon—or, as Gregory put it with some exaggeration, although the title was decreed for him by the Council—no pope had ever taken it (8).

I. *Universalis papa*

2. - The thoughtful balance between *humilitas* and *ordinis nostri dignitas* was not to last. Already in the course of the seventh century several popes accepted without protesting *acta* of councils or letters by emperors that styled them as *universalis papa*: thus Martin I (649),

(3) *Reg. ep.* 5,41 : MGH, *Epp.* t. 1, p. 332, 1-2.

(4) These and other criticisms of Gregory the Great are judiciously discussed by CASPAR, *loc. cit.* and BRÉHIER, *loc. cit.* Cf. R. JANIN, art. *Constantinople*, in DHGE, t. 13, 1956, col. 643-645.

(5) *Reg. ep.* 7,30 : *ed. cit.* p. 478, 1-2 ; cf. *profanum vocabulum* in *ep.* 7,31 : p. 479,8.

(6) See Walter ULLMANN'S perceptive observation on the English mission as historical background for Gregory's first protests, *The growth of papal government*, 2nd ed., London, 1962, p. 36-37.

(7) *Reg. ep.* 5,44 : *ed. cit.* p. 340, 12-16.

(8) *Reg. ep.* 5,37 and 44 : *ed. cit.* pp. 322, 33-323,2 ; 341, 6-10 ; *ep.* 8,29 : *ed. cit.*, t. 2, p. 31, 33-36. For Leo the Great's being addressed as *uniuersalis archiepiscopus et patriarcha magnae Romae* see ACO II, t. 3,1, pp. 287, 289, 294, 296 ; for *uniuersalis ecclesiae papa*, ACO II, t. 2,2, p. 65.

Agatho (679, 681), and Conon (687) (9). A hundred years later, Hadrian I's *synodica* to the Second Nicene Council (787) reproached the Patriarch Tarasius for using the universal title, but only because it contradicted the Roman primacy: Hadrian no longer expressed any concern for the episcopate at large, and he remained silent about the possibility of the pope himself being so addressed (10).

On the other hand, the Pseudo-Isidorian forgers—from whom one would not have expected it—remained more faithful to Gregory's absolute rejection of *universalis*, although they presented it as coming from the pen of Pelagius II. Taking their cue from Gregory the Great's references to the stern reaction of his predecessor, they appropriated to the latter large portions of what Gregory had written in 595 to Eulogius of Alexandria and Anastasius of Antioch, when they fashioned their first epistle of Pelagius (11). There is a change, to be sure, from the original statement, "none of my predecessors ever consented to use such impious (*profanum*) vocabulary" to a general injunction "none

(9) Council of Rome (649), in MANSI, t. 10, col. 883C; Council of 679, from the Life of Wilfrith, in MANSI, t. 11, col. 179B; cf. Wilhelm LEVISON, *Die Akten der römischen Synode von 679*, in *Zeitschr. der Savigny-Stiftung*, Kan. Abt. 2, 1912, p. 277; subscription of Theodore, *locum tenens Agathonis beatissimi et uniuersalis papae urbis Romae* in the Sixth Ecumenical Council (681), in MANSI, t. 11, col. 668D; Justinian II to Pope John V, *ibid.*, col. 737. The letter was received after John V's death by Pope Conon, see *ibid.*, col. 1097D (= *Liber pontificalis*, t. 1, p. 368).

(10) JE 2448, in MANSI, t. 12, col. 1074-C. Concerning the absence of this passage from the Greek acts see now Patrick HENRY, *Images of the Church in the Second Nicene Council and in the Libri Carolini*, in *Law, Church, and society: Essays in honor of Stephan Kuttner*, ed. K. PENNINGTON and R. SOMERVILLE, Philadelphia, 1977, p. 258f. (appendix), in reply to Luitpold WALLACH, *The Greek and Latin versions of II Nicaea and the synodica of Hadrian I...*, in *Traditio*, t. 22, 1966, p. 103-125.

(11) JK † 1051 (for the genuine JK 1058 see note 2 *supra*). The derivation from Gregory's *ep.* 5,41 was first recognized by David BLONDEL, *Pseudo-Isidorus et Turrianus vapulantes*, Geneva, 1628, p. 683-644. See also the notes of Paul HINSCHIUS in his edition of *Decretales Pseudo-Isidorianae*, Leipzig, 186, p. 721-722. Specifically

GREG. M.: MGH *Epp.* 1 PS. *Isid.* ed. Hinschius

p. 332, 3-6

332, 19-23, 25-26

334, 3-335, 12

335, 13

p. 721 para. 2, lin. 1-2 *Relatum - se scribere*

721,3 *infra*-722,4 *Nullus enim - indebitum*

722 para. 2 *Aduersarius - quam tenemus*

722 para. 3, lin. 1 *Orate.*

16

of the patriarchs (*nullus enim patriarcharum*) should ever use..." (12); what matters, however, is that the Pseudo-Isirodian text retains the unequivocal, all-embracing admonition never to address anyone as "universal" (*neminem umquam universalem nominet*)—this name belongs to the one head, that is Christ, alone (13).

3. - The age of the Reformers in the later part of the eleventh century thus became heir to two strands of thought: one that preserved the teaching of Gregory the Great and one that diluted, and would eventually turn it upside down by claiming the universal title as a prerogative of the Roman Pontiff.

Leo IX in his two letters to Michael Kerullarios still maintained St. Gregory's attitude and, implicitly quoting from Gregory's register, combined a reprimand of the neophyte patriarch with the refusal of the title for himself, as his early predecessors had done (14). But matters changed with Gregory VII. The oath of fealty which the Norman prince Richard of Capua took in 1073 "to you my Lord Gregory the universal pope" (*tibi domino meo Gregorio universali pape*) was entered in the papal register and so was Robert Guiscard's feudal oath of 1080, using the same formula, for the Duchy of Apulia, Calabria, and Sicily (15). In all likelihood, it had been the Archdeacon Hildebrand who in 1061 drafted this form when Richard first took his lands in

(12) GREG. M.: « Sed nullus umquam *decessorum meorum* hoc tam profano uocabulo *uti consensit*. quia uidelicet si unus patriarcha uniuersalis dicitur, patriarcharum nomen ceteris derogatur »; PS. PELAGIUS: « Nullus enim *patriarcharum* hoc tam profano uocabulo umquam *utatur*, quia si unus patriarcha... » etc. (There remains a crux in the next line of the Pseudo-Isidorian version, see Appendix I *infra*.)

(13) Ps PELAGIUS: « Quapropter karitas uestra neminem umquam suis in epistolis uniuersalem nominet... » (p. 722, 2-4); « ...ita uniuersa sibi temptet adscribere et omnia que soli uni capiti coerent uidelicet Christo » (p. 722, 18-19); cf. Gregory in MGH, *Epp.* 1, p. 332,35, p. 334, 17-18. (The only textual difference worth noting is the form of address, *karitas uestra*: the ninth-century forger may have found Gregory's « Propterea sanctitas » not proper for writing to bishops.)

(14) JAFFÉ-LOEWENFELD 4302, ch. 9, in MANSI, t. 19, col. 640B-C; JL 4332, *ibid.*, col. 664E-665A.

(15) Richard of Capua, 14 September 1073, in *Reg. Greg. VII*, 7,21a, ed. Erich CASPAR, MGH, *Epistolae selectae in usum schol.*, t. 2, 1, Berlin, 1920, p. 35,33 (with earlier editions cited); cf. Paul F. KEHR, *Italia pontificia*, t. 8, Berlin, 1935, p. 206f., N° 28. Robert GUISCARD, 29 June 1080, in *Reg. Greg. VII*, 8,1a, ed. cit., t. 2,2, 1923, p. 514, DEUSDEDIT, *Coll. canonum* 3,286 (158), ed. Victor WOLF VON GLANVELL, Paderborn, 1905, p. 395; cf. *Ital. pont.*, t. 8, p. 18, N° 47.

fief from Pope Alenxander II (16). Again, the enregistered acts of the Roman Lenten Synod of 1079 begin with the formal inscription "In the year of incarnation..., and the sixth year of the pontificate of Lord Gregory VII the universal pontif" (*Anno ab incarnatione..., pontificatus vero domini Gregorii universalis pontificis VII. anno VI...*) (17). All this was more than accepting a title: it was putting into practice the terse proposition Gregory formulated in his second year as part of the so-called *Dictatus papae*: "The Roman Pontiff alone is by right called universal" (*Quod solus Romanus Pontifex iure dicatur universalis*) (18). This astonishing summation represented his personal reading of the historical record; it expressed that new exaltation of the papal office which drove Gregory-Hildebrand forward, but it certainly did not render the thought of the first Gregory.

In the circle of the Reformers two canonists adopted a similar position. Cardinal Deusdedit, who completed his collection after the death in 1085 of Gregory VII and dedicated it to his successor Victor III (d. 1087), made these statements in his *capitulatio* for the first book: "He [the Roman Pontiff] was addressed as pope by the Nicene Synod. Before this [synod], he was called universal. By the synod of 330 fathers at Chalcedon he was called universal" (19). For the designation as "universal" prior to Nicea, he refers to c. 1 of his Book IV, an abridged *Constitutum Constantini*, where the papal *principatus* "over all the churches of God in the whole world" (*in universo orbe terrarum*) is mentioned (20)—but this is really not what

(16) Lateran, 2 Octobre 1061, in DEUSDEDIT, 3,288 (159), *ed. cit.*, p. 395 (misdated): « et tibi meo domino Alexandro pape uniuersali »; cf. *Ital. pont.*, t. 8, p. 205, N° 23. Robert Guiscard's first oath, of August 1059, in DEUSDEDIT, 3,284 (156), on which all other texts are based (cf. *Ital. pont.*, t. 8, p. 12, N° 16), has only « et tibi domino meo Nycolao pape », P.F. KEHR, *Die Belehnungen der süditalienischen Normannenfürsten durch die Päpste (1059-1192)*, in *Abhandl. der Preuss. Akademie der Wiss., Philos.-histor. Klasse*, 1934, N° 1, p. 23f., argued that « uniuersali » must be supplied. I doubt that this is correct.

(17) *Reg. Greg. VII*, 6,17a, *ed. CASPAR*, t. 2,2, p. 425.

(18) *Reg. Greg. VII*, 255a, *ed. cit.*, t. 2,1, p. 202, with CASPAR'S commentary. Cf. Karl HOFMANN, *Der « Dictatus Papae » Gregors VII.: Eine rechtsgeschichtliche Erklärung*, Paderborn, 1933, p. 34f.; Julia GAUSS, *Die Dictatus-Thesen Gregors VII. als Unionsforderungen*, in *Zeitschr. der Savigny-Stiftung*, Kan. Abt., t. 29, 1940, p. 46f. (also p. 47, n. 1, on earlier popes who tolerated the title; cf. n. 9 *supra*).

(19) « Quod a Nicena synodo nominatus sit papa. Cap. v. — Item quod ante eam uocatus sit papa uniuersalis. Cap. i. libro III. — Quod a Chalcedonensi sinodo DC XXX patrum uniuersalis sit appellatus. Cap. CXLVIII. » (*Ed. cit.*, p. 8,10-13).

(20) DEUSD. 4,1, *ed. cit.*, p. 398, 8-11: « ut principatum teneat... super omnes in uniuerso orbe terrarum ecclesias... ».

Deusdedit's rubric claims. His statement on Chalcedon gives as reference Book I, c. 149: two short excerpts from letters of Gregory the Great which speak of the universal title "decreed" at Chalcedon but always refused by the popes (21). It was entirely in the spirit of his friend and master that Deusdedit, in composing the rubric, passed over the essential "but" of both his texts, and thereby changed their whole intent. A parallel to this is found in the *Propriae auctoritates apostolicae sedis* (the so-called *Dictatus of Avranches*), which opens with the proposition, "The Roman Pontiff alone is considered universal, as the Council of Chalcedon attests", a proposition that combines, as it were, the *Dictatus papae* and Deusdedit's *capitulatio* (22). With this document of unknown origin, probably composed soon after the work of Deusdedit, the direct canonistic influence of Gregory VII's bold reversal of the teachings left by his great eponymous predecessor came to an end. Neither Deusdedit nor the *Dictatus* made an impact on the major collections from Ivo down to Gratian.

If we now turn to the other side, the line of canonists that represented the "conservative" attitude, we must begin with the unknown author of the *Diversorum patrum sententiae* (Collection in Seventy-four Titles). Under the general rubric "Let no one be called universal" (*Ne universalis quisquam uocetur*) he combined the essential phrases of the Pseudo-Pelagian letter with a second text, this time correctly ascribed to Gregory the Great, who had set forth once more in 598 his thought on the pretentious term (*superbae appellationis uerbum*) to Eulogius of Alexandria, beseeching "your sweet holiness" not to

(21) DEUSD. 1,149 orig. = 1,185 and 186 in WOLF VON GLANVELL'S numbering; excerpted from Gregory the Great's *Reg. ep.* 5,37 (MGH, *Epp.* t. 1, p. 322,23-323,4) and *ep.* 8,29 (t. 2, p. 31,33-35). Both include the statement about his predecessors: « sed nullus eorum umquam hoc singularitatis nomine uti consuevit »; « sed tamen nullus eorum hoc umquam uti uoluit ». For his excerpts from Ps. Pelagius II (JK †1051) and *Greg. ep.* 9, 156 (JE 1683) in Book 1, 141-142 (115-116), DEUSDEDIT gave the rubrics: « De excommunicatione eiusdem ciuitatis episcopi, qui se uniuersalem nominauit... »; « De interdictu apostolice sedis pro eodem uocabulo... » (*ed. cit.*, p. 13).

(22) « Solus Romanus pontifex uniuersalis habetur teste Calcedonensi concilio (var. sinodo) », in Hubert Mordak's edition, *Proprie auctoritates apostolice sedis: Ein zweiter Dictatus papae Gregors VII.* † in *Deutsches Archiv für Erforsch. des Mittelalt.*, t. 28, 1972, p. 105-132, at p. 126, c. 1 (where the reference for *teste Calcedonensi* should be to JE 1360, 1357 = *ep.* 5,37 and 44, rather than JE 1359 [*ep.* 5,36], of Gregory the Great). For the dating of the *Propriae auctoritates* after (rather than during) the pontificate of Gregory VII, I am following Friedrich KEMPF, *Ein zweiter Dictatus papae †* in *Archivum historiae pontificiae*, t. 13, 1975, 119-139.

address him, Gregory, again as universal pope (23). Our canonist was, of course, unaware that in his two excerpts he quoted Gregory the Great twice over (24). But it is worth noting that he enhanced his first text by shortening its address to a terse "Pope Pelagius of Rome to all bishops" where Pseudo-Isidore had written "To the beloved brothers, all the bishops who by the unlawful summons of Bishop John of Constantinople are gathered at Constantinople in council"—a more pompous but also more limited address (25).

