

Investigating the Margins:

Bernard of Parma's *Glossa ordinaria* on Religious Marginality in the High Middle Ages

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## Abstract

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The *Glossa ordinaria* compiled by Bernard of Parma (d. 1266) on Pope Gregory IX's 1234 *Decretales*, commonly known as the *Liber extra*, is among the most influential canon law commentaries during the High and Late Middle Ages. Interrogating this source, this dissertation examines the legal status of selected marginal religious groups in medieval Europe—apostates, heretics, Jews, Muslims, and practitioners of magic. Soon after its emergence, Bernard's *Glossa* was studied by law school students—that is, future Church judges, lawyers, inquisitors, and even popes—from the mid-thirteenth century on, and was the standard commentary copied into the margins of manuscripts of the *Decretales*. Yet, modern scholarship ignores this source almost entirely. This study treats this issue through transcription, translation, comparison, and analysis of texts from selected medieval manuscripts of the *Decretales* and the *Glossa*, including the earliest surviving exemplars (c. 1240). It explicates the Romano-canonical judicial terminology and principles employed by the *Glossa*. Furthermore, it scrutinizes the *Glossa*'s manner of using legal allegations and tracks the excerpts which it inherits from commentarial literature. Finally, it examines how the *Glossa* treats the selected marginal religious groups, and thus uncovers how this source can serve as a window for us into medieval society from the perspective of the learned or academic law. More broadly, this work contributes to a fuller understanding of the development of medieval canonical science, the operation of the ecclesiastical-legal system, and the mechanism through which the institutional Church defined its own religious boundaries.

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# **Dedication**

Parentibus meis et Magistro Roberto

# Abbreviations for Legal Citations<sup>1</sup>

| <b>Abbreviations</b>                      | <b>Full Forms</b>   |
|---|---|
| Dist. 45 c. 5                             | <i>Distinctio 45, capitulum 5 of Gratian's Decretum</i>                                     |
| C. 24 q. 2 c. 6                           | <i>Causa 24, questio 2, capitulum 6 of Gratian's Decretum</i>                               |
| <i>De pen.</i> D. 7 c. 1                  | <i>De penitentia (Causa 33, questio 3), distinctio 7, capitulum 1 of Gratian's Decretum</i> |
| <i>De cons.</i> D.4 c. 117                | <i>De consecratione, distinctio 4, capitulum 117 of Gratian's Decretum</i>                  |
| C. 24 q. 3 dict. ante c. 26               | <i>Causa 24, quaestio 3, Gratian's dictum before capitulum 26 in the Decretum</i>           |
| C.15 q.1 dict. post c.2                   | <i>Causa 15, quaestio 1, Gratian's dictum after capitulum 2 in the Decretum</i>             |
| <i>Comp. I.</i> 5.6.3                     | <i>Compilatio I, liber 5, titulus 6, capitulum 3 of the Quinque compilationes antiquae</i>  |
| X 3.33.2                                  | <i>Decretales Gregorii IX/Liber extra, liber 3, titulus 33, capitulum 2</i>                 |
| X 1.6.28 <i>glos. ord. s.v. dividatur</i> | X 1.6.28, <i>glossa ordinaria</i> on the word <i>dividatur</i>                              |

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<sup>1</sup> Legal allegations in the transcriptions throughout this dissertation are highlighted with bold font.

|               |  |
|---------------|--|
| Sext 1.15.1   | <i>Liber sextus, liber 1, titulus 15, capitulum 1</i>                                      |
| C. Th. 16.8.7 | <i>Codex Theodosianus, liber 16, titulus 8, lex 7</i>                                      |
| Cod. 4.41.2   | <i>Codex Justiniani, liber 4, titulus 41, lex 2</i>  |
| Dig. 18.1.70  | <i>Digesta Justiniani, liber 18, titulus 1,<br/>fragmentum 70</i>                          |
| Inst. 1.9.1.  | <i>Institutiones Justiniani, liber 1, titulus 9,<br/>fragmentum 1</i>                      |
| Nov. 69.1     | <i>Novellae Justiniani/Novellae leges/Novellae<br/>Constitutiones, titulus 90, caput 1</i> |

## Bibliographic Abbreviations

### Abbreviations

### Full Forms

MS F

MS Florence, BML Plut.3 sin.9

1582 *ER*

*Corpus Iuris Canonici*. 3 vols. Rome: In aedibus Populi Romani, 1582

BBGMEMJ

Bio-Bibliographical Guide to Medieval and Early Modern Jurists (website)

Berger

Berger, Adolf, ed. *Encyclopedic Dictionary of Roman Law*. Philadelphia: American Philosophical Society, 1953.

BMCL

*Bulletin of Medieval Canon Law*

CCCM

*Corpus Christianorum. Continuatio Mediaevalis*. Turnhout: Brepols, 1971–

CCSL

*Corpus Christianorum. Series Latina*. Turnhout: Brepols, 1953–

CE

*The Catholic Encyclopedia*

CHR

*Catholic Historical Review*

COGD

*Conciliarum oecumenicorum generaliumque decreta: editio critica*. Turnhout: Brepols, 2006–

Coing, *Handbuch*

Coing, Helmut, ed. *Handbuch der Quellen und Literatur der neueren europäischen*



- Privatrechtsgeschichte: Mittelalter (1100–1500)*. Munich: Beck, 1973
- DBI Ghisalberti, Alberto Maria, ed. *Dizionario biografico degli Italiani*, 9 vols. Rome: Istituto della Enciclopedia italiana, 1967
- DBGI Biocchi, Italo et al., eds. *Dizionario biografico dei giuristi Italiani (XII-XX Secolo)*. Bologna: Società Editrice il Mulino, 2013
- DDC *Dictionnaire de droit canonique*
- DMA *Dictionary of the Middle Ages*
- DThC *Dictionnaire de théologie catholique*
- Fr. QCA Friedberg, Aemilius, ed. *Quinque compilationes antiquae: nec non Collectio canonum Lipsiensis*. Leipzig: Bernhard Tauchnitz, 1882
- Fr. v.1 cols. 446-447 Friedberg, Aemilius, ed. *Corpus Iuris Canonici*, vol. 1. Leipzig: Bernhard Tauchnitz, 1879; reprinted Graz 1955, columns 446-447
- Fr. v.2 cols. 656-657 Friedberg, Aemilius, ed. *Corpus Iuris Canonici*, vol. 2. Leipzig: Bernhard

- Tauchnitz, 1881; reprinted Graz 1955,  
columns 656-657
- JE, JK, JL Jaffé, Philipp, ed. *Regesta pontificum romanorum: ab condita ecclesia ad annum post Christum natum MCXCVIII* (F. Kaltenbrunner (JK: an. ?–590); P. Ewald (JE: an. 590–882); S. Loewenfeld (JL: an. 882–1198). 2 vols. 2nd ed. Leipzig: Veit, 1885–1888
- JU Domingo, Rafael, ed. *Juristas universales*. 4 vols. Madrid: Marcial Pons, 2004.
- JTS *Journal of Theological Studies*
- Kuttner, *Repertorium* Kuttner, Stephan. *Repertorium der Kanonistik (1140–1234): Prodromus corporis glossarum*. Vatican City: Biblioteca Apostolica Vaticana, 1937
- LM Auty, Robert, et al., eds. *Lexikon des Mittelalters*. 10 vols. Munich; Zürich: Artemis-Verlag, 1977–1999
- Mansi Mansi, Johannes Domenicus, ed. *Sacrorum conciliorum nova et amplissima collectio*. 53 vols. Florence: Expensis Antonii Zatta Veneti, 1758–1798

|             |  |
|-------------|--|
| MIC         | <i>Monumenta iuris canonici</i>  |
| MGH         | <i>Monumenta Germaniae Historica</i>   |
| NCE         | <i>The New Catholic Encyclopedia</i>   |
| NRSV        | <i>New Revised Standard Version of the Bible</i>   |
| PL          | Migne, Jacques-Paul, <i>Patrologia Latina</i> . 221 vols. Paris: apud Garnier fratres, 1844–1904   |
| Potthast    | Potthast, August, ed. <i>Regesta pontificum romanorum inde ab Potthast anno post Christum natum MCXCVIII ad annum MCCCIV</i> . 2 vols. Berlin: prostat in aedibus Rudolphi de Decker, 1874–1875      |
| RDC         | <i>Revue de droit canonique</i>  |
| RHD         | <i>Revue historique de droit français et étranger</i>  |
| RIDC        | <i>Rivista Internazionale di Diritto Comune</i>  |
| SCH         | <i>Studies in Church History</i>   |
| Schulte, QL | Schulte, Johann Friedrich von. <i>Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart</i> . 3 vols. Stuttgart: F. Enke, 1875–1880, reprinted Graz 1956 |
| SDHI        | <i>Studia et documenta historiae et iuris</i>  |
| SG          | <i>Studia Gratiana</i>   |

ZRG Kan. Abt.

*Zeitschrift der Savigny-Stiftung für*

*Rechtsgeschichte, Kanonistische Abteilung*

# Introduction

## 0.1 Behind Two Inquisitors: *Glossa Ordinaria*, *Decretales*, and Religious Marginality

In 1248 or 1249, two Dominican inquisitors working at Carcassonne, Bernard de Caux (d. 1252) and Jean de Saint-Pierre, upon request from Pope Innocent IV (1243–1254) and Guillaume de Broue (d. 1257), archbishop of Narbonne, composed an instructional manual for their fellow friar inquisitors.<sup>1</sup> “[W]e decree that... [a heretic’s] bones be exhumed from the cemetery... and burned in detestation of so heinous an offence (*in detestationem criminis tam nefandi*),” they wrote in this guiding material which was still a nascent genre at the time. This phrase, “in detestationem criminis,” became influential in the Late Middle Ages.<sup>2</sup>

However, these two inquisitors were not always as harsh in their treatment of heretics, at least not of living ones. About two years prior, on 6 May 1246, Bernard and Jean, then dealing with heretics at Toulouse, issued a verdict in the cloister of St. Sernin, which still stands today as the *Basilique Saint-Sernin*. The verdict targeted six lay citizens who had had intimate

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<sup>1</sup> For a brief introduction and an English translation of this document, i.e., the *Processus inquisitionis*, see Walter L. Wakefield, *Heresy, Crusade, and Inquisition in Southern France, 1100–1250* (Berkeley: University of California Press, 1974), 250–258. The translation was based on the Latin edition published in Adolphe Tardif and Le P. François Balme, “Document pour l’histoire du *Processus per inquisitionem* et de l’*Inquisitio heretice pravitatis*,” *Nouvelle revue historique de droit français et étranger* 7 (1883), 669–678.

<sup>2</sup> Seventy-five years later, also at Carcassonne, an inquisitorial register from 22 February, 1325 recorded a sentence ordering the posthumous burning of heretics “in detestationem criminis tam nefandi”: “[D]eclaramus magistrum Arnaudum Morlana predictum per bec que contra ipsum invenimus hereticum fuisse et in sectam hereticorum detestabilem decessisse, precipientes eius ossa de sacris cimiteriis si possint discerni ab aliis fidelium ossibus exhumari et comburi in detestationem criminis tam nephandi, eius memoriam in futuro perpetuo damnantes.” Jean Duvernoy, ed., “Le Registre DDD de l’inquisition de Carcassonne 1325–1327 : Manuscrit Doat 28 de la Bibliothèque nationale de Paris,” <http://jean.duvernoy.free.fr/text/pdf/DDD.pdf>. Furthermore, toward the end of the Middle Ages, as Heinrich Kramer was claiming that sorceresses deserved even harsher punishments than heretics in his infamous *Malleus maleficarum*, first published in 1486/87, he instructed his readers that Catholic sons cannot inherit property from their heretic fathers because, again, “in detestationem criminis”: “Sed et super terciam penam si heretici habent filios catholicos priuantur paterna hereditate in detestationem criminis.” Heinrich Institoris, *Malleus maleficarum* (Speyer: Peter Drach der Mittlere, 1486/1487), Part I, section “Quod malefice grauissimas merentur penas vltra omnes flagiciosos mundi.” This first edition of the *Malleus maleficarum* has been digitized by the Bayerische Staatsbibliothek at Munich (Munich, BSB 2 Inc.s.a. 836 (Ink-I-225)) and is available at <https://mdz-nbn-resolving.de/bsb00043229>.

interactions with heretics. Out of the six, four had relapsed into heresy after abjuration.<sup>3</sup> A clear papal prescription against any laymen convicted of such a crime was at hand for the inquisitors. Pope Lucius III's (1181–1185) influential 1184 decretal *Ad abolendam* had entered important canon law collections soon after publication and remained in the later *Corpus Iuris Canonici*. It orders such people “to be left to the secular judgment [which potentially means death by fire], without any further hearing.”<sup>4</sup>

However, the two inquisitors did not follow the papal injunction. They summoned these people, *legitime citatos*, and simply ordered that as long as these six persons wanted to return to the Church and were willing to perform penance in an ecclesiastical prison, their excommunication would be absolved. Raymond Maurin and his wife Arnaude, both of whom had participated in various Cathar ceremonies, were treated similarly; no transfer to secular courts was mentioned or even implied.<sup>5</sup>

What was behind Bernard and Jean's aforementioned expression, “in detestationem criminis,” and their decision to accept the relapsed persons? The expression appears in none of the canons from the high medieval papal decretal collections, nor in the later entire *Corpus Iuris Canonici*. The decision, opposing the command of Lucius III, is similarly not found in contemporary papal and conciliar decrees. Nevertheless, as the chapters on heretics in this dissertation will demonstrate in detail, one important yet seldom-studied commentary text on canonical jurisprudence, composed in and for medieval law schools, was probably working in

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<sup>3</sup> I.e., Pons Bladier, Pierre d'Albigois, Raymond Sabbatier, and Pons Dominique.

<sup>4</sup> Edward Peters, ed., *Heresy and Authority in Medieval Europe* (Philadelphia: University of Pennsylvania Press, 1980), 172. For the Latin text of this text as X 5.7.9, see Appendix B.

<sup>5</sup> See Célestin Douais, ed., *Documents pour servir à l'histoire de l'Inquisition dans le Languedoc : publiés pour la Société de l'histoire de France*, Société de l'histoire de France, n. 299, 300 (Paris: Renouard, H. Laurens, 1900), 8–10.

the minds of these inquisitors, who undoubtedly had been trained in canon law. This text—the first redaction of which was composed about ten years before the instructional manual discussed above—employs the phrase “in detestationem criminis” in the context of legitimizing the posthumous accusation and excommunication of heretics.<sup>6</sup> The same text, raising a counterargument against Lucius III’s *Ad abolendam*, asks that if the relapsed ones wish to return to the Church, should they not be heard and accepted, “since the Lord does not wish the death of a sinner”?<sup>7</sup> This text is the *Glossa ordinaria* composed by Bernard of Parma (d. 1266).

This dissertation investigates how Bernard of Parma’s *Glossa ordinaria* (hereafter Bernard and *Glossa*) on Pope Gregory IX’s *Decretalium domini Gregorii papae noni compilatio* (hereafter *Decretales*), promulgated in 1234, commonly known as the *Liber extra*, deals with the issue of religious marginality. The importance of the *Decretales*, the *Glossa*, and the study of these texts will be discussed below in detail in section 0.3. Here it suffices to say that Bernard’s *Glossa*, surviving in hundreds of manuscripts, constituted a crucial part of the jurisprudence of the thirteenth century and beyond. As a highly influential—or “ordinary/standard (*ordinaria*, in the same sense as the Bible’s *Glossa ordinaria*)”—legal commentary, it shaped the intellectual development of generations of law students and masters and the legal landscape during the Late Middle Ages. Composed by a law school professor to guide his students as well as future readers in understanding, interpreting, and even challenging Church laws, the *Glossa* bridges the canon

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<sup>6</sup> X 5.7.5 *glos. ord. s.v. post mortem*: “[E]nim speciale est in crimine haeresis, in detestationem criminis, ut post mortem possit accusari et excommunicari.”

<sup>7</sup> X 5.7.9 *glos. ord. s.v. audientia*: “Sed si volunt redire, nonne debent audiri et recipi: quia ecclesia non claudit gremium volentibus redire ad ipsam? **C. de summa. Tri. inter claras. circa fi.** et delicti enim veniam penitentibus non negamus, dicit Imperator. **C. e. t. Manichaeos. et de pen. d. iii. adhuc instant.** Bene credo quod debet recipi, quia Dominus non vult mortem peccatoris.”

law that was taught in classrooms and the canon law which was practiced in courts, shaping the daily life of medieval Christendom. Furthermore, because a legal education served as the common preparation for increasingly more Church administrators across the hierarchy after 1200,<sup>8</sup> this text would have been studied and consulted not only by lawyers and judges of the ecclesiastical courts, but also by present and future authorities ranging from inquisitors and bishops to popes. In this way, therefore, it was no less influential as a shaping force than the other *glossae ordinariae* on the Scripture and the Justinianic collections in the high-late medieval Latin West. Yet, no previous research has examined this text in detail, not to mention excavated the rich information about medieval jurisprudence and society contained in it. These are the aims of this present study.

My investigation has been conducted by (1) explicating juridical terminology and religious concerns embedded in the canons of the *Decretales*, (2) analyzing comments in the *Glossa* from Bernard or his contemporary canonists, and (3) examining the Romano-canonical legal allegations employed by the *Glossa*. Studying selected medieval manuscripts, I explore two aspects of the *Glossa*: the legal thinking in it and the information it can offer about the high medieval socio-religious world. Admittedly, in order to fully understand this significant legal commentary, it would be best to analyze the entire *Glossa*. However, it would be impossible for this dissertation to deal with all the ordinary glosses on the *Decretales*. This study, as a pioneering effort to scrutinize the *Glossa*, thus selects the topic of religious marginality, and treats the canons and glosses in the *Decretales* that fall under this category.

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<sup>8</sup> See James A. Brundage, *The Profession and Practice of Medieval Canon Law* (Burlington: Ashgate, 2004), 164.



“Religious marginality” is used here to denote the religious-legal issues on the boundary of medieval Christianity as an institutional religion.<sup>9</sup> In the *Decretales* these issues include the treatment and the potential conversion of Jews and Muslims in Western Christendom, heresy and the inquisition against heretics, abandonment of religious habit and rebaptism, marital impediment caused by evil spells, casting lots to elect a bishop, and similar topics. The selected texts from the *Decretales* occupy eight titles and fifty-three canons of the *Decretales* (see Appendix A) out of the 1,971 total *capitula* in the work. There are 294 ordinary glosses on these canons (300 if we take into consideration the six additions made between the second and the third quarters of the thirteenth century). The presentation is organized into four case studies around the following topics (roughly in the order of the titles in the *Decretales*), that is, (1) Jews and Muslims, (2) heretics, (3) apostates, and (4) practitioners of magic.<sup>10</sup>

The issues involved in these topics were regulated in the High Middle Ages by ecclesiastical *auctoritates*, especially the papacy. Pertinent texts of papal decretals and conciliar decrees were pondered by scholars in a process which had its origin after the middle of the eleventh century,<sup>11</sup> and which by the mid-thirteenth century was thorough and sophisticated. Embodying the Romano-canonical tradition and rich legal thinking, the *Glossa*, as one of the most influential thirteenth-century *glossae*, served as a fundamental and instructional tool for

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<sup>9</sup> It can be perceived as part of the “medieval marginality” in general that scholars such as Jacques Le Goff and Jean-Claude Schmidt have been discussing since the 1970s. See Jacques Le Goff, “Les marginaux dans l’Occident médiéval,” in *Les marginaux et les exclus dans l’histoire* (Paris: Union générale d’éditions, 1979), 19–28. See also Michael Goodich, *Other Middle Ages: Witnesses at the Margins of Medieval Society* (Philadelphia: University of Pennsylvania Press, 1998); Jacques Le Goff, “L’uomo medievale,” Jacques Le Goff, ed., *L’uomo medievale*, 5th ed. (Rome: Editori Laterza, 1988); Jean-Claude Schmitt, “L’histoire des marginaux,” in *La nouvelle histoire* (Paris: Retz, 1978).

<sup>10</sup> See section 0.8 below and Appendix A for a summary of each chapter and the selected titles from the *Decretales*.

<sup>11</sup> For an excellent overview of this development, where an earlier bibliography can also be found, see Stephan Kuttner, “The Revival of Jurisprudence” in Robert Benson and Giles Constable, eds., *Renaissance and Renewal in the Twelfth Century* (Cambridge: Harvard University Press, 1982), 299–323.

every law school student, that is, future judges, priests, and even popes. Furthermore, it also mirrored religious beliefs and cultural activities among clergy and laity alike, although not always in ways that are easy to follow. The learned law, the practiced law, and religion thus joined together in this educational text, as Bernard tried to balance jurisprudential, judicial, theological, and ecclesiastical concerns throughout his glosses. Considering those on the margins of society in this text can, therefore, serve as a window for observing how papal and scholastic Christianity constructed its religious boundaries in legal terms, dealing with non-conforming insiders as well as outsiders, such as heretics, so-called sorcerers, infidels, and those who were standing on the religious borderline, i.e., the apostates and converts.

This dissertation will be a textual study of the *Glossa*, and the primary goal is to understand Bernard's working logic by examining his judicial concerns. It is not a sociological, cultural, or theological investigation. It does not propose to paint a comprehensive picture of medieval religious marginality, nor to reconstruct a coherent legal theory on the subject. The investigation involves analyzing Bernard's manner of selecting and integrating allegations and excerpts from commentarial literature, and injecting his personal views into his glosses. This also requires tracing the changes that Bernard made over time to his work, which includes adding more comments and allegations, citing newly composed legal works, referring to recent Church councils, etc. The *Glossa* was not a static text but changed over time. Such an investigation also can serve, finally, to invite scholars to uncover the value of studying other topics through the lens of Bernard's Ordinary Gloss.

## **0.2 Who is Bernard of Parma?**

On Tuesday, 12 March 1252, at midnight, the residence of a renowned law professor at Bologna was burgled. Separated from the area in which most Bolognese jurists at the time

preferred to reside, he lived in a spacious unit on the ground floor of what we would probably today call a condo in the Porta Procola district. While his dogs curiously remained quiet in a different room, the professor slept through the event and was stunned in the morning to find that a rapacious thief had taken some of his expensive outer garments, a blanket, and, most importantly, books.

This professor was referred to as “magister” in the case’s notarial report by the witnesses, whose identities ranged from his neighbors to his house servant. Six days after the burglary he bemoaned the lost books to one of the witnesses, Guilelmus de Rotefredo (probably a law student). All of his law books were stolen, the professor complained, except for his *Digestum Novum*. One of the lost tomes, according to the victim’s nephew Bernardinus—who also served as a witness—was Gratian’s *Decretum/Concordia discordantium canonum* (hereafter *Decretum*). The other books, described as parts of a “corpus legum” in the testimony, were possibly volumes of the Justinianic *Corpus Iuris Civilis*.<sup>12</sup> These were essential references for someone who taught in law schools of the thirteenth century. The professor was probably busy consulting these bulky and expensive materials in order to update an influential commentarial textbook that he had composed years ago on Pope Gregory IX’s *Decretales*.

This unfortunate professor was Bernard of Parma. The base text for much of what we now know about his life comes from the Camaldulense abbot and scholar Mauro Sarti (1709–1766). Sarti seems to be the first scholar to construct a relatively detailed biographical narrative of Bernard by critically combining fragmentary reports concerning the life of the canonist from

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<sup>12</sup> For a detailed study of this case, together with a transcription of the witnesses’ testimony, see Martin Bertram, “Bologna, 12. März 1252: Einbruch bei Bernardus Parmensis,” *ZRG Kan. Abt.* 102 (2016): 166–199.

premodern scholars with various primary documents (including papal letters, testaments, and epigraphs). Guido Panciroli/Panziroli (1523–1599), a sixteenth-century jurist whom Sarti often referred to and criticized, provided a brief outline of Bernard’s career in his *De claris legum interpretibus*.<sup>13</sup> He pointed out that Bernard was, in addition to being a scholar of the *Decretales*, a canon at Bologna, papal chaplain and legal consultant, and—a description which has been negated by later scholars—chancellor of Bologna as well as quaestor of the Sacred Palace (*sacri Palatii quaestor*).<sup>14</sup> He also provided a *terminus post quem* for Bernard’s *Glossa*—“circiter annum MCCXL”<sup>15</sup>—which was surprisingly close to the date of the earliest manuscript of the work discovered recently, MS Florence BML Plut.3 sin.9.<sup>16</sup> Nevertheless, as Friedrich Maassen (d. 1900) warned, Panciroli’s work is “not without inaccuracies (*nicht ohne Unrichtigkeiten*).”<sup>17</sup> Sarti, by contrast, provided a more detailed and critical account, together with supporting primary documents.

Sarti’s *De claris archigymnasii bononiensis professoribus a saeculo XI usque ad saeculum XIV*<sup>18</sup> was the fruit of a project commissioned by the Bolognese pope Benedict XIV (1740–1758). Unlike Benedict XIV, Bernard was born in Parma to the Botone family. Sarti

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<sup>13</sup> Guido Panciroli, *De claris legum interpretibus libri quatuor* (Venice: Marcum Antonium Brogiollum, 1637), 324–327.

