

MEDIEVAL STUDIES

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POPE LUCIUS III AND THE BIGAMOUS ARCHBISHOP OF PALERMO

THE teachings of the canonists on the power of dispensing from the common law of the Church¹ are of great interest for the history of medieval thought, because they are so closely bound up with the general theory of law and legislation, and in particular with the doctrine of legislative supremacy of the pope. Already Gratian—without distinguishing much between the acts of dispensing or granting a privilege—had related all dispensatory power to the papal prerogative of making a new law and of interpreting or abolishing the old. The crucial problem was how to define the limits set to this sovereign power of the *dominus decretorum*:² and thus the canonists were led to discuss the pope's position with regard to divine law, natural or revealed; to law established by the apostles, by the first four ecumenical councils—which a famous dictum of Gregory the Great had likened to the Four Gospels³—or, for that matter, to any law affecting the general *status* of the Church. It was more often the practical question of whether the pope can interfere in a given case with such laws by dispensation, rather than the abstract extent of his legislative power, which stirred up controversy among the canonists. Like so many of their fundamental doctrines, the theory of dispensation owes much to the exegesis of individual texts and the debate on individual propositions; papal practice and papal pronouncements embodied in the decretals frequently reflected academic argument and, in turn, constantly provided fresh material for it.

The canonists found a wide field for discussion on the power of dispensing from 'apostolic' law in the age-old discipline concerning the personal fitness for the reception of holy orders. The various kinds of impediments which constitute a permanent bar to ordination, and to the exercise of the functions inherent in the orders received, were for the greater part derived, directly or indirectly, from the so-called *regula apostoli*, i.e., the catalogue of the qualifications which St. Paul had required of a bishop, priest, or deacon in his letters to Timothy and Titus. The Apostle's 'rule' had a central place in the canon

1. For an excellent general study see J. Brys, *De dispensatione in iure canonico, praesertim apud decretistas et decretalistas*. . . . (Bruges, 1925); A. van Hove, *De privilegiis—De dispensationibus* (Commentarium Lovaniense in Codicem iuris canonici, I.v; Malines-Rome, 1939), pp. 293ff.

2. The term is Gratian's, in C.25 q.i p.c.16, §1.

3. Gregory I, *ep.* i.24 (JE 1092), quoted in D.15 c.2. [The letters JK, JE, JL designate the numbers in the second edition of Jaffé's *Regesta pontificum romanorum* by Kaltenbrunner, Ewald, and Loewenfeld (1885-88).]

law of ordination from the early days of the Church,⁴ although the technical term *irregularitas* for the impediments based on it originated only in the twelfth century.⁵

It may seem strange to us today that the medieval writers should have found so much difficulty in the problem of dispensation from one particular irregularity, the impediment of 'bigamy.' Whoever has been married more than once in life has always been, and is still under present law, excluded from ordination,⁶ according to the Apostle's word, 'oportet episcopum esse unius uxoris virum' (1 Tim. iii. 1), an injunction repeated by St. Paul for priests and deacons as well (1 Tim. iii. 12; Tit. i. 5-6).⁷ *Bigamia* in this sense is in the first place the status of the remarried widower, and it is therefore well to remember that in canon law and sacramental theology the word does not necessarily carry the connotation of moral taint which we associate with it in modern parlance, where the use of the term has long become restricted to the crime of leading two married lives at once. To be sure, this *bigamia simultanea* is known as a crime in canon law, too,⁸ but in respect of ordination the notion of bigamy is more subtle: it is based on the idea that in Christian marriage the union of the flesh represents the union of Christ with His Church. Patristic exegesis, especially in the West, found the primary reason for the Pauline rule in the thought that this full sacramental meaning is lacking in any second marriage: the remarried man has 'divided' his flesh, and his marital union can no longer represent the mystical Union.⁹ Because of

4. It has often been observed that the first part of Gratian's *Decretum* is in large measure, from D.25 p.c.3 on, an extended commentary on the *regula apostoli*.

5. Cf. F. Gillmann, 'Zur Geschichte des Gebrauchs der Ausdrücke "irregularis" und "irregularitas,"' *Archiv für katholisches Kirchenrecht*, xci (1911), 49-86; also W. Jöhl, *Die Irregularitas ex defectu nach katholischem Kirchenrechte* (Diss. Leipzig, 1909) (not seen, but cf. the review by Gillmann, *Archiv* . . . xcii (1912), 371-8). Already St. Augustine speaks of *integritas personae regularis* (ep. 60 (C.S.E.L. xxxiv. 221), cf. C.16 q.1 c.36), but the word *irregularitas* was coined by Rufinus, *Summa*, D.25 p.c.3 (ed. Singer, p. 60), cf. Gillmann, *ut supra*, xci, 54-5. Pope Innocent IV in his commentary on X i.9.10, no. 7 (ed. Venet. 1560, p. 114a) wrongly denied the derivation of the term from the *regula apostoli* (cf. Gillmann, p. 81).

6. *Codex iuris canonici*, c. 984, no. 4. For history and bibliography, see J. Vergier-Boimond, 'Bigamie (irrégularité de),' *Dictionnaire de droit canonique*, ii (1937), 853-88; also F. X. Wernz, *Jus decretalium*, ii (3rd ed. Rome, 1915), no. 120.

7. The extension to orders below the episcopate was not due to the medieval canonists, as W. Ullmann assumes, *Medieval Papalism* (London, 1949), p. 66.

8. *Cod. iur. can.* c. 2356.

9. The classical text is St. Augustine, *De bono coniugali*, c. 18 (21): '... uisum est eum qui excessit uxorum numerum singularem non peccatum aliquod commisisse, sed normam quamdam sacramenti amisisse; non ad uitae bonae meritum sed ad ordinationis signaculum necessariam. . . . ita noster antistes unius uxoris uir significat ex omnibus gentibus unitatem uni uiro subditam Christo' (*P.L.* xl. 387-8); shortened and paraphrased in *Glossa ord.* on Tit. i, and so quoted in Gratian,

this *defectus sacramenti*¹⁰ he is not fit to stand in the place of Christ and to minister to His spouse.

This conception soon led to an extensive interpretation, to the effect that the impediment would also arise from marriage to a widow, from concubinage before or after marriage, from failure to dismiss an adulterous wife, and other situations implying a *divisio carnis*. Cases of this kind were dealt with as early as the fourth century in councils and papal letters, at first perhaps in analogy to the marriage restrictions of the Mosaic law for the Jewish priesthood;¹¹ in the language of the classical canonists they were termed *bigamia interpretativa*.

I.

In the Roman Church, bigamy was understood, at least from the time of Pope Siricius, as a bar also to minor orders,¹² a practice which is paralleled by the precepts of the pseudo-Apostolic Canons¹³ and was wrongly considered as Nicene by St. Ambrose.¹⁴ A milder practice, however, which did

D.26 c.2. The Greek Fathers, on the other hand, gave emphasis to moral and pastoral reasons: cf. also St. Ambrose, *De officiis*, i.50. 247: 'quomodo autem potest hortator esse uiduitatis qui ipse coniugia frequentauerit?' (*P.L.* xvi. 97), in Gratian, D.26 c.4. As a practical result, marriage before baptism did not count towards *δευαμία* in the Eastern Church; so also St. Jerome, *ep.* 69 (83) *ad Oceanum* (*P.L.* xxii. 653-64), quoted from *Glossa ord.* on 1 Tim. iii in D.26 c.1. This interpretation was refuted at length by Pope Innocent I, *ep. ad Victricium Rothomag.* c.6 (a. 404, JK 286), *ep. ad Rufum Thessalon.* (a. 414, JK 303); cf. Gratian, D.34 c.13, D.26 c.3.

10. The term became official in Innocent III's decretal *Nuper*, Po. 700 (a. 1199), 3 Comp. i.14.1, X i.21.4. [The abbreviation Po. indicates the number in Pott-hast's *Regesta*.]

11. E.g. Council of Neocaesarea, c.8 (C.H. Turner, *Ecclesiae occidentalis Monumenta iuris antiquissima*, II.i (Oxford, 1907), pp. 30, 128-9; in Gratian, D.34 c.11); Pope Siricius, *ep. ad Himerium Tarrac.* (a. 385, JK 255), c.8 §12, citing *Ezech.* xlv. 22, *Lev.* xxi. 13-14 (*P.L.* xiii. 1151); *ep. ad episcopos Africanos* (Roman Council of 6 January 386; JK 258), cc. 4-5.

12. Siricius, JK 255 cc. 11, 15 (§§15, 19; in Gratian, D.84 c. 5, D.50 c.56); JK 258 cc. 4-5; Innocent I, JK 286, c.6 §9; JK 303, c.1 §2.

13. *Can. apost.* c.17: 'Si quis post baptismum secundis fuerit nuptiis copulatus aut concubinam habuerit, non potest esse episcopus, non presbyter aut diaconus aut prorsus ex numero eorum qui ministerio sacro deseruiunt' (Turner, *Monum.* I. i.1 (1899), 15-16); c.18: 'Si quis uiduam aut eiectam acceperit, aut meretricem aut ancillam uel aliquam de his quae publicis spectaculis manciantur, non potest esse episcopus aut presbyter aut diaconus aut ex numero eorum qui ministerio sacro deseruiunt' (*ibid.*); in Gratian, D.33 c.1, D.34 c.15.

14. *Ep.* 63 (82) *ad Vercellenses*: '... patres in concilio Nicaeni tractatus addidisse neque clericum quemquam debere esse qui secunda coniugia sit sortitus' (*P.L.* xvi. 1206 = *ed. Maur.* ii. 1037; in Gratian, D.34 c.14). The text—let alone the variants 'in concilio Nicaeni tractatu', etc.—has always been a *crux interpretum*, cf. the Maurists' note v. *patres*; their conclusion that St. Ambrose probably read a non-Nicene text in a canonical collection where it appeared as Nicene still holds

not go beyond the 'Pauline' degrees and envisioned only episcopate, priesthood, and diaconate, prevailed in Spain and Gaul as late as the fifth and sixth centuries.¹⁵ It was therefore without any thought of dispensation when the First Council of Toledo, c. 400 A.D., allowed the lector who married a widow to remain in his grade or even to become a subdeacon:

(c. 3) Item constituit sancta synodus ut lector fidelis, si uiduam alterius uxorem acceperit, amplius nihil sit, sed semper lector habeatur aut forte subdiaconus,

while the subdeacon who remarried after ordination was to be removed from his office (for incontinence?) but could continue in the lower orders as lector or porter (c.4).¹⁶

Both the pseudo-apostolic and the Spanish tradition appear side by side

good. (For a parallel case, St. Ambrose quoting Neocaesarea under the name of Nicaea, cf. Turner, 'Chapters in the History of Latin MSS of Canons,' *Journal of Theological Studies*, xxx (1929), 236.) This text was probably an early Latin version of the *Canones apostolorum* if we accept Turner's date, c. 360-380, for both the *Constitutiones* and the *Canones apost.* ('Notes on the Apostolic Constitutions,' *J.T.S.* xvi (1915), 54, 523ff.) The existence of at least one such version in the late fourth century is borne out by the *fragmentum Veronense*, MS Capit. LI (49) (saec. vi), ed. A. Spagnolo in Turner's *Monum.* I. ii.1 (1913), pp. 324-*nn* (for the date of its model see Turner, *ibid.*, p. xv); and while the verbal differences of its cc. 14-15 (p. 329=cc. 17-18 *vulg.*) from Ambrose's text seem to rule out this particular version as his source, the fact remains noteworthy that the Verona fragment was subscribed in its day 'a quodam bibliothecario' (Turner, p. xv): CANON(ES) NICAENORVM.

15. Councils of Orange (a.441), c.25; Angers (453), c.11; Arles (524), c.3 (=D.55 c.2); Orléans (541) c.10 (Bruns, *Canones apostolorum et conciliorum*. . . (Berlin, 1839), ii. 125-6, 138; Maassen, *Concilia aevi merovingici* (M.G.H. Conc. i; Hannover, 1893), pp. 37, 89). See also the fifth-century collection mislabelled as second Council of Arles, c.45 (Bruns, ii.135=Orange, c.25), and XI.21.1 'ex concilio Aurelianensi,' which is a summary of Arles 524, c.3.—Only Tours (460), c.4, 'Ut clericus cui nubendi datur licentia internuptam non accipiat uxorem: quod si fecerit ultimum in officio teneat locum' (Bruns, ii.140), penalizes 'bigamous' subdeacons and clerics in minor orders ('cui datur licentia. . .': celibacy is prescribed in cc.1 and 2 for *sacerdos uel leuita* only, p. 139f.). But this demotion *ad ultimum locum in officio* is still milder than, e.g., Siricius, JK 255, c.11, 'Quisquis sane clericus aut uiduam aut certe secundam coniugem duxerit, omni ecclesiasticae dignitatis priuilegio mox nudetur, laica tantum sibi communionem concessa,' or Innocent I, JK 303, c.1, '... nec ad ultimum ecclesiastici ordinis assumere. . .'.¹⁷

16. Bruns, *Canones*, i.204; c.4 reads: 'Subdiaconus autem defuncta uxore si aliam duxerit, et ab officio in quo ordinatus fuerat remoueat et habeatur inter ostiarios uel inter lectores, ita ut euangelium et apostolum non legat, propterea ne qui ecclesiae seruiant publicis officiis seruire uideatur; qui uero tertiam, quod nec dicendum aut audiendum est, acceperit, abstentus biennio postea inter laicos reconciliatus per poenitentiam communicet.' The interpretation of this text presents difficulties: cc.3 and 4 appear almost contradictory, the one allowing promotion to, the other prescribing demotion from the subdiaconate. Neither the explanation that the fathers of Toledo wished to differentiate between interpretative (c.3) and true

in the *Capitula* of St. Martin of Braga (c. 572-579 A.D.).¹⁷ He coupled an abbreviation of *Can. apost.* c.18 with a paraphrase of Ancyra c.21 (on homicide); he abridged I Toledo c.4, expanded I Toledo c.3 to include also bigamy proper, and inserted a qualifying clause, 'si forte necessitas sit,' for the lector's promotion to subdeaconship.¹⁸

(Mart. Brac. c. 26) Si quis uiduam aut ab alio dimissam duxerit, non admittatur ad clerum, aut si obrepsit deiciatur. Similiter si homicidii aut facto aut praecepto aut consilio aut adsensione post baptismum conscius fuerit et per aliquam subreptionem ad clericatum uenerit, deiciatur et in fine uitae suae communionem recipiat.

(c. 44) Si subdiaconus secundam uxorem duxerit, inter lectores uel ostiarios habeatur, ita ut Apostolum non legat.

(c.43) Lector si uiduam alterius uxorem acceperit, in lectoratu permaneat, aut si forte necessitas sit, subdiaconus fiat, nihil autem supra. Similiter et si bigamus fuerit.

The *Capitula Martini* reached later generations through the Hispana and

(c.4) bigamy, nor the assumption that they wished to extend the irregularity to subdeacons (thus meeting the Roman practice halfway) seems plausible, since bigamy by remarriage before ordination is not included in c.4. The wording of the canon rather seems to indicate a beginning trend to extend celibacy (as understood in the West, i.e. the obligation of continence) to the order of subdiaconate. This would explain why the legislative reason cited is not the *regula apostoli* but 'ne qui ecclesiae seruerit publicis (= 'secular,' 'worldly') officiis seruire uideatur'; it would also explain the greater severity in the case of third marriages after ordination. But the fact remains awkward that first marriages after ordination are not mentioned at all. However, if the suggested interpretation is correct (and for what it is worth, we may mention that Gratian understood the canon in this sense, D.31 p.c. 14 *Illud quoque*), the First Council of Toledo would mark a first step towards the law of celibacy for subdeacons, as we find it in the so-called *Codex ecclesiae Africanae* of 419, c.25 (Bruns, i. 163; cf. D.32 c.13) and in Leo I, *ep. ad Anastasium* (c. 446, JK 411; D.32 c.1).

17. On the date, see C.W. Barlow, *Martini episcopi Bracarenensis opera omnia* (New Haven, 1950), p. 86. The *Capitula* are edited pp. 123-44, with the running head, 'Canones ex orientalium patrum synodis,' and Barlow insists on calling them 'canons of St. Martin'; cf. pp. 84, 103 n.43: 'there is no evidence that he [Martin] used any other word than *canones*. . .'. Barlow seems to have in mind the use of the word *canones* (for the Greek sources) in Martin's prologue, e.g., p. 123, lines 4, 10; but cf. p. 124, 15-6 'ut de quo *capitulo* aliquis scire uoluerit, possit celerius inuenire.' It is difficult to see why the editor should have rejected the conclusive evidence of the title given in the MSS, 'Capitula ex orientalium patrum synodis a Martino episcopo ordinata atque collecta' (p. 123).

18. Ed. Barlow, pp. 131 (c.26), 135 (cc.43-44). St. Martin's sources were first identified by Jean Doujat (1609-1688), in the Appendix of G. Voell and H. Justel, *Bibliotheca iuris canonici veteris* (Paris, 1661), i, pp. vii-xxxii; cf. the title page, also Doujat's *Praenotationes canonicae* (1687), iii.17 (Venice, 1735, p. 327), but Barlow gives no source for c.26 (p. 131, cf. also p. 100, n. 16: '... no known source elsewhere'). For the text of *Can. apost.* c.18 see note 13 *supra*; for the various Latin versions of Ancyra c.21 (*al.* 22, 41), Turner, *Monum.* II. i, pp. 108-9.

Pseudo-Isidore, but became mislabelled in the collections of the eleventh century as canons 'ex concilio Martini papae' or 'ex decretis Martini papae'.¹⁹ This was of far-reaching consequence, because the three canons on bigamy eventually entered Gratian's *Decretum* with the false attribution to Pope Martin I (D.50, c.8 *Si quis uiduam*, D.34, cc.17 *Si subdiaconus* and 18 *Lector*).²⁰ Faced with the discrepancy of the latter two from the many texts which applied the *regula apostoli* to all clerical orders, Gratian saw no other solution but to construe the less severe canons as instances of papal dispensation: by way of dispensing with the general rule, he explained, Pope Martin had allowed that a bigamous subdeacon may officiate in minor orders; and that a bigamous lector may advance, if need be, to the subdiaconate.²¹

Thus it was really by an accident of textual transmission that the canon *Lector* would become the starting point for the long-drawn controversy of the glossators on dispensation *contra apostolum* and on the relative powers of pope and bishops in this matter. The question, 'an cum bigamo liceat dispensare,' with all its array of canonistic arguments, was soon taken up by the scholastic theologians. On some of its aspects, the debate continued down into the seventeenth and eighteenth centuries.²²

19. Thus in Burchard's *Decretum* (e.g. ii.35 'ex decretis Martini papae'), or the series of 84 chapters 'ex concilio Martini papae' in the *Collectio Tripartita*; cf. the Ballerini in their dissertation (1757) *De antiquis . . . collectionibus et correctoribus canonum* (S. Leonis Magni Opera, iii) P.L. lvi. 261-2; P. Fournier, 'Les collections canoniques attribuées à Yves de Chartres,' *Bibliothèque de l'Ecole des Chartes*, lvii (1896), 673 (also published in book form, Paris, 1897; p. 29).

20. Gratian's variants: Mart. c.26 *lin.* 1 dimissam] relictam 2 aut si obrep-
sit] quodsi irreperit 3 adensione] defensione (cf. Barlow, *var. lect.*) 5 reci-
piat] accipiat.—Mart. c.43 *lin.* 1 uxorem alterius tr. 2 forte om. sit] fuerit.

21. Gratian, dict. a.c. 17: 'Sed postea temporum defectui condescendens papa Martinus in minoribus ordinibus eos constitui permisit dicens: (c.17) Si subdiaconus. . .'; dict. a.c. 18: 'Necessitate tamen exigente bigami usque ad subdiaconatum possunt promoueri. Unde Martinus papa ait: (c.18) Lector. . .' See also the interpolated dictum, probably an early gloss, in D.84 p.c. 4 (*Conc. V Carth.* c.3): 'Contra Martinus papa "Si lector uiduam duxerit," ut supra legitur: sed illud ubi necessitas, hoc ubi nulla necessitas urget' (cf. the *Nota Correctorum* and Friedberg, *Corpus iuris canonici*, i (1879), note 70 *ad loc.*; Mme Rambaud-Buhot has found this in at least ten MSS in French libraries).

22. To cite only a few: F. Suarez, *De censuris* (1603), disp. 49 s.6 (*Opera*, xxiiiibis (Paris, 1861), 538-42); N. Garcias, *De beneficiis* (1609), vii. 6 no. 3ff. (Venice, 1618-19, ii. 52-3); A. Barbosa, *De officio et potestate episcopi* (1632), ii. 49 no. 20ff. (Lyons, 1656, p. 474); P. Fagnanus, *Commentaria . . . decretalium* i.21.2 (Rome, 1661, I. ii.358-64; Venice, 1709, i. 496-501); A. Reiffenstuel, *Ius canonicum universum* (1700-14), i.21 no. 28ff. (Paris, 1864, i. 517-9); L. Ferraris, *Prompta bibliotheca canonica* . . . (1746), s.v. 'Bigamia,' art. iii (Rome, 1885, i. 670-5); F.E. von Boenninghausen, *Tractatus iuridico-canonicus de irregularitatibus*, ii (Munster, 1863), 206-13.