When Anselm of Lucca in the 1080's (c. 1083-86) composed his collection, he incorporated these twin chapters with rubric and inscriptions verbatim (although elsewhere in his book he had also an excerpt from Hadrian I's *synodica* to the Second Nicene Council, mentioned above) (26). The two chapters appeared again under the same title in the *Polycarpus* (1109-13), but with an African canon of different lineage, concerning the title of the bishop of Carthage, inserted between the two, and with a precise reference to the register, *In epistola xxviii. lib. viii.* provided for the letter of Gregory (27).

(23) *Div. patr. sent.* (74T), c. 184 *Nullus patriarcharum — indebitum* (JK † 1051) and c. 185 *Ecce in prefatione—uulnerant* (JE 1518: *Reg. ep.* 8,29), ed. John T. GILCHRIST, *Diuersorum patrum sententiae siue Collectio in LXXIV titulos digesta*, in *Monumenta iuris canonici*, ser. B. t. 1, Città del Vaticano, 1973, p. 114f. The direct source for Gregory's letter was probably JOH. DIACONUS, *Vita*, 3,60 (PL, t. 75, col. 170), see GILCHRIST, p. 114 *ad loc.* and p. xcvi.

(24) 74T, c. 184 = *Ps. Isid.*, ed. HINSCHIUS, p. 721,3 *infra* - 722,4 = *Reg. ep.* 5,41, ed. MGH, *Epp.* t. 1, p. 332, 19-23, 25-26. 74T, c. 185 = *Reg. ep.* 8,29 *ibid.* t. 2, p. 31, 23-32.

(25) « Pelagius papa Romanus episcopis omnibus » (c. 184), as against « Dilectissimis fratribus uniuersis episcopis qui illicita uocatione Iohannis Constantinopolitani episcopi ad synodum Constantinopolim conuenerunt, Pelagius » (*ed. cit.*, p. 720). The only other changes worth mentioning are the substitution of *uniuersalitatibus uocabulo* for *hoc tam profano uocabulo* (cf. GILCHRIST, *app. crit. ad loc.*), and the suppression of *cuiusquam mente* in the puzzling passage (cf. Appendix I, *infra*), « absit a fidelibus cuiusquam mente ».

(26) ANS. LUC., *Coll. can.*, 6, 117-118, ed. F. THANER, Innsbruck 1915, p. 325; and 1,84 (excerpts from Hadrian I, JE 2448), *ibid.*, p. 85f.

(27) *Polycarpus*, 1, tit. 25 (*Ne quis uniuersalis appelletur*), cc. 1, 3. For rubrics in *Polyc.* citing book and epistle of Gregory's register see generally: Paul FOURNIER, *Les deux recensions de la collection romaine dite le Polycarpus*, in *Mélanges d'archéol. et d'hist. de l'école franç. de Rome*, t. 37, 1918-19, p. 70, n. 1 — *Polyc.*, 1,25,2 *Ex concilio affricano*, « Vt prima sedes... » is c. 25 of the Council of Carthage (397) in the *Breviarium Hipponense*, ed. Charles MUNIER, *Concilia Africae*, CCL, t. 149, 1974, p. 40 (cf. ed. BALLERINI, 1757, PL, t. 56, col. 426); here derived from BURCH., *Decretum*, 1,3 or IVO, *Decretum*, 5,57. (I have used MS Vat. Reg. lat. 897 for *Polyc.*)

4. - The last and most articulate exponent of the absolute rejection of any "universal" nomenclature was Gratian. Taking over, in Dist. 99, the texts of "Pelagius" and Gregory in combination from either Anselm or the *Sententiae* (probably the former) while quoting the African canon in a different context (28), he strengthened the thrust of the twin chapters by proclaiming twice (29): "Not even the Roman Pontiff may be called universal" (*Universalis autem nec etiam Romanus pontifex appellatur*)—certainly a more explicit assertion than the impersonal "Let no one be called..." of his source.

But Gratian's was a lost cause. The glossators noted that his (and Gregory the Great's) concern no longer reflected practical reality. Already Rufinus commented: "Today this is not observed, for every day we call the supreme pontiff 'universal' in our letters. However, out of humility these two popes [Pelagius and Gregory] refused to be so grandly named" (30). This set the tone for the exegesis of Gratian's texts by later decretists: If any of these texts, they said, including the canon *ex concilio Africano* on the bishop of the "first see", were to be understood of the Roman bishop, then it is no longer in force (*abrogatum, non tenet, etc.*), however, it holds good for all other patriarchs and primates (31). Those two popes, as Huguccio put it,

(28) D. 99, cc. 4-5, with the African canon (c. 3) placed in the preceding section on primates. Besides, Gratian c. 5 differs from *Polyc. 1, 25,3* in that it lacks all reference to the register of Gregory the Great. Thus, the general observations of Ch. MUNIER, *Les sources patristiques du droit de l'Eglise*, Mulhouse, 1957, pp. 130, 132, concerning Gratian's primary dependence on the *Polycarpus* do not apply here.

(29) D. 99, dict. a.c. 4; rubr. c. 4.

(30) RUFINUS, *Summa*, D. 99, dict. a.c. 4: « Hoc hodie non seruat...; sed isti duo apostolici sic magnifice nominari ex humilitate recusabant » (ed. SINGER, Paderhorn, 1902, p. 194), repeated by JOHANNES FAVENTINUS and the *Summa Omnis qui iudicat, ad. loc.* For this topos of humility see also STEPHANUS TORNACENSIS, *Summa*, D. 99, c. 5 (ed. SCHULTE, Giessen, 1891, p. 119); the *Summa Tractaturus magister*; HUGUCCIO, *Summa*, D. 99, dict. a.c. 4; the *Summa Ecce uicit leo*. (MSS and full texts for these and other glossators quoted in subsequent notes will be given in Appendix II *infra*.)

(31) STEPH. TORN. c. 3: « *Prime sedis*: idest Romane. Hodie neque istud neque sequens locum habet...; uel dicamus hic dici de aliis primis sedibus a Romana » (*loc. cit.*). RUFINUS, D. 99, pr. still wrote, after enumerating the patriarchs: « Isti autem nec principes sacerdotum... sunt uocandi (*var. uocati*); Romanus quoque pontifex uniuersalis appellari non debet ». JOH. FAVENTINUS (followed by *Sum. Omnis qui iuste*) changed this to: « Qui autem in istis sunt sedibus *preter Romanum*, non principes sacerdotum... sunt uocati », and « Si enim de Romano ibi intelligeret, derogatum esset capitulo ». For this topos of abrogation see also the glosses of the Biberach MS, Vatican MS Ross, lat. 595, HUGUCCIO, c. 3 und n. 44 *infra*, ALANUS, the *Glossa Palatina*, and JOHANNES TEUTONICUS, *Glossa ordinaria* (all in Appendix II).

voiced their own humility, but without prejudice to their successors (32). Or, as we read in a French gloss, their pronouncements were merely the result of a special historical situation (33). Stronger language, such as that of the *Dictatus papae* or of *Deusdedit*, had never entered the mainstream of canonistic tradition but was not even needed: the canonists came to the same conclusion just by observing the realities of their own time, that is, the ongoing consolidation of papal prerogative and papal primacy.

Once Gratian's statement had been rendered innocuous as being obsolete, the glossators were not greatly interested in the exegesis of his authorities. Who would gainsay the noble sentiment of Gregory the Great's triple exclamation, "My honor is the honor of the universal Church; my honor is my brothers' common strength (*solidus uigor*); I am honored in truth when to each and all their due honor is not denied" (34)? But what could one add to this by way of glosses? Thus the decretists limited themselves to strings of commonplaces: "What is attributed to one, is taken away from others"; "he who assigns all and everything (*uniuersum*) to one, leaves nothing for himself"; "we must not give furtherance to anyone at the detriment of another" (probably an echo of the language of the Digest) (35); "nobody must do what makes another look lesser"; "no one should lower himself more than is expedient, nor should prelates be so humble that they will become despised". Other texts from Gratian, the civil law, and

(32) HUGUCCIO, dict. a.c. 4: «...potest dici quod illi duo ex humilitate tam alte appellari recusauerunt, nec tamen aliis preiudicium fecerunt quin sic appellentur».

(33) *Summa Tractatus magister*: «Hoc hodie non seruatur, quia ex causa dictum fuit... propter uitandam arrogantiam que imponebatur (?) Romanis pontificibus a Constantinopolitanis tempore Mauricii imperatoris».

(34) D. 99, c. 5.

(35) HUGUCCIO: (a) c. 4, v. *derogatur*: «... arg. quod si quid conuenit pluribus et illud tantum uni attribuitur, ceteris auferrī uidetur»; c. 5, v. *negat se hoc*: «...et est arg. quod de uno dicitur de altero negatur: quod enim uni generaliter uel specialiter attribuitur ab alio remouetur»; (b) c. 4, v. *ne debitum*: «...quia si alii tribuit uniuersum, nichil sibi relinquit»; (c) v. *arripere*: «Nam nulli est consulendum cum aliena iactura». Similarly *Summa De iure canonico tractatus* (a), ALANUS, c. 5, v. *neget* and c. 4, rec. 2 (a, c), *Glossa Palatina*, c. 5, v. *subtrahitur*, c. 4 v. *unuersalitatē* (a, b), *Summa Reginensis*, c. 5, v. *si enim* (a); JOH. TEUTON., *Glossa ord.* c. 5, v. *subtrahitur* (a, c.). For *lucrum ex aliena iactura* cf. Dig. 5,3,38; 5,12,1; 14,3,17,5.

a few recent decretals were cited in support of these truisms (36). The only argument of legal substance the glossators extracted from Gregory's text was the maxim that a papal favor must not be construed so as to detract (*derogare*) from another's right unless this is specifically mentioned in the rescript or mandate: a much-debated rule, of which we still have an echo in the *Codex iuris canonici* of 1917 (can. 46) (37).

5. - But no writer, not even the great Huguccio, probed into the dialectic of Pelagius-Gregory's two-pronged axiom on which all else was based: "the honor of *universalis* or *universus* you claim for yourself you take away from others; and the honor you give to others in exaggeration demeans your own dignity" (38). It would not have been difficult to demonstrate that this axiom considered only the contradictory, or total, opposite of 'universal' but disregarded the logical possibility of relative or simple opposites, such as universal/partial, or everything/something. Huguccio even underlined St. Gregory's argument by equating *universalis* with *esse omnia*, "to be all things", wherefore to others nothing (*nichil*) is left. In this sense, he quipped, Caesar was all things (39). The words are from Lucan's *Pharsalia*, where

(36) (a) HUGUCCIO, c. 4 v. *arripere*: «...et est argumentum aliquem non debere facere quo alius minor appareat»; (b) *Glos. Pal.* c. 5, v. *prebetur*: «Non debent enim esse plus subditi quam expedit..., nec prelati ita humiles ut contemptentur». Similarly HUGUCCIO, c. 4, v. *indebitum*; JOH. TEUTON., c. 5, v. *prebetur*. — All texts with the pertinent *allegationes* in Appendix II *infra*.

(37) HUGUCCIO, c. 5 v. *non negatur*: «Arg. contra rescriptum pape ab aliquo impetratum in quo de iure alterius aliquid imminuitur: non est enim uerisimile quod papa ex suo rescripto uelit derogare iuri alterius, nisi inde specialiter faciat mentionem». Similarly *Summa Regin.* c. 5, v. *meus honor*; ALANUS, c. 5, v. *honoratus*; *Glos. Pal.*, c. 5, v. *ad me*; MS Vat. Ross. 595, *gl.* c. 4, v. *indebitum*; JOH. TEUTON., c. 5, v. *subtrahitur*. Also see the additions to the *Glossa ordinaria* (recension of BARTHOLOMAEUS BRIXIENSIS) *ad loc.* in the margin of the *editio Romana*, and Card. GASPARRI's footnote to *Cod. iur. can.*, c. 46 citing X 1, 3, 6 and 19; Sext. 1, 2, 1; 1, 3, cc. 4 and 8-10. The bibliography is immense, see Alphonse VAN HOVE, *De legibus ecclesiasticis*, Malines-Rome, 1930, p. 18ff.; *De rescriptis*, Malines-Rome, 1936, p. 173ff.

(38) D. 99, c. 4: «...quia si unus patriarcha uniuersalis dicitur, patriarcharum nomen ceteris derogatur;... ne sibi debitum subtrahat cum alteri honorem offert indebitum»; c. 5: «...quia uobis subtrahitur quod alteri plus quam ratio exigit prebetur».

(39) HUGUCCIO, c. 5, v. *in prefatione*: «Qui enim dicitur uniuersus uel uniuersalis, uidetur esse omnia: quo sensu Cesar fuit omnia». See also ALANUS, c. 4, rec. 2; MS Vat. Ross. 595.

omnia Caesar erat sums up the poet's censure of the dictator's unlawfully summoned Senate meeting—with neither consuls nor praetors present, the curule chairs removed, and the assembled Fathers ready to vote him kingship or divine honors, and exile or death for themselves (40). Lucan's line had become a proverbial saying in the twelfth century. An interesting parallel with its use by Huguccio is found in Peter the Chanter's *Verbum abbreviatum*: pluralist bishops, the Chanter wrote, "are worse than Julius Caesar of whom Lucan said: Caesar was all". And the Parisian moralist went on to explain why it was worse to covet all honors in several churches than merely in one city as Caesar did at Rome (41). As for Huguccio, he did not spell out the details implied in his quotation, but the student who remembered his Lucan must have enjoyed the master's subtle comparison (42) of self-styled universal patriarchs with the power-usurping Caesar of the *Pharsalia*.

Fuit omnia: therefore Gregory the Great's pointed antithesis, "When you call me *universalis papa* you deny to be what you profess of me" (*uestra sanctitas... negat se hoc esse quod me fatetur uniuersum*) must be read, in Huguccio's exegesis: "...you deny to be yourself a patriarch because you call me one who is *universus*, that is, all things"; or rather, "you deny to be yourself *universalis*, that is, part of the corporate

(40) LUCAN, *Phars.* 3, 104-111, at v. 108f.: « *Omnia Caesar erat, priuatae curia uocis/Testis adest...* ». I wish to thank Dr. R.W. Hunt, Isle of Wight, and Professor P. G. Schmidt, Marburg, for their kindness in helping me locate Huguccio's source and medieval parallels. Cf. Hans WALTER, *Proverbia sententiaeque latinitatis medii aevi*, t. 3, Göttingen, 1965, N° 19951. See Additional note, p. 127 *infra*.