<sup>14</sup> A Late-Roman and Byzantine title for the highest imperial legal officer. Panciroli here refers to Bernard’s gloss on X 1.6.28, which, however, contains no reference for this title.

<sup>15</sup> Panciroli, *De claris legum interpretibus libri quatuor*, 326.

<sup>16</sup> See Martin Bertram, “Dekorierte Handschriften der Dekretalen Gregors IX. (*Liber Extra*) aus der Sicht der Text- und Handschriftenforschung,” *Marburger Jahrbuch für Kunstwissenschaft* 35 (2008): 33, 60; Martin Bertram, *Kanonisten und ihre Texte (1234 bis Mitte 14. Jh.): 18 Aufsätze und 14 Exkurse* (Leiden: Brill, 2013), 525.

<sup>17</sup> Friedrich Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters*, vol. 1 (Graz: Leuschner & Lubensky, 1870), XX.

<sup>18</sup> For sections on Bernard of Parma, see Mauro Sarti, *De claris archigymnasii bononiensis professoribus a saeculo XI usque ad saeculum XIV* (Bologna: Typographia Laelii a Vulpe instituti scientiarum typographi, 1769–1772), vol. 1, 355–359; vol. 2, 118–131, 218.

assumed that he was born in the early thirteenth century. Bernard moved to Bologna to study law, and became a student of the well-known canonist, Tancred.<sup>19</sup> Sarti further found that by 1232 Bernard was already labeled a *magister* in an official Bolognese statue, and was mentioned as a papal chaplain and canon in several papal letters from Innocent IV (1247), Alexander IV (1255), and Urban IV (1264), seeking advice regarding local church affairs. Indeed, Bernard in a gloss called himself a Bolognese canon and papal chaplain.<sup>20</sup>

Moreover, Sarti reported that Bernard also was a priest at St. Maria di Montovalo<sup>21</sup> in Bologna, a church which was violently invaded by a count named Jacobus Panicus in the 1260s.<sup>22</sup> This incident soon turned into a legal case that brought Bernard much trouble during his last years. In his testament finalized in 1266, Bernard donated much of his property to local religious groups, while bequeathing his *libri legales* to his nephew Gerardus de Valetto, who, according to Sarti, was a doctor of canon law himself.<sup>23</sup> Also in his testament, Bernard gave instructions that he should be buried—with a marble gravestone erected in front of his

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<sup>19</sup> Both Sarti and Affò reported that Bernard in his gloss on X 2.19.6 claimed that he used to audit lectures of Vincentius Hispanus, but they were uncertain about whether this evidence is enough to argue that Bernard was his student. Augustin Theiner, on the other hand, straightforwardly mentions Vincentius as the teacher of Bernard. See Ireneo Affò, *Memorie degli scrittori e letterati parmigiani*, vol. 1 (Parma: Stamperia Reale, 1789), 99; Augustin Theiner, *Disquisitiones criticae in praecipuas canonum et decretalium collectiones* (Rome: Collegio Urbano, 1836), 16.

<sup>20</sup> X 1.6.28 *glos. ord. s.v. dividatur*: “De hoc quod dixit Hug., quaesitum fuit a me Bernardo Parmensi canonico Bononiensi capellano domini Papae in consecratione domini Octaviani, Bononiensis episcopi, utrum archiepiscopus posset consecrare, et alius missam cantare?”

<sup>21</sup> This church is also known as St. Maria di Montepalense/Montepalese, according to Antonio Masini, *Bologna perlustrata* (Bologna: Carlo Zenero, 1650), 381; and Carlo Cesare Malvasia, *Le pitture di Bologna* (Bologna: Giacomo Monti, 1686), 317. However, it cannot be found in the *Italia Pontificia*.

<sup>22</sup> This incident was reported by Sarti without the exact date. The earliest source mentioning this incident, published in Sarti and Fattorini, *De claris archigymnasii bononiensis professoribus*, vol. 2, 129, is an *Acta causae* (a record of testimonies for a lawsuit) of this legal case. According to this document, Bernard appealed to the Roman curia on this case in 1265. However, it is unclear, based on this text, whether the conflict happened in 1264 or 1265. Details of this conflict await thorough investigation of local history.

<sup>23</sup> *Ibid.*, vol. 1, 359.

sepulchre—in the cathedral church of Bologna, beside the tomb of his teacher, Tancred. Sarti also printed the epigraph, while denouncing the one published in Panciroli as “corruptam omnino.” The epigraph reads:

SEPULCRUM DOMINI BERNARDI DE BOTONO DE PARMA  
CHANONICI BONONIENSIS DECRETORUM DOCTORIS  
ET APARATVS DECRETALIVM COMPILATORIS.<sup>24</sup>

Here Bernard is addressed as a compiler of an apparatus for the *Decretales* and a doctor of the *Decretum*. Using the testament, Sarti dated Bernard’s death to March 1266, a date which was pinpointed by Ireneo Affò (1742–1805) to 24 March using a necrology in Parma from 1789.<sup>25</sup> Reviewing late medieval and premodern scholarly notes, Sarti pointed out that scholars like Thomas Diplovatatus (1468–1541) and Casimir Oudin (1638–1717) occasionally confused our Bernard with the other canonist named Bernard of Compostella (the younger, fl. 1245–1267), while the influential jurist, Johannes Andrea (d. 1348), was able to distinguish them.<sup>26</sup>

Without further explanation, Johann Friedrich von Schulte (1827–1914) dated Bernard’s death between 10 and 31 May 1263.<sup>27</sup> Stephan Kuttner (1907–1996) and Beryl Smalley (1905–1984), denying Schulte’s claim, reaffirm Sarti and Affò’s dating.<sup>28</sup> After this, little more was said

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<sup>24</sup> Sarti and Fattorini, *De claris archigymnasii bononiensis professoribus*, vol. 1, 358. For a more detailed discussion of the gravestone and the inscription, and a photograph of the epigraph, see Giancarlo Roversi, *Iscrizioni Medievali Bolognesi* (Bologna: Istituto per la Storia di Bologna, 1982), 64–65 and 90.

<sup>25</sup> See Ireneo Affò, *Memorie degli scrittori e letterati parmigiani*, vol. 1, 104.

<sup>26</sup> Moreover, Affò questioned a list of other premodern narratives about Bernard’s life for either lacking historical evidence or simply repeating Panciroli’s mistakes.

<sup>27</sup> See Schulte, *QL*, vol. 2, 114.

<sup>28</sup> Stephan Kuttner and Beryl Smalley, “The ‘Glossa Ordinaria’ to the Gregorian Decretals,” *The English Historical Review* 60 (1945): 99, n.4.

about Bernard's life until Bertram in 2016 published a study of a notarial record documenting the burglary at Bernard's house in 1252, as mentioned at the beginning of this section.<sup>29</sup>

Both Sarti and Affò listed three works by Bernard: the *Glossa*, the *Casus longi*, and the *Consilium magistri Bernardi Doctoris Decretalium circa interpretationem Constitutionis Gregorii IX contra Blasphemos*, which Sarti printed from a manuscript from the Biblioteca Malatestiana in the city of Cesena in northern Italy. Schulte (and seemingly all later scholars) ignored the last work,<sup>30</sup> while adding the *Summa super titulis decretalium* to this list, and conjectured that the sequence of Bernard's works was as follows—*Apparatus (Glossa)*, *Summa*, *Casus longi*, and then gradual updates to the *Glossa* until his death.<sup>31</sup> The fact that Bernard kept working on the *Glossa* from its first publication was noticed as early as Johannes Andreae and mentioned by premodern scholars including Panciroli, Sarti and Affò.

However, it was not until 1945 that Kuttner and Smalley—by examining thirty Vatican manuscripts of the *Glossa* and MS Bodleian lat. th. b. 4, the earliest dated manuscript (1241) known to that point—mapped out an influential four-redaction hypothesis: “first redaction 1234–c. 1241; second 1243–5; third 1245–c. 1253; final 1263–6.”<sup>32</sup> While Kuttner and Smalley cautiously postulated that “Bernard, therefore, must have prepared and published *at least* [emphasis added] four versions of his *Ordinaria* [i.e., the *Glossa*],”<sup>33</sup> nearly all later references and studies mentioning the *Glossa* have repeated this theory.<sup>34</sup> About fifteen years earlier,

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<sup>29</sup> Bertram, “Bologna, 12. März 1252.”

<sup>30</sup> The reason for this omission awaits examination.

<sup>31</sup> See Schulte, QL, vol. 2, 114–117.

<sup>32</sup> Kuttner and Smalley, “The ‘Glossa Ordinaria’ to the Gregorian Decretals,” 101.

<sup>33</sup> *Ibid.*, 100.

<sup>34</sup> See, for example, Gabriel Le Bras, “Pour une nouvelle édition de la glose ordinaire des Décrétales de Grégoire IX,” RHD 44 (1966): 240–241; R. Abbondanza, “Bernardus da Parma,” in DBI, vol. 9, 276–279; H. Zapp,

Ruffini Avondo (1901–1983) expressed doubt that there were any redactions of the work between 1263 and 1266, considering the lack of manuscript evidence and the deteriorating health of Bernard during that period; Bernard had begun to prepare his testament in 1262, and wrote his *estreme volontà* on 9 June 1265.<sup>35</sup> However, the addition to X 1.6.28 *glos. ord. s.v. dividatur*, in which Bernard mentioned the consecration of Octavian, bishop of Bologna, which occurred in May, 1263, is evidence that Bernard was still working on his glosses toward the end of his life.<sup>36</sup>

Finally, in 2013, Bertram claimed that “the subdivision of the development of the *Glossa* initially proposed by Kuttner and Smalley requires a terminological and factual revision.”<sup>37</sup> He argues that the *Glossa* of Bernard went through so many additions before 1263 that it is unnecessary to pinpoint the stages of its development. However, it should be noted that notwithstanding the supersession of the four-redaction hypothesis, the chronology given by Kuttner and Smalley remains valuable for charting the history of the *Glossa*. This point will be illustrated in detail later in this chapter, and in the analysis of relevant glosses throughout this dissertation.

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“Bernardus de Botone,” in LM, vol. 1, col. 1976; J. M. Buckley, “Glossa Ordinaria,” in NCE, vol. 6, 246–247; Rafael Domingo, “Bernardo de Parma,” in *Diccionario general de derecho canónico*, eds. Javier Otaduy Guerin, Antonio Viana, and Joaquín Sedano, vol. 1 (Cizur Menor, Navarra: Aranzadi, 2012), 670–671; Orazio Condeorelli, “Bernardo da Parma,” in DBGI, vol. 1, 230–231; Frédérique Cahu, *Un témoin de la production du livre universitaire dans la France du XIIIe siècle: la Collection des Décrétales de Grégoire IX* (Turnhout: Brepols, 2013), 85–95.

<sup>35</sup> Edoardo Ruffini Avondo, “Le origini del conclave papale,” *Atti della Reale accademia delle scienze di Torino* 62 (1927): 417; Sarti, *De claris archigymnasii bononiensis professoribus*, vol. 2, 130–131.

<sup>36</sup> Kuttner and Smalley, “The ‘Glossa Ordinaria’,” 97.

<sup>37</sup> Bertram, *Kanonisten*, 525: “[d]ie von Kuttner und Smalley zunächst vorgeschlagene Gliederung der Entwicklung der *Ordinaria* erfordert eine zugleich terminologische und sachliche Revision.”



### 0.3 Why Study the *Glossa*?

The history of Western canon law is increasingly well mapped, especially prior to the year 1234. Building on the work of many scholars over the past 150 years, general surveys are at hand, as well as many studies of specific collections, individuals, or topics.<sup>38</sup> Some scholars, therefore, have termed the current situation as “a renaissance in the study of medieval canon law.”<sup>39</sup> In his lecture “Why the History of Canon Law is Not Written,” delivered on 3 July 1984 in the Old Hall of Lincoln’s Inn, Charles Donahue, Jr. highlighted that

[i]n the case of canon law we are particularly well informed about the law because of the wealth of academic writing on the topic. Thus when we see the church courts distorting the academic law in a case or group of cases, we can be reasonably confident that something outside of the law in the books is at work, forcing the doctrine into strange moulds.<sup>40</sup>

This methodology necessitates the study of two kinds of sources, both of which “cry out for further attention.”<sup>41</sup> Legal records can best reveal their potential in providing “insights into the relationship between law and society, [and] tell us how the law shaped the laws of the people with which it dealt and also how they shaped the law”<sup>42</sup> when examined together with the other type of source, that is, learned or academic law. The *Glossa*, I argue, is a key and educational text of academic canon law that is no less important than any other types of legal materials as historical sources. This section discusses how investigating Bernard’s *Glossa* can contribute to

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<sup>38</sup> For a recent bibliographical essay, see Robert Somerville and Bruce Clark Brasington, eds. and trans., *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1317*, Second edition, Studies in Medieval and Early Modern Canon Law 18 (Washington, D.C.: The Catholic University of America Press, 2020, 1<sup>st</sup> edition 1998), 209–215.

<sup>39</sup> Kriston R. Rennie and Jason Taliadoros, “Why Study Medieval Canon Law?,” *History Compass* 12 (2014): 133.

<sup>40</sup> Charles Donahue, Jr., *Why the History of Canon Law Is Not Written* (London: Selden Society, 1986), 8.

<sup>41</sup> *Ibid.*, 17.

<sup>42</sup> *Ibid.*, 8.

major realms of medieval studies such as the development of high medieval juridical thought, the legal-procedural concerns of the institutional Church, and medieval society from a jurisprudential lens. A brief introduction to legal glosses and what *Glossa ordinaria* means is in order first.

During the High Middle Ages, glosses as a literary genre performed a wide variety of functions, ranging from explicating a word or phrase, introducing a certain context for a passage and making inter textual references to asserting a counterview to the argument in the original text.<sup>43</sup> The scope and depth of the discussions in a gloss, especially for legal materials, often exceed the content of the base text. Furthermore, as a particular set of glosses on a seminal text became widely accepted as “authoritative” by contemporary scholars, that set came to be called the “*Glossa ordinaria*,” that is, the standard gloss, and was copied in the margins of most manuscripts of the main text. In other words, these glosses were regarded as the essential apparatus for the interpretation and application of the texts at issue. As law schools and universities focusing on legal studies multiplied in cities from Italy to England, the *glossae ordinariae* on important canonical collections, including the *Decretales*, became indispensable reference tools in classrooms. Therefore, for both medieval readers—and modern scholars—the ordinary glosses, such as Bernard’s *Glossa*, are rich material that one cannot afford to overlook by reading only the base text.

Bernard’s glosses on the *Decretales* of Pope Gregory IX became its *Glossa ordinaria* soon after the promulgation of this first universal and exclusive canonical collection in 1234. With 1,971 canons, the *Decretales* covers nearly every aspect of high medieval religious life—

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<sup>43</sup> For a recent study on medieval biblical glosses, see Mark J. Clark, “The Biblical Gloss, the Search for Peter Lombard’s Glossed Bible, and the School of Paris,” *Mediaeval Studies* 76 (2014): 57–113.

from the operation of ecclesiastical administration at all levels to rulings on secular/religious matters such as marriage and inheritance. Surviving in at least 675 complete manuscripts and 40 fragments,<sup>44</sup> this official papal compilation was taught in schools and used in courts across Western Europe from its first appearance. It formed a substantial component of the Roman Catholic Church's official *Corpus Iuris Canonici* after its publication under Pope Gregory XIII in 1582 (i.e., the *Editio Romana*, hereafter 1582 *ER*), and the 1582 *ER* was only superseded by the 1917 *Codex Iuris Canonici*.

Throughout this process, the *Glossa* of Bernard has surrounded the text of the *Decretales* in hundreds of its medieval manuscripts, as well as in the official printed versions. Of the 201 manuscripts of the *Decretales* that I have examined, either in their physical or digitized forms, two contain only the *Glossa*'s prologue,<sup>45</sup> thirty-two contain either non-*Glossa* glosses or no glosses,<sup>46</sup> and the remaining 167—83% of the total number examined—all contain the *Glossa*. Applying that percentage to 675 (i.e., the number of known complete manuscripts of the *Decretales*), as a rough estimation, will give us 560. The “comprehensive list of *Decretum* manuscripts” on Kenneth Pennington's “Bio-Bibliographical Guide to Medieval and Early Modern Jurists” website (hereafter BBGMEMJ) indicates that there are 481 existing manuscripts

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<sup>44</sup> See Martin Bertram, “Signaturenliste der Handschriften der Dekretalen Gregors IX. (Liber Extra).” Online-Publikationen des Deutschen Historischen Instituts in Rom, 2014. URL: [www.dhi-roma.it/bertram\\_extrahss.html](http://www.dhi-roma.it/bertram_extrahss.html) (1<sup>st</sup> edition 2005).

<sup>45</sup> MSs Klosterneuburg, Bibliothek des Chorherrenstifts 1043 and Oxford, Bodleian Library Selden Arch. B. 51.

<sup>46</sup> MSs Admont, Stiftsbibliothek 621 and 646; Bamberg, Staatsbibliothek Msc.Can.24 (P.I.21); Berlin, Staatsbibliothek zu Berlin - Preussischer Kulturbesitz lat. oct. 520 and Phill. 2009; Cambrai, Bibliothèque municipale 0511 (0470), Florence, BML Conventi soppressi 460 and Santa Croce plut. 03 sin. 04 and plut. 05 sin. 02; Kassel, Universitätsbibliothek 4<sup>o</sup> Ms. iurid. 32; London, British Library Add. 17393 and Royal 10.C.XIII and 11.B.VIII; London, Lambeth Palace Library 0430; Metten, Bibliothek der Abtei Metten Incbl II, 17-18; Munich, BSB Clm 15651, 09654, and 03203; Nürnberg, Stadtbibliothek Cent. IV. 99 and V. 91; Paris, BnF, lat. 03936, 04294, 04295, 04295A, 04379, 09633, 11715, 13664; Reims, Bibliothèque municipale 0695 (G. 531) and 0694 (G. 544); Vienna, ÖNB 2189.

of Gratian's *Decretum*. By contrast, Huguccio's *Summa*, "the crowning achievement of the extraordinarily creative work of the decretists of the twelfth century, [which] was influential in its own time and remained so throughout the thirteenth century and beyond,"<sup>47</sup> according to the BBGMEMJ, has forty-four manuscripts. Of course, we cannot judge a work's influence solely based on the quantity of its surviving medieval manuscripts. Indeed, Huguccio's influence can even be readily seen in the mentions of him in the *Glossa*. Nevertheless, the sheer number of the *Glossa*'s manuscripts is a strong indicator of its popularity.

Unfortunately, despite the fact that the *glossae ordinariae* on the Bible, the Justinianic compilations, and the *Decretum* of Gratian have been studied in detail in recent decades,<sup>48</sup> our understanding of Bernard's *Glossa* as an essential canonical-jurisprudential work is far less satisfactory. No detailed study of Bernard's jurisprudential philosophy as expressed in the glosses exists. His familiarity with, attitude toward, and critical use of his sources from Romano-canonical collections as well as contemporary canonists' writings, call for examination. Dealing with these issues will result in a clear picture of mature medieval canonical *and* civil juridical thought—including the "dinamica interna del *ius commune*"<sup>49</sup>—in the High Middle Ages.

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<sup>47</sup> Donahue, 18.

<sup>48</sup> For instance, for a more detailed examination of the development of the glosses on Gratian's *Decretum*, see Rudolf Weigand, *Die Glossen zum Dekret Gratians: Studien zu den frühen Glossen und Glossenkompositionen* (Rome: Libreria Ateneo Salesiano, 1991). Some of Weigand's articles on this subject were reprinted in Rudolf Weigand, *Glossatoren des Dekrets Gratians* (Goldbach: Keip Verlag, 1997). For the use of the *Glossa ordinaria* on Gratian's *Decretum* in thematic studies in medieval canon law, see Titus Lenherr, *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa Ordinaria des Johannes Teutonicus* (St. Ottilien: EOS Verlag, 1987); and Ruggero Maceratini, *La glossa ordinaria al Decreto di Graziano e la glossa di accursio al Codice di Giustiniano: una ricerca sullo status giuridico degli eretici* (Trento: Università degli Studi di Trento, 2003).

<sup>49</sup> Manlio Bellomo, *L'Europa del diritto comune*, 5th ed. (Rome: Cigno Galilei Edizioni di Arte e Scienza, 1991), 251.

Moreover, Bernard's *Glossa* has rarely been studied as a source of historical information beyond the realm of canon law. Medieval canonists did not compose their works and live their lives in ivory towers. They trained future lawyers and judges who would be responsible for the operation of ecclesiastical courts and for the resolution of real-life cases, including, for example, disputed episcopal elections,<sup>50</sup> clerical misconduct, the operation of religious orders, property disputes, domestic discords and especially marriage, as well as religious crimes such as apostasy and blasphemy.

In addition, thirteenth-century canonists had careers outside academia, which often involved legal affairs.<sup>51</sup> James Brundage (1929–2021) notes that they “became an elite group from whose ranks came disproportionately large numbers of archdeacons, cathedral canons, commissary judges, bishops’ officials, auditors of the Rota, bishops, cardinals, and even popes.”<sup>52</sup> For example, Bernard himself was both a chaplain and consultant to the papacy, and Sinibaldus Fliscus, who also composed an influential commentary on the *Decretales*, once worked as an auditor of the papal curia before becoming a cardinal and then Pope Innocent IV.<sup>53</sup>

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<sup>50</sup> For a detailed discussion on this matter, see Robert Benson, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton: Princeton University Press, 1968).

<sup>51</sup> See Knut Nörr, “Die kanonistische Literatur,” in Coing, *Handbuch*, 367.

<sup>52</sup> James Brundage, “The Teaching and Study of Canon Law in the Law Schools,” in Wilfried Hartmann and Kenneth Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, History of Medieval Canon Law (Washington, D.C.: Catholic University of America Press, 2008), 118.

<sup>53</sup> See A. de la Hera, “Sinibaldo Fieschi (Inocencio IV),” in JU, vol. 1, 430–434. Paulius Rabikauskas points out that although “de sérieuses raisons incitent à faire remonter jusqu’au début du pontificat d’Innocent III les origines de cette institution [the *audientia contradictarum*],” Sinibaldus Fliscus was the first identified holder of the office of *Auditor litterarum contradictarum*. See Paulius Rabikauskas, “‘Auditor litterarum contradictarum’ et commissions de juges délégués sous le pontificat d’Honorius III,” *Bibliothèque de l’École des Chartes* 132 (1974): 214. For a more detailed examination of this ecclesiastical office, see Peter Herde, *Audientia litterarum contradictarum: Untersuchungen über die päpstlichen Justizbriefe und die päpstliche Delegationsgerichtsbarkeit vom 13. bis zum Beginn des 16. Jahrhunderts*, vol. 1 (Tübingen: M. Niemeyer, 1970), 20–78. For a discussion of the operation of the papal chancery around the early thirteenth century, see Paulius Rabikauskas, “Die Arbeitsweise der päpstlichen Kanzlei (Ende 12. - Anfang 13. Jahrhundert),” *Archiv für Diplomatik. Schriftgeschichte, Siegel- und Wappenkunde* 41 (1995): 263–271. Other examples of such canonists: Ricardus Anglicus (d. 1242) served multiple times as an

Moreover, during this period the judicial bureaucracy of the Church became increasingly sophisticated, with judicial bodies ranging from archdeacons' tribunals, bishops' episcopal courts and metropolitans' provincial courts to the papal courts.<sup>54</sup> These canonists thus heard and judged—as church officials—real-world cases treating both ecclesiastical affairs and civil disputes emerging from “every part of Western Christendom.”<sup>55</sup> The jurisprudential works they composed were thus not only theoretical expositions, but also legal expressions from people who were inside of, or at least eminently familiar with, the operation of the medieval Christian Church as an institution. In the end, these scholarly works, including Bernard's *Glossa*, contained pragmatic reflections for readers to consult in coping with countless cases that did not neatly fit the succinct regulations in canonical collections. Thus, their writings often echoed the society out of which they emerged. Through investigating legal concerns and discussions in these texts on specific topics, we will be better able to understand the thirteenth-century Church.

To sum up, investigating the *Glossa* on the Gregorian Decretals will shed light on three interconnected areas of medieval studies. First, understanding the textual development and Bernard's working logic behind his glosses is crucial for the reconstruction of high medieval legal thinking. Second, these glosses provide a first-hand, insider perspective on the

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officer in court and as a judge-delegate under Pope Innocent III; Hostiensis (d. 1271) and Goffredus Tranensis (d. 1245) ended up as cardinals; and Jacobus Albanus (d. c. 1273) served as an advocate before he became a bishop. Regarding Richardus Anglicus, see Jane E. Sayers, *Papal Judges Delegate in the Province of Canterbury, 1198–1254: A Study in Ecclesiastical Jurisdiction and Administration* (London: Oxford University Press, 1971), 114–118, 296–301. With respect to Hostiensis and Goffredus Tranensis, see J. Ferrer Ortiz, “Enrique de Susa (el Ostiense),” and E. Tejero, “Gofredo de Trani,” in *JU*, vol. 1, 444–448 and 405–407. On Jacobus Albanus, see J. Lips, “Jacques ou Jacobus de Albertino ou D'Alberti,” in *DDC*, vol. 6, cols. 77–78.