II.

This paper is concerned only with the early phases of the discussion.²³ In historical retrospect it is easy for us to discard the textual basis furnished by the canon *Lector* as imaginary because the original canon had nothing to do with either pope or dispensation.²⁴ Still, the problems which arose in its interpretation were very real. Was Pope Martin's decree contrary to the law of the Apostle? Did it authorize dispensation from the irregularity only by the pope or also by bishops, at least in minor orders? Could the pope himself go beyond the order of subdiaconate in dispensing? And could the bigamous person, if major orders were conferred, receive the sacramental character? In the debate of all these issues, the arguments involved were not always clearly kept apart, and tempers must have grown hot if at certain points of dissent we find the masters abusing each other as madmen, fools, and dumb beasts; if some ridiculed the ordination of bigamous clerks by comparing it to that of a jackass, and called the author of the canon *Lector* contemptuously 'Martin the Goat.'²⁵

I. That Martin's canon, especially as regards promotion to the subdiaconate, ran counter to other canonical rules, among which his own canon *Si quis uiduam*, was universally admitted and had to be explained by the distinction between strict law and dispensation.²⁶ The first generations of glossators did not consider this a dispensation *contra apostolum*. It could easily be seen that St. Paul's rule spoke only of bishops, priests, and deacons ;

23. Most of the *summae* and *apparatus* of the early glossators (before the Decretals of Gregory IX) and a few representative texts of the mid-thirteenth century have been examined, but I have not scanned the vast literature of collected *quaestiones* nor the great mass of mixed gloss compositions. Some of our texts are quoted (not always correctly) and discussed in Brys, *De dispensationibus* (n. 1 *supra*), esp. pp. 133-4, 199-200, 221-3. The short paragraph on c. *Lector* and its medieval interpretation in Ullmann, *Medieval Papalism* (London, 1949), pp. 65-6, is based on an unfortunate misunderstanding of the sources.—For the full text of passages excerpted from the manuscript (and some printed) sources in the notes hereafter, see the Appendix below, pp. 439-53; in the footnotes, references to MS and folio (or edition and page) will be given only for short texts not included in the Appendix.

24. So already Suarez, *De censuris*, 49.6 no. 5 (p. 539), the Ballerini *loc. cit.* (n. 19 *supra*), and others. Cf. Wernz, *loc. cit.* (n. 6 *supra*).

25. See *infra*, pp. 428-9, 431.

26. Cf. Stephanus Tornacensis, *Summa*, D.34 c.17 (ed. J.F. von Schulte, Gies-sen, 1891, p. 52); Huguccio, *Summa*, D.34 c.18, v. *in lectoratu*: 'Alibi contra dicit idem Martinus, ut *infra* di. 1. Si quis uiduam . . . set ibi ponit ius commune, hic loquitur dispensatiue'; Alanus, *Apparatus Ius naturale*, D.34, c.18, v. *necessitas*: 'puta inopia clericorum. Necessitas enim dispensationem inducit. . .'; *Apparatus Ecce uicit leo*, eod. v. *in lectoratu*: '1. di. Si quis contra, ubi idem Martinus *infra* (?) contradicit. Set illud loquitur de iure, hoc de dispensatione'; Johannes Teutonicus, *Glossa ordinaria*, eod. v. *fiat*: '... Innocentius tamen dicit quod non licet dispensari cum bigamo . . . et idem Martinus hoc dicit, 1. di. Si quis uiduam. . .'

the subdiaconate is 'quodam modo' not a sacred order,²⁷ and Martin's canon merely dispenses from positive law.²⁸ The only difficult point was that St. Ambrose had cited the Council of Nicaea as source for the extension of the Pauline rule to the clergy at large, and on principle the first four ecumenical councils should be as immutable as the Gospels.²⁹ Still, there was a difference between scriptural authority and any human, ecclesiastical legislation (*institutiones ecclesiasticae*), even though it be of the highest order: Rufinus, the first glossator to discuss this problem (c. 1157-1159), taught that the four councils are inviolable except where they enacted 'disciplinary statutes of great severity' (*rigore magno aliquid statuunt in personas*); he cited Pope Martin's dispensation as a case in point.³⁰ This distinction was

27. Simon de Bisignano, *Summa*, D.34 p.c. 17 v. *ad subdiaconatum*: 'Hic queritur quare bigamus nulla causa faciente possit diaconus fieri uel sacerdos, cum subdiaconus possit fieri necessitate instante. Ratio est . . . uel quia subdiaconatus quodam modo sacer ordo non est. . .'; *Summa Reuerentia sacrorum canonum*, D.34 c.18, v. *nihil autem supra*; 'Vnde apparet subdiaconatum ceteris longe esse inferiorem et ex institutione noua sacris esse ordinibus adnumeratum, ut infra di. lx. c. ult.' (Erfurt, MS Amplon. q. 117, fo. 123vb); *Summa Omnis qui iuste*, D.34 c.14, v. *in niceno concilio*: '... Item queritur quare dispensauit Martinus tantum cum bigamis usque ad subdiaconatum. Forte ideo quia regula apostolica tantum de episcopo et presbitero et diacono data fuit, non de subdiacono, quia tunc temporis ordo ille inter sacros ordines non computabatur. . .'; *Summa De iure canonico tractaturus*, D.34 c.18, v. *nihil autem supra*: '... Set numquid poterit dispensare usque ad diaconum? Resp. forte non, quia apostolus de hiis gradibus cogitauit qui tunc erant: soli presbiteri et diacones tunc erant. . .' (Later on the author expresses the strange thought that St. Paul *could* have chosen to include by visionary foresight the not yet existing subdiaconate, cf. n. 32 *infra*); Huguccio, *Summa* eod.: '... regula enim apostoli non uidetur loqui nisi de episcopo et presbitero et diacono, et ideo dispensatio usque ad subdiaconatum non uidetur contra regulam apostoli. . .'; Ricardus Anglicus, *App. 1 Comp.* i. 13.3, v. *priuari*: '... idest dispensando cum bigamo usque ad subdiaconatum, quod non est contra apostolum; usque ad diaconatum non posset. . .'

28. Rufinus, *Summa*, C.1 q.7 p.c. 5 (after stating that there is no dispensation in those laws 'quorum mandata uel interdicta ex lege moralium uel euangelica et apostolica institutione principaliter pendent . . . quia omnia hec statuta partes sunt iuris naturalis'): '... Dispensabilia uero sunt cetera statuta canonum, que sola sanctorum posteriorumque patrum auctoritate promulgata sunt et firmata, ut: ne monachi publice missam celebrent, ne publice penitentes uel bigami ad clerum promoueantur, et similia' (ed. Singer, Paderborn, 1902, p. 234); *Appar. Animal est substantia*, D.34 c.18, v. *fiat*: '... Nota quod in his que sunt de iure naturali, ut in adulterio, furto, papa non potest dispensare, set in illis tantum que ab inpositione sorciuntur effectum, ut in bigami promotione. . .' The frequent identification of Biblical and natural law in Gratian and the early glossators is well known.

29. Cf. St. Gregory, n. 3 *supra*. On Ambrose see n. 14 *supra*.

30. Rufinus, *Summa*, D.14 c.2: 'Non solum de scriptura noui testamenti hoc intelligendum est, que ex nulla dispensatione potest conuelli, sed etiam de quibusdam institutionibus ecclesiasticis. Institutionum namque ecclesiasticarum . . . alie sunt concilia patrum, uel illa [*leg. iiii?*] scil. maiora . . . uel cetera minora; alie sunt canones apostolorum; alie decreta. . . Illa igitur quattuor maiora concilia et canones apostolorum in nullo casu mutilari possunt, nisi quando rigore magno aliquid statuunt in personas, sicut concilium Nicenum statuit nullum bigamum fieri clericum iuxta

repeated by many : the pope's power is limited by the four councils in all that pertains to the articles of faith or eternal salvation or—as the Anglo-Norman *Summa Omnis qui iuste* (c. 1186) put it—to the general welfare of the Church (*statuta de statu generali ecclesie*), but not in regard to statutes of a disciplinary nature (*statuta in animaduersionem personarum*)³¹. This disposed of the Nicene argument.³² Again, occasionally we find the canon *Lector*

illud "Cognoscamus" dist. xxxiv (c. 14) : hodie autem bigamus etiam in subdiaconatum ordinari potest, unde illud "Lector" in eadem dist. . . ' (ed. Singer, p. 34).

31. Stephanus Torn. *Summa*, D.14 c.2 : '... Quod continetur in iv. euangeliiis et apostolorum uerbis quatuorque generalibus conciliis, uel que ad articulos fidei spectant uel sine quibus homo non potest saluari, non possunt mutari, cetera ex cognitione cause [*om. ed.*] possunt. Quedam tamen in conciliis illis generalibus tradita sunt que postea immutantur, ut est illud Niceni concilii, scil. ne bigamus fiat clericus et si qua [*quae ed.*] sunt similia, cum tamen hodie etiam usque ad subdiaconatum possit bigamus promoueri. Illa ergo que quandoque immutantur ea sunt que in personas aliquid seuerius exercent. . . ' (ed. Schulte, pp. 23-4, emended). Repeated *verbatim* by Johannes Faventinus, *Summa*, eod. (Salamanca, MS 2075, fo. 15rb-15va). *Summa Omnis qui iuste*, eod.: 'Notandum quod ea que in lege et euangelio, in apostolis et iiii. conciliis generalibus continentur, indispensabilia sunt, dum tamen sint statuta de statu generali ecclesie uel de articulis fidei, ut xxv. Q.i. Sunt qui (c.6). Set tantum ea que rigorem continent et statuta sunt in animaduersionem personarum mutari possunt . . ., item illud Niceni concilii ne bigamus promouetur, mutatur in xxxiiii. di. Lector. . .'; *Summa De iure can. tract.* eod. v. *quedam* : 'uetus et nouum testamentum et iiii. concilia.' *conuelli* : 'in articulo fidei nec in statu ecclesie uniuersalis. Secus in aliis, puta que in personas aliquid seuerius exercent, ut plenius habes di. xxxiiii. Lector.' The important concept of 'general welfare' (*status generalis*) of the Church still needs a full investigation, but see Brys, *De dispensatione*, pp. 133, 195-8, and the excellent observations of B. Tierney, *Foundations of the Conciliar Theory* (Cambridge, 1955), pp. 50-3, 'Pope and Council,' *Mediaeval Studies*, xix (1957), 201-2, texts pp. 210-12; for the parallel problem of *status regni* in constitutional theory, G. Post, 'The Theory of Public Law and the State in the Thirteenth Century,' *Seminar*, vi (1948), 42-59.

32. *Summa Omnis qui iuste*, D.34 c.14, v. in *Niceno concilio* : 'Si ita statuit concilium Nicenum, quomodo potuit Martinus dispensare contra ut bigamus promouetur in subdiaconatum, cum contra Nicenum concilium non ualeat dispensari...? Quod tamen de hiis intellige que ad articulos fidei pertinent: hec autem in animaduersionem personarum sunt introducta.' It is noteworthy that the closely related *Summa De iure canonico tractaturus* takes the 'Nicene' rule to be a matter of *status universalis ecclesiae* and yet dispensable, D.34 c.18 : '... Set cum Nicenum concilium, ut supra, Cognoscamus (c.14), statuerit etiam non debere esse clericum bigamum et super uniuersali statu hoc statuerit, num Martino liceat contra dispensare? Resp. sic, quia quod Nicenum concilium adiecit statuto apostolico, quod ius commune fuit, rigor erat. Nam de iure communi futurum apostolos forte non omisisset, quia in spiritu uidit, ut creditur, futuros subdiaconos. Rigori ergo personarum licite detrahitur per papam.'—For the few authors of the early thirteenth century who still mention the Nicene Council in connection with bigamy, the dispensation is no longer a problem. Alanus, *Apparatus*, D.34 c.18, v. *necessitas* : '... hec autem dispensatio non est contra apostolum set contra Nicenam sinodum ...'; *Glossae Valentianenses* 1 *Comp.* i.13.3, v. *priuari* : '... dico quod reuera solus papa potest dispensare quod bigamus sit subdiaconus, nec est contra apostolum set contra Nicenum consilium [*sic*]. . .'

described as contrary to the *Canones apostolorum*.³³ But the glossators knew that these were not texts of absolute, and certainly not of scriptural authority.³⁴

However, the more conservative side of the argument drew support from recent papal decretals. In a response given to the bishop of Spalato, Alexander III stated (c. 1168-1170) that bigamous persons who were promoted *ad sacros ordines* must be deposed, because 'in bigamis contra apostolum dispensare non licet'.³⁵ This shift in terminology was significant. Ever since the Gregorian Reform had revived and reinforced the ancient law of celibacy, the term *sacer ordo* had come to include, at least in this respect, the subdiaconate with diaconate and priesthood. It had been so used by the reform popes Alexander II and Urban II, and by the twelfth-century canonists;³⁶ and although for many centuries the theological nature of subdeacons' orders was to remain a matter of controversy,³⁷ any doubt about their being 'sacred' at canon law was officially settled by a decretal of Innocent III in 1207.³⁸ In the meantime, Alexander's letter to Spalato became widely known through the *Compilatio prima*, where the relevant portion—wrongly attributed to his successor,

33. Ricardus Anglicus, *Summa questionum*, q. 5, *De decretalibus epistulis*: '... In canonibus apostolorum precipitur ut si quis uiduam uxorem duxerit, non promoveatur, di. xxxiii. Si quis uiduam (c. 15; cf. n. 13 *supra*). Tamen contra id capitulum loquitur Martinus papa ead. di. Lector, contrarium ibi statuens. ...' (Zwetl, MS 162, fo. 147va).

34. Cf. Rufinus, *loc. cit. supra*, n. 30, and quite generally, Gratian, D. 16, cc. 1-4.

35. Alexander III, *Super eo* (P.L. cc. 627), JL 11690; for the identity with this letter of the fragmentary tradition in the decretal collections (separately recorded in JL 14100) see W. Holtzmann, 'Die Register Alexanders III. in den Händen der Kanonisten,' *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, xxx (1940), 58.

36. Alexander II, JL 4575 (a. 1065); Urban II, Synod of Melfi, c. 3 (1089). Both appear under Urban's name in Gratian, D. 32 cc. 11-12 (cf. also c. 10 = Melfi c. 12). Rufinus, *Summa*, D. 32 c. 11 (Singer, p. 75), etc.

37. Cf. S. Many, *De sacra ordinatione* (Paris, 1905), pp. 40-43; A. Michel, s.v. 'Ordre,' *Dictionnaire de théologie catholique*, xi. 2 (1932), 1381. It is now settled doctrine that the subdiaconate is not a sacrament.

38. Innocent III, *A multis*, Po. 3233: 3 Comp. i. 9. 6, X i. 14. 9, quoting 'Urban II' from D. 32 cc. 11, 12 and Gregory the Great, *ep. i. 42* (JE 1112), from D. 31 c. 1. A puzzling textual problem remains: the crucial word of Gregory's phrase, '... ut nullum facere subdiaconum praesumant, nisi qui se uicturum caste promiserit' (*M.G.H. Epp.* i. 67, line 25) appears in D. 31 c. 1, according to Friedberg's best MSS (cf. note 10 *ad loc.*), as 'diaconum'; Innocent III, however, must have read 'subdiaconum' as in the original and as it was also read, e.g., by Rufinus (D. 31 pr., ed. Singer, p. 71) and Huguccio *ad loc.* but not by all glossators (the *Casus* on D. 31 c. 1 in the printed editions of the *Glossa ordinaria* obviously contemplates both alternatives).—A second decretal on the same subject, *Miramur non modicum*, ascribed to Innocent III (Collection of Alanus, i. 14. un.; X i. 18. 7), is apocryphal, cf. the latest discussion in C.R. Cheney, 'Three Decretal Collections. ...,' *Traditio*, xv (1959), 480-3.

Lucius III—appears as cap. *Super eo* in the title *De bigamis non ordinandis*.³⁹ The canonists could not fail to notice the contrast between 'Pope' Martin's having allowed dispensation up to the subdiaconate and a modern pope's having forbidden any dispensation *ad sacros ordines* as contrary to the Apostle.⁴⁰ 'Sic ergo papa dispensat contra apostolum'—with these succinct words Johannes Teutonicus begins his comments on c. *Lector* in the *Glossa ordinaria*;⁴¹ and Innocent III himself instructed the bishop of Limoges in the case of a subdeacon, saying that dispensation would be 'contra doctrinam apostoli'.⁴²

All this explains why in the exegesis of c. *Lector* some glossators used an historical argument: the term *sacri ordines*, they pointed out, had not meant at all times what it means today, and Pope Martin's dispensation must be understood according to the tenets of the early Church, when the subdiaconate was not yet reckoned among the sacred orders.⁴³ (Consequently, Hostiensis held, the pope would not easily grant such a dispensation today.)⁴⁴

39. 1 Comp. i.13.3=X i.21.2. Bernard of Pavia's source, *Coll. Bambergensis*, xi. 13b (Deeters's numbering; *Coll. Cass.* xxi.20), still gave the correct name and address. Other portions of JL 11690 (14100) appear in 1 Comp. iv.14.1 and v.2.18 (X v.3.22).

40. All glossators on *Super eo* cite c. *Lector* as *contrarium*.

41. Cf. also *Glossa ord.* C.25 q.1 c.6 *Sunt quidam*, v. *apostoli*: 'Hic uidetur quod papa non possit . . . , qualiter ergo Martinus dispensat contra apostolum, ut xxxiii. di. *Lector*? . . .'; also Laurentius as cited in the stratum of additions to the *Apparatus* of Alanus (Paris, MS 15393), vv. 'non est contra apostolum set contra Nicenam sinodum' (n. 32 *supra*): 'immo est contra apostolum ut dicit lau.'

42. X i.21.7 *A nobis fuit* (not in Potthast; Friedberg *ad loc.* note 1 wrongly doubts the authenticity). Address and full text only in Alanus, *Coll.* i.16.1 (printed from the Weingarten text (appendix, c.43) by Heckel, *Zeitschrift der Savigny-Stiftung*, Kan. Abt. xxix (1940), 316-7).

43. So, already before Comp. 1, the *Summae Omnis qui iuste* and *De iure canonico tractaturus* (n. 27 *supra*, cf. also Simon and Reuerentia *sacr. can.*, eod.). After Comp. 1: *Apparatus Materia auctoris*, i.13.3, v. *priuari*: '... uel tempore apostolorum subdiaconatus inter sacros ordines non computabatur'; Damasus, *Summa*, tit. *de bigamis*: '... dispensatiue tamen usque ad subdiaconatum potest promoueri, xxxiii. di. *Lector*, et non est contra decretalis in isto titulo, *Super eo*, quia antiquitus subdiaconalis ordo non erat sacer ordo. lxi. di. Nullus' (D.60 c.4; MS Vat. Pal. 656, fo. 160 rb); *Appar. Ecce uicit leo*, D.34 c.18 v. *bigamus fuerit*: '... quod non est contra preceptum si fiat subdiaconus, quia in tempore apostoli non erat subdiaconatus sacer ordo. . . .'; Bernardus Parmensis, *Glossa ord.* X i.21.2, v. *dispensare*: '... R. dixit quod Marcellus [*sic ed. Rom.*] papa retulit se ad statum primitiue ecclesie, in quo subdiaconatus non erat sacer ordo. . . .' (concerning the doubtful interpretation of the siglum R. see notes on the text, Appendix, *infra*); Goffredus de Trano, *Summa*, tit. *de rescriptis*, i.3 n. 8; tit. *de bigamis*, i.21 n. 11; Johannes de Deo, *Libellus dispensationum* (2nd ed.): '... nec obstat xxxiii. di. *Lector*, quia in antiqua ecclesia (*al.* tempore Martini) non fuit subdiaconatus sacer ordo, set a tempore Gregorii, xxxi. di. ci. et ii.'

44. Hostiensis, *Summa*, tit. *de bigamis*, § *Et an cum bigamo ualeat dispensari*: '... Puto quod c. *Lector* intelligatur secundum statum primitiue ecclesie . . . non erat sacer ordo (citing X i. 18.7). Unde papa hodie de facili cum subdiacono non dispensaret. . . .'