(41) PETRUS CANTOR, *Verbum abbreviatum*, c. 32 (*Contra bigamos et lamechitas in pluribus ecclesiis*): « Tales peiores sunt Julio Caesare. Cuius cum singula uitia enumerat Lucanus, in fine dixit de eodem: *Omnia Caesar erat. ...erat enim consul, quaestor, etc. et hoc in eadem ciuitate. Peior ergo ille qui in diuersis...* » (PL, t. 205, col. 117). Patristic and medieval interpretation of Gen. 4, 19ff. saw Lamech as the first polygamist; the word *lamechita* (not in DU CANGE, NIEMEYER, etc.) was apparently coined by the Chanter.

(42) Huguccio could not know how subtle: he would hardly have been aware of the original Pseudo-Isidorian address for the « Pelagius » letter of D. 99, c. 4, where the *inlicita uocatio* of the Patriarch John's synod is mentioned (see note 25 *supra*): compare *Phars.* 3,104 on the Senate assembled *nullo cogendi iure*; see also the « emended » inscription of c. 4 in the *editio Romana*.

whole (*de universitate*), for if I am all you are nothing" (43). All this may be quite elegant as an *explication de texte*, but the point is blunted by the concluding line of the entire comment: rejection of the universal title is observed as regards all others; "as for the Lord Pope, it is not observed" (44).

6. - Thus the great questions raised by Gregory had become moot, and there is something untidy about the manner in which the decretists left them unresolved. It remained for Pope Innocent III to put forward an answer, if only implicitly and without reference to Gregory's text in the Decretum which was so inconvenient for the canonists. In the course of the celebrated letter *Apostolicae sedis* Innocent wrote on 12 November 1199 to the Patriarch John Kamateros, expounding at length the doctrine of papal primacy, he answered a question among several asked by the patriarch: Why had he, the pope, in his previous letter called the Roman church "one and universal" (45)? John Kamateros's challenge appears to be based on mistranslation or misunderstanding of a passage in the first letter of Innocent (August/September 1198), which contains nothing of the sort; or else, we should have to postulate that it was a different, not enregistered and now lost papal

(43) HUGUCCIO, c. 5 v. *me uniuersalem*: « idest esse omnia uel uniuersa, *negat se esse hoc*, scil. patriarcham, *quod*, idest quia *fatetur me esse uniuersum*, idest esse omnia; uel *negat se esse hoc*, scil. uniuersalem, idest esse de uniuersitate, quia eo ipso quod me dicis uniuersalem, negas te esse de uniuersitate, quia si ego sum omnia, tu es nichil... ». Similarly *Summa Reginensis*, c. 5, v. *si enim*.

(44) HUGUCCIO, *loc. cit.*: « ...Ecce in hoc capitulo continetur quod papa non debet appellari uniuersalis, in superiori quod nullus. In aliis obseruatur, in domino papa hoc non obseruatur. »

(45) INNOCENT III, *Reg.* 2,209 (Potthast 862): « Quaesiuisti etiam dubitans et addiscere uolens qua ratione Romanam ecclesiam unam et uniuersalem in nostris litteris uocauerimus, uelut in quasdam species specialissimas iam diuisam, cum et unus sit pastor et unum ouile, licet sub uno pastorum principe Christo plures sint constituti pastores »: PL, t. 214, col. 762D-763B (BALUZE's edition of 1682); and ed. Theodorus HALUSCYNISKYI, *Acta Innocentii PP. III...*, in *Fontes* (ed. Pont. Commissio ad redigendum Codicem iuris canonici orientalis), ser. 3, t. 2, Vatican City, 1944, p. 192. The letter was also incorporated into the anonymous *Gesta Innocentii*, c. 61, ed. BALUZE, *Epistolarum Innocentii III...*, Paris, 1682, t. 1, p. 26ff. (not included in Migne's reprint, PL, t. 214, col. CXXIII). For the decretal collections see note 58 *infra*. — The new edition by Othmar HAGENEDER et al. in *Die Register Innocenz' III.*, t. 2, Rom-Wien, 1979, p. 387 (with the new reading « Quesiuiisti etenim »), appeared only after this essay was completed.

message to which the patriarch here replied (46). The reply, in any event, offered an opportunity for the pope to reformulate and resolve the old problem of universality in the Church. Shifting its ground from the personal to the institutional, he discussed the "universal" qualification, no longer of persons, but of churches.

There are two ways (he wrote) one can speak of *universalis ecclesia*. In one sense the term means the same as "catholic" in Greek: in this sense the Roman church is not the "universal Church" but part of it, albeit the first and foremost... (47). One can also speak of *universalis ecclesia* as the one that has all (*uniuersas*) churches under itself: and in this sense only the Roman church is called universal (48). This

(46) The Greek text (cf. V. GRUMEL, *Les registres des actes du patriarchat de Constantinople*, t. 1, 3, Paris 1947, N° 1194, p. 190) is now finally available, edited from MS Paris gr. 1302 by A. PAPADAKIS and A.M. TALBOT, *John X Camaterus confronts Innocent III: An unpublished correspondence*, in *Byzantinoslavica*, t. 33, 1972, p. 33-35., p. 34. Official Latin translation in Innocent's *Reg.* 2,208: «...Nam et pro miro habeo quomodo unam et uniuersalem Romanorum uocasti ecclesiam (*mian kai geniken ten ton Rhomaion ekklesiam ekalesas*) ut quasi iam diuisam in species quasdam specialissimas, et haec uno existente grege ouillum Christi, nobis quodammodo pastoribus sub eo constitutis pastorum principe communique doctore...»: PL, t. 214, col. 757B; HALUSCYNKYI, p. 548. Compare however *Reg.* 1,354 (Potth. 350), where Innocent had written: «...Ipse quoque Dominus Iesus Christus unum esse ouile et unum pastorem in euangelio protestatur, et in apostolorum symbolo unam esse catholicam et apostolicam ecclesiam fides catholica profitetur» PL, col. 327D-328A; HALUSCYNKYI, p. 181; ed. Othmar HAGENEDER and Anton HAIDACHER, *Die Register Innocenz' III.*, t. 1, Graz-Köln, 1964, p. 529. I have italicized the mistranslated words; elsewhere in the letter Innocent used expressions such as *apostolicae sedis unitas, ecclesiae unitas*, but never the criticized words. — On the hypothesis of another, lost letter or version of this letter, see Daniel STIERNON's outstanding analysis, *I rapporti ecclesiastici tra Roma e Bisanzio: Il patriarca di Costantinopoli Giovanni X Kamatèros e il Primato romano*, in *Problemi di storia della Chiesa: il Medioevo (Cultura e storia)*, t. 16; Milan, 1976), at p. 105-113. — For the text of *Reg.* 2,208 see also the new ed. in HAGENEDER, t. 2, p. 380.

(47) *Reg.* 2,209: «Nos autem inquisitioni tuae taliter respondemus quod ecclesia duabus ex causis uniuersalis uocatur... Dicitur enim uniuersalis ecclesia quae de uniuersis constat ecclesiis, quae Graeco uocabulo catholica nominatur, et secundum hanc acceptionem uocabull ecclesia Romana non est uniuersalis ecclesia sed pars uniuersalis ecclesiae, prima uidelicet et praecipua, uelut caput in corpore...».

(48) *Ibid.*, «Et dicitur uniuersalis ecclesia illa una quae sub se continet ecclesias uniuersas, et secundum hanc nominis rationem Romana tantum uniuersalis ecclesia nuncupatur»: PL, t. 214, col. 763; HALUSCYNKYI, p. 192; HAGENEDER, t. 2, p. 387.

was not a very profound distinction, but it was a workable one. To illustrate it, Innocent chose for the second of the two meanings an analogy which seems awkward at first sight: In like manner (he wrote) God is called "the universal Lord", not because of any antecedent division into very special or subordinate kinds [of lordship] (...*non quasi iam diuisus in species specialissimas aut etiam subalternas*) but because all things (*uniuersa*) are under His rule (49). With this strange phrase, however, Innocent merely took up the vocabulary of the patriarch's censure: "I wonder (it read in its Latin translation) why you call the church of the Romans one and universal, *ut quasi iam diuisam in species quasdam specialissimas*" (50). That is, Innocent used the opponent's own words to refute him—an early example of his lawyerly skill for which his contemporaries were to admire him so much (51). (Needless to say, the patriarch remained unconvinced.) (52)

This whole passage of dialectic argument on the universal Church has received much less attention from modern historians than the great ecclesiological themes of the letter in which it is embedded. But interestingly enough, in the late sixteenth century the *Correctores Romani* of the Decretum quoted part of the distinction from Innocent's register—with some errors of transcription—in a lengthy note on St. Gregory's letter so as to allay the misgivings the text and Gratian's embarrassing use of it caused in the post-Reformation era (53). At an

(49) *Ibid.*: « sicut et Deus uniuersalis Dominus uocatur, non quasi iam diuisus... sed quoniam uniuersa sub eius dominatione continentur ».

(50) See note 46 *supra*; Gr. *hos eis eide diaroumenen hypobebekota tina* (ed. PAPADAKIS and TALBOT, p. 34), perhaps alluding to the « tree » of categories in PORPHYRY'S *Isagoge*; see STIERNON, *I rapporti*, p. 112-13.

(51) *Pace* Professor PENNINGTON, who does not concede that Innocent was competent as a lawyer, see e.g. his *Pope Innocent III's views on Church and state...*, in *Law, Church, and society* (note 10 *supra*) p. 49-67.

(52) « Where in the Gospels do we find Christ saying ... that the church of the Romans is ... *katholikotera (uniuersalior)* than all others? »: see the excerpt from his reply (GRUMEL, No. 1196, Paris MS gr. 1302, fol. 271r) in Martin JUGIE, *Theologia dogmatica Christianorum ab Ecclesia catholica dissidentium*, t. 4, Paris, 1931, p. 386, n. 1; full text in PAPADAKIS and TALBOT, p. 35. A new edition, based on a MS from Chalki (now in the Patriarcal Library at Istanbul), has been promised by STIERNON, p. 130f.

(53) D. 99, c. 5, *Nota Correctorum* (reproduced in FRIEDBERG, col. 351 *ad loc.*). Their excerpt of *Reg.* 2,209 misquotes e.g. *graeco uocabulo* (n. 47 *supra*) as *graeco sermone* and *sed quoniam uniuersa* (n. 49) as *quoniam omnia*.

early stage of their work (in 1571) the *Correctores* even planned to alter the pertinent texts of the *Decretum* (53). But this thought they eventually abandoned, and the original, exceedingly long draft made by Don Miguel Tomás Taxaquet of a critical *notatio* (55) was substantially shortened in the edition (1582).

7. - The *Correctores Romani* would have been surprised, had they known that they had before their eyes, in the *Glossa ordinaria* on the very text of Gregory they were so carefully annotating, the remnants of what an early thirteenth-century decretist had written, connecting the same letter of Innocent III with this chapter in Gratian. As printed in the Roman edition, the gloss on D. 99 c. 5 reads (Bartholomew of Brescia's redaction):

negat se hoc esse: idest esse de vniuersitate, cum tamen Romana ecclesia non sit vniuersalis, licet sit de vniuersitate. Ioan.

The textual differences in Johannes Teutonicus's original version (c. 1216/17) are negligible. But significantly his source, the *Glossa Palatina*, had concluded this sentence by referring to *ex. de primatu apostolice sedis c. uno*. It is understandable that in the *Ordinaria* Johannes suppressed the *allegatio*, for it referred to a chapter and a decretal collection that had become antiquated with the publication in 1209/10 of the authentic *Compilatio tertia* (56). (There are other, though infrequent instances of such outdated references in the *Palatina* (57); they let us catch a glimpse at the pre-1210 stages of composition of that apparatus.)

(54) Congregation of 13 November 1568 and General Congregation of 14 March 1571, MS Vat. lat. 4889, fol. 157r; see Appendix III *infra* for their proposed correction of Gratian's rubric of c. 4 and addition to c. 5. For the papers of the *Correctores* see S. KUTTNER, *Gratian and Plato, in Church and government in the Middle ages*, ed. C.N.L. Brooke et al., Cambridge, 1976, pp. 103 (with bibliography, n. 59), 117f.

(55) MS Vat. lat. 4890, fol. 35v-37r, No. 513. Excerpts in Appendix III *infra*.

(56) The scribe of the Vatican MS *Reg lat. 977* apparently was also at a loss: he left the reference quoted above (from MS Pal. lat. 658) incomplete, writing merely, « ...set sit de uniuersitate, extra. »

(57) There are two more examples in the present context, *gl. D. 99, c. 4* (see Appendix II); others are cited by S. KUTTNER, *Bernardus Compustellanus antiquus*, in *Traditio*, 1, 1943, p. 333, n. 48; and by A.M. STICKLER, *Il decretista Laurentius Hispanus*, in *Studia Gratiani*, t. 9, 1966, p. 512f. from Arras MS 500 (592). Unfortunately the Arras MS lacks D. 99, owing to loss of pages after fol. 39 (D. 96).

In the present case, the text referred to is no other than Innocent III's *Apostolicae sedis*, which was included as the only chapter (*c. uno*) under the title, "Of the primacy of the Apostolic see" in the collections of Rainier of Pomposa (1201) and Bernard of Compostela (1208) (58). We do not know the reasons that prevailed upon Petrus Collivaccinus to omit the important letter from the *Tertia*: One can only speculate that the redactor (and his papal master) considered it too broadly theological a document for inclusion in a book of *epistolae decretales*. It is also of historical interest to note that in this book, of which certainly not a few decretals discussed aspects of the primacy, the thought of having a special title *de primatu sedis apostolicae* was not adopted, as indeed no later papal collection would adopt it.

Whoever first drafted the short gloss in the *Palatina* —presumably Laurentius Hispanus (59)—began by repeating Huguccio's second explanation of St. Gregory's cryptic words, *negat se hoc esse* etc. and then expanded upon this by adding "although the Roman church is not *universa* but *de universitate*", with a reference to Innocent's letter in the collection of Bernard of Compostela (60). The glossator, however, missed the point made by Innocent III, since he quoted only one half of the dichotomy (the Roman church as *pars universalis ecclesiae*); had he quoted the other half too (*quae sub se continet ecclesias uniuersas*), he might have solved the difficulty of his text. In the end, the *Glossa ordinaria* made the whole comment merely less intelligible by cancelling the reference to *Apostolicae sedis*.