<sup>54</sup> For a recent compilation of articles on ecclesiastical courts and legal procedure in the medieval canonical tradition, see Wilfried Hartmann and Kenneth Pennington, eds., *The History of Courts and Procedure in Medieval Canon Law*, *History of Medieval Canon Law* (Washington, D.C.: The Catholic University of America Press, 2016).

<sup>55</sup> James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 123.

administrative procedures and concerns of the institutional Church and the papacy. Third, the *Glossa* can also offer us a window into the socio-religious context of the High Middle Ages.

#### 0.4 Printings and Problems

Using the *Gesamtkatalog der Wiegendrucke* (GW) only, and following the observations of František Laurin (1829–1913), Aemilius Friedberg (1837–1910), Schulte, Ludwig Hain (1781–1836) and ultimately Georg Panzer (1729–1805),<sup>56</sup> Bertram in 2008 noted that there were no fewer than twenty-two editions of the *Glossa* printed during the age of *incunabula*.<sup>57</sup> As a matter of fact, a quick search of the *Incunabula Short Title Catalogue* (ISTC), which synthesizes all major early printing catalogs including those of Panzer, Hain, Goff (1916–1982), and the GW, among others, reveals that there existed fifty-five editions of the *Decretales*, and most (if not all) of them contained the *Glossa*. The *editio princeps*, published by Heinrich Eggestein in Strasbourg, has recently been dated between 1468 and 1471.<sup>58</sup> Following this edition, another was published by Peter Schöffer in 1473 at Mainz, which was, according to Laurin, “the first edition that has been equipped with all those numberings.”<sup>59</sup> A Roman edition came out in 1474 using Schöffer’s as an exemplar.<sup>60</sup> Furthermore, at least seventeen more editions of the *Glossa* emerged between 1500 and 1582, including one by Charles Dumoulin (1500–1566) with his own notes in Lyons in 1553.<sup>61</sup>

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<sup>56</sup> František Laurin, *Introductio in Corpus juris canonici* (Freiburg im Breisgau: Herder, 1889), 150, n. 5.

<sup>57</sup> See Bertram, “Dekorierte Handschriften der Dekretalen Gregors IX. (*Liber Extra*) aus der Sicht der Text- und Handschriftenforschung,” 32, 52 n. 19.

<sup>58</sup> See Orazio Condorelli, “Bernardo da Parma,” in DBGI vol. 1, 230.

<sup>59</sup> Laurin, *Introductio*, 150: “[p]rima editio, omnibus illis determinationibus instructa.”

<sup>60</sup> Ireneo Affò, *Memorie*, vol. 1, 105–106.

<sup>61</sup> *Decretales Gregorii noni Pontificis* (Lyons: Apud Hugonem à Porta, & Antonium Vincentium, 1553). This edition was condemned during the preparation for the 1582 *ER*.

The differences among these editions still await exploration.<sup>62</sup> In 1582, as one of the major post-Tridentine efforts, the Catholic Church printed the 1582 *ER*—the only official edition—of the *Corpus Iuris Canonici*. This work includes Gratian’s *Decretum*, Gregory IX’s *Decretales*, Boniface VIII’s *Liber sextus*, John XXII’s *Constitutiones Clementis V*, *Extravagantes Joannis XXII*, and the *Extravagantes communes*, all revised by the *Correctores Romani* commissioned by the papacy in 1566.<sup>63</sup> As a result, most printings of the *Decretales* immediately after 1582—generally produced in Lyons or Venice—followed the 1582 *ER* verbatim in both the central text and the *Glossa* when included.<sup>64</sup> In the early modern and modern eras, as the jurisprudential study of canon law as a living legal system was increasingly overshadowed by the study of civil law within national borders, the printing of the *Glossa* gradually ceased. The 1687 Paris edition of the *Decretales* prepared by Pierre Pithou (1539–1596) and his brother François (1543–1621) did not include the *Glossa*, nor did the 1728 edition of Christopher Freiesleben (1696–1741) in Prague, the 1747 edition of Justus Böhmer (1674–1749) in Halle-Magdeburg, or the 1839 edition of Emil Richter (1808–1864) in Leipzig.<sup>65</sup> Friedberg’s 1879–1881 edition of the *Corpus Iuris Canonici*, the most recent and widely-used critical edition, did not include Bernard’s work.

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<sup>62</sup> See Stephan Kuttner, “Notes on the *Glossa Ordinaria* of Bernard of Parma,” *BMCL* 11 (1981), 87.

<sup>63</sup> On the *Correctores Romani* and their editing work on the *Decretum* of Gratian, see Mary E. Sommar, *The Correctores Romani: Gratian’s Decretum and the Counter-Reformation Humanists*, *Pluralisierung & Autorität* 19 (Berlin: Lit; London: Global, 2009).

<sup>64</sup> Printings without the *Glossa*—but with other premodern canonists’ notes (printed in italics following the canons commented on)—also existed during this period. For instance, in 1591 one of such editions of the full *Corpus Iuris Canonici*, integrating notes of the sixteenth-century Perugian canonist Johannes Paulus Lancelottus (d. 1590) but without the *Glossa*, was printed in Lyons.

<sup>65</sup> See Fr. v.2 col. LI for a brief review of the editions of Böhmer and Richter.



Kuttner points out that “Bernard’s *Casus longi* were at first only occasionally entered as a separate stratum in manuscripts of the glossed Decretals; that they should be eventually incorporated into the *Ordinaria* [i.e., the *Glossa*] is a development of transmission which has its parallel in the history of the Gloss on Gratian.”<sup>66</sup> Both Sarti and Affò claim that there existed no separate manuscripts of the *Casus*. How many manuscripts of the *Glossa* contained this work has yet to be studied. The separate printings of the *Casus* started with the Paris edition published by Petrus Caesaris and Johannes Stol in 1475, and there were at least fourteen editions of this work before the sixteenth century. The first edition that printed the *Glossa* and the *Casus longi* together was published in Nürnberg in 1493,<sup>67</sup> about twenty years after the first printed edition of the *Glossa*. Kuttner, based on a survey in the Robbins Collection at Berkeley, provides a list of sixteenth-century printings of the *Glossa* lacking the *Casus*, including the edition printed by the Calvinist jurist Charles Dumoulin in 1553.<sup>68</sup> The 1582 *ER*, however, did print the *Casus* together with Bernard’s glosses. But here again, comparison among these editions is yet to be done. As Kuttner informs us, “major variants occur from the first page on.”<sup>69</sup>

Most importantly, no printings preserved the *Glossa* as it existed in late thirteenth-century manuscripts. “The form that was printed contains references that carry us well beyond 1271,”<sup>70</sup> not to mention the traces of Bernard’s gradual additions throughout more than twenty years from (at least) 1239 to 1263 or even 1266. The 1582 *ER* provides by far the most

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<sup>66</sup> See Kuttner, “Notes,” 87.

<sup>67</sup> See Ludwig Hain, *Repertorium Bibliographicum*, vol. 1 (Stuttgart: J.G. Cotta, 1826), 520. Laurin, and Kuttner following him, mistakenly transcribed the date 1491. See Laurin, *Introductio*, 153, n. 3; Kuttner, “Notes,” 87, n. 4.

<sup>68</sup> Kuttner, “Notes,” 87.

<sup>69</sup> *Ibid.*, 88.

<sup>70</sup> Gabriel Le Bras, “Pour une nouvelle édition de la glose ordinaire des Décrétales de Grégoire IX,” *RHD* 44 (1966): 241: “La forme qui a été imprimée contient des références qui nous portent bien au-delà de 1271.”

accessible text of the *Glossa* for scholars. However, the *glossae* thus printed were a product of nearly 350 years of additions and alterations to Bernard's texts, and thus contain layers of content that must be treated with caution, separately from Bernard's original composition. For example, the *Novella in Decretales* of Johannes Andreae (c. 1270–1348) merged with Bernard's text in many of the *Glossa* manuscripts produced from the first half of the fourteenth century on,<sup>71</sup> and thus entered the earliest incunables of the *Decretales*, such as, for example, the edition published by Ulrich Han and Simon Nicolai Chardella in Rome in 1474.<sup>72</sup>

Furthermore, Kuttner's study reveals that the expurgation program initiated by the Master of the Sacred Palace, Tomás Manrique (d. 1573), though superseded by the project of his successor Paolo Constabili (1520–1582),<sup>73</sup> did, in fact, alter or even purge some of Bernard's original glosses from the official edition.<sup>74</sup> This program targeted the glosses and additions of the *Corpus Iuris Canonici* during the 1570s.<sup>75</sup> At the same time, some notes from Charles Dumoulin in his 1553 edition, which were supposed to be purged under the programs of Manrique and Constabili, curiously survived in the 1582 *ER* with the Charles' name deleted. Moreover, in the 1582 edition, almost every canon was accompanied by an introductory comment that sometimes ended with the signature Abbas/Abbas Sicu./Abbas Siculus (i.e., "the Sicilian abbot").<sup>76</sup> These comments came from the work of the canonist known as Panormitanus on the *Decretales*

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<sup>71</sup> See Kenneth Pennington, "Johannes Andreae's Additiones to the Decretals of Gregory IX," *ZRG Kan. Abt.* 74 (1988): 328–347.

<sup>72</sup> See Laurin, *Introductio*, 150.

<sup>73</sup> For orders from Manrique and Constabili delineating their respective plans of expurgation, see Theiner, *Disquisitiones criticae in praecipuas canonum et decretalium collectiones*, XV–XVI, n. 3.

<sup>74</sup> Kuttner, "Notes," 89.

<sup>75</sup> See Tomás Manrique, *Censura in Glossas et Additiones Juris Canonici omnibus exemplaribus hactenus excusis respondens* (Cologne: Apud M. Cholinum, 1572).

<sup>76</sup> Niccolò Tedeschi/Niccolò de' Tudeschi/Nicolaus de Tudeschis, also known as Panormitanus (1386–1445).

composed in the early fifteenth century.<sup>77</sup> Finally, the 1582 edition was one of printings that integrated Bernard's *Casus longi* with the *Glossa*. Bernard had written these as separate works, and the occasional merging of them in some manuscripts remains to be explained.<sup>78</sup> As Kuttner demonstrates, the 1582 *ER* followed the 1547 Paris edition and expanded the *Casus longi* by adding to them many *notabilia* for which, so far, no manuscript evidence has been found.<sup>79</sup>

Let us return to the *Glossa*. Besides the problems listed above regarding the printings of Bernard's work, almost immediately after his death, canonists such as William Duranti<sup>80</sup> (who was, as discussed above, Bernard's student) and Johannes Andreae<sup>81</sup> started seeking textual evidence that could identify the final redaction of the *Glossa*. Such concern lasted through the late sixteenth century, even after the publication of the 1582 *ER*. This was attested by the reprinting of Bartolomeo Cipolla (c. 1420–1475)'s *De cognitione librorum iuris canonici* ("On the Examination of Books of Canon Law")<sup>82</sup> in the massive compilation of scholarly works on the Romano-canonical legal system, *Tractatus universi iuris*, published by Franciso Ziletti in 1584–1586.<sup>83</sup> But these short bibliographical notes by no means illustrate Bernard's working logic or his scholarly and/or ecclesiastical concerns, nor do they tell us much about the Church and the world from the eyes of the influential canonist. What Kuttner says of the posthumous

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<sup>77</sup> See Kenneth Pennington, "Panormitanus's *Lectura* on the Decretals of Gregory IX.," in *Fälschungen im Mittelalter: Internationaler Kongress der Monumenta Germaniae Historica, München, 16.–19. September 1986*, vol. 2 (Hanover: Hahnsche Buchhandlung, 1988), 363–373.

<sup>78</sup> See Kuttner, "Notes," 87.

<sup>79</sup> *Ibid.*, 88–89.

<sup>80</sup> *Ibid.*, 90, n. 14.

<sup>81</sup> Kuttner and Smalley, "The 'Glossa Ordinaria' to the Gregorian Decretals," 97–98.

<sup>82</sup> Preserved in a late fifteenth-century manuscript, see MS Munich BSB Clm 14533, fols. 1r–7v.

<sup>83</sup> *Tractatus universi iuris*, vol. 1 (Venice: Franciscus Zilettus, 1584), 181v–183r. See also Kuttner, "Notes," 90.

history of the *Glossa*—“[N]early everything remains to be done”—also applies to the history of its formation. Therefore, in order to begin a systematic investigation of the *Glossa*’s textual history and to demonstrate its potential value for medieval studies, a close evaluation of Bernard’s work based on manuscripts is needed.

## 0.5 Historiographical Discussion

A few thematic studies in medieval canon law have consulted the *Glossa*, however briefly. Ten years before proposing the four-redaction theory with Smalley, Kuttner in his *Kanonistische Schuldlehre* mentioned Bernard’s opinion on the culpability for breaching enforced oaths, among the various opinions of other contemporary canonists. Nevertheless, this brief discussion was only to present the complexity and uncertainty of the subject at issue in the medieval jurisprudential world.<sup>84</sup> Introducing Bernard as one of the “précurseurs” before the “princes” of the decretal laws, Charles Lefebvre in *L’Âge classique, 1140–1378* noted that one of Bernard’s glosses on legal customs, while citing the Justinianic *Digest*, was rejected unanimously by other glossators.<sup>85</sup> Referring to Bernard as one of the “lesser jurists of the period [1234–1348],”<sup>86</sup> James Brundage in his *Law, Sex, and Christian Society in Medieval Europe* mentioned Bernard on the issues of women’s judicial power, fornication by separated couples, prostitution, and sex crime.<sup>87</sup> None of these cases, however, tried to analyze the *Glossa*’s

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<sup>84</sup> Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX: systematisch auf Grund der handschriftlichen Quellen dargestellt* (Vatican City: Biblioteca Apostolica Vaticana, 1935), 329–330.

<sup>85</sup> Gabriel Le Bras, Charles Lefebvre, and Jacqueline Rambaud, *L’Age Classique, 1140–1378 : Sources et Théorie du Droit* (Paris: Sirey, 1965), 546.

<sup>86</sup> James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 417.

<sup>87</sup> *Ibid.*, 426, 459, 466, 468, 482–484.

working logic—especially by investigating the Romano-canonical allegations it employed—even when the author noted that “Bernard of Parma pointedly referred to an ancient civil law text.”<sup>88</sup>

Similar cursory treatment of Bernard’s legal reflection without any in-depth examination also exists in other studies of medieval canon law on the topics of Jews, marriage, heresy, and magic.<sup>89</sup> Few thematic works on medieval canon law that consulted the *Glossa* investigated how Bernard reflected upon legal principles, procedures, and social contexts to reach his final opinions. One of the major aspects of the legal thinking embedded in the *Glossa* is Bernard’s critical use of Roman law. The numerous legal allegations of the Justinianic compilations contained in medieval canonical *glossae* attest to the canonists’ familiarity with classical Roman law, alongside the development of the “intellectual interdependence between civilians and canonists.”<sup>90</sup> Nevertheless, compared with the relatively rich literature on Roman law in

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<sup>88</sup> Ibid., 468.

<sup>89</sup> See, for instance: Patrick Hersperger, *Kirche, Magie und “Aberglaube”*: *Superstitio in der Kanonistik des 12. und 13. Jahrhunderts* (Cologne: Böhlau, 2010); Lotte Kéry, *Gottesfurcht und irdische Strafe: der Beitrag des mittelalterlichen Kirchenrechts zur Entstehung des öffentlichen Strafrechts* (Cologne: Böhlau, 2006); Catherine Rider, *Magic and Impotence in the Middle Ages* (New York: Oxford University Press, 2006); Sascha Ragg, *Ketzer und Recht: die weltliche Ketzergesetzgebung des Hochmittelalters unter dem Einfluss des römischen und kanonischen Rechts* (Hanover: Hahnsche Buchhandlung, 2006); Charles J. Reid, *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids: Eerdmans, 2004); Henry Kelly, *Inquisitions and Other Trial Procedures in the Medieval West* (Burlington: Ashgate, 2001); Peter Biller and Anne Hudson, eds., *Heresy and Literacy, 1000–1530* (Cambridge; New York: Cambridge University Press, 1994); Walter Pakter, *Medieval Canon Law and the Jews*, *Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung* 68 (Ebelsbach: R. Gremer, 1988); Elisabeth Vodola, *Excommunication in the Middle Ages* (Berkeley: University of California Press, 1986).

<sup>90</sup> Brundage, *Medieval Canon Law*, 112.

Gratian's *Decretum*,<sup>91</sup> Roman jurisprudence in the medieval canonical *glossae* has been largely neglected.<sup>92</sup>

Brundage's discussion of the relationship between medieval canon law and private-public life sets an excellent stage for connecting canonical juridical thought with the legal issues around people living on the religious margin.<sup>93</sup> Unfortunately, beyond the realm of medieval law, except for titles discussed above, few scholarly works on religious marginality have considered the rich information embedded in the Romano-canonical tradition generally, not to mention Bernard and his *Glossa*. The extant scholarship on medieval Jews, Muslims, magic, and heresy is, indeed, vast. These studies thoroughly consult important historical materials including papal and conciliar documents, chronicles, and theological treatises, and in some cases even surviving physical objects such as amulets. In general, these presentations offer well-grounded narratives under the general topic of religious marginality (for a full list of works consulted, see Bibliography). However, our understanding of people living on religious margins in the High Middle Ages will not be comprehensive without a careful examination of the contribution that can be made by Bernard's *Glossa*.

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<sup>91</sup> See, for instance, Anders Winroth, "Les deux Gratien et le droit romain," *RDC* 48 (1998): 285–299; Brigitte Basdevant-Gaudemet, "Les sources de droit romain en matière de procédure dans le Décret de Gratien," *RDC* 27 (1977): 193–204; Jean Gaudemet, "Droit canonique et droit romain : a propos de l'erreur sur la personne en matière de mariage (C. XXIX, qu. 1)," *SG* 9 (1966), 45–64; Gabriel Le Bras, "L'Église médiévale au service du droit romain," *RHD* 44 (1966): 193–209; Charles Munier, "Droit canonique et droit romain d'après Gratien et les Décrétistes," in *Études d'Histoire du droit canonique dédiés à Gabriel Le Bras* (Paris: Sirey, 1965), 273–281; Jean Gaudemet, "Das römische Recht in Gratians Dekret," *Österreichisches Archiv für Kirchenrecht* 12 (1961): 177–191; Adam Vetulani, "Gratian et le droit romain," *RHD* 24 (1946): 11–48. See also the "Orientation bibliographique" listed in Jean-Philippe Gaudemet, "Le droit romain dans la pratique et chez les docteurs aux XIe et XIIe siècles," *Cahiers de Civilisation médiévale* 8 (1965): 365.

<sup>92</sup> For instance, in his work on the integration of Roman law in classical canon law, Pierre Legendre analyzed none of the Romano/canonical *glossae ordinariae* beyond very few references. See Pierre Legendre, *La pénétration du droit romain dans le droit canonique classique de Gratien à Innocent IV, 1140–1254* (Paris: Imp. Jouve, 1964).

<sup>93</sup> See Brundage, *Medieval Canon Law*.

## 0.6 Base Text-Manuscript-Edition Selections

This study focuses on exploring the *Glossa*, an essentially uncharted canonical source—as it emerged and developed during the thirteenth century—that involved a wide range of ecclesiastical as well as juridical/jurisprudential materials for which few satisfactory critical editions exist. The shortcomings of the printed versions of the *Glossa* have been noted above. It is, therefore, crucial to select the manuscripts and/or editions presenting texts that are as close as possible to what Bernard would have composed and/or consulted (for complete lists of manuscripts and editions selected for this study, see Bibliography).

The fundamental texts of this study are the *Decretales* and the *Glossa* on it. Selecting manuscripts for the *Decretales* is a complicated issue. Edward Reno, evaluating this problem, points out that “many small errors have accumulated over time, to the point where an edition like the 1582 *ER* contains literally thousands of them,”<sup>94</sup> and summarizes the problem by noting that “[a]pproaching the promulgated version of the *Decretals* becomes like a calculus problem, bounded on one side by the variants of early *Decretals* manuscripts, and on the other by the range of possible readings available in the *Quinque compilationes antiquae* [hereafter *QCA*] manuscripts.”<sup>95</sup> Arbitrary choices, therefore, must be made according to our specific research subject. The best manuscript(s) of the *Decretales* for this study would be the one(s) that Bernard used to compose and update his glosses. Unfortunately, we may never be certain which manuscript, or manuscripts, that was. Hence, the best option may be to examine the earliest ones containing the *Glossa*. The base text of the *Decretales* that I chose to use is the second earliest

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<sup>94</sup> Edward Andrew Reno, “The Authoritative Text: Raymond of Penyafort’s Editing of the ‘Decretals of Gregory IX’ (1234),” PhD diss., (Columbia University in the City of New York, 2011), 142.

<sup>95</sup> *Ibid.*, 143.

dated manuscript (1239) that contains the *Glossa*, MS Florence, BML Plut.3 sin.9 (hereafter MS F). However, for immediate comparison of the canons, I will use the earliest dated manuscript of the work (1235), MS Florence, BNC Palat. 157, which does not have any glosses in it. The *Decretales* copied in other manuscripts selected for studying the *Glossa* (criteria listed below) will also be investigated for variants.

In terms of the *Glossa*, I have selected manuscripts according to the stages mapped out by Kuttner and Smalley, which for this present study I will enlarge with a fifth stage, as noted below. As discussed above, the divisions pointed out by Kuttner and Smalley still hold as clear markers for the occasions when Bernard cited a specific papal decretal promulgated in a known year between 1234 and 1266. These dated papal decretals, many of which are Innocent IV's important legislation, such as *Officii* (1243–1244),<sup>96</sup> *Pia* (1243–1244),<sup>97</sup> and *Volentes* (c. 1250–1251),<sup>98</sup> in turn can help contextualize the glosses under study. Therefore, using the same papal documents as indicators, I have selected the following manuscripts for this research: (1) MS F (dated 1239; representing the 1234–c. 1241 version); (2) MS Vatican, BAV Vat. lat. 1365 (1243–1245); (3) MS Vatican, BAV Vat. lat. 1383 (1245–c. 1253); (4) MS Vatican, BAV Borgh. 237 (1253–1263); and (5) MS Munich, BSB 26301 (post–1263).<sup>99</sup> “The Digital Decretals” website,<sup>100</sup> which is under preparation by Reno, will provide the most accessible and searchable

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<sup>96</sup> *Sext* 1.15.1.

<sup>97</sup> *Sext* 2.12.1.

<sup>98</sup> *Sext* 5.7.1. For the dating and discussions of these three decretals, see Stephan Kuttner, “Die Konstitutionen des ersten allgemeinen Konziles von Lyon,” *SDHI* 6 (1940): 70–131.

<sup>99</sup> The ranges of dates given in this list are the stages of revisions of the *Glossa* listed by Kuttner and Smalley, instead of those of the production of the manuscripts.

<sup>100</sup> Edward Reno, <https://sites.google.com/view/digitaldecretals>. Access to this website was kindly provided to me by Professor Reno.



text of the *Glossa* for scholars so far. This source, though based on the 1582 *ER*, will facilitate the reading of Bernard's glosses, legal allegations, and citations. With respect to manuscripts selected to examine the works of Bernard, such as his *Notabilia*,<sup>101</sup> and of other canonists, see Bibliography.

To trace the legal allegations appearing in Bernard's glosses, I use Friedberg's edition of the *Corpus Iuris Canonici*<sup>102</sup> for Gratian's *Decretum*. This is necessary because of the absence of a critical edition of this work as it existed during the thirteenth century, and the heavy editorial changes made by the *Correctores Romani* on it for the 1582 *ER*. For the same reason, the critical edition of the second recension of the *Decretum*, which is still under preparation under the general editorship of Anders Winroth, will be consulted for this study once completed.<sup>103</sup> I also consult two selected manuscripts for the *Glossa ordinaria* on the *Decretum*: MS Vatican, BAV Vat. lat. 1367 (with Johannes Teutonicus' original *Glossa ordinaria*)<sup>104</sup> and MS Munich, BSB Clm 14005 (with Bartholomew of Brescia' revised *Glossa ordinaria*). To examine allegations of the *QCA*, I use volume four of the *Antonii Augustini Archiepiscopi Tarraconensis Opera omnia*<sup>105</sup> for the first four collections, which is, according to Kuttner, an "excellent text."<sup>106</sup> For

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<sup>101</sup> See Kuttner, "Notes," 88. As discussed above, Sarti also mentioned Bernard's *Consilium magistri Bernardi Doctoris Decretalium circa interpretationem Constitutionis Gregorii IX contra Blasphemos*, which he claimed to have printed from a manuscript preserved at the Biblioteca Malatestiana in Cesena. With the kind help of Dr. Consuelo Dutschke and Mr. Gianluca Morigi, I was able to consult this (possibly only) extant manuscript of this *Consilium*, i.e., MS Cesena, Bibliotheca Malatestiana S. II. 5. fols. 266vB-267vA.

<sup>102</sup> Aemilius Friedberg, ed., *Corpus Iuris Canonici*, 2 vols. (Leipzig: Ex officina Bernhardi Tauchnitz, 1879–1881).

<sup>103</sup> See Anders Winroth, <https://sites.google.com/a/yale.edu/decretumgratiani/> for this project's status.