Had the glossators known the true origin of the canon, their 'historical' reasoning would not have been far from the mark.⁴⁵

2. Behind the question of theoretical classification there were, however, issues of greater practical interest. It seems that the glossator Simon of Bisignano was the first to formulate (c. 1177-1179) the problem whether on the strength of Pope Martin's dispensatory canon every bishop can, by his own authority, promote bigamous clerks to the subdiaconate. His answer was an unqualified *No*.⁴⁶ But ten years later, c. 1188-1190, Huguccio reported that certain authors held the opposite. Their argument was based on Martin's words, '... subdiaconus fiat, nihil autem supra': a pope cannot impose a binding law on his successors, only on his subjects, but for the subjects the limitation (*nihil supra*) would be meaningless if they could not dispense at all; therefore, etc.⁴⁷ Huguccio rejected this syllogism by a different interpretation of *nihil supra*: with these words Martin did not mean indeed to make a law for later popes—but then, he did not mean to make a law at all; he merely intended to show what is fitting and what he considered permissible for himself, so that other popes might follow the same good counsel: thus the terms of the opposite argument do not apply.⁴⁸

Huguccio's refutation of episcopal authority in this matter was accepted by many⁴⁹ but not by all. The view that Pope Martin had intended his

45. The First Council of Toledo (400) antedated Leo I, JK 411 (c. 446; D.32 c.1), and Martin of Braga's *Capitula* antedated at least Gregory I, JE 1112 (a. 591; D.31 c.1) and JE 1306 (ep. iv. 34; C.27 q.2 c.20). But on the glossators' own premises the 'historical' argument could not hold water, especially if Gregory the Great was expressly referred to, as by Johannes de Deo (cf. n. 43): Pope Martin I (649-55) reigned after Leo and Gregory.

46. Simon, *Summa*, D.34 p.c.17, v. *ad subdiaconatum*: '... Set queritur an ratione huius dispensationis quilibet episcopus possit sua auctoritate bigamos ad subdiaconatum promouere et an bigamus hoc uelut de iure sibi debitum petere possit. Nos neutrum concedimus.' *Summa Omnis qui iuste*, D.34 c.14, v. *in Niceno conc.*: '... Episcopus tamen ad instar Martini non posset dispensare ut bigamus promoueatur in subdiaconum'; *Summa De iure can. tract.* D.34 c.18, v. *nichil autem supra*: '... Set numquid episcopus <cum> bigamo potest dispensare ut faciat subdiaconum? Resp. Non credo. ...'

47. Huguccio, *Summa*, D.34 c.18, v. *nichil autem supra*: '... Set numquid episcopi possunt dispensare in bigamo uel uidue marito? Credo quod non, arg. di.1. Non confidat (c.59). Quare ergo Martinus dicit 'nichil supra'? Cum pape non possit legem imponere, subditis frustra talis lex imponeretur nisi et ipsi possent in tali casu dispensare. Ideo dicunt quidam quod episcopi in hoc casu possunt dispensare. ...'

48. Huguccio (continued): 'Set potest dici quod Martinus non imponit legem apostolicis, set ostendit quid deceat et quid ipse sibi licere uult et consulit ut et alii idem obseruent, set non cogit. ...'

49. Alanus, *Apparatus*, D.34 c.18, v. *necessitas*: '... set in hoc casu soli pape licet dispensare, arg. di. xxxii. De illo (c.4), di. 1. Non confidat (c.59). ...'; *Appar. Ecce uicit leo*, eod. v. *si bigamus fuerit*: 'Ecce cum bigamo hic papa dispensat. Set numquid posset hoc simplex episcopus? Quamuis quidam concesserint, dicimus

canon as a guide for bishops found defenders in Richard de Mores (Ricardus Anglicus) and Bernard of Compostella.⁵⁰ The leading decretalist of the early thirteenth century, Tancred, sought to strengthen it by the observation that bishops are expressly allowed to dispense from other precepts of the Pauline rule, to wit, in irregularities arising from minor crimes. Such dispensations, he said, are only *praeter*, not *contra apostolum*;⁵¹ or, as others put it more bluntly, the Apostle has only forbidden to ordain, not to dispense from his prohibition.⁵² But against all these arguments the dominant, stricter view

quod non, ut l. di. Non confidat. . .'; *Glossa Valentian.* 1 Comp. i.13.3, v. *priuari*: '... dico quod reuera solus papa potest dispensare . . ., episcopus simplex non potest dispensare ut fiat subdiaconus. . .'. For *Apparatus Materia auctoris* see n. 50; for Raymond of Peñafort and later authors, nn. 52ff.

50. Ricardus Anglicus, *Appar.* 1 Comp. i. 13.3, v. *priuari*: 'infra xxxiiii. di. Lector contra. Solutio: ibi ostendit Martinus quid liceat pape aut quid aliis episcopis, idest dispensando cum bigamo ad subdiaconatum, quod non est contra apostolum; usque ad diaconatum non posset ut michi per hoc capitulum uidetur, scil. ut statuatur: sic dispensandum est. . .'; incorporated in Tancred's *Glossa ord.* 1 Comp. eod. v. *dispensari* ('supra xxxiiii.—sicut michi uidetur'), with siglum 'R.', and from there in the *Apparatus* of Vincentius, X i. 21.2 v. *dispensare* ('contra d. xxxiiii.—uidetur'), with siglum 't.' Uneasiness about Richard's opinion can be seen in the fact that the scribe of his *Apparatus* in the Avranches MS 149 wrote '... quid liceat pape, non quid aliis episcopis. . .', and that the *Apparatus Materia auctoris*, which reproduces Richard up to the words '... dispensando cum bigamo,' continues (1 Comp. i.13.3, v. *priuari*): 'quod contra apostolum non posset, ut uidetur ex hoc capitulo. Pape ergo licet, alii non licet; uel tempore . . . (see n. 43 *supra*). Bernardus Compostellanus in *Glossa Palatina*, D.34 c.18, v. *autem supra*: 'Hic non ponit regulam successoribus iste Martinus, quia nec posset . . ., set episcopis datur hic forma dispensandi cum bigamis. b.'

51. Tancred *loc. cit.*, after repeating Richard's gloss, continues: 'Video enim quod apostolus prohibuit criminosum ordinari, ut xxv. di. § Nunc autem (p.c.3), et quod episcopis liceat dispensare cum criminosis, scil. cum adulteris et minoribus criminibus implicatis, infra de iudiciis, At si clerici (1 Comp. ii.1.6; X ii.1.4), et non est contra apostolum set preter apostolum. Quidam tamen dicunt quod episcopis nullo modo dispensare licet cum bigamo. . .'. Vincentius, *Appar.* X i. 21.2, incorporates (after Richard's gloss, n. 50 *supra*) the first part of this gloss, 'Video—preter apostolum' without siglum, and adds: 'et dico quod Martinus non potuit legem imponere successoribus: expressit enim quid liceat [*leg. deceat?*].'

52. Raymond of Peñafort, *Summa iuris canonici*, ii.5 *de bigamis*: '... Set quis poterit dispensare? Dicunt quidam quod episcopus, et hoc per illud uerbum 'nichil autem supra' positum in predicto cap. Lector. Non enim illud posset intelligi de papa, quia Martinus non poterat imponere legem successoribus. . . Si obicias quod non licet contra apostolum episcopis dispensare, respondent quod non obstat, nam et apostolus dixit 'oportet ordinandos esse sine crimine,' et tamen episcopi dispensant in adulterio et in minoribus criminibus, ex.i. de iudic. At si [this refers to Tancred]. Item apostolus non prohibet dispensationem set de iure communi ostendit tales non esse promouendos. Alii dicunt, et forte uerius. . .'. (see n. 54); repeated almost *verbatim* in his *Summa de casibus*, iii.3 *de big.* §4. The argument, 'nec est contra apostolum, quia etsi prohibuit bigamum ordinari, non tamen cum eo prohibuit dispensari,' was later used by Goffredus de Trano for papal dispensation, *Summa*, tit. *de big.* i.21, n. 11.

could always invoke the new decretals of the contemporary popes:⁵³ however one might construe the canon *Lector* for the past, 'today' positive law clearly denied bishops the power of dispensing *in sacris*.⁵⁴ There were further intrinsic reasons, as Bernard of Parma pointed out in the *Glossa ordinaria* on Gregory IX's Decretals, why Tancred's argument from the analogy of delicts could not apply to the *defectus sacramenti*.⁵⁵

53. In addition to the old canon D.50 c.59 *Non confidat* (Gelasius I, JK 636, c.4; see Huguccio, Alanus, etc. nn. 47, 49 *supra*), the decretals cited are chiefly: *Super eo* (cf. n. 39); Celestine III, *De bigamis autem*, JL 17162, 2 Comp. i.11.2 (X i.21.3) concerning the uncertain address see W. Holtzmann, 'Kanonistische Ergänzungen zur Italia Pontificia,' *Quellen und Forschungen aus ital. Archiven* . . . xxxviii (1958), No. 125; Innocent III, *Nuper* (n. 10 *supra*; the text in X i.21.4 should read: '... quod cum huiuscemodi clericis . . . tamquam cum bigamis non liceat dispensari'; Friedberg's '... quod, quum huiuscemodi . . .' (*Corp. iur. can.* ii.147) makes no sense, for *cum* is preposition, not conjunction—let alone the deplorable, 'classical' spelling 'quum' in a medieval text, against the MSS), and *A nobis fuit* (n. 42 *supra*).

54. *Appar. Ecce uicit leo*, D.34 c.18 (continued from n. 49): '... immo si dispensat debet deponi et ordinatus, ut ex. de bigamis non ord. *Super eo*'; Albertus, *Appar. 2 Comp. i.11.2, v. admitti*: 'nec etiam ex dispensatione episcopi, secus pape, ut supra xxxiii. di. *Lector*' (F. Gillmann, 'Magister Albertus Glossator der Comp. II,' *Archiv für kath. Kirchenrecht*, cv (1925), 142, quoting from Leipzig MS 983, fo. 64va); incorporated in Tancred, *Glossa ord. 2 Comp. eod.*: 'nec etiam per dispensationem episcopi, ut ex. iii. eod. tit. *Nuper*, secus per dispensationem domini pape, ut di. xxxiii. *Lector. a.*' (cf. Gillmann, *loc. cit.*), and from there in Vincentius, *Apparatus* X i.21.3, with his own siglum 'Vinc.' (This gloss is rather incongruous: Celestine's decretal deals with bigamous priests, but Albert, citing D.34 c.18, obviously has subdeacons in mind.) Laurentius, objecting to Bernard of Compostella's opinion, *Glossa Palatina loc. cit.* (n. 50 *supra*): 'contra l. di. Non confidat: quod tamen hodie nouo iure eis interdictum est, ut ex. de big. c. ult. (1 Comp. i.13.3)'; also in the additions to Alanus of the Paris MS (cf. n. 41 *supra*), eod.: '... set nunquid alii, scil. episcopus, potest [*sic*] dispensare usque ad subdiaconatum ut hic dicitur? Non, quia prohibitum est, de big. c. ult. *la.*'; St. Raymond (continued from n. 52): 'Alii dicunt, et forte uerius, quod hodie non licet episcopis cum bigamo dispensare, quia ius expressum est quod eis prohibet dispensationem, ex. iii. de biga. *Nuper*. Ad idem facit ex. i. de biga. c. ult. et di. l. Si quis uiduam. . .'; Ambrosius, *Summa* tit. *de bigamis*: '... Set numquid hic episcopus dispensabit? Nequaquam: non illa ratione quia apostolus prohibuit bigamum ordinari, licet id pro ratione assignetur infra eod. tit. *Super eo*, libro eodem. . . Quod tamen aperte falsum est, dispensat enim in omnibus minoribus criminibus . . .; set alia ratione, quia id expresse episcopis prohibitum est, ut ex. iii. eod. tit. *Nuper a nobis*'; Johannes de Petesella, *Summa* tit. *de bigamis* (X i.21.1): '... dicunt tamen quidam, et male, quod episcopi possunt usque ad subdiaconatum dispensare cum bigamo per cap. xxxiii. di. *Lector*, quia dispensationem talium sibi Romanus pontifex reseruauit, ut infra eod. *Super eo*'; Bernardus Parmensis, *Glossa ordinaria*, X i.21.2 v. *dispensare*: '... Quidam dicebant quod episcopi olim poterant dispensare cum bigamis . . ., quorum opinio reprobatur infra eod. *Nuper et c. A nobis* . . .'

55. Bernardus Parm. *loc. cit.* (after reporting Tancred's opinion as 'quidam dicebant'): '... licet dispensetur cum criminosis, non tamen sequitur quod cum bigamo, et illa est ratio quia criminosis post peractam penitentiam restitutus uidetur in pristinum statum et incipit esse quod non fuit . . . sed bigamus non prohibetur

On the other hand, since the new decretals envisaged the sacred (major) orders alone, Johannes Teutonicus proposed a compromise solution which left to the bishops the authority of dispensing in all minor orders.⁵⁶ This view found for a time wide acceptance: it was adopted by St. Raymond of Peñafort, Hostiensis, and St. Thomas Aquinas.⁵⁷ Many theologians defended the bishop's rights in minor orders long after that position had been abandoned by most canonists.⁵⁸ The issue was to occupy the Roman Congregation of the Council as late as the seventeenth century.⁵⁹ But all these later developments lie beyond the scope of this paper.

3. For the subdiaconate, in any event, only the papal prerogative of dispensation remained. In an age when the order of subdeacon was not yet a mere stage of transition and subdeacons frequently manned important curial offices at Rome as well as in the dioceses at large,⁶⁰ this was by no means a purely academic proposition. But the true test case came with the question whether the pope can go further and dispense a man from bigamy to become deacon, or priest, or bishop. To the glossators, this was an exciting question indeed: for it meant setting directly aside the Apostolic Rule,⁶¹ and here the written law gave no answer nor precedent. Normally, such a dispensation would appear contrary to the christological symbolism of the

promoueri propter crimen sed propter sacramenti defectum, quia carnem suam diuisit in plures ab unitate recedendo. Sed illud sacramentum amplius restitui non potest per aliquam satisfactionem cum non sit crimen. . . .'

56. Johannes Teutonicus, *Apparatus* 3 Comp. i.14.1 *Nuper*, v. *dispensari*: 'nisi in minoribus ordinibus, ut l. di. Quicumque penitens (c.56) et c. Placuit (c.68), xxxiii. di. Lector' (MS Vat. Chis. E. vii. 207).

57. St. Raymond *loc. cit.* (continued from n. 54): 'Secundum hoc non tenet illud c. Lector, nisi forte quoad minores ordines ut in illis possit episcopus dispensare . . .' (instead of 'ut . . . dispensare,' the *Summa de casibus*, iii. 3 §4 reads: 'in quibus credo quod potest episcopus propter necessitatem dispensare'); Hostiensis, *Summa*, tit. *de bigamis* § fin.: '... Episcopi uero dispensare possunt cum bigamis usque ad minores ordines, l. dist. Quicumque ii. (c.56), quia tales non sunt ministri nec rectores nec habent officium predicandi, unde de diuisione carnis non est timendum in talibus, secus de sacris. . . .'. St. Thomas Aquinas, *In IV Sententiarum* . . ., iv. d.27 q.3 art. 3 (*Opera*, ed. Parma, 1852-73, vii pt. 2, p. 956), etc.

58. For a detailed survey of *canonistae* and *theologi* on this issue, see Fagnanus, *Commentaria* (n. 22 *supra*) i.21.2, no. 19ff.; Ferraris, *loc. cit.* art. iii, no. 4ff.

59. S.C. Conc. 30 Jan. 1589 (confirmed by Sixtus V *in consistorio*), 13 Apr. 1630, etc.: cf. Garcias, *loc. cit.* n. 22 *supra*, no. 3; Barbosa, *loc. cit.* no. 25, Fagnanus, no. 46; Reiffenstuel, no. 32; Boenninghausen, pp. 212-3; also the Ballerini, *op. cit.* n. 19 *supra*, P.L. lvi. 262.

60. Geoffrey of Trani, e.g., was subdeacon and *auditor litterarum contradictarum* before being raised to the cardinalate.

61. Huguccio, *Summa*, D.34 c.18, v. *nichil autem supra*: '... dispensatio usque ad subdiaconatum non uidetur contra regulam apostoli, set si fiat ad diaconatum uel presbiteratum aperte uidetur contra regulam apostoli. . . .'

major orders,⁶² and it is perhaps characteristic of the deep respect for this symbolism that the first glossator to ask the question, Simon of Bisignano, shied away from answering it: 'Let him inquire who is harassed by the worries of the world.'⁶³

But only a few years later, the Anglo-Norman author of the *Summa Omnis qui iuste* asserted without hesitation that the pope could dispense beyond the subdiaconate, 'although we do not read that he ever did so' (*licet factum non legatur*),⁶⁴ whereas another writer of the same school had his misgivings because the apostolic rule concerned the general *status* of the Church; he admitted, however, that he had heard of such a dispensation.⁶⁵ Huguccio, taking up the problem, began by saying cautiously that the pope could dispense *de facto* and that in his day it had been done . . . : 'but perhaps this was more of a fact than a matter of law,' considering the *regula apostoli*. Therefore the pope should not go beyond what Martin I had allowed.⁶⁶ But then, taking courage as if by an afterthought, Huguccio added that the pope is not bound by Martin's prohibition; that he does and can dispense; and

lest we should appear to belittle the power of the pope, let us say that he can do so *de iure*. Also against the Apostle? Yes: because by reason of jurisdiction (*praelatio*) every *apostolicus* is greater than the *apostolus*

62. Simon de Bisignano, *Summa*, D.34 p.c.17 (continued from n. 27 *supra*): '... Ratio est quod cum cuiuslibet ordinis gestaret officium Christus, sacerdotis tamen sic gessit officium quod se ipsum optulit; diaconi officium ita habuit quod idem fuit corpus tradens discipulis et oblatum...'; Alanus, *Appar.* D.34 c.18, v. *nichil*: 'Ecce dispensationi certus imponitur terminus ut hic . . . : hec dispensatio usque ad ordinem episcopi uel presbiteri excedere non debet, repugnante apostoli prohibitione et sacramenti significatione. Episcopus enim significat de omnibus gentibus unitatem uni uiro, idest Christo, subiectam, di. xxvi. Acutius (c.2). Set hec significatio non est in bigamo. . . .'

63. Simon *loc. cit.*: '... An uero summus pontifex posset bigamum ad sacerdotium promouere, uel utrum esset sacerdos si eum ordinaret de facto, hoc inquirat quem mundi labor exagitat.'

64. *Summa Omnis qui iuste*, D.34 c.14, v. *in niceno concilio* (continued from n. 27): '... Posset tamen apostolicus cum talibus dispensare ulterius, licet factum non legatur. . . .'

65. *Summa De iure can. tract.* D.34 c.18 (continued from n. 27): '... unde contra prohibitionem apostoli super uniuersali statu ecclesie non posset papa dispensare [*i.e.* usque ad diaconatum]: audiui tamen dispensatum . . . ' (For the preoccupation of this *Summa* with the *universalis status ecclesiae* see nn. 31, 32 *supra*).

66. Huguccio *loc. cit.*: '... Set nonne papa potest dispensare cum bigamo usque ad diaconatum? Potest quidem de facto, nostris etiam temporibus Lucius tertius dispensauit . . . (see *infra*, III), set forte plus fuit ibi facti quam iuris. Regula enim apostoli non uidetur loqui nisi de episcopo et presbitero et diacono, et ideo dispensatio usque . . . (see n. 61) . . . uidetur contra regulam apostoli, et hec est causa quare Martinus noluit dispensare nec papa debet ultra dispensare. . . .'

(the pun on the papal title defies translation), and he can dispense in all the Apostle has said, save in matters of faith or salvation.⁶⁷

Here, nearly everything was said that need to be said. Later writers had only to elaborate on Huguccio's argument, the principle of which they found easily corroborated in certain pronouncements of his great disciple, Innocent III. 'Non habet imperium par in parem,' the pope wrote in the decretal *Innotuit*⁶⁸ (which Professor Cheney has called a 'classic discussion' of the problems of dispensation and common law);⁶⁹ and again, to the Chapter of Cambrai: 'secundum plenitudinem potestatis possumus de iure supra ius dispensare.'⁷⁰ Only few authors avoided taking a clear stand on the issue;⁷¹ nearly all repeated that the limitation in Pope Martin's canon was not binding upon his successors, only a piece of grave counsel;⁷² that the pope could set

67. Huguccio (continued): '... licet Martini prohibitionem non ligetur. Dispensat tamen et potest dispensare ultra, saltem de facto, et ne uideamur diminuerere potentiam pape, dicamus quod de iure potest. Set numquid contra apostolum? Dico quod sic, quia ratione prelationis quilibet apostolicus est maior quam fuerit apostolus: unde et in omnibus que dixit apostolus potest papa dispensare, nisi in his que pertinent ad fidem uel ad salutem.' This opinion is quoted in excerpt by Bernardus Parmensis, *Glossa ord.* X i. 21.2, v. *dispensare* ('... et licet ipse H. dubitet, uidetur tamen consentire, ne uideatur diminui potentia pape, quod possit dispensare cum bigamo') and Guido de Baysio, *Rosarium*, D.34 c.18 ('... secundum H. ... Vnde dicebat Hug. ne uideamur, ...' etc.).