(58) RAIN. POMP. 3,1 (un.): PL t. 216, col. 1186-1192, at 1190A/C; and, from Rainier, in *Coll. Dunelmensis secunda*, c. 66, see C.R. CHENEY and Mary G. CHENEY, *Studies in the collections of twelfth-century decretals, from the papers of the late W. HOLZMANN (Monumenta iuris canonici, ser. B, t. 3, Città del Vaticano, 1979)*, pp. 301, 307. BERN. COMPOST. 1, 2, 1 (un.). — BERN. 1,1,1-1,2,1 was edited by Charles LABBÉ — not by Antonio AGUSTIN, as is generally assumed — in his revised and enlarged *Antiquae collectiones decretalium cum Antonii Augustini... & Iac. Cuiacii... notis et emendationibus*, Paris, 1609 (reissued 1621), p. 721 (recte 725); see S. KUTTNER, *Antonio Agustín's edition of the Compilationés antiquae*, in *Bulletin of medieval canon law*, N.S. t. 7, 1977, p. 10.

(59) The problem is briefly discussed in the commentary on this text, Appendix II *infra*.

(60) Bernard's collection was also the source of another quotation, a few lines earlier, in *Glos Pal.* D. 99, c. 4. In the teaching system adopted for decretal law at Bologna the differently arranged collection of Rainier was hardly suitable for reference.

LT2

II. *Servus servorum Dei*

8. - Gratian's *Concordia* afforded the canonists no proper occasion for commenting on that lasting contribution Gregory the Great had made to the style of papal diplomatics, the title of *servus servorum Dei*. Hardly any decretals in Gratian are inscribed with the full greeting (61). Two letters of Gregory carry in their context an allusion to that title: "I am the servant of all bishops (*sacerdotes*) inasmuch as they lead priestly (*sacerdotaliter*) lives"; "I, who by the burden of the episcopacy have become the servant of all..."—but these letters never entered the canonistic tradition (62).

Thus it was Innocent III's bull of publication for the *Compilatio tertia* which by its formal address, "Innocent, bishop, servant of the servants of God, to all the masters and students residing at Bologna: greetings and apostolic benediction", gave the glossators a first opportunity to discuss the papal style.

Not all of them did: neither the apparatus of John of Wales nor that of Laurentius presents comments on the pope's greeting. But others had something to say about the legal, the spiritual, and the ecclesiological connotations of the formula. If in most of the glosses the spiritual meaning received only little attention, this reflects the fact that St. Gregory's original message of humility had over the centuries become a fixed form. Vincentius Hispanus, for instance, began his gloss on *servus* by a free quotation from Mt. 20,26, "for whoever is the greater among you shall be your servant" (*sit minister vester*) (63), but did not pause to add the semantic "rhyme" of the next verse, "and whoever wishes to be first among you shall be your slave" (*erit vester servus*)—or, as Mark 10,44 has it, "shall be the slave of all" (*erit omnium servus*). That verse, by intensifying Christ's terms of counsel from ministry to slavery (*minister/servus, diakonos/doulos*) would have much better expressed in all its strength what Gregory wanted to convey.

(61) See for instance Urban II, JL 5743 in C. 1, q. 3, c. 8.

(62) *Reg. ep.* 5,37 (JE 1360) and 11,26 (JE 1816): MGH, *Epp.* t. 1, p. 323, 10-11 and t. 2, p. 287, 13-14. Cf. Mk. 10.44 (quoted below) and 1 Cor. 9.19.

(63) VINCENTIUS, *Appar. Comp. III* (before 1215), v. *servus*: « Quia qui maior est inter uos sit minister uester » (cf. *Vulg.* « quicumque uoluerit inter uos maior fieri... »). MSS and full texts for the glossators on the decretal collections will be given in Appendix IV *infra*.

Instead, Vincentius turned immediately to Roman law and looked for points of legal doctrine on slavery that might be applied by analogy to the pope as *servus*: we call him so because property can be acquired by the pope for any church, even as property is acquired by a slave for his master (63a). (We may note in passing that some glossators of the Decretum likewise resorted to the argument of the pope as "slave" when they discussed the thorny problem of direct agency in *stipulatio*.) (64) Or again, Vincentius continued, as *servus servorum Dei* the pope is servant of God, because according to the Digest the deputy slave who belongs to an ordinary slave (*uicarius qui est seruus ordinarii*) is also the slave of the latter's master (65). The first of these Romanizing glosses, together with its brief biblical opening sentence, was taken over by Tancred in the *Glossa ordinaria* on Innocent's collection (c. 1220), the second was not; but Zoën Tencarari substantially repeated it in his apparatus (after 1126), on the opening address of Pope Honorius III's *Compilatio quinta* (66). Vincentius himself, when he composed—this was over twenty years after his work on the *antiquae compilationes*—a new apparatus on the Gregorian Decretals, omitted his earlier observation on the *servus vicarius*, but drew once more the parallel between property acquisition by a slave and by the pope. This time, however, the quotation from the Gospel was gone and replaced by a reference he must have found in the meantime: "The emperor, too, calls himself *servus*", he wrote, citing from the prologue

(63a) *Ibid.*: « uel seruus dicitur quia, sicut per seruum acquiritur domino..., ita per papam cuilibet ecclesie adquiri potest... », citing Inst. 2,8, pr. and 3 Comp. 3, 37, 2 ; 2, 6, 1.

(64) BERNARDUS (Papiensis ? Compostellanus ?), the *Glossa Palatina*, and JOHANNES TEUTONICUS, *Glossa ord.* on C. 1 q. 7 c. 9 v. *et per te* (s. *Petro apostolo*), see Antonio PADOA SCHIOPPA, *Sul principio della rappresentanza diretta nel Diritto canonico classico*, in *Proceedings of the Fourth International Congress of medieval canon law, Toronto... 1972*, Città del Vaticano, 1976, pp. 116, 130f.: « ...quia papa est seruus b. Petri (var. quia ipse est seruus eius mag. Bernar.), unde dicit se in epistolis suis seruus seruorum Dei, unde uersus :

Serui erant tibi, Roma, prius domini dominorum,
 Seruorum serui nunc tibi sunt domini. »

The equation of *seruus beati Petri* with *seruus servorum Dei* invites further study; cf. for instance VINCENTIUS (n. 65 *infra*) on the *seruus vicarius*. But the distich (cf. WALTHER, *Proverbia* [n. 40 *supra*], No. 28159) gives the argument a mocking tone.

(65) *Ibid.*, v. *seruorum Dei*: « Ergo est seruus Dei, quia uicarius qui est seruus domini ordinarij », citing Dig. 15, 1, 17.

(66) TANCRED, *Appar. Comp. III*, pr., v. *seruus*; ZOEN, *Appar. Comp. V*, v. *Honorius*.

of Justinian's constitution *Quas gratias* (534) for the reconquered Diocese of Africa (67).

Returning to the glossators of the *Compilatio tertia*, we find the same preoccupation with legal—one may as well say, legalistic—explanations of the papal title in the *Apparatus* "*Servus appellatur*", composed before 1215 by an unknown decretalist from glosses of Laurentius, Silvester, and others. "He [Pope Innocent] is called *servus* (we read in the opening gloss) because his is a public service" (68). This statement is borne out in the first place by a reference to Innocent III's own words, in the decretal *Cum instantia*, on his daily concern for all churches as a duty of the apostolic *servitus* (69). But the glossator looks at once for corroboration by Roman law: "Likewise, the notary (*tabellio*), who is in a public office, is called *servus publicus*" (with a wrong reference to the Code and a correct one to the Digest) (70). "For a [private] slave cannot be notary", our glossator continues, with a further reference to the Code, and then shows how far he has moved from Gregory the Great's spiritual concerns when he exclaims: "But perish the thought (*absit*) that he be called *servus* in

(67) VINCENTIUS, *Appar. X*, v. *servus*: « Et imperator appellat se reuum », citing Cod. 1, 27, 1, 5; « quia sicut per seruum acquiritur domino, etiam si sit fugitiuus.... », with the added reference to Dig. 17, 1, 22, 9. BERNARD OF PARMA'S *Glossa ordinaria*, v. *servus*, is mainly put together from Vincentius's glosses on the two compilations, enlarged by some more « imperial » parallels (see text in Appendix IV, *infra*).

(68) The gloss, « *Servus appellatur quia publice seruit...* », is printed in full by Franz GILLMANN, *Des Laurentius Hispanus Apparatus zur Compilatio III auf der Staatlichen Bibliothek zu Bamberg*, Mainz, 1935, p. 78f., with corrections by the same author, in *Archiv für kath. Kirchenrecht*, t. 117, 1937, p. 438, n. 1. Since then, scholars have abandoned Gillmann's attribution (beginning with Gaines POST, *The so-called Laurentius-Apparatus...*, in *The Jurist*, t. 2, 1942, p. 5-31). The true Laurentius in Karlsruhe, MS Aug. XL and Admont, MS 55 (see Knut W. NÖRR, in *Traditio*, t. 17, 1961, p. 542f.) has no gloss on the bull of promulgation. The gloss « *Servus appellatur* » is reprinted below in Appendix IV, since Gillmann's publication is not easily found.

(69) 3 Comp. 3, 37, 2: « Cum instantia nostra cotidiana sit secundum debitum apostolicae seruitutis omnium ecclesiarum sollicitudo continua... »; see also the beginning of 3 Comp. 2, 2, 1, « Licet ex suscepto seruitutis officio... », shortened to « Licet ex suscepto, et infra » in X 2, 2,10. Cf. The reference to this chapter in the *Glossa ord. X*, v. *servus*: « ...infra de censib. Cum instantia, in particula quae decisa est in principio ».

(70) *Appar. Servus appell.* « ...ut C. de emancip. l.ii »; but Cod. 8, 48, 2 has nothing on the *tabellio* as *servus publicus*. See, however, Cod. 8, 47 *de adopt.*, 2, « ...seruo publico caueatur » and the Accursian Gloss *ad loc.*: « idest notario, quia publice seruit, non quia servus est ». The next reference, Dig. 46, 6, 2, is correct.

[the sense of] that servitude which amounts to [civil] death" (with a reference to the Digest) (71). The writer then turns to the matter of property acquisition by pope and slave, which he, for one, calls an idle question (*superuacuum est querere*)—consistently so after having rejected comparison with true slavery. But he finds it worth noting that the pope, unlike other prelates, can acquire title for each and every church, for the Church is one and he is the common shepherd (*pastor in solidum*) (72).

9. - After all these juridical considerations and a few more references to textual parallels in the next gloss of the apparatus, it comes as a surprise to read (73): *Oratius: Seruiet eternum qui paruo nesciet uti*. What lies behind this rather abrupt quotation of a line of classical poetry? From the context of Horace's Epistle 1,10, it becomes clear that the glossator wanted to allude, for those who remembered their *auctores*, to the vice so often castigated in medieval verse and prose: the greed of the papal curia. "The horse (Horace wrote), once it accepted rider and bit, may be victorious, but can not shake the rider from its back nor the bit from its mouth";

sic qui pauperiem ueritus potiore metallis
libertate caret, dominum uehit improbus atque
seruiet aeternum qui paruo nesciet uti. (*Ep.* 1,10,39-41)

So he who fears to be a pauper and forfeits
his freedom, which is worth more than all mines of gold,
Will carry shamelessly a master and remain a slave
Eternally, not knowing how to do with little.

Not a servant of God's servants—the glossed words are *seruorum Dei*—but a slave of mines of gold or wealth (*metalla*): we are familiar with that kind of indictment from moralists and satirists but would not expect it, even in this veiled form, from the lawyers, who themselves were so often the target of such aspersions.

(71) *Ibid.*: « Seruus enim non est uel esse potest tabellio », citing Cod. 10, 71, 3; « Absit enim eum seruum appellari illa seruitute que morti comparatur », citing Dig. 35, 1, 59.

(72) *Ibid.*: « et ideo superuacuum est hic querere cui acquirat; ...eo stipulante potest acquiri actio cuilibet ecclesie cum una sit ecclesia... et ipse sit pastor in solidum, aliis in partem sollicitudinis uocatis ».

(73) *Ibid.*, v. *seruorum Dei*. For the references that precede see note 86 and Appendix IV *infra*; and note that *qui paruo* is *quia paruo* in Horace. See Additional Note, *infra*.

10. - Sarcasm, however, was no longer veiled in the opening gloss of Johannes Teutonicus on the *Compilatio tertia*. This is how he taunted Pope Innocent, with a daring use of apostrophe: « Even though you call yourself servant of the servants of God, you are thundering forth more grandly (or more loudly, *altius tanem intonas*) when you disdain to be regarded the vicar of Peter, as in the decretal *Quanto*; and Jerome calls you the successor of the Fisherman...” (74). With the studied ambivalence of *altius intonare* he also evoked the familiar image, both classical and Christian, of God thundering from on high (75). All this may seem mere rhetoric, yet it shows how strongly Johannes must have felt about what he considered a discrepancy between the Roman Pontiff as vicar of God (so Innocent in the decretal *Quanto*) and as servant of the servants of God, in the popes's initial greeting.

It is unlikely that Johannes Teutonicus would have risked publication in Innocent III's lifetime of what he said here, in a rather aggressive manner, on the first page of his apparatus. We know that the apparatus was not completed before 1217. Indeed, the erratic manuscript tradition of this first gloss suggests that a number of drafts preceded its final wording, and even then there seems to have been considerable hesitation and confusion about it in the schools, as the editor of the apparatus has recently pointed out (76): The opening gloss is garbled and misplaced in a group of six manuscripts connected with the French School, and derived (for this particular gloss) from a faulty archetype; it is altogether absent from four manuscripts of Italian provenance, which may indicate suppression at the Bolognese school; and in one manuscript (of Spanish origin) we read a different version, which instead of using apostrophe speaks of the pope in the

(74) JOH. TEUTONICUS, *Appar. Comp. III*, v. *seruus*: « Licet hic te appelles seruum Dei, altius tamen intonas cum dedignaris dici uicarius Petri, ut infra de translat. episc. Quanto, et a Ieronimo appellaris successor picatoris, xxiiii. q.i. Quoniam uetus » (c. 25). The relevant passage in 3 Comp. 1, 5, 3 *Quanto*, is « ...Romanus pontifex, qui non puri hominis sed ueri Dei gerit in terris ». — I wish to thank Professor Kenneth PENNINGTON for his kind permission to use the critical text he has established in his forthcoming edition of the *Apparatus*. See also the preliminary edition of this gloss in his article, *The manuscripts of Johannes Teutonicus' Apparatus to Compilatio tertia*, in *Bulletin of medieval canon law*, N.S., t. 4, 1974, p. 22f.

(75) For examples see *Thesaurus linguae latinae*, t. 7, 2, col. 27. The glossator certainly did not mean « to intone » (*intonare* in medieval liturgical usage).

(76) PENNINGTON, *The manuscripts*, p. 20 and n. 8 *ibid.*; p. 22 *ibid.* The full critical apparatus will be given in his edition.

third person and quotes directly from the decretal *Quanto* without mentioning "high thunder" and "disdain", probably in an attempt to tone down the invective.