<sup>104</sup> It should be noted that Admont, Stiftsbibliothek 35 also could be a good exemplar.

<sup>105</sup> Antonio Agustín, *Antonii Augustini Archiepiscopi Tarraconensis Opera omnia*, ed. Giuseppe Rocchi, vol. 4 (Lucca: Typis Josephi Rocchii, 1769).

<sup>106</sup> Stephan Kuttner, "Antonio Agustín's Edition of the *Compilationes antiquae*," *BMCL* 7 (1977): 3.

*Comp. V.*, I use volume one of the *Honorii III Romani Pontificis Opera omnia quae exstant*.<sup>107</sup> Friedberg's analytical edition of the *QCA*<sup>108</sup> is also consulted, together with his edition of the *Corpus Iuris Canonici*.

For the allegations of Roman law, I use the “vulgate” edition of the *Corpus Iuris Civilis*, which Charles Donahue argues is “the edition that scholars of the *Corpus* used from the thirteenth until well into the seventeenth century.”<sup>109</sup> Works of canonists and Roman jurists cited by Bernard are selected with the assistance of printed and online resources such as Schulte's *Die Geschichte der Quellen und Literatur des canonischen Rechts*,<sup>110</sup> Kuttner's *Repertorium der Kanonistik (1140–1234)*<sup>111</sup> (with Bertram's additions<sup>112</sup>), Gero Dolezalek's “Manuscripta juridica” website,<sup>113</sup> and Kenneth Pennington's *BBGMEMJ*.<sup>114</sup>

## 0.7 Method of Textual Analysis

By examining the ordinary glosses on selected canons in the *Decretales*, this study aims to show how they can shed light on our understanding of medieval jurisprudence, as well as the Church and society in general during the thirteenth century. The following formula is thus employed. First, each chapter has been divided into sections according to the main themes that I

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<sup>107</sup> Hieronymus Bottino and César Auguste Horoy, eds., *Honorii III Romani Pontificis Opera omnia quae exstant. Medii aevi bibliotheca patristica, seu ejusdem temporis patrologia ab anno MCCXVI uque ad Concilii tridentini tempora 1–5* (Paris: Imprimerie de la Bibliothèque ecclésiastique, 1879), vol. 1.

<sup>108</sup> Aemilius Friedberg, ed. *Quinque compilationes antiquae*. Leipzig: Bernhard Tauchnitz, 1882.

<sup>109</sup> Charles Donahue, Jr., <http://amesfoundation.law.harvard.edu/digital/CJCiv/CJCivMetadata.html>. This digital edition is produced according to the 1604 version of the *Corpus Iuris Civilis* published by Horace Cardon in Lyons.

<sup>110</sup> Schulte, QL.

<sup>111</sup> Kuttner, *Repertorium*.

<sup>112</sup> Martin Bertram, “Some Additions to the *Repertorium der Kanonistik*,” *BMCL* 4 (1974): 9–16.

<sup>113</sup> Gero Dolezalek, <http://manuscripts.rg.mpg.de/>

<sup>114</sup> Kenneth Pennington, [http://amesfoundation.law.harvard.edu/BioBibCanonists/general\\_search.php](http://amesfoundation.law.harvard.edu/BioBibCanonists/general_search.php).

have extracted from the glosses that are selected according to the legal thinking that they—or the allegations that they invoke—reveal upon investigation. At the beginning of each chapter, I provide a brief historical discussion of the relevant topic, introduce selected titles and the canons under them from the *Decretales* (see Appendix A for a list of the selected canons), and briefly describe the *Glossa* on those canons: how many are there in total, how many of them were added after the first redaction, and how many are to be analyzed in detail in the chapter. (Appendix B contains the transcriptions of all canons and ordinary glosses under the selected titles based on MS F, unless otherwise noted.)

In the analysis of each section, I first present summaries of the relevant canons that the glosses are commenting on, discussing their historical context when necessary. A detailed textual investigation of the selected glosses follows. Each such investigation comprises three parts: (1) manuscript and composition/revision history study; (2) comment analysis; and (3) allegation interrogation.

For part (1), in the first place, transcription and translation of the selected glosses are provided in parallel columns. In these columns, latter additions made to the first redaction of the *Glossa* are enclosed by “+” symbols, and (when significant) are accompanied by clarifying footnotes, demonstrating the evolution of Bernard’s legal thinking over time. If any of the (including later redactions of the) text under discussion contains a canonist’s *sigla*, I check selected manuscripts of that canonist to see if the gloss was indeed taken from that canonist, and whether Bernard made any changes to it.

For part (2), I firstly present the glossator’s comment in relation to the canon: does the former agree with the latter, add new juridical dimensions to the latter, or challenge the latter by invoking a counterargument? Occasionally, direct confrontations indeed appear, in which case I

study in what manner the gloss solves the contradiction. Furthermore, if the comment contains Roman law principles—in some cases the glossator made it rather clear—I investigate how he used the principle exactly: was he simply pointing out a principle that the canon itself already embodies, or was he rather creatively employing a principle that is not originally intended for the case under discussion? The analysis of the latter scenario, which I believe is an important aspect of the mechanism of the medieval *ius commune* that deserves further exploration, is a major component of my research.

For part (3), I begin with identifying every allegation that the gloss invokes: whether it is a sermon by Augustine of Hippo (d. 430), an excerpt from Isidore of Seville's (d. 636) *Etymologie*, a canon from the Third Lateran Council (1179), an imperial edict from Emperor Frederick II (1220–1250), a passage from the Justinianic *Corpus Iuris Civilis*, or a decretal from Pope Innocent III (1198–1216), etc. I then determine whether that allegation is directly echoing what the canon prescribes, or is pointing toward one of three more interesting scenarios: (a) it provides detailed judicial instructions with respect to the crime under discussion; (b) it contradicts rather than supports the canon's position; and (c) it at first glance does not seem to be related to the canon at all, but upon analysis show judicial, analogous connections with the canon in terms of legal principles, nature of the crime, or manners of punishments, etc. Interrogating allegations as these reveals juridical thoughts behind the gloss. Another layer of my examination during this process is questioning the *types* of allegations invoked by the glossator. Sometimes he invoked a Roman law text rather than a canon law passage that seems to be more fitting. Instances such as these call for scholarly speculation. Lastly, I also pay attention to cases where the gloss makes an argument without employing any allegations, which sometimes can tell us about common practice in the legal landscape of the time. In the end, when applicable, my study

also connects or contrasts the uncovered concerns and thoughts behind the *Glossa* with its contemporary literature and/or events and practices in its contemporary society.

## **0.8 Summary of Each Chapter**

As mentioned above, this dissertation examines Bernard's *Glossa* on four medieval groups identified in the *Decretales* that can be categorized as "marginal" from a religious perspective: (1) Jews and Muslims, (2) heretics, (3) apostates, and (4) practitioners of magic.

The first chapter deals with how the *Glossa* on X 3.33 and X 5.6 treats Jews and Muslims. These two titles contain two and nineteen canons, respectively. Themes explored range from the *Glossa*'s understanding of the theological positions of these two religious communities, whether both are considered enemies of Christians, to the *Glossa*'s treatment of interreligious-marital issues between members from each community. The chapter demonstrates that the canonical conflation of laws pertaining to Jews and Muslims during the High Middle Ages, argued by some recent studies, is but one side of the story. Furthermore, it shows that the issue of commensality, however popular the topic in contemporary medieval studies, was far less important than the issue of Jews and Muslims holding Christian slaves. More importantly, in-depth analysis of the ordinary glosses in the chapter, as in the following chapters, reveals the *Glossa*'s own, juridical concerns that are different from, or even contradictive of, the canons.

The second chapter examines the *Glossa* on the first nine canons of X 5.7, the title in the *Decretales* that specifically targets heretics. Canons in this section are unsystematic in terms of their definitions of heresy and heretics, their understanding of the legal category of heresy as a crime, and the (lack of) procedures for treating heretics. Investigations of the ordinary glosses on them, by contrast, provide important insights into these questions and show how the religious threat of heresy and heretics was interpreted by a legal commentary embodying the spirit of *ius*

*commune*. Concerns of the *Glossa* that are different from those of the canons are also excavated through considering the comments and the allegations.

The third chapter continues the topic of the legal treatment of heretics and analyzes the ordinary glosses on X 5.7.10-16. These high medieval canons come from the pontificates of Popes Innocent III (1198–1216) and Gregory IX (1227–1241), the period in which the medieval Church became increasingly focused on heresy and the inquisitorial procedure that was gradually implemented to deal with heretics. Glosses in this section, upon examination, reveal particular attention paid to the technical details of the nascent so-called “papal inquisition” against heresy. To explore how the *Glossa* might have complemented contemporary instructional inquisitorial texts, toward the end of the chapter, I compare the *Glossa* on X 5.7 with two inquisitorial manuals written by the compiler of the *Decretales*, Raymond of Peñafort.

The fourth chapter investigates the *Glossa* on the six canons of X 5.9, which deal with people who abandon their religious *habitus* and return to secular life—called “apostates” in the *Decretales*—and those who undergo or perform rebaptism. Major questions explored include how the glossator discussed the legal implications of apostasy and rebaptism as religious crimes, and how he achieved a balance among allegations that contradict each other or even the canons. The chapter also considers in what manner the *Glossa* deals with ecclesiastical matters, such as papal dispensation of crimes and clerical promotion, which occupy both the *Decretales* and its ordinary glosses in this section.

The last main chapter of this dissertation examines how the ordinary glosses treat the perpetrators of actions that invoke non-human forces: actions that we today would categorize as sorcery. X 4.15 and X 5.21, respectively, contain seven and three canons; such actions include casting evil spells to cause sexual impotence, using divinatory means to seek lost objects, and

casting lots to select candidates for an episcopal seat. Performers of magic, in the eyes of high medieval theologians such as Thomas Aquinas, are resorting to the power of demons and betraying the Christian religion.<sup>115</sup> Although they are not “religious communities” like other groups examined in this dissertation, such as Jews and Muslims, their deeds certainly are perceived as theologically problematic to Christianity. It is with this understanding that the chapter explores the *Glossa* on these two titles. Does the *Glossa* consider the aforementioned forms of magic as religious crimes, similar to heresy? Are perpetrators, who are more akin to heretics than to Jews or Muslims in the sense that they are presumably Christians, subjected to serious ecclesiastical censure or clearly-laid out canonical procedures? Questions such as these are investigated in this chapter, which then closes with a discussion of whether such perpetrators were considered marginal religious communities by the *Glossa*.

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<sup>115</sup> See Lynn Thorndike, “Some Medieval Conceptions of Magic,” *The Monist* 25 (1915): 107–139. Such understanding of divinatory practices in particular was already present in the late antique Christian society. However, notably, it was not the only attitude to divination by then within the community. See Robert Wiśniewski, *Christian Divination in Late Antiquity* (Amsterdam: Amsterdam University Press, 2020), 23–44.

# Chapter One: “They should be decapitated”:<sup>1</sup>

## The *Glossa* to X 5.6 & 3.33 on Jews and Saracens

### 1.1 Introduction

In the beginning of his book, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law*, David Freidenreich invokes a hypothetical scenario in which two Christian clergymen, a rabbi, and a Sunni/Shi'i imam walk into a restaurant.<sup>2</sup> Until recently an inconceivable scenario, as the author himself admits, it nonetheless is an interesting introduction to his historical study of dietary norms within these religious traditions. Indeed, as Freidenreich shows, the permission or prohibition of interreligious commensality (the sharing of a meal) is a topic which attracts not only modern readers, but also drew the attention of ancient and medieval religious authorities and intellectuals. This chapter, however, will demonstrate that this issue, however interesting, is not a central concern in the *Decretales* and its Ordinary Glosses. In the eyes of the thirteenth-century institutional Church and especially its legal scholars, commensality, within the framework of Christian/Jewish/Muslim relations, was less important than other legal subjects.

This chapter discusses selected ordinary glosses to two titles in the *Decretales: De iudaeis, sarracenis, et eorum servis* (X 5.6) and *De conversione infidelium* (X 3.33). My analysis, on the one hand, explores the main concerns of the *Glossa* as a key legal-educational text treating Jews and Muslims in the thirteenth-century legal landscape.<sup>3</sup> On the other hand, I

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<sup>1</sup> X 5.6.6 *glos. ord. s.v. ferrum*: “Ut **infra. e. ad liberandam.**, ubi de hoc totum habes, quod hic dicitur haec ad hostes transferri non debent. **C. quae res expor. non debeant. l. ii.** et illi sunt decapitandi.”

<sup>2</sup> David M. Freidenreich, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley: University of California Press, 2011), 3.

<sup>3</sup> Scholarly literature on medieval non-Christians from the legislative perspective is abundant. See the bibliography in Christoph H. F. Meyer, *Non-Christians in the Normative Culture of the Catholic Church between Antiquity and*



investigate how the *Glossa* forms and conveys its legal thinking about these marginal, non-Christian groups not only through its comments but also its carefully selected Romano-canonical allegations.

Before examining specific glosses, I begin with a brief summary of X 5.6 and X 3.33. It first should be noted that these two titles certainly do not cover all canonical contents concerning Jews and Saracens<sup>4</sup> in the *Decretales*. Treatments of various concerns associated with these groups occasionally appear in other places within the *Decretales*. Such canons include X 4.21.2, where Pope Lucius III (1181–1185) warned that Christian wives who have been captured by Saracens should not remarry before their first spouse’s death is proven; X 5.17.4, in which Pope Alexander III (1159–1181) assigned monetary and caning punishments to Saracens who abduct (*rapiunt*) Christian women and boys;<sup>5</sup> and X 3.30.16 as well as 5.19.18, both of which require

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*the Modern Era: A Select Bibliography*, Max Planck Institute for European Legal History Research Paper Series, No. 2020-15: subsidia et instrumenta (Frankfurt am Main: Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3206610](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3206610). To this bibliography one may add David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton: Princeton University Press, 1996); Mark R. Cohen, *Under Crescent and Cross: The Jews in the Middle Ages*, 2nd ed. (Princeton: Princeton University Press, 2008); and David M. Freidenreich, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley: University of California Press, 2011). Christoph Meyer has also recently produced an overview of non-Christians in the history of canon law, see Christoph H. F. Meyer, “Nichtchristen in der Geschichte des kanonischen Rechts: Beobachtungen zu Entwicklung und Problemen der Forschung,” *Rechtsgeschichte-Legal History* 26 (2018): 139–160. Besides this overview, three relevant articles that particularly discuss Jews and/or Muslims in the *Decretales* should be noted: Stefan K. Stantchev, “‘Apply to Muslims What Was Said of the Jews:’ Popes and Canonists Between a Taxonomy of Otherness and *Infidelitas*,” *Law and History Review* 32 (2014): 65–96; David M. Freidenreich, “Muslims in Western Canon Law, 1000–1500,” in *Christian-Muslim Relations: A Bibliographical History*, vol. 3 (1050–1200) (Leiden; Boston: Brill, 2011), 41–68; John A. Watt, “Jews and Christians in the Gregorian Decretals,” *SCH* 29 (1992): 93–105.

<sup>4</sup> “Saracen” and “Muslim” are used as synonyms in this chapter and dissertation. On the historical understanding of the word “Saracen,” see John Tolan, “Jews and Muslims in Christian Law and History” in Adam J. Silverstein, Guy G. Stroumsa, and Moshe Blidstein, eds., *The Oxford Handbook of the Abrahamic Religions* (Oxford; New York: Oxford University Press, 2015), 172–174.

<sup>5</sup> Notably, this canon was later employed by some thirteenth-century inquisitors to justify the use of torture in the prosecution of heresy. See Henry Ansgar Kelly, “Judicial Torture in Canon Law and Church Tribunals: From Gratian to Galileo,” *CHR* 101 (2015): 782. On the hesitation of the *Glossa* regarding the use of violence in treating heretics, see Chapter Two, sections 2.5 and 2.6 of this dissertation.

Jews to pay tithes; X 3.34.8, which legitimizes the burning of the Talmud and others.<sup>6</sup> However, the two titles selected for this chapter, consisting of 21 canons in total and the accompanying *Glossa*, specifically focus on our subjects.

X 5.6, containing 19 chronologically arranged canons ranging from the late sixth-century Council of Mâcon (581) to Pope Gregory IX’s letters, covers a series of topics concerning Jews, Muslims, and pagans.<sup>7</sup> The two tables below show the canons where these groups and topics are discussed:

| <b>Targeted Groups (specifically mentioned)</b> | <b>Canon(s) in X 5.6</b>         |
|---|----------------------------------|
| Jews only                                       | 1, 2, 3, 4, 7, 8, 9, 13, 14, 19  |
| Saracens (Muslims) only                         | 6, 11, 12, 17                    |
| Pagans <sup>8</sup> only                        | 10                               |
| Both Jews and Saracens                          | 5, 15, (and 16 and 18, see n. 8) |
| Both Jews and Pagans                            | 16                               |
| Jews, Saracens, and Pagans                      | 18                               |

| <b>Themes</b>                               | <b>Canon(s) in X 5.6</b> |
|---|--------------------------|
| Slaves/servants/serfs/etc.                  | 1, 2, 5, 8, 13, 19       |
| Trading military supplies/equipment/etc.    | 6, 11, 12, 17            |
| Construction/Renovation of synagogues       | 3, 7                     |
| Holding public office                       | 16, 18                   |
| Closing doors/windows on religious holidays | 4                        |

<sup>6</sup> On this canon and Pope Innocent IV’s comment on it, see Alexander Fidora, “The Latin Talmud and the Extension of Papal Jurisdiction over Jews,” *Medieval Worlds* 11 (2020): 152–164.

<sup>7</sup> A more detailed table of these canons’ contents can be found in Stantchev, “‘Apply to Muslims What Was Said of the Jews,’” 75.

<sup>8</sup> The word “pagan (*paganus*)” in X 5.6 can cause confusion, as it denotes different non-Christian groups across these canons. In this table, I have used this word from the canons. However, it should be noted that in X 5.6.10, the word “pagan” is referring to the northern European, non-Abrahamic religious groups that were the target of the northern/Baltic crusades; in X 5.7.16 and 18, nevertheless, “pagans” seems to be synonymous with “Saracens.” The *Glossa* to these canons reflects this flexibility accordingly. On the relationship between the concepts “Saracens” and “pagans,” see Benjamin Z. Kedar, “*DE IUDEIS ET SARRACENIS*: On the categorization of Muslims in medieval canon law,” in Rosalio Castillo Lara, ed., *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler* (Rome: LAS, 1992), 207–213 (reprinted in B. Z. Kedar, *The Franks in the Levant, 11th to 14th Centuries*, Collected Studies 423 (Aldershot; Brookfield: Variorum, 1993)); John Victor Tolan, *Saracens: Islam in the Medieval European Imagination* (New York: Columbia University Press, 2002), 105–134. David Freidenreich notes that “[t]he equation of Saracens and pagans is commonplace within medieval Christian legal discourse.” Freidenreich, “Muslims in Western Canon Law, 1000–1500,” 43.

|                              |    |
|------------------------------|----|
| Protection of Jews           | 9  |
| Distinguishing dress         | 15 |
| Food/commensality            | 10 |
| Physical attack on clergymen | 14 |

Since the two canons under X 3.33 both treat interreligious marriages between Christians and Jews or Muslims, it is safe to conclude that the ownership and manumission of Christian slaves as well as commercial relations with Muslim enemies were the major concerns of the *Decretales* regarding non-Christians. The glosses to X 5.6 and 3.33 follow this pattern. However, similar to their handling of other topics examined in this dissertation below, the ordinary glosses, with their own judicial concerns (that is, differing from those of the canons) expressed through the comments and allegations, also address practical and technical issues not covered by the canons.

In the following sections, I will first analyze how the ways in which the *Glossa* deals with Jews and Muslims are similar or different. Next, I will show how the *Glossa*, when addressing issues pertaining to the enslavement of non-Christians, brings the discussion into an almost non-religious framework with a central concern for the protection of business interests. Then, focusing on the glosses to a case concerning the custody and conversion of a young Jewish boy, I show that the *Glossa* not only delves into the Roman familial law origin of the canon under discussion, but also extensively employs Roman property law on the matter of custody. Moreover, the *Glossa* also introduces exceptions to the papal decision in the canon, thus in effect at times speaking for the non-Christian side. The final section returns to a common theme in this dissertation: how the *Glossa* hides its concerns through deliberately selected allegations from the Romano-canonical traditions rather than through exposition.

## 1.2 From those *qui foris sunt* to *hostes*: Understanding of Jews and Muslims

Unlike the *Glossa ordinaria* to Gratian's *Decretum*, Bernard's *Glossa* does not refer to Jews and Muslims as neighbors, nor does it encourage love or esteem for them.<sup>9</sup> Therefore, in the most general sense, how does the *Glossa* situate Jews and Muslims in the canonical world? To some extent, it reflects the “conflation of non-Christians” or “convergence of legal attitudes toward non-Catholics” in the legislative realm, as described in studies by Stefan Stantchev and David Freidenreich.<sup>10</sup> Indeed, some canons in X 5.6 can be interpreted as manifestations of this tendency. Compared with canons X 5.6.1, 2, 8, 13, and 19, which are all primarily concerned with prohibiting Jews from having Christian servants, X 5.6.5 is the first canon in X 5.6 that is concerned with “Iudaei sive Sarraceni.”<sup>11</sup> Similarly, the Fourth Lateran Council ruling (c. 68) in X 5.6.15, concerning the wearing of distinguishing dress, addresses “Iudaeos seu Sarracenos.”<sup>12</sup> Further, with respect to the prohibition against holding public offices, both X 5.6.16 and 18 point to Jews and Saracens. No canon specifically addresses the distinction between Jews and Muslims.<sup>13</sup>

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<sup>9</sup> *Glos. ord.* to *De pen. D. 2 c. 5, s.v. participes*: “Ergo Iudei et Sarraceni proximi nostri sunt et diligendi a nobis ut nos, et verum est.” On this gloss see James A. Brundage, “Intermarriage Between Christians and Jews in Medieval Canon Law,” *Jewish History* 3 (1988): 26. For a recent discussion about the treatment of Judaism and Islam in the *Decretum*'s *Causa 23*, together with the decretists' commentaries on it, see Anna Sapir Abulafia, ‘Engagement with Judaism and Islam in Gratian’s *Causa 23*,’ in Philippe Buc et al., eds., *Jews and Christians in Medieval Europe: The Historiographical Legacy of Bernhard Blumenkranz*, Religion and Law in Medieval Christian and Muslim Societies 7 (Turnhout: Brepols, 2016), 50–53.

<sup>10</sup> See Stantchev, “‘Apply to Muslims What Was Said of the Jews’,” 66 and 71. See also Freidenreich, “Muslims in Western Canon Law, 1000–1500,” 53–60 and 65–68.

<sup>11</sup> X 5.6.5 [Fr. v.2 col. 773]: “Iudaei sive Sarraceni neque sub alendorum puerorum suorum obtentu, nec pro servitio vel alia qualibet causa Christiana mancipia in domibus suis permittantur habere. Excommunicentur autem qui cum eis praesumpserint habitare.”

<sup>12</sup> X 5.6.15 [Fr. v.2 cols. 776–777]: “In nonnullis provinciis a Christianis Iudaeos seu Sarracenos habitus distinguit diversitas.”

<sup>13</sup> Note that such a canon does exist in Gratian's *Decretum*, i.e., the famous *Dispar nimirum* from Pope Alexander II (1061–1073) (C. 23 q. 8 c. 11). This will be discussed below in this chapter.

The *Glossa* in one case also merges ecclesiastical treatments of these two groups. To the above-mentioned X 5.6.5, which begins with an injunction that Jews and Muslims must not keep Christian slaves in their houses,<sup>14</sup> X 5.6.5 *glos. ord. s.v. permittantur* provides a quite comprehensive summary of canonical rulings concerning these non-Christians.

**X 5.6.5 *glos. ord. s.v. permittantur***<sup>15</sup>

| Transcription   | Translation   |
|---|---|
| Sed quid ad nos de his qui foris sunt: ut <b>ii. q. i. multi.</b> <sup>16</sup> <b>xlvi. di. qui sincera.</b> ? <sup>17</sup> Solutio: de hiis qui foris sunt non iudicat ecclesia, ut penam spiritualem intelligat. In casibus tamen iudicat de eis, qui repellit Iudaeos a communione +Christianorum+. <sup>18</sup> <b>xxviii. q. i. sepe.</b> <sup>19</sup> nec ab eis corrumpantur, ut ibi et <b>infra e. ad hoc.</b> <sup>20</sup> et hic, repellit enim a legitimis actibus. <b>ii. q. vii. alieni.</b> <sup>21</sup> et ab officiis publicis. <b>liiii. di. nulla officia.</b> <sup>22</sup> et <b>infra e. cum sit.</b> <sup>23</sup> et <b>c. plt.</b> , <sup>24</sup> et ne possint emere Christiana mancipia. <b>infra e. c. ult.</b> <sup>25</sup> et <b>liiii. di. fraternitatem.</b> <sup>26</sup> | But what is that to us regarding those who are outside [the Church], as [in] <b>ii. q. i. multi.</b> and <b>xlvi. di. qui sincera.</b> ? Solution: the Church is not judging regarding those who are outside, as it would impose the spiritual penalty. However, in some cases it [i.e., the Church] judges concerning them: it excludes Jews from the community +of Christians+, [see] <b>xxviii. q. i. sepe.</b> , lest they [i.e., Christians] be corrupted by them, so that thereupon and [see] <b>infra e. ad hoc.</b> and here, for it excludes [them] from legal actions, [see] <b>ii. q. vii. alieni.</b> and from public duties. [See] |

<sup>14</sup> X 5.6.5 [Fr. v.2 col. 773]: “Iudaei sive Sarraceni... Christiana mancipia in domibus suis permittantur habere.”