68. Po. 953 (a. 1200), 3 Comp. i.6.5, X i.6.20.

69. C.R. Cheney, *From Becket to Langton* (Manchester, 1956), p. 44 n. 1.

70. Po. 126 (a. 1198), 3 Comp. iii. 8.1, X iii. 8.4.

71. Ricardus Anglicus, *Appar.* 1 Comp. i.13.3 (continued from n. 50 *supra*): '... sic dispensandum est [*i.e.* usque ad subdiaconatum], alias autem petentibus nichil est diffinitive positum, ut in aut. de referendariis' (*Auth.* ii.5 = *Nov.* x). This part of his gloss was not taken over by Tancred. It appears to be formulated with studied ambiguity; at first sight, Richard seems to say: 'For those who petition otherwise, nothing is stated definitively,' but one could also read: 'For those ... , it is definitively stated: *nichil* [autem *supra*].' In *Nov.* x, Justinian rebukes petitioners who press for an excessive increase in the number of *referendarii palatii*: they will no longer be heard. This would favour the second interpretation, but the words to which Richard alludes, 'nihil enim petentibus factum est finitum [*al.* finitium]' (*Auth.* ii.5.1, *lin.* 22-3 ed. Schoell), are malapropos: in their context, they express the emperor's complaint that 'petitioners never take anything as final.'—We are also left without a definite answer, although a preference for the affirmative seems to be implied, in the question asked by the *Appar.* *Animal est substantia*, D.34 c.18, v. *supra*: 'Set quomodo potuit successoribus suis legem imponere? Nonne in tantum posset extendi dispensatio ut bigamus presbiter fieret?' (The Liège MS adds: 'Quidam enim dispensauit cum bigamo ut archiepiscopus fieret,' see *infra*, III).

72. Alanus (see n. 74 *infra*); *Appar.* *Ecce uicit leo*, D.34 c.18, v. *nichil autem supra*: '... Set numquid astringit hic papa Martinus successores? Dicimus quod non, quia non posset, set quid facere debeant ostendit ...'; Bernardus Compostellanus, in *Glossa Palatina* eod.: 'Hic non ponit regulam successoribus iste Martinus, quia nec posset, ut ex.iii. de elect. Innotuit (3 Comp. i.6.5) ...'; Laurentius, in the additions to Alanus of the Paris MS (vv. 'certus imponitur terminus ...', n. 62 *supra*): 'Non tamen pape imponit necessitati [*sic*] quin possit dispensare si uelit,

aside in this matter the rule of St. Paul; and so forth.⁷³ Alanus was the first to invoke expressly the *plenitudo potestatis* in support of the pope's unfettered dispensatory power,⁷⁴ and the Spanish decretalist Johannes de Petesella stated that a denial of such power amounts to denying that St. Peter has received the Keys.⁷⁵ As Peter's successor, the pope has more jurisdiction than Paul; and even if Peter had issued the Apostolic Rule (we read in Hostiensis),

quia non habet imperium par in parem, ex.iii. de elect. Innotuit . . .; St. Raymond, *Summa iur. can.* ii.5 (after citing c. *Lector*): 'Non enim illud posset intelligi de papa, quia Martinus non poterat imponere legem suis successoribus, cum non habeat imperium par in parem, ex.iii. de elect. Innotuit . . .; Vincentius, *Appar.* X i.21.2 (see n. 51 *supra*); Hostiensis (see n. 76 *infra*).

73. *Appar.* *Ecce uicit leo*, D.34 c.18, v. *si bigamus fuerit*: '... Set numquid posset dispensare papa ut esset bigamus sacerdos? Dicunt quidam quod non. . . . Posset tamen dici quod posset ex ista [*leg. iusta*] causa contra preceptum dispensare quod non pertinet ad articulos fidei'; Tancred, *Glossa ord. 1 Comp.* i. 13.3 v. *priuari*: '... Videtur quibusdam et michi quod dominus papa directe contra apostolum dispensare posset, quoniam maior est in amministrazione quam fuerit Paulus . . .': repeated by Vincentius, *Appar.* X i.21.2. v. *contra apostolum*: 'Et dico quod dominus —Paulus . . .', signed 'Vinc.' Goffredus de Trano, *Summa*, tit. *de big.* no. 11: '... uel dic, proprie non obstat prohibitio Pauli, quia papa maior est in administratione Paulo . . . papa enim est loco Petri, qui maior fuit Paulo. . . . Guido de Baysio, *Rosarium* (c. 1300), D.34 c.18 cites this as being also the opinion of Laurentius: '... Vnde dicebat Lau. quod papa potest cum bigamo dispensare contra apostolum, quia ipse est maior potestate apostolo . . .', but this is not what Laurentius had to say, cf. n. 72 *supra*. Johannes de Deo, *Libellus dispensationum*, tit. *de dispensatione domini pape*: 'Super hoc diuersi doctores diuersa senciunt. Quidam dicunt quod papa possit dispensare in omni casu, etiam contra apostolum, cum teneat locum beati Petri et sit uicarius Iesu Christi . . .', but he rejects this opinion, see note 90 *infra*. Innocent IV, *Comment.* X i.21.2: '... Sed contra uidetur quod nec etiam pape liceat, quia est contra apostolum. . . . Sed dicendum est quod non dispensat papa contra apostolum in his quae pertinent ad articulos fidei et forte in his quae pertinent ad generalem statum ecclesiae, sed in aliis dispensat. . . . Item maior est papa quam Paulus in administratione.' (Ullmann, *Medieval Papalism*, pp. 65-6, without citing the 'Sed dicendum est,' takes the 'Sed contra uidetur' for Innocent's own opinion.)

74. Alanus, *Appar.* D.34 c.18, v. *necessitas*: '... Posset tamen papa in hoc articulo contra apostolum dispensare . . .'; v. *nichil*: '... Posset tamen ex plenitudine potestatis sue usque ad supremum gradum dispensare. Quare ergo dicit Martinus, 'nichil autem supra'? Resp. non ut suis successoribus prescribat, set ut quid seruare debeant ostendat.' Both passages are found only in the second recension (c. 1202); the problem of extending the papal prerogative beyond c. *Lector* is not even raised in the first (c. 1192): this confirms Father Stickler's recent observations on the development of Alanus from a moderate into an outspoken advocate of papal sovereignty in the period between the two recensions of the *Apparatus*; 'Alanus Anglicus als Verteidiger des monarchischen Papsttums,' *Salesianum*, xxi (1959), 346-406 (for the dates as given above, see pp. 371-3).

75. Johannes de Petesella, *Summa*, tit. *de big.* i.21: '... Cum bigamo dico dominum papam dispensare posse plenarie, licet quidam negent,' which he finds absurd, 'quia negant potestatem ecclesie Romane et clauis fuisse traditas Petro et per ipsum suis successoribus . . . et expresse confunduntur l. di. Quicumque penitens' (c.56).

the pope as his equal would not be bound by it.⁷⁶ It is another matter that it would not be fitting for the pope always to make use of the fulness of his power: in this, and only in this sense may we say he 'cannot' dispense.⁷⁷

4. There were, however, dissenters. What we know of their views comes almost entirely from the adverse criticism they met with in the writings of the dominant school; very little has been found of their own presentation of the case. The starting point of this doctrine was not the dispensatory power of popes and bishops but the nature of bigamy in relation to the sacraments. Whether the bigamous is a capable subject at all for receiving the sacramental character, if *de facto* ordained to the priesthood, was one of the delicate questions Simon of Bisignano had declined to investigate.⁷⁸ But the *Summa Omnis qui iuste* and Huguccio expressly stated that the order is truly received.⁷⁹ If they felt it necessary to stress the point, this seems to indicate that doubts had been raised in some quarters, as a problem distinct from, but prejudicial for that of the right to dispense. A few years later, the issue came out into the open. Alanus reports (c. 1192) that, on the strength of the traditional doctrine of *defectus sacramenti* in a bigamous cleric, *quidam* have come

76. Hostiensis, *Summa*, eod. § fin.: '... Solutio: dispensare potest papa, qui loco Petri successit et ideo est maior Paulo in administratione. . . Nam etsi Petrus hoc prohibuisset, tamen par in parem non habuit imperium, supra de elect. Innotuit §i. Alii dicunt contrarium. . . . Set ubi de dispensatione agitur et queritur utrum ualeat quantum ad ecclesiam militantem, quis dubitabit de plenitudine potestatis, secundum quam papa potest de iure supra ius <dispensare> . . .' Cf. also *Lectura*, X i. 21.2, n. 4: 'Potest ergo dispensare cum bigamo, quamvis beatus Paulus prohibeat ipsum ordinari, quia nedum beatus Paulus sed nec beatus Petrus apostolorum princeps in talibus possit ipsum astringere, etsi hoc expressisset . . .' etc.

77. *Summa loc. cit.*: '... Hoc tamen "non potest," idest non congruit potentiae suae. Sic exponitur infra de statu monach. Cum ad monasterium . . .'; *Lectura loc. cit.* no. 5: '... Licet autem hoc posset facere, non tamen decet eum quod semper utatur plenitudine potestatis, et sic potentiae suae non congruit, et hac congruentia seu decentia considerata dicimus quod "non potest." Simile infra de statu mon. Cum ad monasterium, in fine. . . .' This stems from the standard commentaries on the decretal *Cum ad monasterium* (3 Comp. iii. 27.2, X iii. 35.6), where Innocent III had written that the pope cannot (*non potest*) dispense from the essence of vows of poverty; Johannes Teutonicus interpreted: '...quod dicit hic quod non potest, expone: idest, non congruit eius potentie . . . Jo.' (thus in Tancred, *Glossa ord.* 3 Comp. *ad loc.*; cf. Bernardus Parmensis, *Glossa ord.* X *ad loc.*).

78. See note 63 *supra*.

79. *Summa Omnis qui iuste*, D.34 c.14 (continued from n. 64): '... et si bigamus sacerdos fieret, in ueritate ordinem haberet, ut di.l. Quicumque (c.56) . . .'; *Summa De iure can. tract.* D.34 c.18 (continued from n. 65): 'Et num si bigamus ordinetur in presbiterum presbiter erit? Resp. sic.' Huguccio, *Summa*, eod. (continued from n. 48): 'Set illud nota quod bigamus, in quocumque ordine ordinetur, ordinem recipit, etiam episcopalem si in eo ordinetur, arg. di.l. Quicumque penitens.' The argument from this canon, D.50 c.56, lies in that here Pope Siricius (*ep. ad Himerium*, JK 255, c.15) allows the *bigamus* who was *indebite et incompetenter* ordained to remain by special *venia* in his order, though without *spes promotionis*.

to the conclusion that no bigamist can lawfully or unlawfully become bishop, for he is barred by an *impossibilitas iuris*. But, Alanus adds curtly, this is not true.⁸⁰

Early in the thirteenth century, the view he rejected reappeared in the French school. An anonymous gloss on the *Compilatio prima* held that a bigamous person, if he were *de facto* promoted by papal dispensation to the priesthood, 'non reciperet characterem.'⁸¹ And the author of the *Apparatus Ecce uicit leo* on the Decretum, who himself was inclined to recognize papal dispensation *contra apostolum* except in the articles of faith, related that others denied this power because they considered the bigamous clerk to be as incapable as a woman of the reception of priestly orders. Despairing of a solution, our author exclaimed: 'Only God knows whether the order is received or not.'⁸²

In Bologna, the extreme 'sacramentalist' view found an even more biting expression. As much as we can learn from its opponents, this view rejected both episcopal and papal powers of dispensation in major orders, and the phrase was coined of the ordained bigamist who receives as little sacramental character as an ass. According to Tancred, who was the first to mention (and to reject) this piece of irreverence, its proponents also tried to discredit the canon *Lector* by saying that 'Martinus non fuit papa set capra.'⁸³ Laurentius in the *Glossa Palatina* named as author of the 'sicut nec asinus' doctrine

80. Alanus, *Apparatus* (continued from n. 62): '... Vnde dicunt quidam quod bigamus nec iuste nec iniuste potest fieri episcopus impossibilitate iuris impediante, quod uerum non est. Nec Augustinus dicit [in D.26 c.2] simpliciter episcopum hoc significare, set "unius uxoris uirum episcopum..." It is at this point that he added in the second recension the statement on *plenitudo potestatis*, n. 74, *supra*.

81. *Glossae Valentianenses* I *Comp.* i. 13.3, v. *priuari* (cf. n. 49): '... ut fieret sacerdos papa non posset dispensare, et hoc si faceret esset contra apostolum, et si de facto promoueretur non reciperet characterem...' (I owe this text and the information on the French origin of the glosses of Valenciennes MS 274 to the kindness of Msgr. Charles Lefebvre.) Cf. also the marginal addition (early 13th cent.) to Honorius's *Summa questionum* in Douai MS 640, fo. 20ra: 'Item queritur an bigamus suscipiat characterem. Non uidetur quia propter defectum sacramenti non promouetur: non ergo, cum in ipsum [*sic*] deficiat sacramentum, potest recipere sacramentum...'; but the writer rejects this view: 'Set contra, ordinati ab hereticis uel excommunicatis ordinem recipiunt..., item in sacramentis dum modo fiant in forma ecclesie et ab eo qui potest, uerum est quod cumferuntur [*sic*]: ergo et hic karacter.' Honorius himself does not discuss dispensation in the title *de bigamia* (ii. 9).

82. *Apparatus Ecce uicit leo* (continued from n. 73 *supra*): 'Set numquid, si de facto episcopus bigamum in sacerdotem ordinauit [*i.e.* after papal dispensation], est ordinatus? Ita uidetur... Solutio: dicunt quidam, sicut nec femina esset ordinata quia non est apta ad accipiendum sacerdotium, non posset etiam hic papa dispensare. Quicquid dicatur, utrum recipiat ordinem uel non, solus deus scit.'

83. Tancred, *Glossa ord.* I *Comp.* i. 13.3 v. *dispensari*: '... Quidam tamen dicunt quod episcopis nullo modo dispensare licet cum bigamo, et si ordinaretur non reciperet characterem sicut nec asinus, et Martinus non fuit papa set capra. Videtur quibusdam et michi...' (n. 73 *supra*).

the legist Nicolaus Furiosus,⁸⁴ who is elsewhere known as the *reportator* of Johannes Bassianus. When and where he made this gross remark we do not know, but it gave him a lasting if dubious fame.⁸⁵ His surname offered too obvious an occasion for punning to be resisted by later glossators: they delighted in speaking of him as Nicolaus Furiosus 'et sui sequaces, qui similiter sunt furiosi' or who 'scripsit non sine furore.'⁸⁶

At any rate, his 'mad' opinion was commonly rejected. Bernard of Parma in the *Glossa ordinaria* on the Decretals and the Portuguese master Johannes de Deo in the second edition of his *Libellus dispensationum*⁸⁷ seem to have been the only decretalists of the mid-thirteenth century to disagree with the common teaching and to deny on sacramental grounds the pope's

84. *Glossa Palat.* D.34 c.18, v. *nichil autem supra*: '... Fuerunt tamen quidam qui dixerunt cum bigamo dispensari non posse ultra, ut hic docetur, nec reciperet caracterem sicut nec asinus: hoc dixit Nicholaus Furiosus, set confunditur ex illo cap. di.l. Quicumque'; also in the additions to Alanus of the Paris MS (v. 'unde dicunt quidam,' n. 80): 'scilicet Nich. Furiosus.' The text of *Glossa Palat.* is quoted, 'secundum L.,' in Guido de Baysio, *Rosarium*, D.34 c.18.

85. Both M. Sarti, *De claris archigymnasii Bononiensis professoribus*, i (Bologna, 1769), p. 82, and C.F. von Savigny, *Geschichte des römischen Rechts im Mittelalter*, v (2nd ed. Heidelberg, 1850), p. 71 note f, cite this opinion of his from Hostiensis (cf. n. 86). For MSS of Nicholas's *reportatio* see E.M. Meijers, 'Sommes, lectures et commentaires,' *Atti del Congresso internazionale di Diritto romano*, i (Pavia, 1934), at pp. 466-7 (reprinted in his *Etudes d'histoire du droit*, edd. R. Feenstra and H. Fischer, iii (Leyden, 1959), 237-8). Nicholas's own commentary on portions of the Digest (Paris MS lat. 4601, cf. Meijers *ut supra*, p. 471 (242)) may contain the gloss in question.

86. Johannes de Petesella, *Summa*, i.21 (cf. n. 75) '... licet quidam negent, ut Nicholaus Furiosus et sui sequaces, qui similiter sunt furiosi in hac parte, quia negant potestatem ecclesie...'; Goffredus de Trano, *Summa*, tit. *de rescriptis* (i.3), n. 8: '... Sed Nicholaus Furiosus scripsit non sine furore quod... non reciperet caracterem sicut nec asinus. Sed hoc non approbo...'; Hostiensis, *Summa*, tit. *de big.* §fin.: '... Alii dicunt contrarium, unde dicunt: Martinus papa, qui dispensavit in dicto cap. Lector, non fuit Martinus papa sed Martinus capra. Ideo Nicolaus Furiosus scripsit non sine furore quod... sicut nec asinus, et est ratio quia sicut oculum amissum non potest tibi papa reddere, sic nec defectum sacramenti... Sed ubi de dispensatione agitur... (cf. n. 76 *supra*), quis dubitabit de plenitudine potestatis...'; cf. also *Lectura X* i.21.2, v. *dispensare non licet*, n. 5: '... quamvis Nic. Furiosus non sine furore scripserit quod non possit bigamus plus quam asinus ordinari...'; v. *remanere*: '... sic ergo furor Nicolai taceat Furiosi...'; Vincentius, *Appar.* eod. v. *contra apostolum*: '... et fatui sunt qui dicunt bigamos non posse recipere caracterem. Vinc.'

87. A.D. de Sousa Costa, *Um mestre português em Bolonha no século XIII, João de Deus: Vida e obras* (Braga, 1957), pp. 101-3, has found internal criteria of two recensions (one written before, one during the pontificate of Innocent IV), but no manuscript evidence. I came across the first recension in Milan, MS Ambros. M 64 *sup.*, fo. lxxxxvra-civa, with the title, *Summula de irregularitatibus et dispensationibus*; it lacks *inter al.* the passages quoted in n. 90, 96 *infra*. Further details must be discussed elsewhere. Much of Johannes de Deo's *Libellus* was later incorporated by Willielmus Durantis (Durandus) in the *Speculum iudiciale*, i.1, tit. *de dispensationibus*.

plenary powers of dispensation for the bigamous. But they both refrained from citing the obnoxious civilian. Bernard's is only a half-hearted denial; it concludes a long, rambling discussion in which the various issues have become rather confused⁸⁸ and which seems to have convinced no one.⁸⁹ As for Johannes de Deo, he thought it wise to add, at the end of the chapter, an apologetic apostrophe to the reigning pontiff: 'And this we say saving the respect and the power of the Roman Church and thy honour, worshipful Innocent IV.'⁹⁰

III.

In all these discussions the authors often spoke of the conferment of higher orders as something that might happen *de facto*,⁹¹ and indeed one such papal

88. *Glossa ord. X i.21.2, v. dispensare*. A tentative analysis of the lengthy gloss as it appears in the Roman edition of 1582 (*et seqq.*) is found below, Appendix. The printed text is obviously defective; a final interpretation must await collation of MSS of the various recensions of the *Gl. ord.* (on which see Kuttner and B. Smalley, *E.H.R.*, lx (1945), 97-103). Bernard starts at one point: 'H. dixit quod episcopi dispensare non poterant...; Jo. uoluit dicere quod papa non posset' (referring to Johannes de Deo?); he then turns to the sacramentological argument against Tancred's opinion on episcopal powers (cf. n. 55 *supra*) and continues, 'propter quod uidetur quod papa non possit dispensare cum bigamo propter eandem rationem, quia propter dispensationem papae non restituitur sacramentum unitatis, cum nec posset...'; after further discussion (including a report on Huguccio, cf. n. 67 *supra*), he concludes: 'Tamen hoc quod dicitur, bigamus in quocumque ordine ordinetur recipit ordinem, arg. 50.di. Quicumque penitens: per quod capitulum uidetur quod cum bigamo dispensare possit. Sed illud tantum intelligitur in minoribus ordinibus.' (Note that the sentence 'Tamen hoc' *rell.* is incomplete and that in the end he seems to exclude papal dispensation even for the subdiaconate.)

89. Hostiensis, *Lectura*, eod. no. 5 recommends his own opinion (n. 76, 77 *supra*) with the words: '... et hoc teneas remota prolixa glossa quae hic antiquitas est signata, quam si times amittere inuenies eam in summa eod. tit. § fin. [where some of Bernard's observations are incorporated] et infra de concess. preb. Proposuit [*Lect.* iii.8.4, no. 12: ed. Venice, 1581, iii, fo. 35r] plenius prosecutam.'