What made Johannes write this invective? Most probably it was hurt pride. He showed in the closing lines of his apparatus—this modest compendium (*summula*) as he called it—that he was a man quite sure of himself (77). His *glossa* (he wrote) was so easy to grasp, and friendly towards all, that even freshmen need not be afraid (77). But "should you believe that anything in this work is wrong (*contrarium ueritati*) you may be sure that it is due to the mistake of a scribe (*mendosa littera*) or to your own lack of understanding (*te minime intellexisse*)". In these last words to his reader, Johannes proudly appropriated for himself the terms of inerrancy which St. Augustine had reverently coined for the writers of the scriptural canon (78).

Johannes had felt equally sure of himself in the Spring of 1216, when he presented his new collection (the *Compilatio quarta*) to the pope for official approbation and promulgation. When Innocent refused to grant this, we are told by a near-contemporary source, Master Johannes left the curia in great anger (*ira succensus recessit de curia*) (79). Never a staunch papalist, he could not resist the temptation to give vent to his hurt pride and strike back at Innocent III, by now dead (12 July 1216), in the gloss on the opening words of that pope's compilation. At least this seems a reasonable conjecture. With a great sense of symmetry, he had managed to scoff at the papal style in his first gloss, and at the reader's intelligence in the last.

(77) JOH. TEUTONICUS, *Appar. Comp. III*, gl. fin.: « Coram Deo profiteor quod hec summula inflationem uel inuidiam aspernatur, et glosa adeo palpalibem et amicum se prebet oculis omnium, ut nec auditor anniculus cathedram expavescat »: Admont MS 22, fol. 215rb.

(78) *Ibid.*: « Et si quid tibi, o lector, in hoc opere ueritati contrarium uideatur, aut mendosam dicas litteram aut te minime intellexisse non ambigas, ut supra ix. di. Ego solis. Johannes. amen. » D. 9 c. 5 is from AUGUSTINE, ep. 82, c. 1, no. 3: « ...uel mendosum esse codicem ...uel me minime intellexisse non ambigas » (CSEL, t. 34, p. 354). This final reference is absent from several MSS I have collated, also from the text quoted by JOHANNES ANDREAE, *Novella*, X 3, 40 *de v.s.*, c. 25 (ed. Venice, 1581, t. 5, col. 157vb, no. 18) and published by F. GILLMANN, *Magister Albertus Glossator der Compilatio II.*, in *Archiv für kath. Kirchenr.*, t. 105, 1925, p. 148, n. 2.

(79) See the *Principium decretalium* published from the Vatican MS Borgh. lat. 45 by S. KUTTER, *Johannes Teutonicus...*, in *Miscellanea Giovanni Mercati*, t. 5 (*Studi e Testi*, t. 125), Città del Vaticano, 1946, pp. 625f., 633.

11. - It was only about twenty years later, when the Book of Decretals of Gregory IX had replaced the five earlier compilations, that some serious answers were attempted for the question the German glossator's challenge of Pope Innocent had raised. Vincentius Hispanus, for all his eagerness to find parallels to the pope as servant in civil law, was aware in the work of his later years that a semantic problem existed in the papal title. "But is he not the vicar of the Lord?" he asked in his gloss on the traditional words *servus servorum Dei* of Gregory IX's bull of publication for the Decretals. Like David, in Jerome's exegesis of the Psalmist's "Thee only I have offended" (Ps. 50,6), the pope "is king and fears none but God" (80). Vincentius also found instances in Justinian's Code and in the Decretum where the pope addresses even the emperor as son (81). The rather lame answer Vincentius gave to all these learned references was that papal power is great indeed but must be used for public utility; "also the emperor spends sleepless nights", he quoted once more from Justinian, "for the commonwealth" (*pro re publica*) (82). The gloss thus ends, curiously enough, where it began, with a studied effort at establishing a parallel between the papal and the imperial "servitude".

Shortly afterwards, Goffredus of Trani in his Apparatus on the Gregorian Decretals asked the same question: "Why does he call himself a servant when he is lord and vicar of Christ?" But here, at last, we find a more adequate solution of the dilemma and a more spiritual emphasis on the papal style: the pope speaks out of affection for his subjects, like the Apostle, "For free though I was to all, yet unto all

(80) VINCENTIUS, *Appar. X* (see note 67 *supra*): « Set contra, nonne est vicarius Domini, infra de translat. Quanto? Et 'rex erat et neminem timebat preter Deum', de penit. di. iij. § David » (c. 24 med., based on JEROME, *ep.* 122, no. 3). The glossator's quotation is closer to the text of the *ed. Rom.* (« rex enim erat, alium non timebat »; « ...eram... timebam » in Jerome) than to Friedberg's « rex enim alium non timebat ».

(81) *Ibid.*: « et dicitur imperator eius filius », referring to the address of Pope JOHN II's letter to Justinian, Cod. 1, 1, 8 (JK 884) and JOHN VIII, D. 10, c. 10 (JE 3011).

(82) *Ibid.*: « Et dico quod potesta eius magna est, set debet eam conformare publice utilitati »; the prooftext is X 2,2,10, but Vincentius apparently forgot that the pertinent passage, « uolentes igitur sic eorum utilitati consulere », of the source (3 Comp. 2,2,1) had been excised by Raymond (just as *seruitutis officio* at the beginning, see note 69, *supra*). For the emperor's sleepless nights he cites Auth. 2, 2 (Nov. 8) pr.

have I made myself a slave that I may gain the more" (1 Cor. 9,19) (83). Or, he speaks out of that extreme (*nimia*) humility which makes him deny that he is the "universal pope"; the same humility whereby he submits to a secular judge (here the oath of purgation of Sixtus III and that of Leo III are cited as precedents) (84).

A discussion of this last point would lead us into the great controversy on the pope's immunity from human judgment, which is beyond the scope of this paper. What interests us here is the second point, with its reference to Gregory the Great's text in Gratian. It seems—barring the discovery of an earlier commentary—that Goffredus was the first canonist ever to make the connection between the refusal of the universal title and the adoption of a style of profound humility.

12. - The substance of Goffredus's exegesis became widely known to later generations through Hostiensis, who incorporated it in his monumental *Lectura* with some further observations and references inserted in between (85). Hostiensis introduced his comments on the word *servus* with a brief reference, "thus below, [in the title] on the sentence of excommunication, [in the chapter] *Relatum*, at the end"—the first canonist to give explicit attention to that letter of Innocent III in this context (86). Indeed, as edited by Raymond of Peñafort for Gregory IX's book, the mandate issued by Innocent III in January 1206 to the archbishop of Lund ends with the injunction that certain villains must come to the *servus servorum Dei* for absolution (87).

(83) GOFFREDUS, *Appar. X*, v. *Gregorius servus*: « Quare uocat se seruum cum sit dominus et uicarius Ihesu Christi? ... Respondeo: ex affectione quam habet circa subditos loquitur, ut dicit Apostolus, 'cum sim liber ex omnibus, omnium me seruum feci, ut plures lucrifacerem'... ».

(84) *Ibid.*: « uel loquitur secundum nimiam humilitatem, secundum quam subicit se iudicio seculari », with references to C. 2, q. 5, cc. 10 and 18.

(85) HOSTIENSIS, *Lectura X*, proem., v. *seruus*, ed. Venice, 1581, t. 1, fol. 3ra, nos. 6-8. Goffredus is the source in particular for the passages, « Imo dominus... sed hoc dicit ex affectione... » with the citation from St. Paul, and « Vel hoc dicit ex humilitate... secundum quam negat se uniuersalem Papam. xcix. di. ecce. & subijcit se iudicio seculari... ».

(86) *Ibid.*, no. 5: « sic infra de sen. ex. relatum. in fine ». The reference itself is older; see the chain of *allegationes* in *Appar. Seruus appellatur* on Comp. III (Appendix IV *infra*), between the opening gloss and the quotation from Horace.

(87) X 5, 39, 37: « ...ad seruum seruorum Dei uenire debeant absoluenti ».

But this is not what Innocent had written. Friedberg duly noted in his edition of the Decretals that the word *Dei* is absent from the letter in the *Compilatio tertia*. He could not know that it was likewise absent from Innocent's Register and merely is found in its printed text of 1791, as a tacit emendation by La Porte du Theil (88). Since this edition is reprinted in Migne, nobody has given much thought to the genuine ending of the letter,

ad seruum seruorum uenire debeant absoluendi,

as it was entered in Reg. Vat. 7, fol. 52r, from where Professor Skyum-Nielsen has edited it in the *Diplomatarium Danicum* (89). The original itself is lost.

Both St. Raymond and the French eighteenth-century savant missed the point with their emendation. Both intended to make the text fit the papal diplomatic style. But why should Innocent have chosen here to use language proper to the form of papal greeting, instead of the traditional chancery terms for cases of reserved absolution (*ad apostolicam sedem uenire, mittere, apostolice conspectui se presentare*, etc.) (90)? In order to see the reason for his choice of an unusual yet almost set phrase in this contexts, we must read the closing line as part of the whole letter.

The reason—and only the genuine wording of that line can lead us to it—is Innocent's quick-witted humor, which often got the better of him and made him use very frank and unceremonious language even on formal occasions (91). We know examples of his forthright manner of speech from cases argued before him in consistory, and from reports

(88) E. FRIEDBERG, *Corp. iur. can.*, t. 2, col. 905 *ad loc.* (n. 14) : « *Dei : deest : C* » (i.e. *deest Comp. III*). F.J.G. LA PORTE DU THEIL, in L.G. DE BRÉQUIGNY, *Diplomata, chartae, epistolae... pars altera*, t. 1 (1791), 2, 847 = PL, t. 215, col. 816 ; Reg. 9 [8], 11 ; Potth. 2653.

(89) *Diplomatarium Danicum*, ser. 1, t. 4, ed. Niels SKYUM-NIELSEN, Copenhagen, 1958, p. 213 f., No 108.

(90) See the vocabulary of X 5, 39, *de sent. excom.* cc. 1-3, 19, 32 (*mittere, transmittere ad ap. sedem*) ; 1, 6, 13, 24 (*uenire ad ap. sedem*) ; so also the beginning of *Relatum*) ; 4, 7, 9, 11, 13, 22 (*ap. conspectui praesentare, se praesentare*) ; 23 (*ap. sedem adire*).

(91) See Helene TILLMANN, *Papst Innocenz III.*, Bonn, 1954, pp. 50f., 137f. ; S. KUTTNER and A. GARCIA Y GARCIA, *A new eyewitness account of the Fourth Lateran Council*, in *Traditio*, t. 20, 1964, pp. 151, 161 ; C.R. CHENEY, *Innocent III and England*, Stuttgart, 1976 (*Päpste und Papsttum*, t. 9), p. 6f. and particularly the fine pages on Innocent's style by Robert BRENTANO, *Rome before Avignon*, New York, 1974, p. 152-54.

on the Fourth Lateran Council. At times his remarks may have sounded irreverent to pious ears, and may well have been intended to shock the sanctimonious; thus when at the Council he overruled the objections raised against admission of the ex-Emperor Otto's ambassadors and added, "Even the devil would have to be given a hearing—if he could repent" (92). Innocent did not hesitate to play on words or concepts from the theological vocabulary of the Church, even at the expense of the religious respect he usually demanded for the papal office. "We take the place of God on earth (*etsi locum Dei teneamus in terris*), but we cannot prophesy what is unknown", he wrote in an otherwise rather stern decretal letter to the archbishop of Milan (93). The pun on *divinus* in the phrase *non tamen possumus divinare* remains untranslatable. So does the pun in a letter to Bishop Odo and the dean of Paris in which Innocent rejected a certain *decretalis seu potius concretalis* as forgery (94): a play on words at more than one level, for the pope here made up the non-word *concretalis* from *concretum* (a "conglomeration") in analogy to *decretalis/decretum*; and while the two make a rhyme, they are derived from totally different verbal roots (*conresco* and *decerno*).

In this perspective it is no longer astonishing if Innocent III also indulged in a pun when he issued the decretal *Relatum* to Archbishop Anders Sunesen of Lund. In that far-away province a canonical problem had arisen in the cases of serfs (*serui*) who assaulted clerics and thereby became automatically excommunicates under the celebrated canon *Si quis suadente diabolo* of the Lateran council of 1139, with absolution reserved to the Apostolic see (95). What to do if the masters of these *mancipia* refuse to be deprived of their service by sending them on pilgrimage to Rome, and the serfs themselves don't care?

(92) Text in KUTTNER, and GARCIA, p. 126, 109-10.

(93) *Reg.* 1, 368 (Potth. 377): PL, t. 214, col. 350B, ed. HAGENEDER-HAIDACHER (note 46 *supra*), p. 559, 14-15. 3 Comp. 3, 10, 1; X 3, 12, 1 (the reading *potuimus* in *ed. Rom.*, instead of *possumus*, is wrong, see FRIEDBERG, n. 22 *ad loc.*). Similarly *Reg.* 1, 345 (Potth. 348): Even with our *plenitudo potestatis* we cannot add one cubit to our stature (Mt. 6, 27) nor be in two places at the same time (*simul in diversis locis existere*), PL *cit.*, col. 319, HAGENEDER, p. 515, 14-18; cf. CHENEY, p. 7.

(94) *Reg.* 10, 15 (Potth. 3043): PL, t. 215, col. 1113-14, at 1114C. Cf. C.R. CHENEY and Mary G. CHENEY, *The letters of Pope Innocent III (1198-1215) concerning England and Wales*, Oxford, 1967, p. xxiii; for the decretal rejected see *ibid.*, No. 638, pp. 106, 248; *Studies in the collections* (note 58 *supra*), p. 318; and my note in *Traditio*, t. 24, 1968, p. 507.

(95) C. 17, q. 4, c. 29.

The pope instructed the archbishop to enforce the Lateran canon as a rule, but that in certain circumstances he had the pope's permission to absolve and to impose a substitute reparation for the toils of taking the road—"unless theirs is so enormous a misdeed that, for the sake of not giving scandal and [a bad] example, these serfs must come to the serf of serfs for absolution."

Only a great pope could allow himself to use the papal title mockingly in a serious canonical mandate. The canonists of his day apparently did not notice the pun. Less than a generation later, thanks to Raymond of Peñafort's well-meant editing, it had disappeared for good from the Book of Decretals.