<sup>15</sup> For the editorial rules of the transcriptions in this dissertation, see Appendix B.

<sup>16</sup> C. 2 q. 1 c. 18 [Fr. v.1 cols. 446-447].

<sup>17</sup> Dist. 45.3 [Fr. v.1 cols. 160-161].

<sup>18</sup> Here ‘Christianorum’ is not in MS F and MS BAV Vat. lat. 11158, both of which represent the pre-1243 redaction(s) of the *Glossa* according to Kuttner and Smalley. It appears on MS BAV Vat. lat. 1365, fol. 553r, which represents the redaction produced between 1243 and 1245, as well as selected manuscripts representing later redactions and the 1582 *ER*.

<sup>19</sup> C. 28 q. 1 c. 12 [Fr. v.1 col. 1087].

<sup>20</sup> X 5.6.8 [Fr. v.2 cols. 773-774].

<sup>21</sup> C. 2 q. 7 c. 23 (*Alieni erroris socium*) [Fr. v.1 col. 488].

<sup>22</sup> Dist. 54.14 [Fr. v.1 col. 211].

<sup>23</sup> X 5.6.16 [Fr. v.2 col. 777].

<sup>24</sup> X 5.6.18 [Fr. v.2 col. 778].

<sup>25</sup> X 5.6.19 [Fr. v.2 col. 778].

<sup>26</sup> Dist. 54.15 [Fr. v.1 cols. 211-212].

Item non permittit eos facere novas synagogas. **infra e. consulvit.**<sup>27</sup> Item quod in diebus lamentationum non exeant in publicum. **supra e. c. proxi.**<sup>28</sup> et **infra e. in nonnullis.**<sup>29</sup> Item quod solvant decimas de terris +quas colunt. **supra de deci. de terris.**<sup>30+31</sup> et ne Christiana mancipia circumcidant. **liiii. di. nulla.**<sup>32</sup> ne ex testamento Christiani aliquid capiant, et ille Christianus est excommunicandus etiam post mortem. **xxiii. q. ii. sane profertur.**<sup>33</sup> excedentes verberibus subiciuntur. **infra de raptoribus. in archiepiscopatu.**<sup>34</sup> ...

**liiii. di. nulla officia.** and **infra e. cum sit.** and **c. plt.**, and lest they would be able to acquire Christian slaves (*mancipia*), [see] **infra e. c. ult.** and **liiii. di. fraternitatem.**

Likewise, it [i.e., the Church] does not permit them to build new synagogues, [see] **infra e. consulvit.**, likewise, on the days of lamentation they should not go out in public, [see] **supra e. c. proxi.** and **infra e. in nonnullis.** Likewise, they should pay the tithes from the lands +that they cultivate, [see] **supra de deci. de terris.**+, and they should not circumcise Christian slaves, [see] **liiii. di. nulla.**, nor should they acquire any [property] from the testament of a Christian, and the Christian [who bequeaths property to Jews] will be excommunicated even after death,<sup>35</sup> [see] **xxiii. q. ii. sane profertur.** The transgressors (*excedentes*) are [to be] subjected to whipping, [see] **infra de raptoribus. in archiepiscopatu.** ...

<sup>27</sup> X 5.6.7 [Fr. v.2 col. 773].

<sup>28</sup> X 5.6.4 [Fr. v.2 col. 772].

<sup>29</sup> X 5.6.15 [Fr. v.2 cols. 776-777].

<sup>30</sup> X 3.30.16 [Fr. v.2 col. 561].

<sup>31</sup> This addition appears in MS BAV Vat. lat. 11158, but not in MS F. It is therefore unclear whether it was simply omitted by the scribe of the latter, or means that the latter reflects an even earlier redaction of the *Glossa*.

<sup>32</sup> Dist. 54.14 [Fr. v.1 col. 211].

<sup>33</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987]. “2. q. 2.” in the 1582 *ER*, which is likely a mistake.

<sup>34</sup> X 5.17.4 [Fr. v.2 col. 809].

<sup>35</sup> This is a confusing statement that appears in all selected editions of the text of the *Glossa*, including the 1582 *ER*. Hostiensis’ commentary on this canon, however, sheds light on this matter by clearly stating that Christians bequeathing inheritance to Jews are to be excommunicated after death. See Hostiensis, *In Primum [-Sextum] Decretalium Librum Commentaria*, vol. 4 (Venice: Apud Iuntas, 1581), fol. 30v, X 5.6.5 *Ivdae* v. *Excommunicentur autem*: “Nono, ne ex testamento christiano aliquid capiant, in quo casu christianus legatus excommunicator post mortem.” On the issue of posthumous excommunication in general, see Dyan Elliott, “Violence against the Dead: The Negative Translation and *damnatio memoriae* in the Middle Ages,” *Speculum* 92 (2017): 1020–1055.

Such a summary of Church laws concerning Jews was common among canonistic writings during the twelfth and the thirteenth centuries.<sup>36</sup> However, one must note that this gloss, commenting on a verb (i.e., *permittantur*) whose subject is “Iudaei sive Sarraceni,” addresses *both* Jews and Muslims as *qui foris sunt* (1 Corinthians 5:12-13). What follows is a merger of specific canons on either Jews or Muslims, many of which come from X 5.6 itself, into a full set of stipulations. This integration of directives to a large extent turns out to be a somewhat crude application of canonical regulations on Jews to Muslims: they are to be expelled from the Christian community, they cannot take legal actions,<sup>37</sup> hold public offices, own Christian slaves (*mancipia*), build new synagogues,<sup>38</sup> nor show themselves in public on religious holidays. The transgressors (*excedentes*) among them will be subject to flogging.

An investigation of the allegations, most of which are aimed at Jews, also reveals the *Glossa*’s reliance on the canonistic tradition concerning Jews. One allegation, however, indicates otherwise. The gloss invokes X 5.17.4, an instruction assigning the punishment of whipping to Muslim “*excedentes*.”<sup>39</sup> The application of canons originally concerning Muslims to Jews is rare: indeed, none of the canons from X 5.6 that specifically deal with Muslims are invoked in this gloss. Those canons’ central concern is commercial communication with Muslims during times

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<sup>36</sup> See John A. Watt, “Jews and Christians in the Gregorian Decretals,” SCH 29 (1992): 94 and n. 1.

<sup>37</sup> For a discussion of the concept of *actus legitimi* in the medieval canonical tradition concerning Jews, and the conflation of heretics and Jews on this restriction, see Pakter, *Medieval Canon Law and the Jews*, 201–207.

<sup>38</sup> Although referring to mosques as synagogues indeed seems to be the common practice at the time, it is hard to imagine that the glossator also would be ignorant of the difference between them. However, here he did not offer any explanation.

<sup>39</sup> X 5.17.4 [Fr. v.2 col. 809]: “In archiepiscopatu tuo *dicitur contingere* quandoque, *quod* Sarraceni mulieres Christianas et pueros rapiunt, et eis abuti praesumunt, et quosdam etiam, [*quod auditu est terribile*,] interdum occidere non verentur. . . . *Super quo utique* Consultationi tuae taliter respondemus, quod tales, in iurisdictione tua existentes, pecuniaria poteris poena multare, et etiam flagellis afficere ea [*tamen*] moderatione adhibita, quod flagella in vindictam sanguinis transire minime videantur.”

of war. Thus, they were understandably not as relevant to Jews. Under such circumstances, the citation of X 5.17.4, in which the *excedentes* are Saracens who abduct Christian women and boys, may seem surprising. No canon in the *Decretales* nor in Gratian's *Decretum* assigns this punishment to Jews, or even hints at Jews committing such crimes. In fact, Gratian, in one *dictum* citing Paul, specifically rejected the idea of flogging those *qui foris sunt*.<sup>40</sup> One possible explanation is that the *Glossa* here embodies the anxiety stemming from twelfth- and thirteenth-century blood libel cases, and thus conflates the two groups, subjecting both Muslims and Jews to the same accusation and associated punishment. After all, the *Glossa* appeared during the thirteenth century, a period when Jews were increasingly "charged with innumerable forms of hostility toward Christianity, Christendom, and individual Christians."<sup>41</sup>

But importantly, this canonical conflation of laws concerning Muslims and Jews is only one side of the story. Canons in the *Decretales* dealing with the trading of arms or providing military service specifically target Muslims and Christian merchants, while showing no interest in applying similar regulations to Jews.<sup>42</sup> Such differentiation was made visible earlier, in Pope Alexander II's famous statement *Dispar nimirum* (C. 23 q. 8 c. 11). With the intention of

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<sup>40</sup> C. 23 q. 4 dict. post c. 16 [Fr. v.1 col. 904]: "Sunt quaedam, que salubri tantum ammonitione sunt corripienda non corporalibus flagellis sunt animadvertenda... De his, qui non sunt nostri iuris, ait Apostolus in epistola prima ad Corinthios: 'Quid enim mihi attinet de his qui foris sunt iudicare? de his enim Dominus iudicabit.'" See also Pakter, *Medieval Canon Law and the Jews*, 47–48.

<sup>41</sup> Jeremy Cohen, *The Friars and the Jews: The Evolution of Medieval Anti-Judaism* (Ithaca: Cornell University Press, 1982), 244.

<sup>42</sup> It should be noted that the papal prohibition against Christians trading war materials with Muslims would escalate into a full embargo of trading with ports controlled by the Mamluk Sultanate during the next century. Within a decade of the Bernard's death, King Jaime I of Aragon was following the papal exhortation and banned, although the embargo not enforced seriously, trading activities with the Mamluk's territories in 1274. Significantly, the Duchy of Candia under the governance of Venice, after issuing a general decree following this papal injunction in 1323, further extended such prohibition to Jewish merchants in the next year. See Olivia Remie Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900–1500*, Cambridge Studies in Medieval Life and Thought, 4th Series 24 (Cambridge; New York: Cambridge University Press, 1994), 257; Eliyahu Ashtor, *Levant Trade in the Later Middle Ages* (Princeton: Princeton University Press, 1983), 13–14; 44–45.



discouraging Christian soldiers from harming Jews,<sup>43</sup> this papal letter argues that Saracens—unlike Jews, who “are prepared to serve (*servire parati sunt*)”—persecute Christians. Thus, it is lawful to fight them.<sup>44</sup> More importantly, in line with this canonical tradition, the ordinary glosses to X 5.6 reveal two key differences between Jews and Muslims in terms of their relations with Christians: (1) whether they are considered to be enemies (*hostes*), and (2) what kind of enemies they are.

The dialectical discussion of whether the Jews are enemies appears in a gloss to another renowned papal statement, *Sicut Iudaei* (X 5.6.9).<sup>45</sup> In this canon, which contains a list of regulations preventing Christians from harassing or harming Jews, Pope Clement III (1080–1100) forbade attacks against Jewish cemeteries on pain of excommunication.<sup>46</sup> It is concerning this issue that the *Glossa* contemplates whether Jews should be regarded as *hostes* of Christians.

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<sup>43</sup> This relatively protective approach towards Jews concerning personal safety could be traced back to Romans 11 and, particularly in the Late Antiquity, Augustine of Hippo. A brief discussion of the latter is available in Kristine Utterback, Merrall Price, and Kristine Utterback, *Jews in Medieval Christendom: Slay Them Not* (Leiden: Brill, 2013), 1–4.

<sup>44</sup> C. 23 q. 8 c. 11 [Fr. v.1 col. 955]: “Dispar nimirum est Iudeorum et Sarracenorum causa. In illos enim qui Christianos persecuntur et ex urbibus et propriis sedibus pellunt iuste pugnatur; hii ubique servire parati sunt.” For an influential discussion of the medieval canonistic reception of this canon, together with a translation of this text, see Peter Herde, “Christians and Saracens at the Time of the Crusades: Some Comments of Contemporary Medieval Canonists,” *SG 12* (1967): 364–368. See also Anna Sapir Abulafia, “Engagement with Judaism and Islam in Gratian’s *Causa 23*.” On the historical context of this letter concerning the so-called “Crusade of Barbastro,” see Joseph F. O’Callaghan, *Reconquest and Crusade in Medieval Spain* (Philadelphia: University of Pennsylvania Press, 2003), 25. See also Henri Gilles, “Législation et doctrine canoniques sur les Sarrasins,” in *Islam et chrétiens du Midi : XIIIe-XIVe siècle*. (Toulouse: E. Privat, 1983), 197. For an overview of the image of Jews in canonical collections compiled during the late eleventh and early twelfth centuries, especially the unpublished ones, see John Gilchrist, “The Perception of Jews in the Canon Law in the Period of the First Two Crusades,” *Jewish History 3* (1988): 9–24; reprinted in J. T. Gilchrist, *Canon Law in the Age of Reform, 11th–12th Centuries* (Aldershot: Variorum, 1993), XII.

<sup>45</sup> For a discussion of the development and expansion of this important papal text on Christian-Jewish relations, see Solomon Grayzel, “The Papal Bull *Sicut Iudaeis*” in Meir Ben-Horin, ed., *Studies and Essays in Honor of Abraham A. Neuman, President, Dropsie College for Hebrew and Cognate Learning, Philadelphia* (Leiden: E.J. Brill for the Dropsie College, Philadelphia, 1962), 243–280.

<sup>46</sup> X 5.7.9 [Fr. v.2 cols. 780–782]: “Ad hoc malorum hominum pravitate et avaritiae obviante, decernimus, ut nemo coemeterium Iudaeorum mutilare aut invadere audeat, sive obtempu pecuniae corpora humata effodere.” Such cases might not be uncommon during the early and high Middle Ages. One of Pseudo-Bede’s homilies mentions Saint Macarius hitting a skull of a deceased Jew with his cane in a Jewish cemetery. See Bernhard Blumenkranz, *Juifs et*

**X 5.6.9 glos. ord. s.v. coemeterium**

| Transcription   | Translation   |
|---|---|
| <p>Ar. contra. <b>ff. de sepul. vio. sepulcra.</b><sup>47</sup><br/>           Solutio: sepulcra hostium religiosa non sunt, ut ibi dicitur: nec illud infringens incidit in edictum. Iudaei vero non imputantur hostes. <b>xxiii. q. viii. dispar.,</b><sup>48</sup> licet sint hostes fidei nostrae. <b>infra e. etsi Iudaeos.</b><sup>49</sup></p> | <p>[See] the counterargument in <b>ff. de sepul. vio. sepulcra.</b> Solution: graves of enemies are not religious, as it is said [in the allegation]: nor is violating it part of the edict. The Jews, however, are not considered as enemies, [see] <b>xxiii. q. viii. dispar.,</b> even though they are enemies of our faith. [See] <b>infra e. etsi Iudaeos.</b></p> |

Although the *Glossa* initially invokes here a *lex* from the *Digest*<sup>50</sup> as a counterargument, claiming that enemies' graves *can* be violated, it apparently aims at highlighting a principle: while sanctity determines whether a grave can be legitimately violated, the status of enmity determines the sanctity of the grave. In other words, according to the *Glossa*, the prohibition against attacking a Jewish cemetery ultimately does not derive from the belief that it is religious, but from the understanding that “Jews... are not considered as enemies.” Notably, the support invoked by the gloss is Alexander II's 1063 *Dispar nimirum* mentioned above. Thus the *Glossa* is comparing Jews with Saracens as persecutors of Christians in this gloss on a canon that *does not mention Saracens at all*. Admittedly, the *Glossa* emphasizes to its readers that with respect to faith, Jews are still *hostes*—a concept that does not appear in the invoked allegation from Pope

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*chrétiens dans le monde occidental, 430–1096*, Collection de la Revue des études juives (Paris; Dudley: Peeters, 2006), 92–93 and n. 111.

<sup>47</sup> Dig. 47.12.4.

<sup>48</sup> C. 23 q. 8 c. 11 [Fr. v.1 col. 955].

<sup>49</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>50</sup> Dig. 47.12.4: “Sepulcra hostium religiosa nobis non sunt: ideoque lapides inde sublato in quemlibet usum convertere possumus: non sepulchri violati actio competit.”

Innocent III (X 5.6.13, *Etsi Iudaeos*).<sup>51</sup> Put simply, according to the *Glossa*, Jews are indeed “enemies of our faith,” but not enemies *compared with Saracens*.

Even though we will have to wait for another century to hear a jurist describe them as “like beasts deprived of all reason,”<sup>52</sup> Saracens, in contrast to Jews, are clearly deemed enemies by the *Glossa*. Both X 5.6.6 and X 5.6.17 legislate against trading with Saracens, or more specifically, against Christians who provide military supplies to Saracens.<sup>53</sup> X 5.6.6 *glos. ord. s.v. ferrum* cites X 5.6.17, and, similarly to X 5.6.13, invokes the concept of *hostes* while the allegation itself does not.

**X 5.6.6 *glos. ord. s.v. ferrum***

| Transcription   | Translation  |
|---|--|
| Ut <b>infra e. ad liberandam</b> , <sup>54</sup> ubi de hoc totum habes, quod hic dicitur haec ad hostes transferri non debent. <b>C. quae res expor. non debeant. l. ii.</b> <sup>55</sup> et <b>illi sunt decapitandi</b> , ut hic, et <b>C. de commerciis. mercatores.</b> <sup>56</sup> <b>ff. de pub. et vec. cotem.</b> <sup>57</sup> ... | As [in] <b>infra e. ad liberandam</b> , where you have everything about this, that in this case it is said that these things should not be transferred to enemies. [See] <b>C. quae res expor. non debeant. l. ii.</b> and they should be decapitated, as in this case, and [see] <b>C. de commerciis. mercatores.</b> [and] <b>ff. de pub. et vec. cotem.</b> ... |

<sup>51</sup> X 5.6.13 [Fr. v.2 col. 776]: “Alia in super contra fidem catholicam detestabilia et inaudita committunt, propter quae fidelibus est verendum, ne divinam indignationem incurrant, cum eos perpetrare patiuntur indigne quae fidei nostrae confusionem inducunt. ...”

<sup>52</sup> We read this in Oldradus de Ponte’s (d. 1335) *Consilia*, translated in Norman P. Zacour, *Jews and Saracens in the Consilia of Oldradus de Ponte* (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 51. However, it should be noted that the use of animal metaphors to describe Saracens had already appeared in the works of Christian writers such as Eulogius and Alvarus in the ninth century. See Tolan, *Saracens*, 99.

<sup>53</sup> For a discussion of the historical context of X 5.6.17, its original form as constitution 71 of the Fourth Lateran Council, and a gloss to it from Hostiensis, see Uta-Renate Blumenthal, “A Gloss of Hostiensis to X 5.6.17 (*Ad liberandam*),” *BMCL* 30 (2013): 89–122.

<sup>54</sup> X 5.6.17 [Fr. v.2 cols. 777-778].

<sup>55</sup> Cod. 4.41.2.

<sup>56</sup> Cod. 4.63.4.

<sup>57</sup> Dig. 39.4.11.pr..

Significantly, the *Glossa* is more aggressive than canons X 5.6.6 and X 5.6.17 themselves, concerning the punishments for Christians who trade with Saracens. This attitude is not only demonstrated in the gloss's comment, but also is implied through the Roman law allegations. Against these Christians, the two canons decree excommunication and anathematization, confiscation of goods, and enslavement upon capture. By contrast, the gloss advises capital punishment (presumably to be imposed by secular authority). It is surprising for a *canonistic* commentary to suggest this penalty.<sup>58</sup> As a matter of fact, all supporting allegations invoked by the *Glossa* here come from the Roman law tradition on trading with enemies. Two out of three *leges* cited punish this crime with the death penalty.

More importantly, examining one of the allegations reveals the reason for the gloss's assignment of capital punishment for Christians. In Cod. 4.41.2, trading military supplies with barbarians is regarded as "most like *proditio (proditioni proximum)*."<sup>59</sup> As the crime of treason (*proditio*) is a subspecies of *crimen maiestatis*,<sup>60</sup> this transgression of trading with Saracens warrants comparison with the crime of heresy. Pope Innocent III in X 5.7.10, *Vergentis in senium*, as discussed in Chapter Three, linked heresy with *crimen maiestatis* and commented that the former is worse than the latter.<sup>61</sup> One may interpret the Pope's words as a veiled endorsement of the death penalty for heretics. Nonetheless, the *Glossa* on heresy, as our examination in that

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<sup>58</sup> Nevertheless, it should be noted that such advice, though uncommon, is not unique among canonical writings. Vincentius Hispanus, for instance, also advocated the death penalty for Christians teaching Saracens to build military equipment. See Herde, "Christians and Saracens at the Time of the Crusades," 371.

<sup>59</sup> Cod. 4.41.2: "Perniciosum namque romano imperio et proditioni proximum est barbaros, quos indigere convenit, telis eos, ut validiores reddantur, instruere."

<sup>60</sup> See "Crimen maiestatis," and "Proditio," in Berger, 418 and 655.

<sup>61</sup> X 5.7.10 [Fr. v.2 cols. 782-783]: "Cum enim secundum legitimas sanctiones, reis laesae maiestatis punitis capite, bona confiscantur eorum, filiis suis vita solummodo ex misericordia conservata: quanto magis, qui aberrantes in fide Domini Dei filium Iesum Christum offendunt, a capite nostro, qui est Christus, ecclesiastica debent districtione puniri, et bonis temporalibus spoliari, cum longe sit gravius aeternam quam temporalem laedere maiestatem?"

chapter reveals, is rather cautious about sending heretics to secular courts out of concern that they may be subjected to death. In X 5.7.9 *glos. ord. s.v. audientia*, it even directly comments, “the Lord does not wish the death of a sinner.”<sup>62</sup> Yet in X 5.6.6 *glos. ord. s.v. ferrum* capital punishment, as the cost for trading with *hostes*, is unambiguously highlighted and reinforced through Roman law authorities.

One key difference that might explain this is that Bernard, with all his emphasis on mercy in the *Glossa* to X 5.7, as we will see in Chapter Two, did not perceive heretics as actual *hostes* at war with Christians. On the other hand, he was quite insistent on highlighting the state of war between Christians and Muslims. For the *Glossa*, the connection between treason and trading arms to Muslims is more substantial. It is important to note that many canonical writings during the late twelfth and early thirteenth centuries by influential canonists such as Alanus Anglicus and Laurentius Hispanus actually emphasize toleration toward Muslims when war is not being waged.<sup>63</sup> Such sympathetic comments do not appear in the *Glossa* to X 5.6. By contrast, in the last two glosses to X 5.6.11, Bernard repeatedly emphasized that truce does not mean peace.<sup>64</sup>

### 1.3 Outside the Interreligious Framework: Money and the Order of Business

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<sup>62</sup> X 5.7.9 *glos. ord. s.v. audientia*: “Bene credo quod debet recipi, quia Dominis non vult mortem peccatoris.” Here the *Glossa* is possibly inspired by a decretal from Innocent III, as discussed in Chapter Two, section 2.6.

<sup>63</sup> Herde, “Christians and Saracens at the Time of the Crusades,” 364-365. See also Freidenreich, “Muslims in Western Canon Law, 1000–1500,” 53. It should be added, however, that Alanus approved applying conditional compulsion, such as confiscation of property and whipping, to convert Muslims. See Benjamin Z. Kedar, “Muslim conversion in canon law,” in Stephan Kuttner and Kenneth Pennington, eds., *Proceedings of the Sixth International Congress of Medieval Canon Law: Berkeley, California, 28 July-2 August 1980* (Vatican City: Biblioteca Apostolica Vaticana, 1985), 328 and n. 32.

<sup>64</sup> X 5.6.11 *glos. ord. s.v. post treugam*: “Treuga est securitas personis et rebus ad tempus concessa. **supra. de treuga. c. i.** Et qui facit treugam non facit pacem, nec desistit a guerra, nisi ad tempus: qui distulit, non in totum destitit. et **ii. q. iii. §. notandum.** et **ff. de iudic. destitisse.**” X 5.6.11 *glos. ord. s.v. non absolvit*: “Nec etiam a periurio: quia licet treuga sit facta, non tamen pax, et ita non extitit conductio, unde incidit in symoniam sententiam et in periurium, et sic treuga non est pax.” It is also worth noting that Guillelmus Redonensis (William of Rennes), a commentator on Raymond of Peñafort’s *Summa de casibus poenitentiae* and a contemporary of Bernard, claimed that it is lawful to abduct Muslim children and convert them to Christianity during truce period. See Kedar, “Muslim conversion in canon law,” 330.