90. Johannes de Deo, *Libellus dispensationum*, tit. 1, *de disp. domini pape* (the bracketed portions are not in the first recension): '... Contra apostolum non potest dispensare nec debet quod bigamus promouetur in diaconem uel sacerdotem uel episcopum... et hoc patres attestantur [scilicet propter significatum et consignificatum incarnationis filii dei in uterum (*sic*) uirginis et propter unionem Christi et ecclesie militantis et triumphantis. Quod autem hoc uerum sit probant patenter tam apostolici quam alii expositores noui et ueteris testamenti... et probat Urbanus... et Lucius... et Celestinus... et Innocentius iii. ex. eod. c. Nuper. Nec obstat xxxiiii.di. Lector... (cf. n. 43 *supra*). Nec obstat... (cf. n. 96 *infra*)]... Et si de facto possit quicquid uelit, tamen non debet: qui licet sine comparacione aliorum hominum sit magnus factus, debet tamen timere... In aliis autem ratione duce bene dispensat... Et hec sufficiant causa breuitatis de dispensatione pape, qui tenet et tenere debet mundi monarchiam... [et hoc dicimus salua honorificencia et potencia romane ecclesie tuique honoris, uenerande Innoc. iiij.].'

91. Cf. Simon (n. 63 *supra*), *Summa Omnis qui iuste* (n. 64), Huguccio (n. 66, 67), *Gloss. Valent.* (n. 81), *Appar. Ecce uicit leo* (n. 82), Johannes de Deo (n. 90).

*factum*⁹² was constantly cited to clinch the proof of the pope's powers in this matter. It was chiefly through the *Glossa ordinaria* on the *Decretum*—although Johannes Teutonicus was not the first writer who mentioned the case—that the report of a dispensation granted by Pope Lucius III (1181-1185) to the bigamous archbishop of Palermo became universally known:⁹³

Lucius tamen dispensauit cum panormitano archiepiscopo qui fuit bigamus . . .

Some admitted that they knew it only from hearsay: 'fertur, set scriptum non uidi' had been Tancred's words when he referred to the case a few years before Johannes Teutonicus.⁹⁴ They were echoed later by Johannes de Petesella;⁹⁵ and Johannes de Deo, whose entire position would indeed have been shattered by such a precedent, boldly added that Pope Lucius' rescript of dispensation, if it were to be found, must be a forgery, 'and whoever thinks otherwise is a muttonhead' (*pecus est*).⁹⁶

But nearly everyone else accepted it as a fact that a bigamist had become archbishop of Palermo through a dispensation given by Lucius III; the same Lucius III, ironically, to whom the Book of Decretals attributed the letter *Super eo* (actually written by Alexander III) which prescribed severe punishment for all who violated the Apostle's prohibition.⁹⁷ Without noticing how odd it was that Lucius the legislator should have been disavowed by Lucius

92. A similar discussion existed among the Anglo-Norman canonists on papal dispensation for a priest deposed as a murderer, cf. *Traditio*, vii (1949-51), 310. The *Summa De iure canonico tractaturus* writes, citing two decretals of Alexander III (*App. Conc. Lat.* xxvi.13-14): '... Alexander tamen circa promotum . . . et circa promouendum . . . dispensauit: de cuius facto non est disputandum'; Honorius, *Summa questionum*, ii.8.4: '... non uidetur eos qui semel post baptismum occiderunt . . . ex aliqua dispensatione posse promoueri, licet secus factum ab Alexandro reperiatur, de cuius facto non est disputandum.' For the non-permissible *disputatio de factis regum* in Bracton (fo. 34), the Assizes of Norman Sicily, and Frederick II's *Liber augustalis*, i.4, see the excellent observations of E.H. Kantorowicz, *The King's Two Bodies* (Princeton, 1957), p. 158, n. 209; the connection of these texts with the canonistic parallels remains to be examined.

93. *Glossa ord.* D.34 c.18, v. *fiat*. For Johannes's source, Bernard of Compostella, see below, at n. 105.

94. Tancred, *Glossa ord.* I *Comp.* i.13.3, v. *dispensari*: '... et fertur, set scriptum non uidi, quod Lucius papa dispensauit cum bigamo usque ad sacerdotium. i.'

95. Joh. de Petesella, *Summa*, i.21: '... et dicitur, set non inueni in aliqua scriptura autentica, quod Lucius papa dispensauit cum panormitano archiepiscopo . . .'; cf. also William of Rennes, *Glossa* on St. Raymond's *Summa de casibus*, ii.3.3 § 4, v. *Lucius papa*: 'non legitur hoc in aliquo libro quo utuntur scholares' (ed. Rom. 1603, p. 262b).

96. *Libellus disp.* (2nd ed., cf. n. 90 *supra*): '... Nec obstat quod dicunt quidam quod Lucius dispensauit cum bigamo, quia non inuenitur; quod si inueniretur apocriphum esset, et qui secus sentit pecus est.'

97. *Supra*, at n. 39.

the administrator, canonists and theologians alike went on to cite the Palermo case.⁹⁸ It appears for instance as a central argument in St. Thomas's discussion of dispensatory powers⁹⁹—which goes a long way to show that in concrete issues the Angelic Doctor did not always treat canonistic reasoning with the disdain he elsewhere proclaims for it.¹⁰⁰ The authority of St. Thomas, in turn, may have much to do with the fact that the story of Lucius III and the archbishop of Palermo was handed down through later generations, until our own age.¹⁰¹

And yet, if we trace its origin, we find that it is at least in part an apocryphal story. During the pontificate of Lucius III, no vacancy was to be filled in the see of Palermo, and the incumbent, Archbishop Walter, whose election

98. Laurentius, as cited in the additions to Alanus of the Paris MS, D.34 c.18, v. *nihil autem supra* (before Joh. Teutonicus); St. Raymond, *Summa iuris can.* ii.5 and *Summa de casibus*, iii. 3 § 4; Goffredus de Trano, *Summa*, i.21, n. 11 and i.3, n. 8; Hostiensis, *Summa*, tit. *de big.* § fin. and *Lectura*, X i. 21, n. 5. See the stemma of texts, below, p. 435. For theologians (13th and 14th cent.) see the major commentaries on Peter Lombard's *Sententiae*, e.g. Albert the Great, iv. dist. 27 (O), art. 22 (*Opera*, ed. Borgnet, xxx (1894), p. 183); St. Thomas (note 99 *infra*), Durand de Saint-Pourçain, iv. dist. 27, q.4, giving 'Gaufredus in summa' as his source (Venice, 1571, fo. 369vb-370ra); Richard of Mediavilla, iv. 27 art.4 q.4 (Brixiae, 1591, p. 423); Duns Scotus, *Opus Oxoniense* iv.33 q.2 n. 7, etc.

99. St. Thomas Aquinas, in *Sent.* iv. 27 q.3 art.3: '... sed in contrarium est quod Lucius papa dispensavit cum Panormitano episcopo qui erat bigamus' (*Opera*, Parma, 1852-73, vii pt. 2, p. 956 = *Summa theol.* Suppl. iii q.66 art.5). The addition 'ut refert glossa' (i.e. *Gl. ord.* D.34 c.18), which appears here in a footnote, is found as part of the text in other editions; clarification may be expected from the ed. *Leonina*.

100. Anti-canonistic utterances of St. Thomas Aquinas (and St. Albert) have been recently collected and discussed by I.T. Eschmann, O.P., 'St. Thomas Aquinas on the Two Powers,' *Mediaeval Studies*, xx (1958), 177-205, at pp. 183ff., but the problem of St. Thomas's relations to canon law and the canonists still awaits a thorough historical and textual investigation, to be conducted without that bias for which Domingo Soto's remark on the *interpretes canonum*, '... quia de iure diuino censere non est eorum munus' (*In quantum Sent.* ad loc.: ii (Venice, 1589), p. 148a) remains the classical expression.

101. Cf., e.g., to cite only post-Tridentine authors, Simon Maiolus, *De irregularitatibus et aliis canonicis impedimentis* ... (Rome, 1575) i.33 n. 14 (p. 104b); Fagnanus, *Commentaria*, i.21.2, n. 11 (Rome, 1661, I. ii. 359); Ferraris, *Prompta bibliotheca* ... (1746), s.v. 'Bigamia,' art. iii n. 1 (Rome, 1885, i. 670); Vergier-Boimond, s.v. 'Bigamie,' *Dictionn. de droit can.* ii (1937), 874 (from Durand de Saint-Pourçain), and, in a garbled form, P.M.J. Rock, s.v. 'Bigamy,' *Catholic Encyclopaedia*, ii (1907), 563b, who has Lucius III issue the dispensation to Nicholas de Tudeschis, the fifteenth-century canonist known as (*Abbas*) *Panormitanus*. By a curious coincidence, I find a warning against this very blunder written, in a seventeenth-century hand, in the margin of the Catholic University of America's copy of Henricus Bohic, *Commentaria in decretales*, i.21.1 (Venice, 1576, p. 92a): 'Archiepiscopus, non credas abbas.'

had been confirmed by Alexander III in 1169,¹⁰² was certainly not in need of any dispensation to continue in office. Actually, there is no mention of an *archiepiscopus Panormitanus* in the ultimate source to which we can trace back, directly or indirectly, all later accounts of the extraordinary case: the *Summa* of Huguccio. Writing c. 1188-1190, a few years after the pontificate of Lucius III, the great decretist merely stated that in his own day this pope had granted a dispensation for 'a certain bigamous person in Sicily' to be promoted to the priesthood—no more:¹⁰³

... nostris etiam temporibus Lucius tertius dispensavit cum quodam bigamo in Sicilia usque ad presbyteratum.

We can easily see how this *quidam bigamus in Sicilia* fired the imagination of some glossators. When Richard de Mores a few years later (c. 1196-1198) presented in his *Distinctiones* a stemma of various kinds of dispensations, he put down, under the heading 'contra apostolum,' the terse statement:¹⁰⁴

Oportet episcopum esse monogamum: contra in archiepiscopo panormitano.

These almost cryptic words had only to be conflated with Huguccio's own report to produce the standard version which was first formulated, as far as we know, by Bernard of Compostella and quoted in the *Glossa Palatina*, c. 1210-1215:¹⁰⁵

... unde papa Lucius dispensavit cum panormitano archiepiscopo qui bigamus fuerat.

102. JL 11628 (28 June, 1169). Archbishop Walter died before the end of 1190, cf. Evelyn Jamison, *Admiral Eugenius of Sicily: His Life and Work* (Oxford, 1957), p. 93, also p. 232 n. 1.

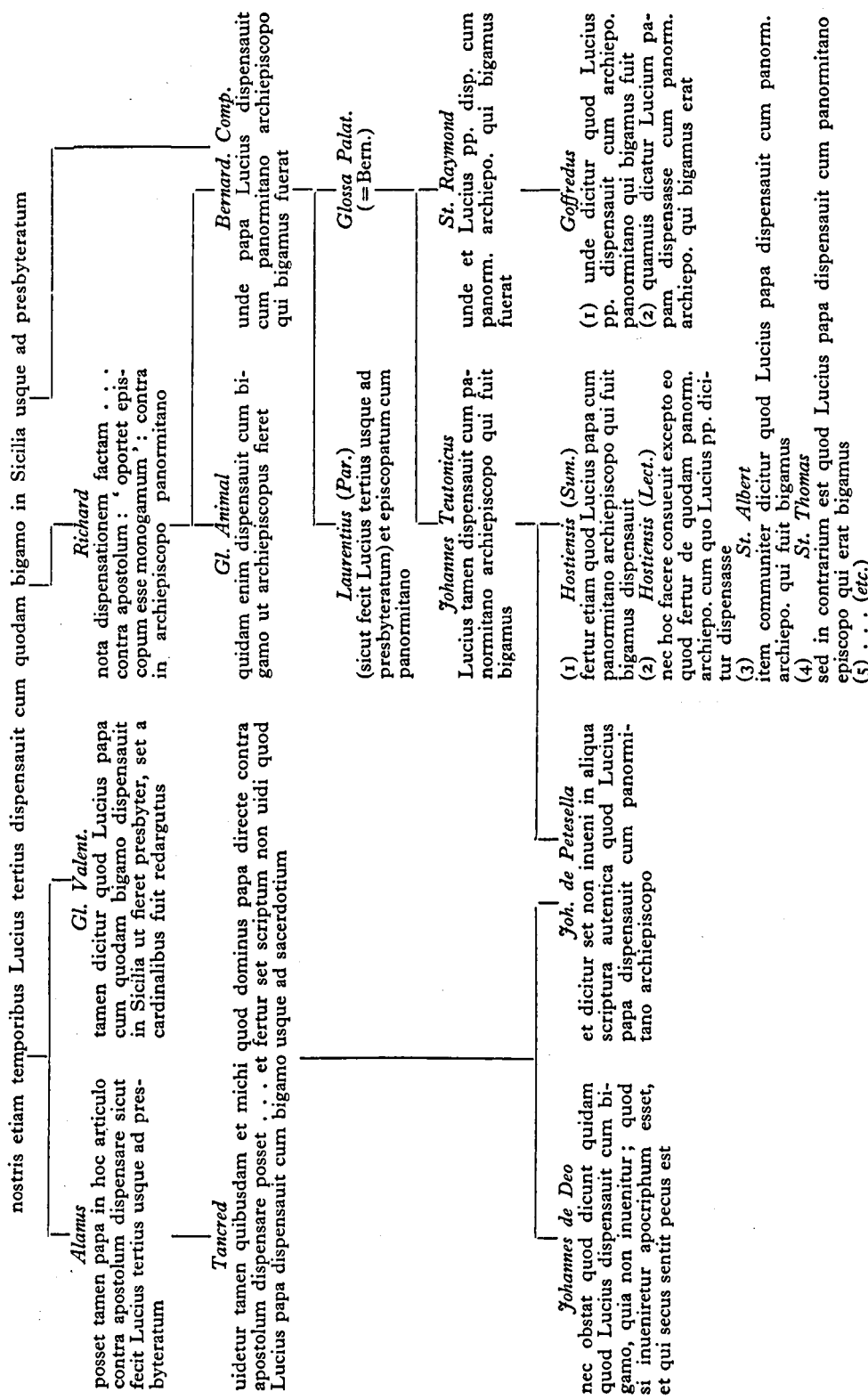
103. *Summa*, D.34 c.18, v. *nichil autem supra* (cf. the context in n. 66 *supra*).

104. *Distinctiones decretorum*, C.1 q. 7 § *Multorum* (p.c.5): 'Nota dispensationem factam: contra apostolum, oportet...; contra ius naturale...' etc. (MS Vat. lat. 2691, fo. 5v). More of this lengthy *distinctio* is printed in J.F. von Schulte, 'Literaturgeschichte der Compilationes antiquae,' *Sitzungsberichte... Akademie*, lxvi (Vienna, 1870), 81. Did Richard take a wrong cue from Huguccio's remark, at the end of his comments on c. *Lector*, that the bigamous cleric will receive every order, 'etiam episcopalem si in eo ordinetur' (cf. n. 79 *supra*)? It should also be noted that in Richard's *Apparatus 1 Comp.* (i.13.3, cf. *supra* nn. 50, 71) the Palermo case is not mentioned and that there he avoids the whole issue of dispensation beyond the subdiaconate. Perhaps one could infer that the *Distinctiones* were completed after the *Apparatus* (on the difficult chronology of Richard's works cf. Kuttner and Rathbone, *Traditio*, vii. 332).

105. *Gl. Pal.* D.34 c.18, v. *autem supra*. Bernard may of course have written this gloss long before 1210. For an earlier occurrence one would have to examine the mixed gloss compositions of the 1190's, especially the quasi-*apparatus*, beg. 'Ordinaturus magister' (on which cf. Kuttner, *Traditio*, i (1943), 285 n. 33; Stickler, *Traditio*, xii (1956), 596-7). The vague statement, made c. 1206-10 in the French *Apparatus Animal est substantia*, 'quidam enim dispensavit cum bigamo ut archiepiscopus fieret' (n. 71 *supra*), could be based on a knowledge of Bernard's gloss, but was more probably derived from a reading of Richard's *Distinctiones*.

THE TEXTUAL TRANSMISSION OF THE PALERMO CASE

Huguccio



This became the immediate model for Johannes Teutonicus's *Glossa ordinaria* and the fountainhead of the whole tradition we have mentioned above.¹⁰⁶

Another line of writers, however, remained closer to the terms of Huguccio's statement and merely spoke of someone's ordination to the priesthood in citing Pope Lucius's precedent. In this form we read it c. 1202 in the second redaction of the *Apparatus decretorum* of Alanus; he was followed by Tancred and others.¹⁰⁷ Even so, the case remained sensational enough; an anonymous glossator of the French school dramatized it further by adding that Lucius on this occasion was contradicted by his cardinals.¹⁰⁸ This author can hardly have come by such a piece of independent information in the early thirteenth century;¹⁰⁹ one may safely say that the added detail reflects only his own conservative persuasion, for he belonged to the group that denied all papal prerogative in this matter.

IV.

The story of the bigamous archbishop of Palermo thus turns out to be a canonistic legend which grew out of Huguccio's report on the case of *quidam bigamus in Sicilia*. Of this case no documentary evidence exists; we can only repeat with the thirteenth-century glossator: 'fertur, set scriptum non uidi.' And yet, the time and the tenor of Huguccio's statement make it unlikely that he should have brought mere gossip into the discussion of so important an issue. He speaks of a fact,¹¹⁰ not a rumour, and it happened, he says, 'in our own time.'

I am indebted to Professor Walther Holtzmann for a valuable literary clue which in all probability leads us to the man whom Huguccio could not or

106. Note 98. In the stemma on the opposite page I have assumed that Raymond of Peñafort's text is directly derived from *Glossa Palat.* The argument is furnished by the common readings which differ from *Glossa ord.*: Lucius tamen] unde papa Lucius *Bern.*, unde et Lucius papa Raym.—qui fuit bigamus] qui bigamus fuerat *Bern. Raym.*

107. Alanus, *Appar.* D.34 c.18, v. *necessitas* (cf. n. 74 *supra*): 'Posset tamen . . . contra apostolum dispensare, sicut fecit Lucius tertius usque ad presbyteratum'; Tancred, *Glossa ord.* 1 *Comp.* (n. 94 *supra*); *Glossae Valentian.* (n. 108 *infra*), and the *quidam* spoken of by Johannes de Deo (n. 96 *supra*).

108. *Glossae Valentian.* 1 *Comp.* (continued from n. 81): '... non reciperet characterem; tamen dicitur quod Lucius papa cum quodam bigamo dispensauit in Sicilia ut fieret presbiter, set a cardinalibus fuit redargutus.'

109. I know only of one text which might be an allusion to the Sicilian case but is not derived from Huguccio, the Anglo-Norman *Summa De iure canonico tractatus*, written c. 1186-92, D.34 c.18, v. *nichil autem supra* (n. 65 *supra*): '... non posset papa dispensare: audiui tamen dispensatum...'

110. Cf. Brys, *De dispensatione*, pp. 133-4; Van Hove, *op. cit.* n. 1 *supra*, remains doubtful, p. 358, n. 3.

would not identify. The *Liber ad honorem Augusti* by Peter of Eboli, a panegyric of the Emperor Henry VI in elegiac distichs, written c. 1195-1196, is an important source for the history of Henry's conquest of Sicily, and in particular for the brief reign of King Tancred (1190-1194), the Emperor's courageous opponent whom the poet despises and ridicules.¹¹¹ The leader of the party which had brought Tancred to the throne was Matthew of Salerno (also known as Matthew of Ajello), vice-chancellor of the late King William II from 1169 to 1189, a skilful statesman of long experience and standing in the royal chancery.¹¹² Tancred raised him to the chancellorship soon after his accession, and Matthew held the office, which had not been filled for many years before, until his own death in the summer of 1193.¹¹³

In the poem, Peter of Eboli reserves his most venomous railings for the chancellor. We need not dwell here on the more conventional terms of poetical wrath, 'pest of Sodom and progeny of Gomorrha' (v. 969), 'vessel of fraud' (v. 971), 'temple of Lucifer' (v. 973), and the like; and even when the poet has Matthew seek relief from the gout in foot-baths of human blood,¹¹⁴ this may be only a device for kindling the reader's hatred. But what arrests our attention is the characterisation of the chancellor as *bigamus* or *bigamus sacerdos*, which repeatedly occurs in the poem as well as in the headings of its original illuminations, executed under Peter's own direction

111. *Liber ad honorem Augusti di Pietro da Eboli*, ed. G.B. Siragusa (Fonti per la storia d'Italia, xxxix (vol. 1, text; vol. 2, plates); Rome 1906); also under the title *Petri Ansolini de Ebulo de rebus Siculis carmen*, ed. E. Rota (Rerum italicarum scriptores [Muratori], nuova ediz. xxxi, pt. 1; Città di Castello, 1904). Rota's arguments, p. xxviii, against the traditional title, attested by the MS colophon, are unconvincing. On Peter of Eboli, see M. Manitius, *Geschichte der lateinischen Literatur des Mittelalter*, iii (Munich, 1931), 703-7; F.J.E. Raby, *A History of Secular Latin Poetry* (2nd ed. Oxford, 1957), ii. 166-70 (where only Rota's edition is cited; Manitius confuses the two editions).