Stephan KUTTNER
University of California,
Berkeley

Additional Note (to n. 40). After these lines were written, Dr. Hunt died on 13 November 1979. For a brief memoir see my *Annual report*, in *Bulletin of medieval canon law*, N.S., t. 9 1979, p. xi. — A further parallel to the quotation from Lucan was kindly pointed out to me by Professor Peter Classen in GERHOCH OF REICHERSBERG, *De inuestigatione Antichisti*, 1, 72: « Si ergo quemadmodum de Cesare a quodam dictum est, Romanus pontifex omnia, ubi corpus (*scil. uniuerse ecclesie*) ? » (MGH, Lib. de lite, t. 3, 1897, p. 391, 41-43) Cf. HUGUCCIO and INNOCENT III, notes 43, 47 *supra*. — (to n. 73). JOHN OF SALISBURY, *Policraticus* 5,10, likewise quotes this *generale prouerbium* with the variant *qui paruo...* (PL, t. 199, col. 564 C; ed. C.I.C. Webb, Oxford, 1909, t. 1, p. 325).

APPENDIX I

A textual crux in Pseudo-Isidore's first letter of Pelagius II

Among the minor verbal changes made in the original letter of Gregory the Great (Reg. ep. 5, 41) by the Pseudo-Isidorians for their letter of Pelagius II (JK †1051) there is one in the passage following the text quoted above, note 12. Gregory wrote: "Sed absit hoc, absit a christiana mente id sibi uelle quempiam arripere unde honorem fratrum suorum imminuere ex quantulacumque parte uideatur..." (MGH Epp. t. 1, p. 332,21-23). Pseudo-Isidore gives us the impossible "Sed absit hoc, absit a fidelibus cuiusquam mente hoc sibi uelle quempiam..." (ed. Hinschius, p. 721 ult. - 722,1). H.'s text is based on Paris, B.N. MS lat. 9629 (= suppl. lat. 840) and lat. 3852; it is confirmed by the outstanding ninth-century MS Vat. lat. 630, fol. 283v (MS Ottob. lat. 93 does not include this letter). The "Cluny" group of manuscripts—on which see Horst FUHRMANN, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen*, t. 3, Stuttgart, 1974, p. 757-768, and recently Karl-Georg SCHON, *Eine Redaktion der pseudoisidorischen Dekretalen aus der Zeit der Fälschung*, in *Deutsches Archiv für Erforsch. des Mittelalters*, t. 34, 1978, p. 500-511—offer the better reading, "absit a fidelis cuiusquam mente": thus the very early Beinecke MS 442, fol. 218vb of Yale University, and Vatican MS Reg. lat. 978, fol. 58ra (s. xi/xii). This is supported by the codices that served the editions of Jacques MERLIN in 1524 (= PL, t. 130, col. 1090C-D; om. "absit hoc"), Peter CRABBE in 1538 (2nd ed., Cologne, 1551, t. 2, p. 155a), and BLONDEL in 1628 (p. 639); also by the rather poor Vatican MS Reg. lat. 976 (s.xiv), fol. 153va. Collations of other manuscripts accessible to me at this writing yield "a fidelis cuiusque mentis" (Vat. lat. 1340, s.xiii, fol. 329vb marg.), "a fidelis mente cuiusquam" (Vat. lat. 1341, s.xii, fol. 65vb), "a fideli cuiusquam mente" (Vat. lat. 3791, s.xi, fol. 251r), "sed absit hoc a fidelibus" (Vat. Urb. lat. 179, s.xv, fol. 187r). All this goes to show what an enormous task lies ahead in new edition of Pseudo-Isidore.

APPENDIX II

*Unpublished Decretist texts **JOHANNES FAVENTINUS, *Summa*

(D.99 pr.) § *De primatibus autem*: Superius in distinctione lxxx. de primatibus summo digito tetigerat, nunc latius de ipsis agit, ante omnia ostendens nullam preterquam in nomine esse differentiam inter patriarchas atque primates. Sunt autem patriarche, idest primates, non quilibet archiepiscopi set illi qui primas, idest maximas sedes optinent, ut Romanus pontifex, Anticenus,^a Constantinopolitanus, Alexandrinus et hodie Ierosolimitanus et Aquilegensis. Qui autem in istis sunt sedibus preter Romanum, non principes sacerdotum set solummodo primarum sedium episcopi sunt uocati,^b ut in illo cap. dicitur Prima sedes.^c Si enim de Romano ibi intelligeret, derogatum esset capitulo.^d Istis primatibus... e conuerso.

Reims MS 684, fol. 39vb.— (a) Antiocenus *om. cod. (supplevi ex Rufino et Sum. Omnis qui iuste)* (b) *De differentia huius clausulae a verbis Ruhini v. adn. 31 supra* (c) D.99 c.3 (d) *Vid. iterum adn. 31 supra. Quae sequuntur concordant Rufino*

(d.a.c.4) § *Uniuersalis autem*: Hoc hodie non seruatur: cotidie namque in epistolis summum pontificem uniuersalem appellamus, set isti duo apostolici sic magnifice nuncupari ex humilitate recusabant.

Summa Omnis qui iuste iudicat (Lipsiensis)

(D.99 pr. et d.a.c.4: *Verbis Johannis Fav. concordat pariter quasdam varias lectiones minoris momenti.*) Leipzig MS 986, fol. 83ra/b.

Summa Tractaturus magister

(D.99 a.c.4) *Uniuersalis autem etc.*: Hoc hodie non seruatur, quia ex causa dictum fuit, in quo casu intelliguntur sequentia duo capitula propter uitandam arrogantiam que inponebatur^a romanis pontificibus a constantinopolitanis tempore Mauricii imperatoris.

(c.4) *Nullus papriarcharum*: primatum, uel etiam papa.

(c.5) *Ecce. prefatione*: salutatione. *superbe*: ex humilitate. *uobis subtrahitur etcet.* xvj. Q. vij. Decimas, xiiij. Q.v. Denique.^b *singulis honor debitus*: arg. ix. Q. iij. Conquestus, di. xvc. Esto.^c

Paris, B.N. lat. 15994, fol. 27vb.— (a) *leg. inputabatur ? opponebatur ?* (b) C. 16 q. 7 (vii. *cod.*) c. 1, C. 14 q. 5 c. 10 (c) C. 9 q. 3 c. 8, D. 95 c. 7

* Minor scribal errors and insignificant variants will not be noted.

Summa De iure canonico tractaturus

(D.99 c.4) *Nullus. arripere. imminuere*: Hinc arg. uehementer unius consimilium commendationem alteri inferre dispensationem.

(c. *Ecce negat se habere^a quod me*: scil. quia^b *me fatetur*, dicens uniuersum.

Laon MS 371 bis, fol. 106 va. — (a) esse *Grat. cum orig. (v. quae notauit infra ad Glos. Pal.)* (b) q(ueritu)r *per compend. cod.*

HUGUCCIO, *Summa*

(D.99 c.3) *Prime sedis*: idest patriarchalis. *episcopus*: alius a papa. Si enim de Romano episcopo hoc intelligatur, derogatum est huic capitulo, nam papa sepe sic appellatur.

(d.a.c.4) § *Uniuersalis usque nec etiam Romanus*: Ex hoc uidetur quod Gratianus intellexerit precedens cap. tantum de aliis patriarchis. Et nota quod hoc hodie non obseruatur; cotidie namque a multis papa uocatur uniuersalis, et ipse tolerat et non prohibet. Potest dici quod isti duo ex humilitate tam alte appellari recusauerunt, nec tamen aliis preiudicium fecerunt quin sic appellentur.^a

Admont MS 7 fol. 125 va; Munich lat. 10247, fol. 98 ra; Vatican Library, Vat. lat. 2280, fol 88 va. — (a) alii... quoniam sic appellatur A

(c.4) *Nullus usque uniuersalitis*: scil. ut se uel alium uniuersalem uel uniuersum uocet. *derogatur*: idest subtrahitur. Arg. quod si quid conuenit pluribus et illud tantum uni attribuitur, ceteris auferri uidetur, arg. di. xlv. *Disciplina^a arripere*: Nam nulli est consulendum cum aliena iactura, arg. xxij. q.ij. Primum et xiiij. q.v. Denique.^b Et est arg. aliquem non debere facere quo alius minor appareat, arg. xi. q. iij. Si quis uero.^c *ne debitum honorem*: Quia si alii^d tribuit uniuersum, nichil sibi relinquit. *indebitum*: idest ultra debitum, quod non est faciendum. Nec enim quis debet subici plus quam oporteat, ut ij. q. viij. Admonendi.^e

(a) D. 45 c. 9 (b) C. 22 q. 2 c. 8, C. 14 q. 5 c. 10 (c) C. 11 q. 3 c. 113 (d) aliis M (e) C. 2 q. 7 c. 57

(c. 5) *Ecce. in prefatione*: idest in salutatione. *perdere*: quia si papa dicitur uniuersalis, uidetur quod ceteris nichil relinquatur, ut possint dici patriarche uel primates. Qui enim dicitur uniuersus uel uniuersalis uidetur esse omnia: quo sensu Cesar fuit omnia. *non negatur*: Arg. contra rescriptum pape ab aliquo impetratum in quo de iure alterius aliquid imminuitur: non est enim uerisimile quod papa ex suo rescripto uelit derogare iuri alterius,^a nisi inde specialiter faciat mentionem, arg.

xxv. q. ii. In Galliarum, Seruatis, Igitur, Quod uero dicitis, et viiii. q. iii. Conquestus, Nunc uero, et xi. q. i. Peruenit et di. lxiii. Quanto et di. lxxxv. Archidiac.^b *me uniuersalem*: idest esse omnia uel uni-versa. *negat se esse hoc*, scil. patriarcham, *quod*, idest quia *fatetur me esse uniuersum*, idest^c esse omnia; uel *negat se esse hoc*, scil. uni-versalem, idest esse de uniuersitate, quia eo ipso quod me dicis uniuer-salem, negas te esse de uniuersitate, quia si ego sum omnia, tu es nichil, et est arg. quod de uno dicitur de altero negatur. Quod enim uni generaliter uel specialiter attribuitur ab alio remouetur, arg. di. xlv. Disciplina et xxiiij. q. iij. Forte et xxxiiij. q. v. Qui sitit.^d Ecce in hoc cap. continetur quod papa non debet appellari uniuersalis, in superiori quod nullus. In aliis^e obseruatur, in domino papa hoc non obseruatur.

(a) alteri A (b) C. 25 q. 2 cc. 3, 6, 5, 10; C. 9 (xliii. A) q. 3 cc. 8, 20; C. 11 q. 1 c. 39, D. 63 c. 10, D. 85 c. 1 (Florentinum archidiaconum)
(c) et A (d) D. 45 c. 9, C. 23 q. 3 c. 11, C. 35 q. 5 c. 9 (e) quod — aliis] quod in ullis aliis A

Glossae cod. Biberach

(D.99 c.3) *Prime sedis*: Si hoc cap. de papa loquitur abrogatum est, si de primatibus, tenet.

(c.4) *Nullus*: arg. supra D. xliii. Quanto est f/// infra xxv. q. i. ///^a (*al. man.*) Nota contra presumptuosos in^b sequenti.

Biberach, Spitalarchiv, MS B 3515 (Decr. Grat.) fol. 75 va/b. —
(a) *allegationes illegib. in microphotogr.* (b) et (?) *cod.*

Glossae cod. Rossiani

(D.9 c.3) *Prime sedis episcopus*: alius a Romano,^a alias derogatum est.

(c.4) *Nullus. derogatur*: Nulli enim est consulendum^b cum aliena iac-tura, arg. infra xi. q. iii. Si quis non obediat, infra xxii. q. ii. Primum, infra xiiii. q. v. Denique.^c *set absit*: infra xxv. q. ii. Decessorum.^d *uniuersalem nominet*: infra ii. q. vii. Admonendi.^e *indebitum*: Non est ergo credendum quod papa ex suo rescripto uelit derogare iuri alterius, nisi inde specialiter faciat intendere. (et est arg. contra rescriptum impetratum a papa.^f)

(c.5) *Ecce. negat se hoc esse*: scil. patriarcham, *quod*, idest quia. (*marg. inf.*) Videtur omnia quo sensu Cesar fuerat omnia.^g

Vatican Library, Ross. lat. 595, fol. 82 rb. — (a) aliis ad romanam *cod.* (b) consuetudine *cod.* (c) C. 11 q. 3 c. 13, C. 22 q. 2 c. 8, C. 14 q. 5 c. 10 (d) C. 25 q. 2 c. 19 (e) C. 2 q. 7 c. 57 (f) *add. al. man.*
(g) *forsan add. ex Alano*

Summa Reginensis

(D.99 c.4) *Nullus. uniuersalitatibus*: scil. ut se uocet uniuersum uel uniuersalem. *quia si*: Arg. non debere aliquem efficere quo ceteri minores apparent. *ne sibi et cet.*: Quod fit quando alicui ultra debitum honor impenditur, et ita in hoc capitulo continetur quod nullus patriarcha debet uocari uiuersalis; in sequenti cap. idem dicitur de domino papa, et hoc est:

(c.5) *Ecce. meus honor*: Arg. contra rescriptum ab aliquo impetratum in quo de iure alterius aliquid imminuitur, quia non est uerisimile papam uelle aliquem ex ignorantia priuare suo iure. *Si enim*: quia eo ipso quod me dicis uniuersalem, negas te de uniuersitate esse, quia si ego sum omnia, tu nichil es. Arg. quod de uno dicitur de alio negatur, arg. supra di. xlv. *Disciplina.*^a

Vatican Library, Regin. lat. 1061, fol. 28 vb. — (a) D. 45 c. 9

ALANUS, Apparatus Ius naturale

(D.99 pr.) § *De primatibus*: Gratianus^a de primatibus tetigit supra di. lxxx. Nunc de hiis plenius subiungit, ostendens eos solo nomine a patriarchis differre et archiepiscopis superiores esse et neminem sacerdotum principem uel uniuersalem appellari debere.

(c.3) [*Prime sedis*: idest cuiusque patriarchalis. Si de papa intellexeris quod hic dicitur, non tenet: hodie enim papa summus pontifex appellatur.]^b [*episcopus*: alius a romano /// derogatum est.]^c

(d.a.c.4) [§ *Vniuersalis*: Vult Gratianus ostendere quod nedum patriarcha, set etiam apostolicus non debet uniuersalis appellari.]^d

(c.4) *Nullus*. [Videtur omnia quo sensu Cesar fuerat omnia.]^e *imminuere*: infra xi. q. iii. Si quis uero. arg. C. de statutis et ima. l. ult.^f [*derogatur*: Nulli enim est consulendum cum aliena iactura.]^g

First recension: Paris, B.N. lat. 3909, fol. 17 rb; Seo de Urgel MS 2009 (Beer 113) fol. 52 rb (= Pr, U); *second recension*: Paris, B.N. lat. 15393, fol. 72 vb, set a of glosses (set b: LAURENTIUS); Paris, Mazarine 1318, fol. 97 vb-98 ra/b (= Ps, M). — Glosses not in the first recension are printed here within brackets. Set a of Ps also incorporates the *Casus decretorum* of BENINCASA; this has not been noticed before and explains the substantial enlargements I mentioned in *Repertorium der Kanonistik* (1937), p. 71. The sample texts published *ibid.* p. 75 and the gl. « Vult Gratianus » printed above are from these *casus*. — (a) g cum ra *suprascr.* U, om. PrPsM (b) PsM (c) Ps tantum, cf. gl. cod. Ross. *supra* (d) Ps tantum: est casus *Benencasae* (e) Ps tantum, cf. cod. Ross. (f) C. 11 q. 3 c. 13, Cod. 1.24.4 (g) Ps tantum, cf. cod. Ross.