A central theme of X 5.6, as the title *De iudaeis, sarracenis, et eorum servis* suggests, is (Christian) *servi* kept by Jews and Muslims.<sup>65</sup> It is also one of the issues that originally pertained solely to Jews and was only later applied to Saracens. Only one canon (X 5.6.5, canon 26 of the Third Lateran Council) of six on this subject mentions Saracens. Furthermore, as John Watt notes, the word *servus* in the canons under this title can have different meanings: a slave, a serf on the farm, or a servant in a home.<sup>66</sup>

These canons, in summary, decree that Jews (and Muslims) should not keep Christian slaves and/or house servants, and that if a non-Christian slave or servant wishes to become a Christian he/she should be granted freedom. Furthermore, both X 5.6.1 from the sixth-century Council of Mâcon and X 5.6.19 from Pope Gregory IX—the first and the last canons of X 5.6—mandate that a 12-*solidi*<sup>67</sup> ransom be given to the Jewish owner for the manumission of the Christian slave or servant.<sup>68</sup>

Monetary compensation for Jewish owners caused various problems for the medieval Church. Innocent III's correspondence reveals that, at least occasionally, this canonically-set

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<sup>65</sup> For a brief discussion of slave trade in the Middle Ages, see *Medieval Trade in the Mediterranean World: Illustrative Documents*, trans. with introductions and notes by Robert S. Lopez and Irving W. Raymond; with a foreword and bibliography by Olivia Remie Constable (New York: Columbia University Press, 2001), 115. See also R. H. Helmholz, "The Law of Slavery and the European *Ius Commune*," in *The Legal Understanding of Slavery: from the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012), 17-39.

<sup>66</sup> See Watt, "Jews and Christians in the Gregorian Decretals," 94 and 103–105.

<sup>67</sup> The exact monetary value and purchasing power of a *solidus* during the time of Gregory IX and Bernard needs further investigation, especially since the monetary systems across the Latin West during the thirteenth century underwent significant changes. See Philipp Robinson Rössner, "From the Black Death to the New World (c.1350–1500)," in Rory Naismith, ed., *Money and Coinage in the Middle Ages* (Leiden; Boston: Brill, 2018), 162–163. The *Glossa* on this (X 5.6.19 *glos. ord. s.v. XII solidis*), apparently being aware of this situation, suggests that physical locations and local customs would determine the currency conversion ("Sed de qua moneta dabuntur? Respondeo, illa, quae est in usu in loco illo.").

<sup>68</sup> X 5.6.1: "Praesenti concilio sancimus, ut nullum Christianum mancipium Iudaeo serviat, sed datis XII. solidis pro quolibet bono mancipio, ipsum quicumque Christianorum, seu ad ingenuitatem seu ad servitium, licentiam habeat redimendi." X 5.6.19: "Nulli Iudaeo baptizatum vel baptizari volentem emere liceat vel in suo servitio retinere. Quodsi quem, nondum ad fidem conversum, causa mercimonii emerit, et postmodum factus sit vel fieri desideret Christianus, datis pro eo XII. solidis ab illius servitio protinus subtrahatur."

ransom amount was often not paid by secular rulers. Moreover, this provision that *servi* wishing to convert be freed enraged Jewish (and Christian!) owners, who aggressively sought the payment from the local clergy.<sup>69</sup> My examination of the *Glossa* on this matter will reveal more practical issues concerning this canonical regulation: does the payer keep the ransomed slave, if he should be a Christian? What if there are no payers willing to ransom the slave? More importantly, it will show that the *Glossa* prioritizes the business aspects of the case over religious concerns—even to the extent of seemingly speaking for the non-Christians.<sup>70</sup>

### X 5.6.1 *glos. ord. s.v. ad servitium*

| Transcription  | Translation   |
|--|---|
| Non tamen erit servus illius, +sed+ restituet ei +pretium+ <sup>71</sup> et erit omnino liberatus. ar. <b>Instit. de noxa. act. §. dominus.</b> <sup>72</sup> Vel si non potest habere statim praetium, serviat ei tantum quod servitium compensetur cum pretio, et postea eat liber quo vult. <b>C. de capti. et postli. l. ult.</b> <sup>73</sup> xxxvi. q. i. de raptoribus. <sup>74</sup> ... Quid si nullus emptor appareat? Nihilominus erit liber, et hostiatim <sup>75</sup> quaerat pretium. <b>ff. de manu. l.</b> | However, he will not be the slave of him [who frees him], +but+ he will restore +the payment ( <i>pretium</i> )+ to him and [then] he will be entirely free. [See] the argument [in] <b>Instit. de noxa. act. §. dominus.</b> Or, if he cannot have immediately the money, he should serve him to the extent that the servitude would compensate for the price, and afterwards he should go freely where he wants. [See] <b>C. de capti. et postli. l. ult.</b> |

<sup>69</sup> See Watt, “Jews and Christians,” 95; Kedar, “Muslim conversion in canon law,” 327 and n. 27. During the period under discussion we have both notarial evidence revealing Muslim slaves in Mediterranean Europe converting to Christianity and correspondence evidence showing the Christian monastic masters and crusader lords might impede their Muslim slaves converting to Christianity, which was at least partially due to monetary reasons. See Kedar, “Muslim conversion in canon law,” 326–327 and Olivia Remie Constable, “Muslims in Medieval Europe,” Carol Lansing and Edward D. English, eds., *A Companion to the Medieval World* (Chichester; Malden: Wiley-Blackwell, 2009), 327.

<sup>70</sup> It should be noted that Rufinus, as Walter Pakter points out, already in his *Summa decretorum* claimed that Jewish owners selling their Christian slaves deserve payment because of equity (*ex equitate*), and a similar argument appears in the *Summa* “Tractaturus Magister.” See Pakter, *Medieval Canon Law and the Jews*, 141. However, the *Glossa* does not express nor makes reference to this principle.

<sup>71</sup> While ‘sed’ and ‘pretium’ are not in MS F, as demonstrated here, they appear in MS Vat. lat. 11158, 155v and other selected—i.e., later—versions of the *Glossa*.

<sup>72</sup> Inst. 4.8.3.

<sup>73</sup> Cod. 8.50.20.

<sup>74</sup> C. 36 q. 1 c. 3 [Fr. v.1 col. 1289].

<sup>75</sup> “ostiatim” in the 1582 *ER*.

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|---|--|
| <p><b>iii. §. si quis autem.</b><sup>76</sup> aut pro pecunia operas praestet, ut dicitur in l. praedicta. <b>C. de capt. l. ult.</b>,<sup>77</sup> scilicet v. annis., ut ibi dicitur.</p> | <p>[and] <b>xxxvi. q. i. de raptoribus.</b> ... What if no buyer appears? He will be free, nonetheless, and he should search for money [to pay the price] door to door. [See] <b>ff. de manu. l. iii. §. si quis autem</b>, or, he could offer labor in exchange for the money, as it is said in the aforementioned law, [i.e.,] <b>C. de capt. l. ult.</b>, namely for five years, as it is said there.</p> |
|---|--|

In the first place, the *Glossa* relies heavily on the Roman law tradition regarding slaves to deal with these issues. Compared with other themes analyzed below in this dissertation, the *Glossa* on this topic generally invokes Roman *leges* in a relatively direct rather than analogous manner. It thus seems that Roman slavery law, or at least many of its principles, was still current in the thirteenth century. According to the gloss, the ransom must be reimbursed to the payer, or paid through servitude that is sufficient to cover the ransom. Moreover, the requisite length of servitude offsetting monetary payment was set at five years. All this derives from a *lex* in the Justinianic *Codex*, Cod. 8.50.20, on the issue of ransoming captives from barbarians.<sup>78</sup> Roman citizens captured by barbarians should be redeemed and set free; but this does not mean that such rescue is free—there are business rules which need to be abided by. The *Glossa* applies this Roman law principle (from the original context of Roman citizens and barbarians) to the

<sup>76</sup> Other selected texts of the *Glossa* read ‘suis autem’, which points the reader to Dig. 40.1.4.10.

<sup>77</sup> Cod. 8.50.20.

<sup>78</sup> Cod. 8.50.20: “No one shall retain, against their will, persons of the various provinces, no matter their sex, legal status, or age, whom barbarian cruelty had driven away through the constraint of captivity; rather, if they wish to return to their own property, they shall be free to do so. (*Diversarum homines provinciarum cuiuslibet sexus condicionis aetatis, quos barbarica feritas captiva necessitate transvexerat, invitos nemo retineat, sed ad propria redire cupientibus libera sit facultas.*) ... [T]he ransomed should rightly either repay the purchase price to the buyers or requite the benefit by obedient labor and work for five years while retaining their free status if they were so born (*[D]ecet redemptos aut datum pro se pretium emptoribus restituere aut laboris obsequio vel opere quinquennii vicem referre beneficii, habituros incolumem, si in ea nati sunt, libertatem.*)” The Latin text here is taken from *Codex Iustinianus recognovit et retractavit Paulus Krueger*, 11<sup>th</sup> ed. (Berlin: Apud Weidmannos, 1954), <https://droitromain.univ-grenoble-alpes.fr/>. The English translation is taken from Bruce W. Frier et al., eds., *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text Based on a Translation by Justice Fred H. Blume* (Cambridge; New York: Cambridge University Press, 2016), 2215–2217.



canonical issue of Christians enslaved by non-Christians. Thus, it is one thing that Christians should be not subjected to non-Christian masters on religious grounds. It is another that the business norms and financial needs of the parties require protection.

What if no one is willing to pay for the release of the slave? This is a common concern among the decretalists.<sup>79</sup> On the one hand, the *Glossa* instructs that the slave should still be freed. On the other, however, the freedman is to be responsible for raising the ransom, either by his own payment or offering his labor to a third party in return for advance of the ransom. This situation is, notably, different from that in X 5.6.19 (which is possibly why the *Glossa* does not invoke it as an allegation here). In that canon, Pope Gregory IX ordered that if the master of the slave does not sell the slave within three months, he must free the slave and forego compensation.<sup>80</sup>

By comparison, the *Glossa* seems to offer greater protection, or is at least less dismissive, of a non-Christian master's financial situation. This concern can also be seen in examining the Roman law allegation invoked by the gloss here. The *Glossa* points its readers to a *lex* on the release of slaves in the *Digest*, Dig. 40.1.4.10. In the cited text, the law instructs that if a slave ransoms himself with his own money, even if he does not pay the full amount, he can still be released—on the condition that, however, he labors or earns money to cover the payment.<sup>81</sup> The gloss in this case, therefore, again is not assessing the situation from the perspective of Christian

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<sup>79</sup> See Walter Pakter, “*De his qui foris sunt: The Teachings of the Medieval Canon and Civil Lawyers Concerning the Jews*,” PhD diss., (The Johns Hopkins University, 1974), 107.

<sup>80</sup> X 5.6.19 [Fr. v.2 col. 778]: “Si autem infra iii menses ipsum venalem non exposuerit, vel ad sibi serviendum emerit eundem, nec ipse vendere, nec alius audeat comparare, sed nullo dato pretio perducatur ad praemia libertatis.”

<sup>81</sup> Dig. 40.1.4.10: “Suis autem nummis redemptus etsi totum pretium non numeravit, ex operis tamen ipsius accesserit aliquid, ut repleti pretium possit, vel si quid suo merito adquisierit, dicendum est libertatem competere.”

and non-Christian relations as are the canons, but from the standpoint of protecting financial interests.

This concern for orderly business dealings and the interests of the transacting parties, even if they are non-Christians, appears also in the ordinary glosses to X 5.6.19. In X 5.6.19 *glos. ord. s.v. causa mercimonii*, Bernard emphasized that as long as the non-Christian master—“a Jew [or] a pagan”—puts his slave up for sale within three months, the former should not be defrauded.<sup>82</sup> Clearly, Bernard was concerned about the possibility that there might be no purchaser capable of paying the ransom. The comment in the following gloss, X 5.6.19 *glos. ord. s.v. XII solidis*, again raises this issue, and refers the reader to X 5.6.1—apparently X 5.6.1 *glos. ord. s.v. ad servitium* just analyzed—instead of the canon itself.<sup>83</sup> The *Glossa* does not support simply removing the Christian slave from his non-Christian owner without compensation.

This emphasis on protecting business interests and financial rights—even those of non-Christians—is only found in the glosses, not in the canons of X 5.6. Protection is indeed limited: the canonical principle that non-Christians cannot own Christian slaves apparently could not be refuted. Moreover, with a view to protecting Christians’ business interests, the *Glossa* also warns Christian redeemers against potential deceit by the Jewish owners of slaves:

**X 5.6.19 *glos. ord. s.v. si autem infra tres***

| Transcription  | Translation  |
|--|--|
| Eo ipso quod non exposuit ipsum infra tres menses venalem, praesumitur quod non mercimonii emerit, sed ad serviendum sibi, unde nullo pretio dato perducetur ad premium libertatis.... Et si alius eum comparet, talis emptio non valeret, et nihilominus erit liber nullo pretio dato, si scienter emit illum; si | Based on the fact that he [i.e., the Jewish master] has not put him [i.e., the slave] up for sale within three months, it is presumed that he did not buy [the slave] for the purpose of business, but to serve himself, in which case, with no price having been given, he [i.e., the slave] will be led to the gift of liberty.... And |

<sup>82</sup> X 5.6.19 *glos. ord. s.v. causa mercimonii*: “In quo casu non fraudabitur ex toto Iudaeus sive Paganus, dummodo infra tres menses illum venalem exponat.”

<sup>83</sup> X 5.6.19 *glos. ord. s.v. XII solidis*: “Quid si non sit qui solvat illos xii. solidos? De hoc dictum est **supra. e. c. i.**”

|   |  |
|---|--|
| <p>ignoranter, agat ad pretium sive ad interesse contra Iudaeum, qui ipsum decepit. <b>ff. de contrahenda. empt. liberi hominis. ar.</b><sup>84</sup> ...</p> | <p>if another person buys him, such purchase should not be valid, and nonetheless he [i.e., the slave] will be free with no price having been given, if he buys him knowingly; if ignorantly, he should look to the Jew for the price [paid for the slave] and the interest [thereon] (<i>agat ad pretium sive ad interesse</i>), who has deceived him. [See] <b>ff. de contrahenda. empt. liberi hominis. ar.</b> ...</p> |
|---|--|

One principle upheld by both X 5.6.19 from Pope Gregory IX and the *Glossa* is that, again, the non-Christian master has to put the slave (baptized or wishing to be baptized) up for sale within three months. Failing to do so would mean that the master wants to keep the slave to serve himself, in which case the slave should be released with no compensation. But Bernard raised a new scenario. What if someone ransoms a slave who indeed has been owned by a Jewish owner to serve himself? The gloss surprisingly passes over the guilt of the Jewish owner for not releasing the slave freely. Rather, it focuses on the issue of commercial fraud. Dig. 18.1.70, invoked by Bernard in this gloss, concerns the transaction between a purchaser and a vendor with respect to a freedman. The law claims that such a transaction can be valid when either both the purchaser and the vendor are ignorant of the “slave’s actual status as a freedman, or only the vendor knows of it. If the purchaser knows, however, the transaction will be nullified.”<sup>85</sup> Bernard thus reminded the Christian redeemer that should he purchase the slave *scienter* (i.e., knowing that the Jewish master owns the slave illicitly), the purchase will be invalidated and the slave liberated. However, he deviated from the Roman law cited, mandating that if the Jewish vendor

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<sup>84</sup> Dig. 18.1.70.

<sup>85</sup> Dig. 18.1.70: “Liberi hominis emptionem contrahi posse plerique existimaverunt, si modo inter ignorantes id fiat. Quod idem placet etiam, si venditor sciat, emptor autem ignoret. Quod si emptor sciens liberum esse emerit, nulla emptio contrahitur.”

does not notify the purchaser about the situation, the latter will be entitled to sue the former for the price paid for slave, with interest.

Furthermore, we can detect the *Glossa*'s concern for protecting monetary interests from technical application of the canonical decree by examining another topic discussed in X 5.6. X 5.6.16 is canon 69 of the Fourth Lateran Council. It forbids Jews from holding public office, prohibits Jewish officials from having interactions with Christians, orders properties acquired by them during their term to be reclaimed and used to care for the Christian poor, and finally, instructs them to be deposed.<sup>86</sup> The *Glossa* on this canon, however, focuses on a technical issue: why does the reclaimed property not return to the previous owners?

**X 5.6.16 glos. ord. s.v. usus pauperum**

| Transcription  | Translation   |
|--|---|
| Sic ergo pauperibus restituitur, quod iniuste extortum est: ut <b>supra de immuni. ecclesiarum. quia.</b> <sup>87</sup> Si vero officium licitum est, tunc si vellet, posset dare pauperibus +quod+ <sup>88</sup> iniuste extortum est. <b>xiii. q. v. non sane.</b> <sup>89</sup> Sed contra videtur, quod restituendum sit illis, a quibus est extortum, et non pauperibus. <b>infra de homicid. sicut dignum. §. eos.</b> <sup>90</sup> <b>de usuris. cum tu.</b> <sup>91</sup> <b>eam te.</b> <sup>92</sup> et | Thus, therefore, what was unjustly extorted is restored to the poor: as [in] <b>supra de immuni. ecclesiarum. quia.</b> But if the office has been permitted, then if he [i.e., the bishop?] wants, he could give to the poor +what+ has been unjustly extorted. [See] <b>xiii. q. v. non sane.</b> But on the contrary, it seems, that what is to be restored should be [given] to those from whom it was extorted and not to the poor. [See] <b>infra de homicid. sicut dignum. §. eos., de usuris. cum tu., eam te.,</b> |

<sup>86</sup> X 5.6.16 [Fr. v.2 col. 777]: “[N]os propter transgressorum audaciam in hoc generali concilio innovamus, prohibentes, ne Iudaei publicis officiis praeferantur.... Officiali vero huiusmodi tamdiu Christianorum communio in commerciis et aliis denegetur, donec in usus pauperum Christianorum secundum providentiam dioecesani episcopi convertatur quicquid fuerit a Christianis adeptus occasione officii sic suscepti, et officium cum pudore dimittat, quod irreverenter assumpsit. Hoc idem extendimus ad paganos.”

<sup>87</sup> X 3.49.8 [Fr. v.2 cols. 656-657].

<sup>88</sup> This pronoun only appears in the 1582 *ER*.

<sup>89</sup> C. 14 q. 5 c. 15 [Fr. v.1 col. 742].

<sup>90</sup> X 5.12.6.§.5 [Fr. v.2 col. 795].

<sup>91</sup> X 5.19.5 [Fr. v.2 cols. 812-813].

<sup>92</sup> This allegation has yet to be identified.

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|---|--|
| <p><b>supra de decimis. tua.</b><sup>93</sup> <b>xix. di. quoniam.</b><sup>94</sup><br/> Hoc ideo fit in hoc casu: quia nescitur a quibus extortum sit. ...</p> | <p>and <b>supra de decimis. tua.</b> [and] <b>xix. di. quoniam.</b> This happens thus in this case because it is unknown from whom it [i.e., the property] had extorted. ...</p> |
|---|--|

This gloss therefore does not concern the Jewish officials mentioned in X 5.6.16, but rather the distribution of the confiscated property to Christians. Once more, it demonstrates consideration for pragmatic economic concerns. By invoking X 3.49.8—another canon from the Fourth Lateran Council—the gloss equates the property taken by Jewish officials with the excessive money prelates extorted from their Christian subjects.<sup>95</sup> In other words, the *Glossa* understands the money in question simply as “unjustly extracted,” instead of “extorted by non-Christians.” Readers of the gloss are thus placed in a business framework, rather than one contending with interreligious conflict.

More importantly, a quick examination reveals that the *Glossa* here actually does not employ an entirely supportive allegation for the canon. X 3.49.8 orders the transgressing prelate both to restore what he exacts illegally *and* donate an equal amount of money to the poor.<sup>96</sup> It does not contradict X 5.6.16 *per se* because, again, these two canons address different targets. But the *Glossa*, by employing it as an allegation, juxtaposes the two to pave the way for its challenge to the canon: the money should be restored to its previous owners. The subsequent long list of allegations from canonical traditions on usury, tithes, etc.—again, none of which deals with interreligious issues—testifies to the *Glossa*’s major concern. X 5.6.15 concludes with

<sup>93</sup> X 3.30.25/26 [Fr. v.2 col. 564]/[Fr. v.2 cols. 564-565].

<sup>94</sup> “18. distin” in the 1582 *ER*, which seems to be correct. Dist. 18.7 [Fr. v.1 cols. 55-56].

<sup>95</sup> X 3.49.8: “Quia plerique praelati, ut procuracionem aut servitium aliquod impendant legato vel alii, plus extorquent a subditis quam solvant, et in eorum damnis lucra sectantes quaerunt praedam potius quam subsidium in subiectis, id de cetero fieri prohibemus.”

<sup>96</sup> X 3.49.8: “Quod si quis forte praesumpserit, et sic extorta restituat, et tantundem cogatur pauperibus elargiri.”

a practical instruction: restore whatever has been taken by the Jewish officials to its previous owners when the latter can be identified. In summary, the *Glossa*'s treatment of the money extorted by Jewish officials does not consider the "religious origin" of the money. Rather, its discussion of distributing it among Christians upon investigation reveals that it is concerned with protecting monetary interests when applying the provisions of the canon in practice.

#### **1.4 Roman and Canon Law Intertwined: Custody and Conversion of a Jewish Boy**

Another section in the *Decretales* that reveals its concern about non-Christians is X 3.33, *De conversione infidelium*. While the heading per se may imply comprehensive legislation on conversion, it contains only two canons, and treats conversion within marriage. X 3.33.1, a letter from Pope Celestine III (1191–1198), concerns marriage between Muslim converts to Christianity and Christian women, especially widows. The pope decreed that in such cases, as long as a convert does not plot the death of a Christian woman's Christian husband, even if he, while still a Muslim, kills the husband on the battlefield and marries the widow, the marriage is still valid.<sup>97</sup> X 3.33.2 offers an even more interesting case in which a Jewish husband, after converting to Christianity, appealed to the bishop's court for the custody of his four-year-old son so that he could raise him as a Christian. The mother, however, remained Jewish and argued that the boy should stay with her since the child at that point needed more maternal than paternal care. Pope Gregory IX (1227–1241) decreed that custody belongs to the father. But more importantly, Gregory offered three reasons for this decision, only one of which concerns religion: (1) a son should be "under the authority of a father"; (2) a son after the age of three

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<sup>97</sup> On the historical background and content of this canon, See Kedar, "Muslim conversion," 324–325.

must be raised by his father; and (3) the Jewish mother in this case might lead the boy into Judaism.<sup>98</sup>

#### 1.4.1 *Rei vindicatio* and *Interdictum de liberis exhibendis*

The *Glossa* to this title in general reveals the same tendency to focus more on legal technicalities outside the interreligious framework as did the glosses to X 5.6 analyzed above. The glosses to X 3.33.2, on the one hand, encompass the Roman familial and property law traditions embodied in the thirteenth-century canonical understanding of marriage and family. On the other hand, they also reveal the *Glossa*'s legal thinking concerning conversion within interreligious families.

Compared with the relatively straightforward text in X 3.33.1, the pope's reasoning in X 3.33.2 might confuse modern readers. What exactly does "under the authority of the father (*in patris potestate*)" mean? What role does the boy's age—which is specified in both the description of the facts and the legal reasoning—play in this case?<sup>99</sup> Furthermore, can the decision on the child's conversion in X 3.33.2, which was a reply to a specific inquiry from

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<sup>98</sup> X 3.33.2 [Fr. v.2 cols. 588-589]: "Cum autem filius in patris potestate consistat, cuius sequitur familiam, et non matris, et apud illas in etate tali quis non debeat remanere personas de quibus possit esse suspicio, quod saluti uel uite insidientur illius, et pueri post triennium apud patrem non suspectum ali debeant et morari, materque pueri, si eum remanere contigerit apud ipsam, posset illum aducere ad infidelitatis errorem, in fauorem maxime xristiane fidei respondemus, patri eundem puerum assignandum." For a brief overview of this canon and Bernard's comments regarding the age of the child and *patria potestas*, see Pakter, *De his qui foris sunt*, 296–297. This canon does not treat the issue of potential divorce of Jewish convert husband-Jewish wife couples, which had been dealt with by Pope Clement III in *Comp. II*. 3.20.1. On the latter, which is not included in the *Decretales*, see Kedar, "Muslim conversion," 321–322.

<sup>99</sup> On the legal agency of children in medieval Romano-canonical tradition in general, particularly in the *Decretum* of Gratian, see Jessica Goldberg, "The Legal Persona of the Child in *Gratian's Decretum*," *BMCL* 24 (2000): 10–53.

bishop Berthold of Teck of Strasbourg on 16 May 1229,<sup>100</sup> be understood as a universal order?<sup>101</sup>

These are the main concerns of the glosses to this canon.

In the first place, the *Glossa* invokes a variety of Roman law texts to support the father. Again, none of these *leges* concern his religious conversion. The *Glossa* repeatedly cites one section of the Justinianic *Institutiones* that illuminates the origin of Gregory IX's phrase concerning the authority of the father in the family: Inst. 1.9, *De patria potestate*. It straightforwardly claims that children born of lawful marriages are under the authority of the father.<sup>102</sup> The same allegation also appears in X 3.33.2 *glos. ord. s.v. ad fidem catholicam, glos. ord. s.v. legitima conuictio*, and *glos. ord. s.v. in patris potestate*. In fact, the last one serves as a focal point in constructing a coherent jurisprudential theory for the general authority of the father in a family. It integrates definitions of family from the *Institutiones* (Inst. 1.9), the *Codex* (Cod. 8.47.5<sup>103</sup> and 6.38.5), and the *Digest* (Dig. 26.4.1, 50.1.1, and, in post-1243 redactions of the *Glossa*, 50.16.195 also). Furthermore, X 3.33.2 *glos. ord. s.v. post triennium* claims that a son

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<sup>100</sup> See Potthast 8399; Lucien Auvray, ed., *Les Registres de Grégoire IX*, vol. 1 (Paris: A. Fontemoing, 1896), 182–183, no. 298. For a more recent edition and bibliography of this decretal, see Shlomo Simonsohn, ed., *The Apostolic See and the Jews, Documents: 492–1404*, Studies and Texts/Pontifical Institute of Mediaeval Studies 94 (Toronto: Pontifical Institute of Mediaeval Studies, 1988), 128–129.