112. On Matthew ('der bedeutendste Kanzlist der normannischen Epoche überhaupt'), cf. K.A. Kehr, *Die Urkunden der normannisch-sizilischen Könige* (Innsbruck, 1902), pp. 54-58, 62-3, 89-92; Evelyn Jamison, *Admiral Eugenius* (n. 102 *supra*), pp. 46-7, 80, 94, 101, 222 and *passim*; see index *s.v.*; also Demus, *op. cit.* n. 115 *infra*, pp. 96, 153, n. 64. Miss Jamison has established (p. 94 n. 1) that Matthew is never called *de Agello* in contemporary sources; it was only his son Richard whom King Tancred made count of the newly created county of Ajello.

113. Kehr, *op. cit.* pp. 62-3; the date of death was 21 July 1193, cf. Siragusa, in *Bollettino dell'Istituto storico italiano*, xxx (1909), 48; Jamison, *op. cit.* p. 94, n. 1; *Necrologio del Liber confratrum di S. Matteo di Salerno*, ed. C.A. Garufi (Fonti per la storia d'Italia, lvi; Rome, 1922), p. 100: 'Dominus Matheus domini regis illustris cancellarius.' Richard of Ajello succeeded his father in the direction of Tancred's chancery, but only as acting head, cf. Kehr, p. 93; Jamison, p. 103, n. 1.

114. *Liber ad hon. Augusti*, verses 164-5, 668-70, 995-6, and the drawing of Berne MS 120, fo. 127r (see plate). Rota, *ed. cit.* p. 28, *ad v.* 164, considers this gruesome accusation as possibly true.



From Peter of Eboli, *Liber ad honorem Augusti*, Berne MS. 120, fo. 127r.

Top illustration: the bigamous chancellor with his two wives.

Lower illustration: the chancellor is depicted as seeking relief from gout in foot-baths of human blood.

in the single surviving manuscript.¹¹⁵ In lines 989-94 Peter of Eboli says explicitly:¹¹⁶

The Church against her laws received thee in her bosom :
 God's altar ill befits the sinful bigamist.
 By pray'r or price he led astray thee, Holy Pope.
 How could so much be ever granted to this man ?
 The bigamist, with evil hand, should on the altar touch
 The Everlasting, to whom God as equal gave himself :

Matthew was indeed twice married and twice widowed: his first wife, Sica, died before 1171 and his second, Judith, in 1180.¹¹⁷ This made him bigamous in the technical sense of the law of ordinations; but the poet's language (*peccati bigamum*, *bigami scelerata manus*), especially in a context replete with all manner of vituperation, deftly evokes the image of a criminal bigamist, the man with two wives at the same time, and the image takes full shape in the illustration Peter caused to be drawn on the opposite page of the original codex (see plate). Of course, the picture may be interpreted differently, as a symbolic representation of two successive wives, and the words *peccati scelerata manus* could also be construed *ex effectu* (i.e., by functioning in orders at the altar the *bigamus* falls into sin and his hands become wicked). But the ambiguity—if ambiguity there is—was probably intended in both verse and picture. We cannot know for sure whether Peter, blinded as he was by partisan hatred, misrepresented on purpose canonical *bigamia* or merely

115. Verse 140; rubric before v. 939; captions of plates vi, vii, viii, xxxii, xxxiii. On MS Berne 120 as the dedication copy for the Emperor, produced under Peter's direction, see Manitius, *Geschichte*, iii. 706; O. Demus, *The Mosaics of Norman Sicily* (New York, 1950), p. 411.

116. Verses 989-94: 'Te sinus ecclesie contra decreta recepit:
 Peccati bigamum non decet ara dei.
 Te prece uel precio, sanctissime pape, fefellit:
 Nescio quo pacto tanta licere uiro,
 Ut bigami scelerata manus tractaret in ara
 Cui deus eterno se dedit esse parem.'

On the difficult expression '*peccati bigamum*' Rota aptly remarks (p. 134, *ad* v. 990); 'chi è bigamo di peccato—è una *constructio ad sensum*,' but his note *ad* v. 993, *ara*: 'sottintendi *Christi*' misses the mark. The elliptic construction requires a direct object: 'ut... tractaret in ara [*Christum, or corpus Christi*] cui... deus se dedit...'

117. Siragusa, *ed. cit.*, p. 137, n. 1. Cf. Matthew's charter for the monastery S. Maria dei Latini in Palermo, May 1171, in which there is a special benefaction 'pro domina Sica uxore nostra bone memorie,' in C. A. Garufi, *I documenti inediti dell'epoca normanna in Sicilia* (Documenti per servire alla storia di Sicilia..., xviii; Palermo, 1899), pp. 137-46, at pp. 141, 142; and the entry in the *Necrologio* of Salerno (n. 113 *supra*) for 25 June 1180, p. 86: 'Iudicta uxor domini Mathei uicecancellarii' (the entries 'Domina Iudecta uxor Mathei de Agello' for 10 May *sine anno* and 'Dominus Matheus de Agello' for 20 Jan. *s.a.* in a fragmentary calendar *sæc.* xiii (*ibid.*, pp. 221, 218) must refer to members of a later generation of the family).

mistook it for bigamy in the popular sense; in any event, the canonical meaning of the term has escaped his modern commentators.¹¹⁸

Verse 991 alludes to a papal dispensation.¹¹⁹ Since the pontificate of Lucius III began in 1181, a year after the death of Matthew's second wife, it stands to reason that he was the pope from whom the widowed vice-chancellor obtained this favour, *prece uel precio* as Peter of Eboli says with a malicious pun. Verses 990 and 993-4, speaking of the altar and the handling of the Blessed Sacrament, leave no doubt that the poet means a dispensation for priestly orders; moreover, Matthew is explicitly called *falsus sacerdos* in verse 999 and *bigamus sacerdos* in the captions of several drawings.¹²⁰

We know from documentary sources that Matthew of Salerno, the accomplished politician, was also a devout and generous founder of churches, monasteries, and hospitals both in Palermo and his native city;¹²¹ that he was an oblate of the Basilians of Messina ever since 1177;¹²² and that Lucius III wrote of the vice-chancellor in terms of warm praise, as Alexander III had done before him.¹²³ The documents, however, give no hint of Matthew's

118. Thus Siragusa, *ed. cit.*, p. 137, n. 3 ('... il poeta traduce in bigamia i due matrimoni legittimi...'); Rota, *ed. cit.*, p. 27 *ad v.* 140 ('... una testimonianza di quella corruzione di Corte... e di quella corruzione ecclesiastica...'); also Kehr, *op. cit.*, p. 92, n. 4.

119. This was correctly seen by Rota, p. 134 *ad v.* 991; but his notions on the nature of this dispensation (cf. p. 27 *ad v.* 140; p. 134 *ad v.* 989) are as hazy as those on bigamy.

120. Verses 999-1000: 'Urbs ita Lernina [*i.e.* Salerno] tibi credens, false sacerdos, / Mortis in obprobrium per tua facta ruet'; and see the captions of the drawings on plates vi (twice), viii, xxxii (but only *bigamus* on pl. vii, xxxiii).

121. Cf. F. Ughelli, *Italia sacra* (1642-62), vii. 578ff. = Ughelli-Coleti, *Italia sacra* (Venice, 1717), vii. 408ff.; G. Paesano, *Memorie per servire alla storia della Chiesa Salernitana*, ii (Salerno, 1852), 216ff. (not seen); Garufi, *Documenti inediti* (n. 117), pp. 137ff.; *id.*, *Necrologio* (n. 113), p. lv; R. Pirri, *Sicilia sacra*, iii [iv] (Palermo, 1637), 16 = Pirri-Mongitori, *Sicilia sacra* (Naples, 1733), ii. 580; Kehr, *op. cit.*, pp. 57, 89 n. 5; Rota, *ed. cit.*, p. 133 *ad v.* 970; Demus, *The Mosaics* (n. 115 *supra*), pp. 153 n. 64, 409, 413 n. 37, 453.

122. Pirri *loc. cit.*; cf. Siragusa, *ed. cit.*, p. 137 n. 3, p. xxxix.

123. Alexander III, in the privilege confirming Matthew's foundation of S. Maria dei Latini in Palermo (cf. n. 117), 30 December 1174: '... a dilecto filio nostro Mattheo regio uicecancellario pia consideratione constructum et propriis dotatum redditibus... monasterium... tanto puriori debemus caritate diligere quanto deuotionem eiusdem uicecancellarii circa opera pietatis feruentiorem esse nouimus et circa nos et Romanam ecclesiam inspirante domino puriorem...' (ed. Garufi, *Documenti inediti*, pp. 155-61); Lucius III, for All Saints' Hospital in Palermo, 13 May 1182: 'Cum dilectus filius noster Matheus regius uicecancellarius domum Omnium Sanctorum... pia consideratione construxerit, nos domum ipsam tanto propensius manutenere uolumus et fouere, quanto predictum uicecancellarium abundantiori caritate diligimus...' (ed. Paul F. Kehr, *Göttinger Nachrichten*, 1899, p. 324); both quoted by K. A. Kehr, *Urkunden*, p. 91 n. 1. Not in Jaffé.

having become a priest late in life;¹²⁴ and his own official style remained to the end *Matheus regius (uice-) cancellarius*.¹²⁵ But on diplomatic grounds one could not expect it otherwise: the silence of the archival sources need not discredit the *Liber ad Augustum* on this point.

Whatever misgivings one might have on account of Peter of Eboli's bias, the fact remains that several years before he composed his poem, Huguccio in his lectures at Bologna had mentioned, with no political axe to grind, the ordination to the priesthood of *quidam bigamus in Sicilia*. The great canonist, and generations after him, cited Pope Lucius's grant of this dispensation as a unique precedent. It would be more than improbable that the *quidam* should have been anyone else but Matthew of Salerno, the last chancellor of the Norman kings of Sicily.

STEPHAN KUTTNER

APPENDIX

In printing the texts which follow, I do not pretend to give critical editions; but where several MSS were collated, variant readings are recorded in the notes. Concerning the canonical sources cited by the medieval authors, the following key will serve for verification in modern editions of the *Decretum*, the *Compilationes antiquae* (=1 Comp., 2 Comp., etc.) and the Gregorian Decretals (=X).

Dist. xii. Nos consuetudinem c.18	xl. Homo c.5
xv. Sicut c.2	Si papa c.6
xvi. Sancta c.8	xlvi. Episcopum c.7
xxii. Sacrosancta c.2	I. Considerandum c.53
penult. et ult. cc.6, 7	Domino sancto c.28
xxv. § Nunc autem d.p. c.3	Ex penitentibus c.55
xxvi. Acutius c.2	Fidelior c.54
Deinde c.3	Non confidat c.59
Una tantum c.4	Placuit c.68
xxxii. De illo c.4	Ponderet c.14
Erubescant c.11	Quicumque penitens c.56
xxxiii. Cognoscamus c.14	Si ille c.58
Fraternitas c.7	Si quis uiduam c.8
Lector c.18	lvi. Quia simpliciter c.14
Si quis uiduam c.15	lx. Nullus (ult.) c.4
Si subdiaconus c.17	lxiii. Obeuntibus c.35

124. We do not know Matthew's age at his death (1193) but have to consider that he was *notarius* of the royal court as early as 1156, *familiaris curie* in 1162 (K. A. Kehr, p. 54), and that his son Nicholas became archbishop of Salerno in 1181; the vice-chancellor must at that time have been at least in his fifties.

125. See e.g. the royal charters in K. A. Kehr, *op. cit.*, pp. 455 (a. 1186), 457 (1188), 465 (1193).

- lxxix. ult. c.2
 lxxiii. Ubi ista c.7
 lxxx. Apostolus c.1
 lxxxii. Presbiter c.5
 lxxxiii. Quisquis c.5
 xc. Olim c.5
 Causa i. q.i. Quod propter (pro) c.41
 i. q.vii. Saluberrimum c.21
 ii. q.i. Multi c.18
 ii. q.vii. Oues c.13
 vi. q.i. Oues c.9
 ix. q.i. Ordinationes c.5
 ix. q.iii. Aliorum c.14
 Conquestus c.8
 Cuncta c.17
 Ipsi sunt c.16
 Patet c.10
 xii. q.ii. Non liceat c.20
 xviii. q.ii. Hoc tantum c.1
 xxiii. q.ii. Sane quod super Ric. c.3
 xxv. q.i. Sunt qui dicunt c.6
 De pen. di.ii. Principium inquit c.45
 xxxvi. q.ii. Si autem c.10
 De cons. di.i. Sicut c.11
 di.ii. Accesserunt c.92
 ex. de bigamis non ord. A nobis X i.21.7 (Alan. i.16.1)
 ex. (ii.) de big. De bigamis (ult.) 2 Comp. i.11.2 (X i.21.3)
 ex. (iii.) de big. Nuper a nobis 3 Comp. i.14.1 (X i.21.4)
 ex. (i.) de big. Super eo (ult.) 1 Comp. i.13.3 (X i.21.2)
 ex. (i.) de clerico percuss. c.ii 1 Comp. v.21.2 (X v.25.2)
 ex. (iii.) de elect. Innotuit 3 Comp. i.6.5 (X i.6.20)
 ex. (i.) de excess. priuilegiat. Cum et plantare 1 Comp. v.28.3 (X v.33.3)
 ex. (i.) de iudic. At si clerici 1 Comp. ii.1.6 (X ii.1.4)
 ex. de maiorit. et obedient. Solite X i.33.6 (3 Comp. i.21.2)
 ex. de priuul. et excess: *vide* ex. de excess.
 ex. de renunt. Nisi cum pridem X i.9.10 (3 Comp. i.8.4)
 ex. de tempor. ordin. Litteras X i.11.13 (3 Comp. i.9.5)
 ex. de translat. prelati (episc.) Inter corporalia X i.7.2 (3 Comp. i.5.2)
 ex. ut eccl. benef. Ut nostrum X iii.12 un. (3 Comp. iii.10 un.)

Simon de Bisignano, *Summa decretorum* (Bologna, c. 1177-1179)

(D.34 p.c.17) § *Necessitate tamen* etc. usque *bigami usque ad subdiaconatum*: Hic queritur quare bigamus nulla causa faciente possit diaconus fieri uel¹ sacerdos, cum subdiaconus possit fieri necessitate instante. Ratio est quod cum cuiuslibet ordinis gestaret officium Christus, sacerdotis tamen sic gessit officium quod se ipsum optulit; diaconi officium ita habuit quod idem fuit corpus tradens discipulis et oblatum, ut infra de con. di.ii. Accesserunt. Vel quia subdiaconatus quodam modo sacer ordo non est, ut infra di.lx.² Nullus.

Set queritur an ratione huius dispensationis quilibet episcopus possit sua auctoritate bigamos ad subdiaconatum promouere et an bigamus hoc uelut de iure sibi debitum petere possit. Nos neutrum concedimus. An uero summus pontifex posset bigamum ad sacerdotium promouere, uel utrum esset sacerdos si eum ordinaret de facto, hoc is³ inquirat quem mundi labor exagitat.

London, B.M. MS Addit. 24659, fo. 5vb.—¹*add. marg. L.* ²lx. L.
³his L.

Summa Omnis qui iuste (Anglo-Norman School, c. 1186)

(D.14 c.2) *Sicut quedam*: Notandum est quod ea que in lege et¹ euangelio, in apostolis et iiii. conciliis generalibus continentur indispensabilia sunt, dumtamen² sint statuta de statu generali ecclesie uel de articulis fidei, ut xxv. Q.i. Sunt qui, set tantum ea que rigorem continent et statuta sunt in animaduersionem personarum mutari possunt. Nam quamuis apostoli statuerint presbyterum deponendum esse³ si fornicationem fecerit, tamen Silvester dispensat, ut di. lxxxii. Presbyter. Item illud Niceni concilii, ne⁴ bigamus promoueat, mutatur⁵ in xxxiiii.⁶ di. Lector. Item illud quod dictum est de electione, ut clerici matricis ecclesie sufficerent, mutatum est, ut di.lxiii. Obeuntibus. Nec mirum si ista uariantur, cum non⁷ sint de statu uniuersalis ecclesie. *pro necessitate*: Nota contra⁸ ius commune posse dispensari⁹ instante necessitate, ut hic et i. Q.i. Quod propter, infra de con. di.¹⁰i. Sicut.

Leipzig, Univ. MS 986, fo. 10va; Rouen MS 743 (E.74), fo. 5vb.—
¹in *add.* R. ²dummodo R. ³om. L. ⁴ut (?) R. ⁵uel *praem.* R.
⁶xxxii. LR. ⁷om. R. ⁸om. L. ⁹dispensare R. ¹⁰q. R.

(D.34 c.14) *Cognoscamus* usque *clericum*: in sacris ordinibus. Ex hoc capitulo habes quod regula illa¹ qua dicitur, 'oportet episcopum esse² unius uxoris uirum,' non solum de episcopo set etiam de presbytero debet intelligi, ut hic dicitur. Olim enim idem presbyter quod episcopus, ut di.xcv. Olim. Immo idem uidetur dicendum de diacono, ut di.lxxxi. Apostolus. *in Niceno concilio*: Si ita statuit Nicenum concilium, quomodo potuit Martinus dispensare contra ut bigamus promoueretur in subdiaconum, cum contra Nicenum concilium non ualeat dispensari, ut di.xv. Sicut et di.xvi. Sancta et di.i. Si ille? Quod tamen de hiis intellige que ad articulos fidei pertinent: hec autem in animaduersionem personarum sunt introducta.

Item queritur quare dispensauit Martinus tantum cum bigamis usque ad subdiaconatum.³ Forte ideo quia regula apostolica tantum de episcopo et prebytero et diacono data fuit, non de⁴ subdiacono, quia tunc temporis ordo ille inter sacros ordines non computabatur, ut infra di. proxima c.i. et di.lx. Nullus. Posset tamen apostolicus cum talibus dispensare ulterius, licet factum non legatur, et si bigamus sacerdos fieret, in ueritate ordinem haberet, ut di.l. Quicumque. Episcopus tamen ad instar Martini non posset dispensare ut bigamus promoueretur in subdiaconum.

L fo. 28rb, R fo. 16ra.—¹om. R. ²om. L. ³corr. ex archidiaconatum L, diaconatum R. ⁴om. L.

Summa De iure canonico tractaturus (Anglo-Norman School, after 1186)

(D.14 c.2) *Sicut quedam*: uetus et nouum testamentum et iiii. concilia. *conuelli*: in articulo fidei, nec in statu ecclesie uniuersalis. Secus in aliis, puta que in personas aliquid seuerius exercent, ut plenius habes di. xxxiiii. Lector.

(D.34 c.18) *Lector. nichil autem supra*¹: Hinc argumentum dispensationem fines suos excedere non debere. Set numquid potuit dispensare usque ad

diaconatum²: Resp. forte non, quia apostolus de hiis gradibus cogitauit qui tunc erant, non de hiis qui non erant: soli presbyteri et diacones tunc erant. Vnde contra prohibitionem apostoli super uniuersali statu ecclesie non posset papa dispensare: audiui tamen dispensatum. Et num si bigamus ordinetur in presbyterum, presbyter erit? Resp. sic. Set numquid episcopus cum³ bigamo potest dispensare ut faciat subdiaconum? Resp. non credo. Set cum Nicenum concilium, ut supra, Cognoscamus, statuerit etiam non debere esse clericum bigamum et super uniuersali statu hoc statuerit, num Martino liceat contra dispensare? Resp. sic, quia quod Nicenum concilium adiecit⁴ statuto apostolico, quod ius commune fuit, rigor erat. Nam de iure communi futurum⁵ apostolus forte non omisisset, quia in spiritu uidit, ut creditur, futuros subdiaconos. Rigori ergo personarum licite detrahitur per⁶ papam.

Laon MS 371*bis*, fos. 86va, 93ra.—¹sac L. ²diacon L. ³om. L. ⁴adicit L. ⁵esset *add.* L. (*forsan legendum* nam quod de . . . futurum esset?). ⁶p̄p L.

Anonymous addition to Honorius, *Summa questionum*

(Anglo-Norman School, c. 1180-1190; addition of early 13th cent.)