(c.5) *Ecce. honorem: infra ii. q. vii. Admonendi.*^a [*perdere: infra xxv. q. ii. Quod uero dicitis.*]^b [*perdere: Non est ergo credendum qu(od summus pon)tifex ex suo rescripto uelit derogari iuri alterius, nisi inde specialiter faci(at) intendere rationem, xxv. q. ii. Quod (uero).*]^c *honoratus: Arg. contra rescriptum pape impetratum in preiudicium alicius, arg. supra lxxiii. Quanto, infra viiii. q. iii. Conquestus, Nunc uero; infra xi. q. i. Peruenit, infra xxv. q. ii. In Galliarum, Si ea, Igitur, Seruatis, Quod dicitis.*^d *negat: Arg. quod de uno dicitur^e de alio negatur, arg. supra di. xxv. Qualis.*^f [*hoc esse: scil. patriarcham, quod ///*]^g *uniuersum: Arg. nomen generale generaliter accipi debere, arg. supra di. xviii. Si Romanorum.*^h

(a) C. 2 q. 7 c. 57 (b) PSM, om. PrU; C. 25 q. 2 c. 10 (c) Ps tantum, cf. cod. Ross. (quae uncis inclusi non leguntur in marg. microphotogr.); C. 25 q. 2 c. 10 (d) D. 63 (lxxi. M) c. 10, C. 9 q. 3 cc. 8, 20; C. 11 q. 1 (iii. male codd.) c. 39 (vv. Conquestus — xi. q. iii. om. M per hohoiotel.); C. 25 q. 2, cc. 3, 4 (om. M), 5, 6, 10 (e) conceditur PSM (f) D. 25 c. 4 (g) Ps tantum, cf. cod. Ross. (h) D. 19 c. 1

Glossa Ecce uicit leo

(d.a.c.4) § *Vniuersalis. nec etiam Roman, pont.:* Hoc dixit ex humilitate in sequenti capitulo Gregorius, quia hodie uniuersalis in litteris.
(c.5) *Ecce. ueritatem^a inflat:* idest ueritatem ecclesie inflatam reddat.

St. Florian MS XI. 605, fol. 33 ra. — (a) uanitatem orig.; de lect. uariis unitatem (ed. Friedb.) et ueritatem (unitatem bis cod. s. Floriani) vide Friedb. adn. 56 ad loc.

Glossa Palatina

(c.3) *Prime sedis:* idest patriarchalis, alias papa bene.
(c.4) *Nullus. uniuersalitatit:* Quod fieri non debet, cum papa scribit quia iura nostra instanter tueri debemus, extra ii. de transl. prela. Inter corporalia,^a nec ius nostrum debemus minuere qui alios^b in sua iustitia confouemus, extra iii. de concess. preben. Licet,^c et dicit Alexander^d quod iura nostra a coepiscopis nobis uolumus conseruari, extra j. de decimis Sicut.^e

Vatican Library, Pal. lat. 658, fol. 23 va; Reg. lat. 977, fol. 69 va/b; Paris, B.N. lat. 15393, fol. 72 vb, set b of glosses (set a: Alanus, see supra). Not all glosses of the Vatican MSS (Vp. Vr) can be found in the Paris MS (Ps), at least on the microfilm. — (a) ep. Inter corporalia (in corpora scr.) sub tit. ex. ii. de transl. prelat. prelatorum allegat Vp ex Gilb. h.t. 1.6.1, cui tit. ex. iii. de translatione epi(scopi) uel elec(ti) substituit Vr (/// de transla. epi. ? lectio incerta Ps) = 3 Comp. 1.5.2 (postea X 1.7.2) (b) qui aliqui alios Vp (c) ex. — Licet Vp (ex. de /// pre. non uac. Licet in b. Ps) ex Bern. Compost.

h.t. 3.10.2 (postea 4 Comp. *de suppl. negl.* 1.6.1 et X *h.t.* 1.10.3), *cui aliam decr.* ex. iij. de off. iud. ord. Licet substituit Vr = 3 Comp. 1.20.6 (postea X 1.30.12), *ubi similia, non tamen uerba nec ius nostrum — confouemus leguntur* (d) *reliqua desunt Ps* (e) j. — Sicut Vr, *deest Vp*; 1 Comp. 3.26.19 (X —), ex. iij. de institutionibus Licet *male add. Vr*

(c.5) *Ecce. ad me.*^a Non est ergo credendum quod papa ex suo rescripto uelit derogari iuri alterius, nisi ibi specialiter faciat mentionem, xxv. q. ii. Quod uero dicitis, ix. q. iii. Conquestus, Nunc uero, xi. q. i. Peruenit, di. lxiii. Quanto, di. lxxxv. Archidiaconum, viii. q. iii. Artaldus arg. contra.^b *subtrahitur*: Ex. i. de off. deleg. Super eo et infra, quod uni attribuitur alii subtrahitur, arg. di. xlv. Disciplina, ff. de iud. Cum preuor.^c *prebetur*:^d Non debent enim esse plus subditi quam expedit, ii. q. vii. Ammonendi, nec prelati ita humiles ur contempnantur, lxxxvi. Quando, ff. de offi. presi. Obseruandum.^e *non negatur*: Simile C. de caduc. toll. § ult. C. de nupt. Imperialis, in princ. Nec enim publico prodest et cet. C. de sent. pref. l. i.^f *hoc esse*:^g idest esse de uniuersitate, cum tamen ecclesia Romana non sit uniuersa set sit de uniuersitate, ex. de primatu apostolice sedis c. uno.^h

(a) *gl.* Non est ergo... *deest Ps, sed vide gl. Alani, v. perdere* (b) C. 25 q. 2 c. 10, C. 9 q. 3 cc. 8, 20 (*vv.* Conquestus — viii. q. iij. *om.* Vp *per homoiotel.*), C. 11 q. 1 c. 39, D. 63 c. 10, D. 85 c. un., C. 8 q. 3 c. 2 (c) 1 Comp. 1.21.20 (X 1.29.15), D. 45 c. 9, Dig. 5.1.12. — pretor: la(urentius). *add. Ps* (d) *gl.* Non debent... *deest Ps* (e) C. 2 q. 7 c. 57, D. 86 c. 4, Dig. 1.18.19 (f) Cod. 6.51. un. 14a, Cod. 5.4.23 pr., Cod. 7.42.1 (*unde* GUIDO DE BAYSIO *ad loc. supplet*: In glo. Simile C. ibi « etc. » adde « singulis legum adminicula denegari », *Rosarium, ed. Lugd. 1549, fol. 107 va*). — l.i.: la *add. Ps* (g) hoc habere Vp (*lect. variam esset [sic], alias habere notat GUIDO loc. cit.; et vide supra Sum. De iure can. tractaturus*). — *gl.* idest — uno *deest in apparatu Laurentii cod. Ps*; in *Rosario Guidonis, ubi Glossa ord. saepissime ex Laurentio augetur, huius gl. mentio non fit*; in « *typo Laurentiano* » *Glossae ord. (de quo vid. Repertorium der Kanonistik, p. 116 sqq.) haec gl. quandoque la. (sic Vat. lat. 1366, fol. 75 rb), quandoque jo. (= Joh. Teut.) (sic Vat. lat. 1369, fol. 91 va) signatur: unde qui eam scripserit non certo constat* (h) de primatu — uno *deest Vr*; hic *allegatur Bern. Compost. 1.2. un. : vide quae scripsi supra in § 7 prope adnot. 58 sqq.*

JOHANNES TEUTONICUS, *Glossa ordinaria*

(D.99 cc.3-5) *Glossae omnino concordant cum eis quae leguntur in edd. impressis secundae redactionis, nisi quod Bartholomaeus Brixien-sis quandoque uerba transposuit et allegationes decretalium compilationi Gregoriana assimilauit. Hic pauca tantum signare iuuat ex gl. c.3 et c.5v. negat se hoc esse (vide supra in § 7).*

Vatican Library, MSS Vat. lat. 1367, fol. 66 ra, Pal. lat. 624, fol. 72 ra,

Pal. lat. 625, fol. 62 ra. — (c. 3) *Prime sedis*: idest patriarchalis, alias papa bene *Joh. Teut. cum Gl. Pal.*: alias — bene *expunx. Vat. 1367, om. Barth. Briz.* (c. 5 *negat se hoc esse*) ecclesia Romana *Joh. cum Gl. Pal.*: Romana ecclesia *tr. Barth.* set sit de uniuersitate *Joh. cum Gl. Pal.*: licet sit de uniuersitate *Barth.*

APPENDIX III

From the papers of the Correctores Romani

(1) Regular Congregation *apud Illustriss. Card. Carapham*, 13 November 1568.

(Entered in the minute book, MS Vat. lat. 4889, fol. 157 r; the date of this meeting appears on fol. 155 r. Decisions made later by a General Congregation — held as always with several cardinals present — were subsequently entered in the broad margins of the first minutes.)

(D.99) can. iij. *Primae sedis.*

Vniuersalis autem] proponatur in cong.^{no} generali hic locus, qui visus fuit dignus annotatione. Consulatur etiam Cong^o circa Rubricam, quae sequitur, videtur enim tollenda ab ea, quod aliena sit ab ijs quae in capite tractantur.

Vnde Pelag. ii. episcopis Illicite a Joanne constantinopolitano conuocatis] Ita leg(endum).

can. iiij. Nullus patriarcharum.

Vnquam etiam] etiam tollatur. Infert] offert. Item Grego.] adde lib. 7 epit. 30. (*edd. antiquae 7.30 = ed. MGH 8.29*)

can. v. Ecce.

Decens (*leg. dicens?*)] dicentes. Ego enim non verbis] ita legendum Meus namque honor est, honor uniuersalis ecc.^o] Ita legendum. Tunc ego vere honoratus sum] Ita legen. Quae vanitatem] Quae vanitatem inflant.

(2) General Congregation *apud Illustr.^{mos} Card. Columnam S. Sixti, Sirlatum et Alciatum*, 14 March 1571 (dated fol. 152v)

(*Marg. sin. next to Consulatur... circa Rubricam*) cen(sura) cong. Gen.

Rubr. hoc modo corrigendum. Nullus Patriarcha vniuersalis est appellandus. (*Not carried out in the edition.*)

(*Marg. dext. next to first lemma*). Cens. Gen.^{lis} congreg.^{lis}

In hunc locum Gratiani faciendam esse diligentiss.^{mam} notat.^{nem} et in marg. errorem manifestissimum Gratiani notari his verbis 'Imo vero est vniuersalis' et congeri in Not.^{no} omnia argumenta ex Innocen'. 3. Concilio Chalcedonen'. et alijs antiquis scripto.^{bis} quib. probatur Rom. Pontificem ipsum solum iure Vniuersalem, posse et debere appellari. Pelagium vero in Cano. sequenti non de Ro. Pont. sed de Primate Affricae sermonem facere. Paulo enim inferius idem Pelagius subiungit Rom. ecclesiam suis priulegijs non carere, quae verba visa fuerunt dignissima quae addantur, quemadmodum et à Polycarpo lib. 2 cap. 25 (non inueni *add. al. man.*) Canon vero qui proxime sequitur ex Greg. lib. 7. cap. 30 modestiam potius et humilitatem S.^{smi} Pont. indicat, qui se indignum Tit. Vniuersalis à S.^{ta} synhodo chalcedonen. Romanis Pontt. concesso, fatetur. vt. vero ex eodem Greg. ex verbis in eadem ep'la proximè sequentib. constat Romano Pont. Titulum vniuersalis competere. censuit etiam Jll.^{ma} Congr.^o verba haec ad finem can. D. Gregorii esse addenda. (*Sequentia ex Reg. ep. 8.29, olim 7.30*) Et quidem in sancta chalcedonen. synhodo atque post à subsequentibus patribus hoc decessorib. meis oblatum v'ra Sanctitas nouit. sed tamen nullus eorum vti vnquam hoc vocabulo voluit, vt dum in hoc mundo honorem sacerdotum diligenter omnium, apud omnipotentem Deum custodirent suum.

(*Marg. dext. next to quae vanitatem inflant*) Cens. Cong. Gen. In fine huius canonis adnotari, addique verba illa D. Greg. in calce Superioris notationis descripta. (*See the first lines of the Nota Correctorum in the edition.*)

(3) Draft of the *Nota Correctorum*, by Miguel Tomás, MS Vat. lat. 4890, fol. 35v-37v, No. 513

4 c. Nullus et seq.