<sup>101</sup> For a discussion of this canon, see Kenneth Pennington, “The Law’s Violence against Medieval and Early Modern Jews,” *RIDC* 23 (2012), 30–31.

<sup>102</sup> Inst. 1.9.1: “In potestate nostra sunt liberi nostri, quos ex iustis nuptiis procreauerimus. ... Qui igitur ex te et uxore tua nascitur, in tua potestate est.” On the notion of *patria potestas* in Roman law and culture, see Nicholas, Barry, and Susan M. Treggiari. “*patria potestas*.” *Oxford Classical Dictionary*. <https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-4779>.

<sup>103</sup> Note that it was Cod. 8.48.5 in the medieval vulgate version of the Justinianic Code, as Cod. 8.10.14 was a separate title by then. For the vulgate version of the *Corpus Iuris Civilis* I have consulted the edition that was printed by Horace Cardon in Lyons in 1604 and digitized by the Harvard Law Library, which is available at <http://amesfoundation.law.harvard.edu/digital/CJCiv/CJCivMetadata.html#ed>.



more than three years old is to be with his father. According to one of the allegations (Cod. 8.46.9), in such cases a child more than three years old can legally demand paternal support.<sup>104</sup>

But more importantly, Bernard not only showed the Roman law origin of the papal statement, but also set the discussion into a more complicated juridical framework based on the will and status of the son:

**X 3.33.2 glos. ord. s.v. ad fidem catholicam (= glos. ord. s.v. perducendus in the 1582 ER)**

| Transcription   | Translation  |
|---|--|
| <p>... Circa hoc distingue aut filius a nullo detinetur aut ab aliquo +si ab aliquo, et tunc<sup>105</sup> uolens aut inuitus. Primo casu petere possum per officium iudicis. <b>ff. de exhi. liberis. l. iii. § hoc autem.</b><sup>106</sup> Si ab alio uolens detinentur, potest peti rei vindicatio,<sup>107</sup> adiecta causa de iure quiritem cognitione praetorea.<sup>108</sup> <b>ff. de rei. ven. l. i. § i.</b><sup>109</sup> quod ius proprie romanorum est. <b>Inst. de patria. po. § i.</b><sup>110</sup> In tertio casu locum habet interdictum de liberis exhibendis, vt <b>ff. de liberis. exhi. l. i. Resposa.</b><sup>111</sup> et <b>ff. de rei. ven. l. i. § i.</b><sup>112</sup> ...</p> | <p>... Regarding this case, determine whether the son was not kept [by anyone], +or was kept by someone [and if so, whether]+ willingly or unwillingly. In the first case I can proceed through the service of a judge. [See] <b>ff. de exhi. liberis. l. iii. § hoc autem.</b> If he is detained willingly by another, he can be petitioned by <i>rei vindicatio</i>, the stipulation suggested by law of citizens with the praetorian cognition. [See] <b>ff. de rei. ven. l. i. § i.</b>, which is the Roman personal law. [See] <b>Inst. de patria. po. § i.</b> In the third case, the situation holds the <i>interdictum de liberis exhibendis</i>, therefore [see] <b>ff. de liberis. exhi. l. i. Resposa.</b> and <b>ff. de rei. ven. l. i. § i.</b> ...</p> |

<sup>104</sup> Pakter points out that “[B]y Constantine’s day only the residual core of the original p.p. [*patria potestas*], consisting of a moral obligation to protect the interests of the minor child, and the rights of the parents to that child, remained.” Pakter, “*De his qui foris sunt*,” 289.

<sup>105</sup> This section appears in BSB Clm 26301, fol. 156r, representing the post-1263 redaction(s) of the *Glossa*, together with the 1582 *ER*.

<sup>106</sup> Dig. 43.30.3.

<sup>107</sup> “vindicat” in the 1582 *ER*.

<sup>108</sup> “praetoria” in the 1582 *ER*.

<sup>109</sup> Dig. 6.1.1.

<sup>110</sup> Inst. 1.9.1.

<sup>111</sup> Dig. 43.30.1.

<sup>112</sup> Dig. 6.1.1.

The *Glossa* asks its readers to determine whether the boy is not currently under any parental control, or is being detained, willingly or unwillingly, by someone. But one must note that the underlying focus of this excerpt is not the boy's will. As a matter of fact, whether willingly or unwillingly, the son will ultimately be assigned to the father, according to the gloss. The most significant point is that Bernard here discussed the issue by mixing principles and terminology of Roman familial law and Roman property law (as he pointed out in the comment). To deal with the possibility that the son is controlled willingly by his mother, he recommended to the father a Roman property action through which the owner (thus analogically the father) can lawfully sue the possessor (the mother) of a thing (the son)—*rei vindicatio*<sup>113</sup>—with the matching allegation of Dig. 6.1.1. If, on the other hand, the boy is retained unwillingly by the Jewish mother, Bernard initially invoked the *interdictum de liberis exhibendis* from Roman law,<sup>114</sup> through which a person held by another against the will of his/her father can be legally released upon the latter's request. What immediately follows, importantly, is the allegation of Dig. 6.1.1 concerning *rei vindicatio*, which claims that this legal action can be applied to all movable, living or nonliving things.<sup>115</sup> In other words, Roman familial and property legal principles were intentionally interwoven by Bernard here to create a legal basis for the papal decision.

#### **1.4.2 Conversion: Age, Freewill, and *Capax doli***

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<sup>113</sup> See "Rei vindicatio," in Berger, 672–673.

<sup>114</sup> See "Interdictum de liberis exhibendis," in Berger, 510.

<sup>115</sup> Dig. 6.1.1: "Quae specialis in rem actio locum habet in omnibus rebus mobilibus, tam animalibus quam his quae anima carent, et in his quae solo continentur."

In terms of the conversion of the son, it seems that Bernard took some time to complete his full text on this matter. Age and free will seem to be the key principles that guided the glossator on this issue. I have mentioned above with X 3.33.2 *glos. ord. s.v. post triennium* that the age of the boy is used to decide whether he should be with his father. In X 3.33.2 *glos. ord. s.v. ad infidelitatis errorem*, translated below, age is closely associated with the issues of conversion and custody. In the comment, the gloss claims that if the boy is less than three years old, the father can use his *potestate patris* to convert his son; if, on the other hand, the son is more than three and he himself is willing to become a Christian, he could be taken away from the mother. The third possibility, however, is curiously implied in an obscure way in the allegation: X 5.6.9, the famous papal bull *Sicut Iudaei*. What if the boy is more than three years old and unwilling to convert? X 5.6.9 instructs that no one should force Jews to convert to Christianity against their will. It does not, however, mention the issue of age. Bernard seemed to have been concerned about this matter regarding age, free will, and conversion from the first redaction of the *Glossa* represented by MS F, as his addition to X 3.33.2 *glos. ord. s.v. ad fidem catholicam*, composed between 1243–1245 demonstrates.

**X 3.33.2 *glos. ord. s.v. ad infidelitatis errorem***

| Transcription   | Translation  |
|---|--|
| Hac de causa etiam si esset minor triennio et <sup>116</sup> pater uellet eum perducere ad fidem, cum sit in eius potestate patri debuit assignari in fauorem fidei kristiane, cum alias si esset maior et proclamaret <sup>117</sup> se uellet <sup>118</sup> fieri kristianum, debeat de manibus illorum eripi. ar. <b>infra de iudaeis. sicut iudaei.</b> <sup>119</sup> | Concerning this case, indeed, if the son was less than three years old, and the father wished to lead him toward the Faith, since he was under his [i.e., the father's] authority, he ought to be assigned to the father into the custody the Christian faith. Otherwise, if he [i.e., the son] was more than three years old, |

<sup>116</sup> Here it is '[E]t' in all selected manuscripts while 'vel' in the 1582 *ER*.

<sup>117</sup> "proclamet" in the 1582 *ER*.

<sup>118</sup> "velle" in the 1582 *ER*.

<sup>119</sup> X 5.6.9 [Fr. v.2 col. 774].

|  |  |
|--|--|
|  | and proclaimed that he wished to become a Christian, he should be rescued from their hands. [See] the argument [in] <b>infra de iudaeis. sicut iudaei.</b> |
|--|--|

**X 3.33.2 glos. ord. s.v. ad fidem catholicam**

| Transcription  | Translation  |
|--|--|
| <p>... +Et nota quod filius conditionem patris vel matris conuersi ad fidem sequi debet. <b>xxviii. q. i. Iudaei.</b><sup>120</sup> Et in hoc casu filius infans non doli capax sequitur meliorem conditionem. Alias si doli capax esset, non deberet baptizari nisi sponte. <b>xxiii. q. v. ad fidem.</b><sup>121</sup> <b>xl. dist. de Iudaeis.</b><sup>122</sup> ... <u>Ber.</u><sup>+123</sup></p> | <p>... +And note that the son must follow the option of the father or the mother who converted to the faith. [See] <b>xxviii. q. i. Iudaei.</b> And in this case the infant son, who is not <i>capax doli</i>, follows the better option. Otherwise, if he was <i>capax doli</i>, he must not be baptized unless willingly. [See] <b>xxiii. q. v. ad fidem.</b> [and] <b>xl. dist. de Iudaeis.</b> ... <u>Ber.</u><sup>+</sup></p> |

While the issue of custody occupies the *Glossa*'s argumentation in X 3.33.2 *glos. ord. s.v. ad infidelitatis errorem*, in this post-1243 addition Bernard focused on religion—notably, all allegations here come from Gratian's *Decretum* rather than Justinianic collections—and free will. First, the addition supports Gregory IX's statement "into the custody of the Christian faith (*in fauorem fidei xristiane*)" by acknowledging that the son must convert to Christianity as long as one or both of his parents have done so. But Bernard immediately complicated (or even perhaps challenged) this simple formula, invoking another Roman law concept, *capax doli*. Considering the following comment in the gloss, its original meaning, "[a] person capable of perceiving the fraudulent character of his action,"<sup>124</sup> was retained in Bernard's time. As a matter

<sup>120</sup> C. 28 q. 1 c. 10 [Fr. v.1 col. 1087].

<sup>121</sup> C. 23 q. 5 c. 33 [Fr. v.1 col. 939].

<sup>122</sup> Dist. 45.5 [Fr. v.1 cols. 161-162].

<sup>123</sup> This section between '+', lacking in MS F, appears in selected manuscripts representing redactions after 1243—i.e., BAV Vat. lat. 1365, fol. 516r, BAV Vat. lat. 1383, fol. 158v, and Munich BSB Clm 26301, fol. 156r—together with the 1582 *ER*.

<sup>124</sup> "Capax doli," in Berger, 380.

of fact, decretists' writings before Bernard were already employing this concept to treat the conversion issue of half-Jewish children.<sup>125</sup> The four-year-old son in this specific case is to be baptized because, the *Glossa* emphasizes, he is not *capax doli*.

More importantly, Bernard connected this concept to the importance of free will in one's decision to convert. Two canonical allegations here, one from Augustine and one from the Fourth Council of Toledo, though lacking the term *capax doli*, stress free will and that force should not be employed to convert non-Christians. In sum, this addition addresses the third possible scenario that is implied and left unsolved in X 3.33.2 *glos. ord. s.v. ad infidelitatis errorem*. Even if the son is more than three years old and unwilling to be baptized, as long as he is not yet *capax doli*, he can be forced to follow "the better option," i.e., Christianity. But in the end, it is equally important, if not more so, to remember that the *Glossa* invokes *auctoritates* from both the *Decretum* and the *Decretales* to emphasize the factors of age and free will in cases of conversion. While Gregory IX in X 3.33.2 simply decreed that the boy should convert *in favorem maxime xristiane fidei*, the *Glossa* is eager to draw its readers' attention to the canonical tradition of preventing forced conversion.

Finally, in addition to this emphasis on prohibiting forced conversion, the *Glossa* also reminds its readers about three noteworthy exceptions in the application of X 3.33.2. These are spelled out in the following X 3.33.2 *glos. ord. s.v. ad fidem catholicam*. First, while the case in question pertains to a four-year-old boy, Bernard noted that in cases where a son is less than three, his mother should take custody of him. Significantly, the *Glossa* apparently takes this

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<sup>125</sup> See Pakter, "De his qui foris sunt," 292.

claim for granted and invokes no allegation supporting it. It thus seems that such a rule was commonly accepted in Bernard's time.<sup>126</sup>

**X 3.33.2 glos. ord. s.v. ad fidem catholicam** (=glos. ord. s.v. *perducendus* in the 1582 *ER*)

| Transcription   | Translation  |
|---|--|
| <p>... Mater tamen habet quandocumque<sup>127</sup> exceptionem contra maritum, puta si est minor triennio cum apud eam tunc debeat educari, uel etiam si iudicatum esset in contrarium <b>ff. de liberis. exhi. l. i.</b><sup>128</sup> Et in alio casu etiam<sup>129</sup> habet exceptionem ob nequitiam patris ut sine diminutione patrie potestatis apud eam filius moretur. <b>ff. de eo. deinde. § etiamsi maxime.</b><sup>130</sup> +.... Quandoque tamen sequitur deteriorem conditionem, scilicet matris, si serua sit. <b>xxxii. q. iv. c. vlt.</b><sup>131</sup> <u>Ber.</u><sup>+132</sup></p> | <p>...The mother, nevertheless, always can invoke an <i>exceptio</i> [i.e., a defense]<sup>133</sup> against the husband, namely, if the child is under three years of age, since at that time he should be under her care, even though it had been adjudicated otherwise. [See] <b>ff. de liberis. exhi. l. i.</b> And in another situation, she also has an <i>exceptio</i>, on account of the wickedness of the father, so that the son may remain with her without diminution of paternal authority. [See] <b>ff. de eo. deinde. § etiamsi maxime.</b> +.... However, under certain circumstances he [i.e., the son] follows the inferior option [i.e., Judaism], namely the mother's, if she was a slave. [See] <b>xxxii. q. iv. c. vlt. Ber.</b>+ </p> |

Second, the *Glossa* invokes a *lex* from the Roman law tradition that the Jewish mother could employ to win custody. She could, according to Dig. 43.30.3.5, demonstrate that the father is morally problematic, and thus she should be awarded custody. Lastly, regarding conversion, the *Glossa* points out one situation to which Gregory IX's decision may not apply: if the mother

<sup>126</sup> The same opinion appears in Hostiensis, *In Primum [-Sextum] Decretalium Librum Commentaria*, vol. 3, fol. 124r, X 3.33.2 *Ex literis v. post triennium*: 'Haec est ratio: quia iste filius, ut supra dixi, erat maior triennio, & sic debebat morari apud patrem, ante triennium vero apud matrem: quia magis eget lacte, quam pane.' See Pakter, "De his qui foris sunt," 296–297.

<sup>127</sup> "quamque" in the 1582 *ER*.

<sup>128</sup> Dig. 43.30.1.

<sup>129</sup> "etiam" missing in the 1582 *ER*.

<sup>130</sup> Dig. 43.30.3.5.

<sup>131</sup> C. 32 q. 4 c. 15 [Fr. v.1 col. 1131].

<sup>132</sup> This section appears in selected manuscripts representing post 1243 redactions of the *Glossa*, together with the 1582 *ER*.

<sup>133</sup> See "Exceptio," in Berger, 458.

is a slave. This, according to Isidore (C. 32 q. 4 c. 15, cited in the gloss), gives the child slave status. Thus, the son should thus remain in Judaism.

### **1.5 Arguments in the Allegations: The Use of Force and the Ownership of Synagogues**

Similar to the glosses to other titles of the *Decretales* that are investigated in this dissertation, the *Glossa* to X 5.6 and X 3.33 also occasionally embeds its own judicial concerns—digressing from the canons under discussion—in the allegations. This final section of this chapter investigates two such concerns.

Our previous examination of the *Glossa*'s treatment of slave trading by non-Christians, custody of children, and non-coerced conversion might at times imply that the *Glossa* is attempting to be protective of infidels. This is not the case. Rather, what the glosses try to achieve in general are practical integrations of legal traditions; any protection of individuals is essentially incidental. In other words, Bernard was respectful of the Romano-canonical resources that he consulted, and often struggled to guarantee the rights they afforded, no matter the beneficiary. It is apparent that he wanted to prevent thoughtless and injudicious application of canons in the *Decretales* through his *Glossa*, a textbook for future lawyers. But it would be wrong to assume that Bernard held any pluralistic approach to non-Christians as marginal religious groups. As he himself stated clearly in one of his comments to X 5.6.2, “the severity or the rigor of law ought to be preserved, but this is with the hatred of those Jews.”<sup>134</sup>

X 5.6.9 *glos. ord. s.v. invitos* is a good example. This canon, as mentioned above, is the papal bull of Pope Clement III, *Sicut Iudaei*. This bull, repeatedly promulgated by more than a

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<sup>134</sup> X 5.6.2 *glos. ord. s.v. severitate*: “Et ar. quod iuris severitas sive rigor servandus est, sed hoc est in odio illorum Iudaeorum.” See also Pakter, *De his qui foris sunt*, 127. Here Pakter argues that Bernard suspended his general preference for *aequitas* when dealing with Jews. However, our examination above of Bernard's treatment of the commercial considerations in ransoming Christian slaves owned by non-Christian masters proves otherwise.

dozen popes throughout the High and Late Middle Ages, legislates against Christians who might harm Jews in various ways. It forbids Christians from wounding or killing Jews, stoning them on their holidays, and destroying their graves, among other things. The very first injunction stipulates that no one should force Jews to convert against their will.<sup>135</sup> Put simply, this is a rather protective canon. The beginning of X 5.6.9 *glos. ord. s.v. invitos* also suggests that conversion to Christianity should not be effected through force.

**X 5.6.9 *glos. ord. s.v. invitos***

| Transcription  | Translation   |
|--|---|
| Hoc ideo dicit, quia nullus ad fidem cogendus est. <b>xxiii. q. v. ad fidem.</b> <sup>136</sup> et <b>xl. di. de Iudaeis.</b> <sup>137</sup> Quia si simpliciter absolute compellantur, non recipere characterem; sed si conditionaliter compellantur, bene recipiunt, et consulendi sunt, ut fidem sic susceptam observent, ut <b>supra de bap. maiores.</b> <sup>138</sup> +§ <b>item quaeritur.</b> <sup>+139</sup> et <b>xl. di. de Iudaeis.,</b> <sup>140</sup> et <b>ff. de ritu nuptiarum. si patre.,</b> <sup>141</sup> et <b>C. de. e. t. nullus.</b> <sup>142</sup> +Ber.+ | Therefore it says this, that no one should be compelled to the Faith. [See] <b>xxiii. q. v. ad fidem.</b> and <b>xl. di. de Iudaeis.</b> Since if they are compelled completely <i>absolute</i> , they would not receive the character; but if they are compelled <i>conditionaliter</i> , they receive [it] well, and they should be advised, so that they would observe the faith received in such a way, as [in] <b>supra de bap. maiores. +§ item quaeritur.;</b> <b>xl. di. de Iudaeis.,</b> and <b>ff. de ritu nuptiarum. si patre.,</b> and <b>C. de. e. t. nullus. +Ber.+</b> |

<sup>135</sup> For a recent summary of high medieval papal attitudes toward forced and voluntary conversion, see Rebecca Rist, ‘The Medieval Papacy and the Concepts of ‘Anti-Judaism’ and ‘Anti-Semitism’,’ in Thomas W. Smith, ed., *Authority and Power in the Medieval Church, c. 1000 - c. 1500*, Europa Sacra 24 (Turnhout, Belgium: Brepols Publishers, 2020), 95–102.

<sup>136</sup> C. 23 q. 5 c. 33 [Fr. v.1 cols. 939-940].

<sup>137</sup> Dist. 45.5 [Fr. v.1 cols. 161-162].

<sup>138</sup> X 3.42.3 [Fr. v.2 cols. 644-646].

<sup>139</sup> This addition appears in the 1582 *ER* only.

<sup>140</sup> Dist. 45.5 [Fr. v.1 cols. 161-162].

<sup>141</sup> Dig. 23.2.22.

<sup>142</sup> “C. eo. tit. nullus” in the 1582 *ER*. Possibly Cod. 1.9 (*De iudaeis et caelicolis*).<sup>14</sup>



However, as this gloss demonstrates, Bernard digressed from the canon’s prohibition against forced conversion, raising and approving the possibility of baptism forced *conditionaliter*.<sup>143</sup> To “support” the canon, the *Glossa* invokes two allegations previously employed at the end of X 3.33.2 *glos. ord. s.v. ad fidem catholicam* (see above in section 1.4): C. 23 q. 5 c. 33 and Dist. 45 c. 5. These two allegations both stress, admittedly, that no one should force Jews to convert. Nonetheless, to support his approval of baptism forced *conditionaliter*, Bernard invoked X 3.42.3, Dist. 45 c. 5 (again!), and Dig. 23.2. But a close reading of these texts makes clear that only one of them, X 3.42.3, actually addresses this issue.<sup>144</sup> By contrast, both X 3.42.3 (immediately after validating baptism forced *conditionaliter*) and Dist. 45 c. 5 order that once converted, these former Jews must be *forced* to remain in the faith. Similarly, through the Roman marriage law, Dig. 23.2.22, Bernard compared the situation under discussion to compelled marriage of a son by his father. In this *lex*, the marriage is judged to be legally binding (and therefore should not be dissolved)—even if the son was not able to exercise his free will when he was married.<sup>145</sup> In fact, even the first allegation of this gloss (C. 23 q. 5 c. 33), after forbidding forced conversion, claims that those relapsing after conversion should be punished by painful caning.

In other words, what Bernard tried to advocate through these allegations was different from what the canon itself calls for: the use of force against Jewish converts is permissible if it keeps them within the Christian faith. This contrast between the canon and the *Glossa* here is

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<sup>143</sup> This is when a person consents to be baptized to avoid punishment.

<sup>144</sup> On this canon and this influential distinction between baptism forced *absolute* and *conditionaliter*, see Watt, “Jews and Christians in the Gregorian Decretals,” 99–100.

<sup>145</sup> Dig. 23.2.22: “Si patre cogente ducit uxorem, quam non duceret, si sui arbitrii esset, contraxit tamen matrimonium, quod inter invitos non contrahitur: maluisse hoc videtur.”

neatly embodied in the very last allegation of the gloss, Cod. 1.9.14. The first half of this Roman law text is similar to X 5.6.9, a list of injunctions against people harming Jews. The second half, however, warns against Jews under these protections becoming arrogant or even doing violence to the Christian religion.<sup>146</sup> Based on Gratian's *Decretum*, Bernard of Pavia's *Summa Decretalium*, and Raymond of Peñafort's *Summa de casibus poenitentiae*, Benjamin Kedar argues that, from the mid-twelfth century on, canonists grew less reluctant "to use harsh means for furthering infidel conversion."<sup>147</sup> The *Glossa* not only demonstrates this tendency, but also tries to highlight for its readers the legitimate use of force to keep converts in the Church.

Another case in which the *Glossa* reveals more of its own emphasis in the allegations than in the comments concerns synagogues. Two canons, X 5.6.3 (from Pope Gregory I) and 7 (from the Third Lateran Council), under the title *De iudaeis, Sarracenis, et eorum servis*, focus on this issue. They instruct that Jews should not be allowed to build new or larger synagogues, but only retain or rebuild old ones. The *Glossa* clearly knows the Roman law origin of these canons and invokes the precise *lex* in the Justinianic *Codex* on this matter, Cod. 1.9.18,<sup>148</sup> to support both canons. More importantly, an examination of the remaining allegations in the *Glossa* to X 5.6.7 demonstrates that it seems to embody a deeper understanding of the actual 'ownership' of synagogues.

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<sup>146</sup> Cod. 1.9.14: "Nullus tamquam iudaeus, cum sit innocens, obteratur nec expositum eum ad contumeliam religio qualiscumque perficiat: non passim eorum synagogae vel habitacula concrementur vel perperam sine ulla ratione laedantur, cum alioquin, etiam si sit aliquis sceleribus implicitus, idcirco tamen iudiciorum vigor iurisque publici tutela videtur in medio constituta, ne quisquam sibi ipse permittere valeat ultionem. Sed ut hoc iudaeorum personis volumus esse provisum, ita illud quoque monendum esse censemus, ne iudaei forsitan insolescant elatique sui securitate quicquam praeceptis in christianae reverentiam cultionis admittant." For a brief overview of Jews in Roman law, see John Tolan, "Jews and Muslims in Christian Law and History," 167–168 and Pakter, "*De his qui foris sunt*," 3–5.