(ii.9 *de bigamia*) Item queritur an bigamus suscipiat characterem. Non uidetur quia propter defectum sacramenti non promouetur: non ergo, cum in ipso¹ deficiat sacramentum, potest recipere sacramentum. Item in bigamo perpetua est prohibitio quia nec permittitur ordinari² nec si ordinatur³ de facto habet characterem. Vnde cum perpetua sit prohibitio⁴ contrahere cum cognata et nunquam possit cum ea esse matrimonium, a simili cum bigamo non est characteris collatio. Set contra, ordinati ab hereticis uel excommunicatis ordinem suscipiunt, supra ix. q.i. Ordinationes:⁵ quare ergo isti non suscipiunt characterem? Item in sacramentis, dum modo fiant in forma ecclesie et ab eo qui potest, uerum est quod conferuntur,⁶ ergo et hic karakter.

Douai MS 640, fo. 20ra *marg. inf.*—¹ipsum D. ²ordiarī D. ³ordiantur D. ⁴cum *add.* D. ⁵Ordinatos D. ⁶cum feruntur D.

Huguccio, *Summa decretorum* (Bologna, c. 1188-1190)

(D.34 c.18) *Lector si duxerit uiduam, olim uxorem alterius, uel si duxerit uiduam alterius uxorem:*¹ idest in uxorem. *in lectoratu:* Alibi contra dicit idem Martinus, ut infra di.l. Si quis uiduam: ibi enim dicit quod talis non debet promoueri et promotus debet deponi. Set ibi ponit ius commune, hic loquitur dispensatiue. *nichil autem supra:* Arg. quod quando alicui aliquid conceditur uel permittitur, non debet se extendere ad alia, arg. viiii. q.iii. Conquestus et xviii. q.ii. Hoc tantum; et² contrario, quando aliquid alicui prohibetur, nisi expressim et nominatim exprimatur in contrarium, bene potest se ad alia extendere, set ex eo quod specialiter additur determinatio, uidetur quod ubi non additur licita sit ad alia extensio, et est argumentum quod dispensatio debet esse contenta suis finibus, arg. di.xii. Nos consuetudinem et di.l. Quicumque penitens et i.q.v. c.i. et q.vii. Saluberrimum et xxxvi. q.ii. Si autem.

Set ecce bigamus uel uidue maritus in necessitate permittitur promoueri usque ad subdiaconatum: set si ordine illo dignus est, nonne ad ulteriorem poterit promoueri propter eandem causam? Non, nisi noua dispensatio interuenerit. Set nec deberet dispensatio plus extendi, dispensationes enim certis finibus limitantur, ut in preallegatis capitulis.

Set³ nonne papa potest dispensare cum bigamo usque ad diaconatum? Potest quidem de facto: nostris etiam temporibus Lucius tertius⁴ dispensauit cum quodam bigamo in Sicilia usque ad presbiteratum. Set forte plus fuit ibi facti quam iuris. Regula enim apostoli non uidetur loqui nisi de episcopo et presbitero et diacono, et ideo dispensatio usque ad subdiaconatum non uidetur contra regulam apostoli: set si fiat ad diaconatum uel presbiteratum aperte uidetur contra regulam apostoli. Et hec est causa quare Martinus noluit ultra dispensare nec papa debet ultra dispensare, licet Martini prohibitionem non ligetur. Dispensat tamen et potest dispensare ultra, saltem de facto, et ne uideamur diminuire potentiam pape, dicamus quod de iure potest. Set numquid contra apostolum? Dico quod sic, quia ratione prelationis quilibet apostolicus est maior quam fuerit apostolus: unde et in omnibus que dixit apostolus potest papa dispensare, nisi in his que pertinent ad fidem uel ad salutem.

Set numquid episcopi possunt dispensare in bigamo uel uidue marito? Credo quod non, arg. di.l. Non confidat. Quare ergo Martinus dicit 'nichil supra'? Cum pape non possit legem imponere, subditis frustra talis lex imponeretur nisi et ipsi possent in tali casu dispensare. Ideo dicunt quidam quod episcopi in hoc casu possunt dispensare. Set potest dici quod Martinus non imponit legem apostolicis, set ostendit quid deceat et quid ipse sibi licere uult, et consulit ut et alii idem obseruent, set non cogit.

Set illud nota quod bigamus, in quocumque ordine ordinetur, ordinem recipit, etiam episcopalem si in eo ordinetur, arg. di.l. Quicumque penitens.

Vatican, MS Borgh. 272, fo. 24rb-va (with some emendations based on MS Arch. S. Petri C. 114, fo. 44r).—¹cf. *var. lect. Gratiani ap. Friedb. ad loc. n.* 132. ²om. B. ³se B. ⁴titius B.

Alanus, *Apparatus Ius naturale* (Bologna, c. 1192, revised c. 1202)

(Passages not found in the first recension are printed here within square brackets; the asterisk denotes the places in Paris MS 15393 where glosses from the *Apparatus* of Laurentius are added in a later stratum: see below, p. 445).

D.34 c.18 [*Lector*: Si quis constitutus in minoribus ordinibus ducat uiduam uel si quis bigamus dispensatiue potest promoueri in subdiaconum, supra autem non.]¹ *Lector*: infra di.l. Si quis uiduam, et est casus² eiusdem Martini in quo rigor continetur. *necessitas*: puta inopia clericorum. *Necessitas* enim dispensationem³ inducit,⁴ arg. supra eadem, c. Fraternitatis. Set in hoc casu soli pape⁵ licet dispensare, arg. di.⁶ xxxii. De illo, di.⁷l. Non confidat.⁸

Hec autem dispensatio non est contra apostolum, set contra Nicenam synodum,* supra⁹ eadem, Cognoscamus. [Posset tamen papa in hoc articulo contra apostolum dispensare, sicut fecit Lucius tertius usque ad presbyteratum.*]¹⁰

nichil: Ecce dispensationi certus imponitur terminus, ut hic et di.¹¹xii. Nos consuetudinem, i.¹² Q.v. c.i.* Hec¹³ dispensatio usque ad ordinem episcopi uel presbyteri excedere¹⁴ non debet, repugnante [apostoli prohibitione et]¹⁵ sacramenti significatione. Episcopus enim significat¹⁶ de omnibus gentibus unitatem uni uiro, idest Christo, subiectam, di.¹⁷xxvi. Acutius. Set hec significatio non est in bigamo. Unde dicunt quidam* quod bigamus nec iuste nec iniuste¹⁸ potest fieri¹⁹ episcopus, impossibilitate²⁰ iuris impediens, quod uerum non est. Nec Augustinus dicit simpliciter episcopum hoc significare,²¹ set 'unius uxoris uirum episcopum.'²² [Posset tamen ex plenitudine potestatis sue usque ad supremum gradum dispensare. Quare ergo dicit Martinus, 'nichil autem supra'? Resp. non ut suis successoribus prescribat, set ut quid seruare debeant ostendat.]²³

Paris, B.N. MS lat. 3909 (=Pr), fo. 7rb; MS lat. 15393 (=Ps), fo. 27ra; Bibl. Mazarine 1318 (=M), fo. 37va; Seo de Urgel, Cathedral Chapter MS 113 (=U), not foliated.—PrU: first recension; PsM: second recension.
¹Ps: om. PrUM. ²et—casus om. Pr. ³om. PsM. ⁴ducit Pr. ⁵soli pape om. Ps. ⁶supra di. PrU. ⁷infra di. PrU. ⁸consideret Ps, considerat M. ⁹ut supra PrU. ¹⁰PsM: om. PrU. ¹¹supra di. PrU. ¹²infra i. PrU. ¹³enim add. PrU. ¹⁴procedere PrU. ¹⁵PsM: om. PrU. ¹⁶signat M. ¹⁷ut di. Pr, ut supra di. U. ¹⁸nec iniuste om. U, suppl. U². ¹⁹fieri potest tr. PrU. ²⁰uel possibilitate PsM. ²¹hoc sign. epm. tr. Ps. ²²(...) p (...) rl'm add. Pr. ²³PsM: om. PrU.

Apparatus Ecce uicit leo (French School, after 1202)

(D.34 c.18) *Lector. in lectoratu*¹: l.² di. Si quis contra, ubi idem Martinus infra³ contradicit. Set illud loquitur de iure, hoc de dispensatione. *nichil autem supra*: Arg. quod dispensatio non est extendenda, arg. i. q.ult. Saluberrimum et xii.di. Nos consuetudinem. Item nec priuilegium, ut ex. de excessibus priuil. Cum et plantare. Set numquid astringit hic papa Martinus successores? Dicimus quod non, quia non posset, set quid facere debeant⁴ ostendit. Simile xii. Q.ii. Non liceat.⁵ *similiter si bigamus fuerit*: Ecce cum bigamo hic papa dispensat. Set numquid posset hoc simplex episcopus? Quamuis quidam concesserint, dicimus quod non, ut l.di. Confidat. Immo si dispensat debet deponi et ordinans et ordinatus, ut ex. de bigamis non ordi. Super eo.⁶

Set numquid posset dispensare papa ut esset bigamus sacerdos? Dicunt quidam quod non, quia non potest contra preceptum facere apostoli, xxv. Q.i. Sunt qui dicunt, et dicunt⁷ quod non est contra preceptum si fiat subdiaconus, quia in tempore apostoli non erat subdiaconatus sacer ordo. Posset tamen dici quod posset ex iusta⁸ causa contra preceptum dispensare quod non pertinet ad articulos fidei. Set numquid,⁹ si de facto episcopus bigamum

in sacerdotem ordinavit, est ordinatus? Ita uidetur implicite,¹⁰ quia deponitur, ut l.di. Quicumque. Solutio: dicunt quidam, sicut nec femina esset ordinata quia non est apta ad accipiendum sacerdotium, non posset etiam hic papa dispensare. Quicquid dicatur, utrum recipiat ordinem uel non, solus deus scit.

St. Florian MS XI. 605, fo. 15vb.—¹*in lectura puta*: F. ²*ibi* F. ³*ita* F?. ⁴*debeat* F. ⁵*xiii. Vt secunda non iaceat* F. ⁶*eos* F. ⁷*et dicunt scripsi: om.* F (*homoiotel.*). ⁸*ista* F. ⁹*non quam* F. ¹⁰*ic* F (?).

Apparatus Animal est substantia (French School, after 1206)

(Passages not found in the Bamberg MS are printed within square brackets].

(D.34 c.18) *Lector. fiat*:¹ ex dispensatione. Nota quod² in his que sunt de iure naturali, ut in adulterio, furto, papa non potest dispensare, set in illis tantum que ab inpositione sorciuntur effectum, ut in bigami promotione. Vnde³ admittitur eius dispensatio. *supra*:⁴ Set quomodo potuit successoribus suis legem inponere? [De hoc dictum est xii.q.ii. Non liceat.] Nonne in tantum posset extendi dispensatio ut bigamus presbiter fieret?⁵ [Quidam enim dispensavit cum bigamo ut archiepiscopus fieret.]

Bamberg MS Can. 42 (P.11.15), fo. 32va; Liège MS 127 E, fo. 28ra. — ¹*ad dict. ante c.18 v. bigami* L. ²*ex—quod om.* L. ³*bene* L. ⁴*ibid. v. subdiaconatum* L. ⁵*fiat* L.

Laurentius, *Apparatus decretorum* (Bologna, c. 1210-1215)

(as presented in the additions made, probably by a French disciple, to the *Apparatus* of Alanus in the Paris MS).

(D.34 c.18) *permaneant*:¹ Et est dispensatio quia ex quo contrahit cum² uidua, priuatur omni priuilegio, lxxxiii. Quisquis. la.

(Alanus: . . . *contra Nicenam sinodum*): Immo est contra apostolum, ut dicit lau. (Alanus: . . . *usque ad presbyteratum*): et episcopatum cum² panormitano. (Alanus: . . . *i.Q.v. c.i*): Non tamen pape imponit necessitatem³ quin possit dispensare si uelit, quia non habet imperium par in parem, ex.iii. de elect. Innotuit. Set nunquid alii, scilicet episcopus potest dispensare usque ad subdiaconatum ut hic dicitur? Non, quia prohibitum est,⁴ de big. c.ult. la. (Alanus: . . . *Vnde dicunt quidam*): scilicet Nich' Furiosus.

Paris, B.N. MS lat. 15393, fo. 27ra.—¹*gl. interlin.* ²*con* P. ³*necessitati* P. ⁴*vel prohibetur* L (*lect. incerta*).

Glossa Palatina (Bologna, c. 1210-1215)

(D.34 c.18) *Lector. autem supra*: Hic non ponit regulam¹ successoribus iste Martinus, quia nec posset, ut ex.iii.² de elect. Innotuit. Vnde papa³ Lucius dispensavit cum panormitano archiepiscopo qui bigamus fuerat. Set⁴ episcopis datur hic forma dispensandi cum bigamis. b.⁵

Contra l.di. Non confidat. Quod tamen⁶ hodie nouo iure eis interdictum est, ut ex.⁷ de big. c.ult. Fuerunt tamen⁸ quidam qui dixerunt cum bigamo dispensari non posse ultra, ut hic docetur, nec reciperet characterem sicut nec

asinus: hoc dixit⁹ Nicholaus¹⁰ Furiosus, set confunditur ex illo cap. di.l. Quicumque.¹¹

Vatican, MS Pal. lat. 658, fo. 9rb, MS Reg. lat. 977, fo. 24va.—¹om. R. ²om. P. ³et papa R. ⁴nec R. ⁵h. P (*sed agitur de opinione Bernardi Compostellani, dum Huguccio aliter sentit*). ⁶bene P ⁷ex. iii R (*sed agitur de 1 Comp. i. 13.3*). ⁸Fuerunt tamen] cum R. ⁹dicit R. ¹⁰nichil P. ¹¹Contra—Quicumque: *est opinio Laurentii, cf. verba Guidonis de Baysio.*

Johannes Teutonicus, *Glossa ordinaria* (Bologna, c. 1216)

(D.34 c.18) *Lector. fiat*: Sic ergo papa dispensat contra apostolum, ut hic et lxxxii. Presbiter. Innocentius tamen dicit quod non licet dispensari cum bigamo, ut ex.iii. de bigam. Nuper, et idem Martinus hoc dicit, l.di. Si quis uiduam. Lucius tamen dispensauit cum panormitano archiepiscopo qui fuit bigamus. Item habes hic. . . .¹

Vatican, MS Vat. lat. 1367, fo. 25ra.—¹*seqq. ut in edd.; ad rem non pertinent.*

Guido de Baysio, *Rosarium* (Bologna, c. 1300)

(D.34 c.18): . . . In glossa i. ibi, 'dispensauit,'¹ adde: scilicet usque ad presbyteratum. Temporibus nostris facta fuit haec dispensatio, sed forte ibi fuit plus facti quam iuris, secundum H.² Et ideo dicebat Nicolaus Furiosus . . . sicut nec asinus. Sed ipsius opinio confunditur 50. dist. Quicumque, secundum L.³ Vnde dicebat Hug. ne videamur diminuire potentiam papae, dicamus quod de iure potest vltra dispensare. Vnde dicebat Lau. quod papa potest dispensare cum bigamo contra apostolum: quia ipse est maior potestate apostolo, 22. dist. Sacrosancta.⁴ Item . . .

Ed. Venice 1577, fo. 46rb.—¹*i.e. verba Jo: Teutonici, supra: 'Lucius tamen dispensauit' rell.* ²*Huguccio ad loc. § 'Set nonne papa potest. . .'* ³*Laurentius, cf. Gloss. Pal. ad loc. in fine.* ⁴*est opinio Huguccionis, non tamen Laurentii.*

Ricardus de Mores Anglicus, *Apparatus Compilationis primae* (Bologna, after 1196)

(De bigamis, i.13.3) *Super eo. priuari*: Infra xxxiiii. di. Lector contra. Solutio: ibi ostendit Martinus¹ quid liceat pape aut² quid aliis episcopis, idest³ dispensando cum bigamo ad subdiaconatum, quod non est contra apostolum; usque ad diaconatum⁴ non posset, ut michi⁵ per hoc capitulum uidetur, scilicet ut⁶ statuatur: sic dispensandum est,⁷ alias autem petentibus⁸ nichil est diffinitue positum, ut in aut.⁹ de referendariis.¹⁰

Avranches MS 149, Bamberg MS Can. 20, Halle MS Ye. 80, London, Lambeth MS 105, Munich MS lat. 6352, Vatican, MS Pal. 696, fo. 11rb. (I owe the collations of ABHM to the kindness of Msgr. Charles Lefebvre; cf. also the text published by F. Gillmann, *Archiv für katholisches Kirchenrecht*, cvii (1927), 596 n.2.)—¹papa *add. al. m. V.* ²om. V, non A. ³scilicet BHLM, de *add. ABHL.* ⁴subdiaconatum V, quod non—diaconatum om. L (*homoiotel.*), *suppl. L2.* ⁵non posse (*corr. posset*) michi V. ⁶om. BM. ⁷om. A, *exp. V.* ⁸penitentibus B. ⁹in aut.] infra A. ¹⁰*Auth.ii.5=Nov. x (vide. n. 71 supra).*

Apparatus Materia auctoris ad Comp. I (after Ricardus)

(*De big. i.13.3*) *Super eo. priuari*: Contra xxxiiii. . . scilicet dispensando cum bigamo,¹ quod contra apostolum non posset, ut uidetur ex hoc capitulo. Pape ergo licet, set alii non licet. Vel tempore apostolorum subdiaconatus inter sacros ordines non computabatur. *bigamus*: l.di. Ex penitentibus. Nam in aliis potest episcopus contra apostolum dispensare, quia illud² 'oportet episcopum esse sine crimine' est preceptum, vi. Q.i. c.i. et ut patet xlv.di. Episcopum et de clerico percussore c.ii.

Zwettl MS 162, fo. 6va-b.—¹*vide Ric. Angl. ad loc.* ²*apostoli add. marg.*

Glossae Valentianenses Comp. I (French School, early 13th cent.)

(*De big. i.13.3*) *Super eo*: Dicitur quod non potest dispensari cum bigamo ut ascendat ad sacros ordines, quia contra apostolum fieret, et si talem quis ordinet deponendus est, tamen ex dispensatione potest tolerari.

priuari: Hoc uidetur falsum, quia possunt fieri subdiaconi, ut xxxiiii. Lector, et subdiaconatus sacer est ordo, ut xxxii.di. Erubescant. Dico quod reuera solus papa potest dispensare quod bigamus sit subdiaconus, nec est contra apostolum set contra Nicenum concilium,¹ ut xxxiiii. Cognoscamus. Episcopus simplex non potest dispensare ut fiat subdiaconus, ut l. Non confidat; ut fieret sacerdos, papa non posset dispensare, et si hoc faceret esset contra apostolum, et si de facto promoueretur non reciperet characterem. Tamen dicitur quod Lucius papa cum quodam bigamo dispensauit in Sicilia² ut fieret presbiter, set a cardinalibus fuit redargutus.

Valenciennes MS 274, fo. 27r (communicated by Msgr. Lefebvre).—¹consilium V. ²*Sicilia scripsi: lacuna in V.*

Tancred, *Glossa ordinaria Comp. I* (Bologna, first recension c. 1210–1215; second recension c. 1220)

(*De big. i.13.3*) *Super eo. dispensari*: Supra xxxiiii. Lector contra. Solutio: ibi ostendit Martinus quid liceat pape aut¹ quid aliis episcopis, scilicet dispensare cum bigamis² usque ad subdiaconatum, quod non est contra apostolum, set usque ad diaconatum³ non licet⁴ per istud⁵ capitulum, sicut michi uidetur. R.

Video enim quod apostolus prohibuit criminosum ordinari, ut xxv.di. § Nunc autem, et quod episcopis⁶ licet dispensare cum criminosis, scilicet cum adulteris⁷ et minoribus criminibus implicatis,⁸ infra de iudiciis, At si clerici: et non est contra apostolum set preter apostolum.⁹ Quidam tamen dicunt quod episcopis nullo modo dispensare licet cum bigamo, et si ordinaretur non reciperet characterem sicut nec asinus, et Martinus non fuit papa set capra. Videtur quibusdam et michi quod dominus papa¹⁰ directe contra apostolum dispensare posset, quoniam maior est in amministrazione¹¹ quam fuerit¹² Paulus. Et fertur, set scriptum non uidi, quod Lucius papa dispensauit cum bigamo usque ad sacerdotium. t.

Vatican, MS Vat. lat. 2509 (rec. 1), fo. 9vb; MS Chis. E. vii. 207, fo. 10rb (rec. 2).—¹et C. ²bigamo C. ³subdiaconatum C. ⁴posset C.

⁵hoc C. ⁶episcopi V. ⁷adulteriis C. ⁸implicati V. ⁹set preter ap. om. C, suppl. C². ¹⁰set capra—papa om. C (*homoiotel.*), suppl. C². ¹¹in ammin.] amministrationem C. ¹²fuit V.