Cum Pelagij et s^{ti} Gregorij Rom. Pontificum tempore Joannes ep's Constantinopolitanis oecumenici et vniuersalis appellationem sibi arrogasset, ei primum Pelagius contradixit ac postea Gregorius superbum illud nomen ut in multis Epistolis regesti continetur in eo grauissime redarguit (*here follows a list of twelve letters = MGH Reg. ep. 5.37, 39, 41, 44, 45 [then, an erroneous et lib. v. ep. 39. Eulogio ep'o Alex.^{no}]; 7.4, 24, 28, 30, 31; 8.29*)... et fortassè alibi. Ac quamuis s. Gregorius in hoc c. et multis alijs ep'lis superius citatis nomen hoc reijciat, ipse tamen in tribus ep'lis asserit Jllud Romanis Pontificibus à synodo Chalcedonensis fuisse oblatum; primum lib.4. in dicta ep.32. Mauritio Jmper. his uerbis: certe pro beati Petri Apostolorum Principis honore... non oblatam presumat? (= *Reg. ep. 5.37, MGH Epp. 1,*

p. 322,33 - 323,4) et ep. 36. Eulogio Alex.^{no} et Anastasio Antiocheno sic scribens: Sicut enim ueneranda... oblatum est' (= *Reg. ep. 5.41, ibid. p. 332,17-20*), et ferè eadem repetit ep. 38. Joann. ep'o. Constantinopolitano scribens, (= *Reg. ep. 5.44*) cuius superbiam in vsurpatione illius nominis increpabat. At quamuis uerba propria nunc in ea synodo non legantur, D. Thomas in opusculo... quae nobis contigerunt exponere' etc. (*see Nota correctorum D.99 c.5*). Certum uero est hos monachos et Archimandritas ad Romanum Pontificem non potuisse, nisi ratione huius uniuersalis Pontificatus, pertinere. Auitus quoque Galliae ep'us... sepè illum uocat uniuersalem Pontificem. (*see Nota correct. ibid.*) S^{tus} quoque Bernardus libro 2.^o de considerat.^{ne}, ad Eugenium Papam haec ait: habent illi (scil. ep'i) sibi assignatos Greges, singuli singulos, tibi uniuersi crediti uni unus, nec modo ouium, sed Pastorum tu unus omnium Pastor (*de consid. 2.8, PL 182, col. 751C/D*). His ergo locupletissimis testimonijs demonstratur Rom. Pont.^{cem} uerè esse ep'm uniuersalem, cuius quidem dictionis duae sunt significationes, ut Jnnoc. iij. lib.2. ep'la 206... aedificabo ecclesiam meam (*see Nota correct. ibid. fin.*). hactenus Jnnocentius. Et ad priorem quidem harum significationum respexerunt Pelagius et s. Gregorius cum dixerunt alijs derogari atque etiam dignitatem omnem auferri, si qui dicat se uniuersum, quod alijs etiam commune est habere. Verum iuxta alteram significationem Rom. Pontifex simul cùm alijs Ep'is ipse est Ep'us uniuersi orbis cumulatiuè (ut vulgo dicitur) non priuatiuè. Ac sanè non perfectè uideretur Christus suae eccl'iae consuluisse, nisi ab ea recedens, ipsi uniuersalem aliquem Pastorem praefecisset. Nam cum multi olim fuerint et nunc etiam sint Episcopatus, ac max.^{ae} Prouinciae ab Infidelibus et Haereticis occupatae, in quibus sunt multi christiani qui nec Ep'os nec Catholicos sacerdotes habere permittuntur, si nullus esset uniuersalis Ep'us, essent illi quasi acephali, nec haberent qui ipsorum animas, et illarum Ecc.^{arum} Res curaret, quod esset absurdissimum. Jtaquè et ob hanc praecipuam rationem (ut alia omittantur) et ob auctores superius, citatos fatendum est Rom. Pontificem uerè esse Ep'm uniuersalem.

APPENDIX IV

*Unpublished Decretalist texts*VINCENTIUS, *Apparatus Compilationis tertiae*

(pr.) *seruus*: Quia qui maior est inter uos sit minister uester,^a uel seruus dicitur quia, sicut per seruum acquiritur domino, ut Inst. per quas personas nobis acquiritur,^b ita per papam cuilibet ecclesie acquiri potest, ut infra de censibus, Cum instantia,^c arg. infra de restit. spol. c.j.^d Vin.^e *seruorum Dei*: Ergo est seruus Dei quia uicarius qui est seruus ordinarii est seruus domini ordinarii, ff. de pecul. Si seruus.^f Ordinarius seruus est qui habet alium seruum sub se, qui appellatur uicarius. Vinc.

Vatican Library, Vat. lat. 1378, fol. 1 ra/b. — (a) cf. Mt. 20.26, Mc. 10.44 (b) Inst. 2.8 pr. (c) 3 Comp. 3.37.2 (X 3.39.17) (d) 3 Comp. 2.6.1 (X 2.16 *ut lite pend.* c. 4) (e) *Integram gl. nomine Vinc. signatam assumpsit TANCREDUS in app. Comp. III ad loc. praeter duas var. lect. (cod. Vat. lat. 1377, fol. 148 ra) : lin. 3 per papam] per dominum papam T 4 arg. om. T* (f) Dig. 15.1.17 (si seruus ordinarius. Seruus est... cod.)

Apparatus Seruus appellatur

(pr.) Seruus appellatur quia publice seruit, ut infra de censib. Cum instantia.^a Et ita tabellio qui est in officio publico seruus publicus appellatur, ut C. de emancip. l.ii.^b et ff. rem pupil. saluam fo. l.ii.^c Seruus enim non est uel esse potest tabellio, ut C. de tabular. scribis logograph. Generali in lib. x.^d Absit enim eum seruum appellari illa seruitute que morti comparatur, ut ff. de condi. et demonst. Intercidit;^e et ideo superuacuum est hic querere cui acquirat, nam eo modo acquirit quo et alii prelati, ut distinguit idem Innocen. infra de testam. Requisisti.^f Istud tamen in eo speciale credo quod eo stipulante potest acquiri actio cuilibet ecclesie, cum una sit ecclesia, ut di. xxi. Quamuis,^g et ipse sit pastor in solidum, aliis in partem sollicitudinis uocatis. *seruus*: infra de sent. exc. Relatum,^h C. de tabulariis l. Generali lib. x, C. de emancip. l.ii, C. de sentent. passis l. ult.ⁱ *seruorum Dei*: Oratius: seruiet eternum qui paruo nesciet uti.

F. Gillmann's edition, *loc. cit.* n. 68 *supra*, from MSS Bamberg Can. 19, fol. 116 va/b and Kassel jur. 11, fol. 1 ra/b (revised). — (a) 3 Comp. 3.37.2 (X 3.39.17) (b) Cod. 8.48.2 *male (vid. adn. 70 supra)* (c) Dig. 46.6.2 (d) Cod. 10.71 (69).3 (e) Dig. 35.1.59 (f) 3 Comp. 3.19.2 (X 3.26.15) (g) D. 21 c. 3 (h) 3 Comp. 5.21.11 (X 5.39.37) (i) Cod. 10.71 (69).3, 8.48.2 (*vid. supra, b*), 9.51.13 (*allegationes h-i forsan antiquiores sunt ipso apparatu*) (j) Horat. *Epist.* 1.10.41

ZOËN, *Apparatus Compilationis quintae*

(pr.) *Honorius etcet.*: Que notantur in extra. iii. super eadem^a et hic repiloga si placet, et ultra. Quod enim dicit, 'seruus seruorum Dei', nichilominus seruus Dei, quia seruus uicarius et seruus domini est, ut ff. de pecul. Cum seruus.^b

Tours MS 565, fol 1 ra. — (a) *scil. in glos. ord. (Taner.) ad pr. 3 Comp.* (b) Dig. 15.1.17 Si seruus

VINCENTIUS, *Apparatus Decretalium Gregorii IX*

(pr.) *seruus*: Et imperator appellat se seruum, C. de off. pref. Afr. li. circa prin.^a Quia sicut per seruum acquiritur domino etiam si^b sit fugitiuus, ut ff. mandati, Si mandauero § fugitiuus et xij. q. ij. Non dicatis,^c ita per dominum papam acquiri potest cuilibet ecclesie, infra ut lite pendente. Ecclesia.^d Set contra, nonne est uicarius Domini, infra de transl. Quanto?^e Et 'rex erat et neminem timebat preter Deum', de penit. di. iij. § Dauid,^f et dicitur imperator eius filius,^g C. de fide cath. Inter et x. di. Vides.^h Et dico quod potestas eiuⁱ magna est, set debet eam conformare^j publice utilitati, infra de foro compet. Licet,^k et imperator ducit noctes insompnes pro re publica, in auth. ut iudices sine quoquo suffr. in princ.^l Vinc.

Paris, B.N. lat. 3967, fol. 1 ra; Vatican Library, Vat. lat. 6769, fol. 3 ra. — (a) Cod. 1.27.15 (b) *om.* P (c) Dig. 17.1.22.9; C. 12 q. 1 c. 11 (d) X 2.16.4 (e) X 1.7.3 (f) De pen. D. 3 c. 24 med. (*vide quae scripsi supra in adnot. 80*) (g) seruus P *male* (h) Cod. 1.1.8 inscr.; D. 10 c. 10 (i) eius *scripsi: deest* PV (j) confirmare V (k) X2.2.10 (3 Comp. 2.2.1; *vide supra in adnot. 82*) (l) Auth. 2.2 (Nov. 8) pr.

GOFFREDUS, *Apparatus Decretalium Gregorii IX*

(pr.) *Gregorius seruus*: Quare uocat se seruum cum sit dominus et uicarius Ihesu Christi, ut infra de transl. prela. Inter corporalia, infra ut beneficia ec. sine dim. conf. Ut nostrum?^a Responso: ex affectione quam habet circa subditos loquitur, ut dicit Apostolus, 'cum sim liber ex omnibus, omnium me seruum feci, ut plures lucrifacerem', ut xxviii. q. i. c. Jam nunc,^b uel loquitur secundum nimiam humilitatem, secundum quam negat se uniuersalem papam, ut xcix. di. c. Ecce,^c secundum quam subicit se iudicio seculari, ur ii. q. v. Mandastis et c. Auditum est.^d Gof.

Vienna MS 2797, fol. 1 ra. — (a) X 1.2.7; 3.12.1 (b) C. 28 (xxviij. cod.) q. 1 c. 8, *ubi laud.* 1 Cor. 9.19 (c) D. 99 c. 5 (d) C. 2 q. 5 cc. 10, 18 (Auditis cod.)

BERNARDUS PARMENSIS, *Glossa ordinaria Decretalium Gregorii IX*

(A : First recension, before July 1241 ; B : Final recension, between 1263 and 1266, with notes from some MSS of the intermediate stages. Cf. S. Kuttner and Beryl Smalley, in *English Historical Review*, t. 60 (1945), pp. 97-103, on the main criteria for four stages of recension.)

A. *First recension*

(pr.) *Gregorius episcopus seruus*: Quia qui maior est uestrum fiat sicut minister uester, uel seruus dicitur quia, sicut per seruum acquiritur domino, in Inst. per quas pers. nobis acq. circa prin.^a ita etiam per dominum papam cuilibet ecclesie potest acquiri, infra de censib. Cum instancia, in particula que decisa est de principio.^b Sic et per imperatorem acquiritur hominibus, in aut. constitutio que digni. liberat a patria pot. § Illud quoque coll. vi.^c Et noctes ducit insompnes, ut subiecti omni quiete consistant, in aut. ut iudices sine quoquo suffr. in prin. coll. ii.^d Et dicit imperator: uoluntarios labores appetimus, ut quietem aliis preparemus,^e in aut. ut diui. iuss. subscriptionem^f habeant gloriosi questoris, in princ. coll. viii.^g

Oxford, Bodleian Library, MS lat. theol. b. 4, fol. 1 ra ; Vatican Library, MS Vat. lat. 11158, fol. 2 ra. — (Lines 1-5 « Quia — Cum instancia » : from VINCENTIUS, *App. Comp. III*, by way of TANCRED as shown by the reading 'per dominum papam'; but Bernard omits the second reference, to (3 Comp.) « infra de rest. spol. c.i. », which apparently he could not locate in the new Decretals. By the time of the second recension (1143-45) he had tracked it down as « infra ut lite pend. Ecclesia ii. » (X 2.16.4). From rec. 2 on, he also prefixed another sentence to the gloss, see *infra*, B. Lines 5-7 « Sic et — coll. vi. » and 9-11 « Et dicit — coll. viii. » are independent ; for 7-9 « Et noctes — coll. ii. » see VINCENTIUS, *App. X*, except for the words, (ut — consistant », taken from *Auth. loc. cit.* directly.) (a) Inst. 2.8. p. (b) X 3.39.17 (3 Comp. 3.37.2 ; cf. *quæ scripsi supra, adm. 69*) (c) *Auth.* 6.9 (Nov. 81) 2 ; *vv. constitutio, a om. B* (d) *Auth.* 2.2 (Nov. 8) pr. (coll. vi. B) (e) *properemus B* (f) *suspitionem BV* (g) *Auth.* 8.10 (Nov. 114) pr. (coll. ix. B, coll. octaua V)

B. *Final recension*

(Analysis based on the official Roman edition of 1582 and collation of a substantial number of Vatican MSS. I have numbered the sections here commented upon and enclosed later interpolations in brackets.)

Seruus: (1) Sic etiam Imperator seipsum appellat seruum. C. de offic. praefe. praeto. Afr. l. i. circa prin.

This sentence from VINCENTIUS, *App. X* (with its reference to Cod. 1.27.1.5) became the new beginning of the gloss in MSS of the second (c. 1143-45), the third (c. 1145-51), and the final recension. The first

words vary: « Imperator appellat se » in Vat. lat. 1365 (rec. 2), Vat. lat. 1379, 1382 (final rec.); « Sic etiam imperator appellat se » in all other MSS collated (Vat. lat. 1381-1391), except for Vat. lat. 11154, fol. 1 va (rec. 2): « et imperator... », *corr.* « Sic et... ». (Cancellations and marginal corrections in this MS show traces of confusion as to whether this pericope should be placed after or before the original « Quia qui maior... ».)

- (2) [Vel dic quod dicit ex humilitate:] quia qui maior—minister vester.
[9. q.3. nullus primas. Mat.20. Luc.22. & Mar.10.]

Neither of the two interpolated sentences — of which the first echoes GOFFREDUS *ad loc.* — appears in any of the MSS collated. I have seen the interpolation « Vel dic... » and the reference to C. 9 q. 3 c. 7 (which includes the N.T. quotation) in the Venice 1486 edition (Hain-Copinger 8020), the earliest available to me; and both interpolations in full in Venice 1492 (Hain 8029*) and all subsequent editions.

- (3) Vel seruus dicitur: quia sicut — decisa est in principio, infra vt lite pen. ecclesia.2.

The reference to X 2.16.4, added to the text of the first recension (see *supra*, A), appears from rec. 2 on (MSS Vat. lat. 1365; 11154 *corr. marg.*).

- (4) sic per Imperatorem — in prin. colla. 8. [& infra de restitu. spolia. c. frequens. (Lib. 6. *add. marg.*)]

Most MSS read « sic et per... » at the beginning. The interpolated final reference to c. *Frequens* (= Sext. 2.5.1) appears first in some late 13th-cent. MSS of the final recension, thus Vat. lat. 1391, fol. [iii] va and Vat. lat. 1384, fol. 3 ra (added *al. m.* and with a further addition, « Innoc. iij. »); then in several 14th-cent. MSS, thus Vat. lat. 1386, 1387, 1388 (signed *bernar.* with suprascript « li.vi. »), 1389, 1390 (« et infra de except. » *corr.* to » ... de rest. spol. »), 1391; but not in Vat. lat. 1379, 1381, 1382. It is not found in any of the earlier recensions, even though *Frequens* was one of Innocent IV's pre-Lyonese constitutions which he incorporated in the conciliar decrees of 1245: Bernard could have cited it, like others of this kind, from the second recension on, but did not. It had become an established part of the text by the time of the first incunabula editions.