Vincentius Hispanus, *Apparatus Decretalium Gregorii IX* (School of Bologna; after 1235 in Portugal)

(*De big. i.21.2*) *Super eo. de bigamis: ordinatis scilicet.*¹ *ordinandi: idest conferendi consimiles ordines.* Hec est enim hodie pena statuta contra,² supra de temp. ord. Litteras. Vinc. *dispensare: Contra di.xxxiiii. Lector. Solutio: ibi ostendit... michi uidetur. t.*³ Video enim... set preter apostolum.⁴ Et dico quod Martinus papa non potuit legem imponere successoribus: expressit enim quid liceat.⁵ *contra apostolum.*⁶ Et dico quod dominus papa directe contra apostolum posset dispensare, quia maior est in administratione quam fuerit Paulus,⁷ et fatui sunt qui dicunt bigamos non posse recipere characterem. Vinc.

(*ibid. c.3*) *De bigamis. uiduarum: ... admitti: nec etiam per dispensationem episcopi, ut eod. tit. Nuper a nobis. Secus per dispensationem domini pape, ut xxxiiii. Lector. Vinc.*⁸

Paris, B.N. MS lat. 3967, fo. 39rb.—¹scilicet (=s.) *scripsi: c. P.* ²*suppleas tales vel aliquid simile.* ³*vide glossam Ricardi ap. Tancredum ad loc. Comp. I.* ⁴*vide Tancredum ibid.* ⁵*leg. deceat? (cf. Huguccionis verba).* ⁶*quid liceat contra apostolum absque distinctione lemmatis scr. P.* ⁷*vide Tancr.* ⁸*vide glossam Alberti ap. Tancredum ad loc. Comp. II (in n. 54 supra).*

Ambrosius, *Summa titulorum decretalium* (Bologna, after 1215)

De bigamis non ordinandis. ... Dispensatiue tamen potest usque ad subdiaconatum promoueri, ut xxxiiii.di. Lector. Set numquid hic episcopus dispensabit? Nequaquam: non illa ratione quia apostolus prohibuit bigamum ordinari, licet id pro ratione assignetur infra eod. tit. Super eo, libro eod. Nam eadem ratione nec cum criminoso aliquo dispensare posset, cum apostolus in regula sua prohibeat criminosum ordinari, ut xxv.di. Nunc autem. Quod tamen aperte falsum est: dispensat enim in omnibus minoribus criminibus, etiam in adulterio, ut ex. i. de iudic. At si clerici. Set alia ratione, quia id¹ expresse episcopis prohibitum est, ut ex. iii. eod. tit. Nuper a nobis. Duo uero sunt species bigamie. ...

Rome, Bibl. Casanatense MS 1910, fo. 42ra.—¹idem R.

St. Raymond of Peñafort, *Summa iuris canonici* (Bologna, c. 1218-1221)

(*De big. ii.5*) ... Item bigamus exigente necessitate potest promoueri usque ad subdiaconatum dispensatiue, xxxiiii.di. Lector.¹ Set quis poterit dispensare? Dicunt quidam quod episcopus, et hoc per illud uerbum 'nichil autem supra' positum in predicto cap. Lector. Non enim illud posset² intelligi de papa, quia Martinus³ non poterat inponere legem suis successoribus, cum non habeat imperium par in parem, ex. iii.⁴ de elect. Innotuit. Vnde et⁵ Lucius papa dispensauit cum panormitano archiepiscopo qui bigamus fuerat.⁶ Si obicias quod non licet contra apostolum episcopis⁷ dispensare, respondent⁸

quod non obstat: nam et⁹ apostolus dixit 'oportet ordinandos esse sine crimine,'¹⁰ et tamen episcopi dispensant in adulterio et in¹¹ minoribus criminibus, ex. i. de iudic. At si.¹² Item¹³ apostolus non prohibet dispensationem set de iure communi ostendit tales non esse promouendos.

Alii dicunt, et forte uerius, quod hodie non licet episcopis cum bigamo dispensare, quia ius expressum est quod eis prohibet¹⁴ dispensationem, ex.iii.¹⁵ de biga. Nuper. At idem¹⁶ facit ex.i. de biga. c.ult.¹⁷ et di.l. Si quis uiduam. Secundum hoc non tenet illud c. Lector, nisi forte quoad minores ordines ut in illis possit episcopus dispensare,¹⁸ arg. xxxiiii. Si subdiaconus, et in eodem c. Lector, et di.l. Placuit, in principio.¹⁹

Item quid si aliquis . . .

Vatican, MS Borgh. 261, fo. 94rb (and cf. the ed. by J. Rius Serra, Barcelona, 1945), collated with the *Summa de casibus poenitentiae* (=S) iii.3 §4 (ed. Rome, 1603, pp. 261-3; =§2 ed. Verona, 1744, p. 238).—¹Item numquid bigamus dispensatiue saltem poterit promoueri? Dico quod sic, usque ad subdiaconatum, exigente necessitate, Dist. 34 c. Lector S. ²posset illud tr. S. ³cuius est cap. add. S. ⁴iii. om. S. ⁵om. S. ⁶fuerat big. tr. S. ⁷liceat episcopo contra apost. tr. S. ⁸Respondeo (R' ed. Rom.) S. ⁹om. S. ¹⁰ordinandum sine crim. esse tr. S. ¹¹om. S. ¹²ex. de iud. At si clerici § fin. S. ¹³Preterea S. ¹⁴proh. eis tr. S. ¹⁵iii. om. S. ¹⁶id S. ¹⁷ex. eod. Super eo S. ¹⁸ut in—dispensare] in quibus credo quod potest episcopus propter necessitatem dispensare S. ¹⁹segr. additio Si tamen clericus in sacris . . . S.

Johannes de Petesella, *Summa titulorum Decretalium Greg. IX* (Bologna, after 1234)

(*De big. i.21*) . . . Cum bigamo dico dominum papam dispensare posse plenarie, licet quidam negent, ut Nicholaus Furiosus et sui sequaces, qui similiter sunt furiosi in hac parte, quia negant potestatem ecclesie Romane et clauces fuisse¹ traditas Petro et per ipsum suis successoribus. Concedunt tamen quod usque ad subdiaconatum possit cum talibus dispensari, ut xxxiiii.di. Lector, et expresse confunduntur l.di. Quicumque penitens. Et dicitur, set non inueni² in aliqua scriptura autentica quod Lucius papa dispensauit cum panormitano archiepiscopo, nec est contra supra eod. Super eo, quia non denegatur in eo summo pontifici dispensatio set aliis episcopis. Dicunt tamen quidam et male quod episcopi possunt usque ad subdiaconatum dispensare cum bigamo per cap. xxxiiii. di. Lector, quia dispensationem talium sibi Romanus pontifex reseruat, ut infra eod. Super eo.

Vatican, MS Vat. lat. 2343, fo. 150ra.—¹fuisse V. ²inuenit V.

Johannes de Deo, *Libellus dispensationum* (Bologna, before 1243, revised after 1243, cf. n.87 *supra*).

(Owing to the deficiencies of the three MSS consulted, only a tentative text is given here. Passages not found in the first recension are printed within square brackets.)

[DE DISPENSATIONE DOMINI PAPE.]¹ Super hoc diuersi² doctores diuersa sentiunt. Quidam dicunt quod papa³ possit dispensare in omni casu, etiam⁴

contra apostolum, cum teneat locum beati Petri et sit⁵ uicarius Ihesu Christi, ex. ut eccles. benef. Vt nostrum, xxii.di. c.i. ex. de translat. prelat.⁶ Inter corporalia. Item dicunt quidam alii⁷ quod in omni casu possit⁸ dispensare, scilicet cum non ligetur⁹ legibus, ix. q.iii. Ipsi [sunt et c. Patet et c.] Cuncta,¹⁰ presertim cum non habeat imperium par in parem, ex. de elect. Innotuit. Nichil ergo excipe¹¹ nisi articulos fidei tantum. Vnde uersus. . . .¹² Si autem¹³ peccat papa¹⁴ in fide, possit puniri, xl.di. Si papa; alias non, ii. q.vii. Oues et vi. q.i. Oues et xl.di.¹⁵ c.i et ix. q.iii. Aliorum et lxix.di. c.ult.

Item¹⁶ alii dicunt contra, scilicet quod¹⁷ non potest dispensare contra apostolum, nec contra ius diuinum nec contra euangelium nec contra iiii. concilia, et inducunt pro se multa iura. . . .¹⁸ Item alii¹⁹ dicunt quod in eis que spectant ad ipsum solum possit indefinite dispensare secum²⁰ sine offensa iuris, que sunt hec: Solus restituit. . . .²¹

[IN QUIBUS PAPA DISPENSARE NON POTEST.]²² Restat ergo uidere²³ in quibus de iure non possit dispensare²⁴ etsi de facto possit. Contra apostolum non potest²⁵ dispensare nec debet quod²⁶ bigamus promouetur in diaconem uel sacerdotem uel episcopum, ut dicit²⁷ apostolus in epistula ad Timotheum²⁸ et Titum.²⁹ 'Oportet esse episcopum unius uxoris uirum,' idest non plurium, et hoc patres attestantur, [scilicet³⁰ propter significatum et consignificatum incarnationis filii dei in utero³¹ uirginis et propter unionem Christi et ecclesie militantis et triumphantis. Quod autem hoc uerum sit probant patenter tam³² apostolici³³ quam alii expositores noui et ueteris testamenti: Augustinus, xxvi.di. Acutius, et Innocentius, xxvi.di. Deinde, Ambrosius, xxvi.di. Vna tantum; et probat Vrbanus, xxv. q.i. Sunt qui dicunt, et Lucius, ex. de bigamis, Super eo, ubi dicitur quod nullo modo possit dispensare; et Celestinus probat illud idem ex. de big. c.³⁴ De bigamis, et Innocentius iii. ex. eod. c. Nuper. Nec obstat xxxiiii.di. Lector, quia in antiqua ecclesia³⁵ non fuit subdiaconatus³⁶ sacer ordo, set a tempore Gregorii, xxxi.di. c.i. et ii. Nec obstat quod dicunt quidam quod Lucius dispensauit cum bigamo,³⁷ quia non inuenitur; quodsi³⁸ inueniretur apocriphum esset, et qui secus sentit pecus est.]

Item non potest dispensare contra euangelium. . . .³⁹

Item in hiis⁴⁰ casibus non dispensat, etsi forte posset⁴¹: in symoniaco. . . .⁴²

Et si de facto possit quicquid uelit, non tamen debet: qui licet sine comparacione aliorum hominum sit magnus factus,⁴³ debet tamen timere, de pen. di.ii. Principium inquit [et ix. q.iii. Aliorum, xl.di. Si papa. In quibus dicitur, si peccat artius⁴⁴ punitur quam alius, xl. di. Homo.]⁴⁵ In aliis autem ratione duce bene dispensat et debet, l.di. Domino sancto [et c.Ponderet et c.Considerandum et c.Fidelior et lvi.di. Quia simpliciter,⁴⁶ ex. de renunt. Nisi cum pridem⁴⁷], et hec de expressis et de tacitis⁴⁸ dispensationibus.

Tacite enim semper dispensat, cum non possit omnia uindicare.⁴⁹ Vnde dicit ipse quod non uult exaggerare aliquod factum⁵⁰ ne cogatur iudicare⁵¹ quod iustum est, lxxiiii.di. Vbi ista, xxiiii. q.ii. Sane quod super Ricardo,⁵² ii. q.i. Multi. Et hec sufficiant causa breuitatis de dispensatione pape, qui tenet et tenere debet mundi monarchiam,⁵³ ex. de maior. et obed. Solite,

xxii.di. c.i. ii. iii. et iiij.⁵⁴ [Et hoc dicimus salua honorificencia et potencia Romane ecclesie tuique honoris, uenerande Innocenti iiij.]⁵⁵

Vatican, MS Vat. lat. 5066, fos. 2v-5v (=V); Rome, Bibl. Casanatense 108, fos. 290rb-291ra (=C); Milan, Bibl. Ambrosiana M.64 sup., fo. a. lxxxxvra-vb (=A).—A: first recension; VC: second recension (but many readings common to AC suggest the existence of several stages in rec. 2). I have abstained from recording many readings, especially of C, which are corruptions rather than variants.

¹*bis scr. V, IN QUIBUS DISPENSAT SOLUS PAPA A.* ²De dispensatione domini pape diuersi A. ³om. A. ⁴et etiam A. ⁵sicut V, sic C. ⁶prel. om. C, episcopi uel clerici A. ⁷Et ideo dicunt AC. ⁸potest A. ⁹non legatur C, ligetur A. ¹⁰VC: Ipsi et Cuncta A. ¹¹Nolunt ergo excipere AC. ¹²*sqq. ita sunt corrupta ut emendari nequeant ex tribus codd. Deinde aliam paragraphum Circa humanum genus cum ytaliciis . . . add. V.* ¹³Set dicunt si autem V, et si autem C, et si A. ¹⁴om. AC. ¹⁵Si papa—xl.di. om. V (*homoiotel.*), ii.q.vii.—c.i. om. A. ¹⁶om. A. ¹⁷quia C. ¹⁸*sqq. omisi.* ¹⁹Item tercii C, Terci A. ²⁰om. C. ²¹*sequuntur 24 casus papales.* ²²VC: om. A. ²³Restat uidere A, Ergo uidere potes C. ²⁴de iure disp. non potest tr. C, non potest disp. de iure tr. A. ²⁵posset A. ²⁶scil. *praem.* A, nec debet. Quod VC. ²⁷ut dicit] ut C, unde A. ²⁸ad corinth. xi. C. ²⁹et Tit. om. A. ³⁰scilicet—pecus est VC: om. A. ³¹uterum VC. ³²pat. tam om. C. ³³apostoli V. ³⁴de big. c.] eodem C. ³⁵in ant. eccl.] tempore Martini C. ³⁶subd. non erat tr. C. ³⁷cum silico (*leg. siculo?*) bigamo C. ³⁸et si C. ³⁹*sqq. quinque genera dispensationum ubi 'non potest.'* ⁴⁰In istis A. ⁴¹forte non posset V, forsitan possit C, forte om. A. ⁴²*sqq. quinque genera ubi 'non dispensat.'* ⁴³factus sit (est A) magnus tr. AC. ⁴⁴acrius V. ⁴⁵VC: om. A. ⁴⁶simpli- cem V, plus sui C. ⁴⁷ex. de re iud. Pridem V, ut ex. de renunt. Nisi cum C, et c. Ponderet—pridem om. A. ⁴⁸et de tac. om. V, de om. A. ⁴⁹de omnibus iudicare A. ⁵⁰aliquod factum] quod actum est AC (quod gestum est *can. cit. D.74 c.7*). ⁵¹ne cog. iud. om. A. ⁵²xxiii.—Ricardo] et A *perperam*. ⁵³machinam V. ⁵⁴et penult. et ult. *add. AC.* ⁵⁵VC: om. A (*var. lect. C sunt corruptissimae*).

Bernardus Parmensis, *Glossa ordinaria Decretalium Greg. IX*

(Bologna, first recension before 1241, last recension after 1263)

(Reproduced from the standard edition, Rome 1582. I have numbered the sections and inserted some comments.)

(De big. i.21.2) *Super eo. dispensare*: Sed contra 34. dist. Lector. Ibi dispensatur ut bigamus subdiaconus fiat.

(I. Bernard reports four opinions.)

(1) Sed ibi ostendit M. quod liceat papae aut aliis episcopis, scilicet dispensare cum bigamo usque ad subdiaconatum et non supra, quod non est contra apostolum per hoc capitulum. Prohibitio apostoli est de diacono, presbytero et episcopo, et non de aliis, quia subdiaconatus non erat adhuc sacer ordo.

(‘Sed ibi—capitulum’: Ricardus Anglicus and Tancred. The explanatory addition ‘Prohibitio—ordo’ resembles the wording in *Summa Omnis qui iudicat*. The beginning should read: ‘... ostendit Martinus quid liceat.’)

(2) R. dixit quod Marcellus papa retulit se ad statum primitiuae ecclesiae, in quo subdiaconatus non erat sacer ordo, 60. dist. Nullus.

(R. is not Ricardus Anglicus nor St. Raymond, but the opinion here quoted was held by others, see note 43 *supra*. Gillmann, in *Archiv für katholisches Kirchenrecht*, cvii (1927), 596 n.2, following Johannes Andreae, *Addit. ad Speculum*, prooem., suggests R(ufinus), but admits that no such text is found in the latter's *Summa*. Panormitanus, however, read 'Rogerius' (*Comm. Decretal.* i.21.2); yet no decretalist glossator of that name is known, cf. Kuttner, *Repertorium*, p. 373 n.6.—'Marcellus papa' is obviously a corruption.)

(3) Quidam dicebant quod episcopi olim poterant dispensare cum bigamis in ordinibus maioribus, hac ratione quia episcopi dispensant cum criminosis, infra de iud. At si clerici, et tamen apostolus prohibuit criminosum ordinari, 25. dist. § Nunc autem, nec tunc dicuntur facere contra apostolum: et sic eadem ratione cum bigamo. Quorum opinio reprobatum infra eod. Nuper et c.A nobis.

('Quidam': Tancred's opinion is reported, but with exaggeration. He did not extend the bishop's dispensatory power to all major orders, *App. Comp. I*, ad loc.)

(4) (a) H. dixit quod episcopi dispensare non poterant cum bigamo uel uiduarum marito, arg. 50. dist. Non confidat. Cuius opinio confirmatur per illa capitula Nuper et A nobis.

(b) Jo. uoluit dicere quod papa non posset.

(Huguccio's opinion on bishops is correctly rendered, but the identity of Jo. remains doubtful: neither Johannes Teutonicus nor Johannes Galensis (who was a staunch curialist, cf. Gillmann, *Arch. kath. Kirchenr.* cxviii (1938), 207, 219) held such an opinion on papal power. But Johannes de Deo did: if he were meant, the gloss must have been written or enlarged after Bernard read the *Libellus dispensationum*. Only a collation of MSS can tell.)

(II. Bernard's own opinion (1) on bishops, (2) on the pope, (3) on validity of orders.)

(1) Quod dicit R. et H. uerissimum uidetur: quia licet dispensetur cum criminosis, tamen non sequitur quod cum bigamo. Et illa est ratio quia criminosis post peractam poenitentiam restitutus uidetur in pristinum statum et incipit esse quod non fuit... sed bigamus non prohibetur promoueri propter crimen sed propter sacramenti defectum, quia carnem suam diuisit in plures ab unitate recedendo. Sed illud sacramentum amplius restitui non potest per aliquam satisfactionem, cum non sit crimen...

(Bernard here develops the 'sacramental' reason for rejecting the analogy between *bigamus* and *criminosus* (I 3, above), i.e. Tancred's doctrine on episcopal powers, although Bernard does not expressly speak of bishops.—The opening statement remains puzzling: he now associates 'R.' with Huguccio's opinion ('quod episcopi dispensare non poterant,' I 4a) although no such statement is ascribed to R. in I 2, above.)

(2) Propter quod uidetur quod papa non possit dispensare cum bigamo propter eandem rationem, quia propter dispensationem papae non restituitur sacramentum unitatis, cum nec posset. Nam cum Deus cetera possit, uirginem tamen post ruinam suscitare non potest . . . multo minus uidetur [papa] dispensare posse cum bigamo. Unde opinio R. bona est. Et licet ipse H. dubitet, uidetur tamen consentire—ne uideatur diminui potentia papae—quod possit dispensare cum bigamo.

(The denial of papal power, attributed above (I 4b) to 'Jo.', is now cited with approval as opinion of 'R.': the siglum thus covers three different opinions—all at variance with that of Richard de Mores! As for Huguccio, he actually stated the opposite, pro-papal position much less hesitantly than Bernard (. . . *dubitet, uidetur*) makes it appear.)

(3) Tamen hoc quod dicitur, bigamus in quocumque ordine ordinetur, recipit ordinem, arg. 50. dist. Quicumque poenitens: per quod capitulum uidetur quod cum bigamo dispensare possit. Sed illud tantum intelligitur in minoribus ordinibus.

(The doctrine on the validity of orders received by a *bigamus* (Huguccio and others, see notes 79ff. *supra*) is whittled down to apply in minor orders only.—The sentence 'Tamen hoc quod dicitur . . .' lacks a finite verb: here again, MS evidence would be needed.)

ADDENDUM ON LAURENTIUS

By oversight I failed to copy two glosses from *Glossa Palatina*, D. 34 c. *Lector*, preceding the gl. v. *autem supra* (p. 445 *supra*)

fiat: Potest ergo papa dispensare cum bigamo contra apostolum, quia ipse potestate maior est quolibet apostolo nisi Petro, nisi in articulis fidei. *nichil*: Ideo hic dicit quia apostolus non uidetur expresse prohibuisse nisi de episcopo, presbitero, diacono, et ideo hic dispensandum dicit [MS P: dispensandum. Item dicit] tantum usque ad diaconatum. h.

The second of these glosses comes from Huguccio (cf. his *Summa*, p. 443 *supra*, lin. 4-6); the first is evidently the gloss of Laurentius to which Guido de Baysio refers, 'Vnde dicebat Lau. quod papa . . .' (p. 446 *supra*). My observations on Guido's text, pp. 446 n. 4 and 426 n. 73, are to be corrected accordingly.