<sup>147</sup> Kedar, "Muslim conversion in canon law," 329.

<sup>148</sup> Cod. 1.9.18.1: "Illud etiam pari consideratione rationis arguentes praecipimus, ne qua iudaica synagoga in novam fabricam surgat, fulciendi veteres permissa licentia, quae ruinam minantur."

**X 5.6.7 glos. ord. s.v. rehedificent**

| Transcription   | Translation  |
|---|--|
| Sic <b>supra e. Iudei.</b> <sup>149</sup> <b>C. de Iudae. l. ult.,</b> <sup>150</sup> quia aliud est tueri quod positum est, et aliud novum facere. <b>ff. de usu fruc. usu fructuarius +novum.</b> <sup>+151</sup> | Thus [see] <b>supra e. Iudei.</b> [and] <b>C. de Iudae. l. ult.,</b> because it is one thing to preserve what has been set up, and another to build a new one. [See] <b>ff. de usu fruc. usufructuarius +novum.</b> <sup>+</sup> |

**X 5.6.7 glos. ord. s.v. exaltent**

| Transcription  | Translation  |
|--|--|
| Non enim licet cuilibet possessori transformare possessionem, puta usufructuario. <b>ff. de usu fruc. aequissimum. §. sed et colores.</b> <sup>152</sup> <b>+B.</b> <sup>+</sup> | For it is not lawful for anyone to transfer ( <i>transformare</i> ) the possession to the possessor, namely the usufructuary. [See] <b>ff. de usu fruc. aequissimum. §. sed et colores. +B.</b> <sup>+</sup> |

Neither Dig. 7.1.44 in X 5.6.7 *glos. ord. s.v. rehedificent* nor Dig. 7.1.13.7 in X 5.6.7 *glos. ord. s.v. exaltent* treats synagogues or Christian-Jewish relation at all. The comment in the latter gloss at first glance also might confuse readers with its abrupt discussion of usufruct and transfer of possession. These two allegations claim that a usufructuary is not legally allowed to change the arrangement of the house of which he has been bequeathed the usufruct.<sup>153</sup> Bernard's comment indicates that he did not see these texts merely as analogies, but rather reads them literally as applicable to the question of the ownership of synagogues. But if he considered Jews

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<sup>149</sup> X 5.6.3.

<sup>150</sup> Cod. 1.9.18.

<sup>151</sup> Dig. 7.1.44. Among the selected texts of the *Glossa*, MS F is the only one that does not contain this addition.

<sup>152</sup> Dig. 7.1.13.7.

<sup>153</sup> Dig. 7.1.44: "Usufructuarius novum tectorium parietibus, qui rudes fuissent, imponere non potest, quia tametsi meliorem excolendo aedificium domini causam facturus esset, non tamen id iure suo facere potest, aliudque est tueri quod accepisset an novum faceret[;]" Dig. 7.1.13.7: "Sed si aedium usus fructus legatus sit, Nerva filius et lumina immittere eum posse ait: sed et colores et picturas et marmora poterit et sigilla et si quid ad domus ornatum. Sed neque diaetas transformare vel coniungere aut separare ei permittetur, vel aditus posticasve vertere, vel refugia aperire, vel atrium mutare, vel viridiaria ad alium modum convertere: excolere enim quod invenit potest qualitate aedium non immutata. Item Nerva eum, cui aedium usus fructus legatus sit, altius tollere non posse, quamvis lumina non obscurantur, quia tectum magis turbatur: quod Labeo etiam in proprietatis domino scribit. Idem Nerva nec obstruere eum posse."

as the usufructuaries of the synagogues, who did he consider to be the legal owner(s)? Also noteworthy is that in Dig. 7.1.13.7, the example given for a house's usufructuary is a son. Could it be that the owner and benefactor of synagogues, according to the *Glossa*, is the Christian Church? This seems to be the implication, though indeed a radical one.<sup>154</sup> The glosses here cannot take us further, but this question deserves further investigation.

## 1.6 Conclusion

Both Jews and Muslims are among those *qui foris sunt* and *hostes*, according to the *Glossa*. On the one hand, the ordinary glosses on X 5.6, as the canons themselves, reflect the general tendency of applying Church laws concerning Jews to Muslims. In the meantime, X 5.17.4, only targeting Muslims who abduct Christian women and boys, does get used by the *Glossa* as an allegation to treat both Jews and Muslims. Fear over Jews disturbing public life in violent ways—which is visible only in the *Glossa*—might derive from the vivid contemporary accusations of blood libel cases against Jews.<sup>155</sup> But on the other hand, the *Glossa* treats Jews and Muslims as enemies of different kinds. Jews are only deemed to be enemies in the religious sense, which does not seem to concern the *Glossa* much: contemporary theological works such as Thomas Aquinas' *Summa contra Gentiles* elaborate on that. Muslims, by contrast, are enemies in both a religious and a military sense, and the *Glossa* underscores the latter. Religious discussion of the Islamic faith in the Middle Ages is rather limited. Yet stricter than the relevant canons, and drawing support

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<sup>154</sup> It is worth noting here that in 1081, Pope Gregory VII claimed that subjecting Christians to the authority of Jews is to “exalt the synagogue of Satan (*sathane synagogam exaltare*).” This English translation is taken from Ephraim Emerton, trans., *The Correspondence of Pope Gregory VII: Selected Letters from the Registrum* (New York: Columbia University Press, 1990), 178. For the complete Latin text of this letter, see Erich Caspar, ed., *Das Register Gregors VII*. vol. 2 (Berlin: Weidmannsche Buchhandlung, 1923), 569–572.

<sup>155</sup> See Albert Ehrman, ‘The Origins of the Ritual Murder Accusation and Blood Libel’, *Tradition: A Journal of Orthodox Jewish Thought* 15 (1976) 85–88. See also Emily Rose, *The Murder of William of Norwich: The Origins of the Blood Libel in Medieval Europe* (New York: Oxford University Press, 2015).

from the Roman law on treason, the *Glossa* suggests death penalty for Christians providing military supplies to Muslims.

In terms of one of the main themes of X 5.6, i.e., prohibiting Jews and Muslims from owning Christian slaves, the principle found throughout the ordinary glosses is less of a religious matter than a pragmatic issue. What is at stake is protection of business interests. Concern for proper monetary or labor compensation for a master or a person who pays for a manumission emerges clearly in the glosses and the allegations. Similarly, the pre-1243 redaction(s) of the *Glossa* uses mainly Roman family and property law to resolve a custody case involving a Jewish boy, his mother, and his Christian father (a convert from Judaism) in X 3.33.2. Only in the redactions produced after 1243 does the *Glossa* add a religious dimension to the discussion, invoking canonical allegations from Gratian.

Finally, it is of paramount importance to emphasize that a full analysis of the *Glossa* demands an understanding of the allegations. In several of instances under consideration here, upon interrogation, the allegations reveal different emphases than the canons and their glosses. For example, although X 5.6.9 protected Jews, students in medieval law schools consulting the ordinary glosses and studying their allegations would be led to texts in the canonical tradition that advocate the use of force to keep converted Jews in the Church.

## Chapter Two: “The Church does not close its bosom to those who wish to return to her”: The *Glossa* to X 5.7 on Heretics (I)

### 2.1 Introduction

The Massacre at Béziers happened on 22 July 1209. This first slaughter of heretics during the Albigensian Crusade marks the appearance of the notorious saying “Kill them all; for the Lord knoweth them that are His [2 Timothy 2:19]!” in history, according to Caesarius of Heisterbach.<sup>1</sup> At this point, Bernard of Parma was probably still a young boy. His years of studying law at Bologna under Tancred saw the signing of the Treaty of Paris on 12 April 1229 that ended the twenty-year Albigensian Crusade under Popes Innocent III (1198–1216), Honorius III (1216–1227), and finally Gregory IX (1227–1241). As he was revising his *Glossa* to the *Decretales*, hundreds of Cathars, including both *perfecti* (the “perfect ones” leading the sect) and *credentes* (“believers”), were burned at the end of the siege of Montségur on 16 March 1244. These inevitable events for the writing of any history on medieval heresy were part of the backdrop against which the *Decretales’ Glossa* was produced and gradually updated. Yet, similar to his treatment of other legal topics, Bernard did not mention these specific historical instances in his glosses. However, his numerous comments and allegations cited from Augustine of Hippo’s (d. 430) writings against the Donatists to Emperor Frederick II’s (1220–1250) constitutions against the Cathars and other heretics in the *Glossa* to the sixteen canons of X 5.7,

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<sup>1</sup> Caesarius of Heisterbach, *The Dialogue on Miracles*, trans. H. von E. Scott and C. C. Swinton Bland, Broadway Medieval Library, vol. 1 (London: G. Routledge & Sons, 1929), 346. The Latin text reads: “Caedite eos. Novit enim Dominus qui sunt eius.” Caesarius of Heisterbach, *Dialogus miraculorum: Textum ad quatuor codicum manuscriptorum editionisque principis fidem accurate recognovit Josephus Strange*, vol. 1 (Cologne, Bonn, and Brussels: J.M. Heberle, 1851), 302.

*De haereticis*, testify the importance of the subject of heresy in the high medieval legal landscape.

Histories and historiographies of heresy have been written by generations of scholars.<sup>2</sup> From the condemnation of the Arianists at the First Council of Nicaea in 325 to the anathematization of various *haeretici* in Pope Gregory IX's bull *Excommunicamus* from 1229 (X 5.7.15), the Christian Church has been no stranger to the practice of recognizing and punishing those it deems heterodox and/or heteroprax within the community.<sup>3</sup> Notably, diverse and sporadic heresies, "most of [which] can be related to the religious temper of the age and the movement for reform which touched all aspects of religious life from 1050 on,"<sup>4</sup> emerged from the eleventh century and especially during the early twelfth century.<sup>5</sup> While it is difficult to systematize and catalogue their heretical characteristics, two particular groups of heretics stood out from the mid-twelfth century. These were the Cathars/Albigensians and the Waldensians, which represent two major manifestations of the contemporary passionate religious sentiment that were deemed threats to the institutional Church.<sup>6</sup> These two groups and their stances,

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<sup>2</sup> A recent discussion of the historiography on medieval heresy can be found in Deborah Shulevitz, "Historiography of Heresy: The Debate Over 'Catharism' in Medieval Languedoc," *History Compass* 17 (2019). See also Lucy J. Sackville, *Heresy and Heretics in the Thirteenth Century: The Textual Representations* (Rochester: Boydell & Brewer, 2011), 1–11. A brief historical narrative of medieval heresy with a list of research sources can be found in Walter L. Wakefield and Austin P. Evans, eds., *Heresies of the High Middle Ages* (New York: Columbia University Press, 1991, 1<sup>st</sup> printed 1961), 1–67. A concise bibliography of sources in English is available in Peters, ed., *Heresy and Authority in Medieval Europe*, 9–11.

<sup>3</sup> Nonetheless, the Early Middle Ages arguably saw a three-hundred-year period without popular religious dissent following the disappearance of Arianism in the late seventh century. See Bernard Hamilton, *Religion in the Medieval West*, 2nd ed. (London: Hodder Education, 2003), 129.

<sup>4</sup> Peters, ed., *Heresy and Authority in Medieval Europe*, 103.

<sup>5</sup> This age witnessed religious non-conformists such as Peter of Bruys, Henry of Lausanne, Arnold of Brescia, Amalric of Bène, etc. (see P. Roche, B. Chudoba, and E. D. Mcshane, "Heresy, History of," in NCE, vol. 6, 772–779), including those "Manichees" noted by Guibert of Nogent at Soissons in 1114. Guibert de Nogent, *Guibert de Nogent: histoire de sa vie (1053–1124)*, ed. Georges Bourgin (Paris: A. Picard et fils, 1907), 213.

<sup>6</sup> Briefly speaking, the former with its dualistic theology, special rites such as *consolamentum*, and hierarchical organization, represented an essentially heterodox, anti-sacramental, and anti-sacerdotal institution in the eyes of the Roman Church. The latter, on the other hand, posed a challenge to the Church and its clerics based on its insistence

considered as heretical by the medieval Church, have a strong presence in the canons of X 5.7 (but significantly not, as we will see in this and the following chapters on heresy, in the *Glossa*).<sup>7</sup>

Heresy from the twelfth century had been dealt with by a continuously developing legal system, in tandem with the fundamental intellectual and institutional trends emerging in the schools and the papacy.<sup>8</sup> From Gratian's *Decretum* and pre-1234 papal decretal collections to the *Decretales Gregorii IX*, canonical treatment of heresy, together with the involvement of the evolving religious authorities, was gradually consolidated and systematized.<sup>9</sup> This process was demonstrated in the transition of major relevant primary sources, or *fontes materiales*: from early patristic theological/pastoral writings to increasingly clarified and strengthened conciliar and papal decrees from the twelfth and thirteenth centuries.<sup>10</sup>

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on apostolic poverty and various radical means to satisfy lay piety, such as the availability of the Bible in vernaculars and public preaching by laymen.

<sup>7</sup> The increasing spiritual need of laymen is but one of the factors to explain the emergence of heretical movements after the first millennium. Partly due to the fact that most historical sources available concerning medieval heresy come from the “non-heretical” side, the persecutors and the sociopolitical function of persecution also became focuses of studies. Integrating classics such as Norman Cohn, *Europe's Inner Demons: The Demonization of Christians in Medieval Christendom* (London: Pimlico, 1993); Robert Ian Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250*, 2nd ed. (Oxford: B. Blackwell, 2007) till today remains to be one of the most influential studies on medieval heresy. See Moore. For a recent review of this work and its influence, see John H. Arnold, “AHR Reappraisal: Persecution and Power in Medieval Europe: *The Formation of a Persecuting Society*, by R. I. Moore,” *The American Historical Review* 123 (2018): 165–174. Moore argues that the persecution of heretics, together with the persecutions of other marginal groups such as lepers and Jews, was an intrinsic part of the sociopolitical-rhetorical mechanism developed in the twelfth-century society by the religious, secular, and intellectual auctoritates to strengthen the order designed and/or maintained by them. See also John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001), 29–47, for a recent evaluation of the historical development of inquisition in medieval Languedoc, which echoes Moore's analytical framework.

<sup>8</sup> As Edward Peters points out, “[t]he twin movements of dogmatic definition and the papal juridical approach to heretics... slowly increased ecclesiastical resistance to heresy and dissent.” Peters, ed., *Heresy and Authority in Medieval Europe*, 167.

<sup>9</sup> For an excellent examination of the treatment of heresy in *Causa 24* of Gratian's *Decretum* and twelfth-century Decretistic literature, see Titus Lenherr, *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa ordinaria des Johannes Teutonicus* (St. Ottilien: EOS Verlag, 1987).

<sup>10</sup> The legislative efforts taken by local church authorities and the papacy, which left their prints directly or indirectly in the canonical tradition, have long been noted by scholars. For a recent summary of conciliar and papal canonical materials concerning heresy during the twelfth century, see Ruggero Maceratini, “Innocenzo III, il Concilio Lateranense IV e lo status giuridico dell'eretico nella Glossa ordinaria al Decreto di Graziano ed in quella



These materials range from the conciliar canons of the Councils of Toulouse in 1056, 1119, and then 1229, the Council of Piacenza in 1095 according to Bernold of Constance's *Chronicon*,<sup>11</sup> the four ecumenical Lateran councils between 1123 and 1215, the Council of Tours in 1163,<sup>12</sup> the Council of Narbonne in 1229 and then 1244, the Council of Albi in 1230, the Councils of Béziers and Arles between 1232 and 1234, the Council of Tarragona in 1242, etc., to the papal decretals such as the *Ad abolendam* of Lucius III (1181–1185) in 1184, the *Vergentis in senium* of Innocent III in 1199,<sup>13</sup> and the *Excommunicamus et anathematizamus* of Gregory IX in 1229.<sup>14</sup> Many of these texts were codified, through Raymond of Peñafort (d. 1275), in the *Decretales*, and indeed have been well studied by researchers. Another apparatus that emerged and developed against the heretics during the twelfth and the thirteenth century was the heresy

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di Accursio al Codice di Giustiniano,” *Vergentis. Revista de Investigación de la Cátedra Internacional conjunta Inocencio III* 3 (2016): 19–58.

<sup>11</sup> See Robert Somerville, *Pope Urban II's Council of Piacenza: March 1-7, 1095* (New York: Oxford University Press, 2011), 25–28.

<sup>12</sup> Covering messages in canon 18 of the First Council of Reims in 1148 and canon 1 of the Second Council of Reims in 1157, canon 4 of this council instructs punishments for both “heretical sects spreading over regions in southern France” and those who help or have business with them. See Robert Somerville, *Pope Alexander III and the Council of Tours (1163): A Study of Ecclesiastical Politics and Institutions in the Twelfth Century* (Berkeley: University of California Press, 1977), 50. See also Henry Charles Lea, *A History of the Inquisition of the Middle Ages*, vol. 1 (London: Sampson Low, 1888), 220.

<sup>13</sup> For a recent historical discussion of these two influential papal bulls, see Leandro Duarte Rust, “Bulas Inquisitoriais: *Ad Abolendam* (1184) e *Vergentis in Senium* (1199),” *Revista de História* 166 (2012), 129–162.

<sup>14</sup> Many of these ecclesiastical decrees have been summarized and discussed in Lucy J. Sackville, “The Church’s Institutional Response to Heresy in the 13<sup>th</sup> Century” in Donald Prudlo, ed., *A Companion to Heresy Inquisitions* (Leiden; Boston: Brill, 2019), 108–140; Lucy J. Sackville, *Heresy and Heretics in the Thirteenth Century: The Textual Representations* (Rochester: Boydell & Brewer, 2011), 88–113; Elphège Vacandard, *L’Inquisition : étude historique et critique sur le pouvoir coercitif de l’église* (Bloud, 1907), 59–80; Henry Charles Lea, *A History of the Inquisition of the Middle Ages* (London: Sampson Low, 1888), vol. 1, 220–226; vol. 2, 484–486; Samuel Roffey Maitland, *Facts and Documents: Illustrative of the History, Doctrine, and Rites, of the Ancient Albigenses & Waldenses* (London: C.J.G. and F. Rivington, 1832), 135–212. English translations of many of these documents can be found in John H. Arnold and Peter Biller, eds., *Heresy and Inquisition in France, 1200–1300* (Manchester University Press, 2017), 147–210; See also Zoé Oldenbourg, *Massacre at Montségur: A History of the Albigensian Crusade* (New York: Minerva Press, 1961), Appendix D. For a recent narrative on the political history of the period of the Albigensian Crusade, see Laurence Wade Marvin, *The Occitan War: A Military and Political History of the Albigensian Crusade, 1209–1218* (Cambridge; New York: Cambridge University Press, 2008).

inquisitors. These were bishops, local clerics appointed by bishops, and, especially from the early thirteenth century, papal appointees that were usually mendicant friars.<sup>15</sup> The appointments of and the consultation manuals composed or used by inquisitors, as well as the inquisitorial records produced by them, have also attracted much modern scholarly attention.<sup>16</sup>

Nonetheless, compared with the legislative dimension of the story, our understanding of the contemporary juridical thought on the legal subject of heresy remains to be deepened. How did medieval judges and lawyers analyze heresy? What practical issues might appear, when local tribunals tried to apply the universal and stringent canons? Could judges in theory force potential heretics to confess? Can privileges exempt a heretic from trial and punishment? What if a pope's regulation on the heretics, e.g., the Cathars, conflicted with what Augustine of Hippo prescribed against the Donatists (which appears often in the *Decretum Gratiani*)? Examining legal writings from the second half of the twelfth and the thirteenth centuries, such as Bernard's *Glossa*, can provide insights and sources to deal with such questions.<sup>17</sup> Furthermore, legal writings such as glosses by canonists who often have experience functioning in Church courts also offer historians a window to investigate the practiced canon law on heresy, especially if studied

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<sup>15</sup> The phrase "inquisitores hereticorum" emerged as early as 1233 in a text from Count Raymond VII of Toulouse (d. 1249). Several months after the promulgation of the *Decretales*, Raymond of Peñafort, the editor of this compilation, mentioned "[i]nquisitor a sede Apostolica constitutus" in his *consilium* on the treatment of heretics. Five years later, the most common designation for medieval heresy inquisitors, i.e., "inquisitores heretice pravitatis," appeared for the first time in Pope Gregory IX's letter *Actore Deo* from 3 May, 1238. See Henry Ansgar Kelly, "The Fourth Lateran Ordo of Inquisition Adapted to the Prosecution of Heresy," 83–84.

<sup>16</sup> For a recent study that contains a discussion of inquisitorial records, see Vasil Bivolarov, *Inquisitoren-Handbücher: Papsturkunden und juristische Gutachten aus dem 13. Jahrhundert mit Edition des Consilium von Guido Fulcodii* (Wiesbaden: Harrassowitz Verlag, 2014).

<sup>17</sup> Another important kind of judicial resources that should be studied together is contemporary consultation texts that were circulated among the inquisitors. An recent compilation of these texts is Riccardo Parmeggiani, *I consilia procedurali per l'Inquisizione medievale (1235–1330)* (Bologna: Bononia University Press, 2011). For English translations of some of these texts, see Arnold and Biller, *Heresy and Inquisition in France, 1200–1300*, 221–290.

together with the mid-thirteenth-century inquisition records, such as those from Languedoc,<sup>18</sup> as well as with the contemporary consultation texts circulated among the inquisitors.<sup>19</sup>

Unfortunately, efforts taken to utilize canonical-jurisprudential writings to study either medieval heresy or the development of canonical science are not enough. Heinrich Heitmeyer's detailed examination of Huguccio's *Summa decretorum* concerning sacraments by heretics and simonists,<sup>20</sup> Titus Lenherr's monograph on one of the so-called *Causae haereticorum*, i.e., *Causa* 24 of Gratian's *Decretum* and decretists' comments on it,<sup>21</sup> and Ruggero Maceratini's works on the *glossae ordinariae* to both the *Decretum* of Gratian and the *Codex Justinianus*<sup>22</sup> are still the most important among the small group of such studies. However, the fundamental text that accompanied thirteenth-century law scholars and students' studying of the Church laws on heresy, including the most recent conciliar and papal decrees that are codified in the first authoritative and exclusive canon law collection, still has not been investigated on this topic.

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<sup>18</sup> Scholars in recent decades have been making such records available. See, for instance, "The Genesis of Inquisition Procedures and the Truth-Claims of Inquisition Records: The Inquisition Registers of Languedoc, 1235–1244," <https://www.york.ac.uk/res/doat/>. MS Toulouse, Bibliothèque Municipale, 0609, contains inquisition registers between 1245–1246, has also been fully digitized at [https://bvmm.irht.cnrs.fr/consult/consult.php?REPRODUCTION\\_ID=620](https://bvmm.irht.cnrs.fr/consult/consult.php?REPRODUCTION_ID=620). Jean Duvernoy, "Liste des textes inédits" (<http://jean.duvernoy.free.fr/text/listetexte.htm>), provides a full transcription of this and other later inquisition registers. For a recent edition and translation of late-thirteenth-century inquisition records, see Peter Biller, C. Bruschi, and S. Sneddon, eds., *Inquisitors and Heretics in Thirteenth-Century Languedoc: Edition and Translation of Toulouse Inquisition Depositions, 1273–1282*. Studies in the History of Christian Traditions, 1573-5664; v. 147. (Leiden; Boston: Brill, 2011).

<sup>19</sup> See Sackville, *Heresy and Heretics in the Thirteenth Century*, 114–153; For English translations of some of these texts, see Arnold and Biller, *Heresy and Inquisition in France, 1200–1300*, 221–290.

<sup>20</sup> Heinrich Heitmeyer, *Sakramentenspendung bei Häretikern und Simonisten nach Huguccio* (Rome: Verlagsbuchhandlung der Päpstlichen Gregorianischen Universität, 1964).

<sup>21</sup> See also n. 9 above for Titus Lenherr, *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa ordinaria des Johannes Teutonicus* (St. Ottilien: EOS Verlag, 1987).

<sup>22</sup> Maceratini, "Innocenzo III, il Concilio Lateranense IV e lo status giuridico dell'eretico nella glossa ordinaria al Decreto di Graziano ed in quella di accursio al Codice di Giustiniano," 19–58; Maceratini, *La glossa ordinaria al Decreto di Graziano e la glossa di accursio al Codice di Giustiniano*.

That is, Bernard of Parma's *Glossa* to X 5.7 in Pope Gregory IX's *Decretales*, which both the present chapter and the following one will scrutinize.

This chapter will examine the ordinary glosses to X 5.7.1-9, thus stopping before X 5.7.10, the famous *Vergentis in senium* mentioned above. This papal decretal for the first time straightforwardly links the crime of heresy to the Roman law concept of *lèse-majesté*, thus marking a watershed in the canonical understanding of heresy during the Middle Ages. Canons discussed in this chapter, on the other hand, provide a series of rulings for diverse issues regarding heresy. The overall structure is unsystematic, and the subjects for rulings range from heretics, people who do not correct heretics, to bishops who provide heritages to heretics/pagans. Only in X 5.7.9, i.e., the *Ad abolendam* of Pope Lucius III (also the last canon to which the *Glossa* is scrutinized in this chapter), have we a relatively comprehensive and systematic consideration of heretics.

In terms of the *Glossa*, in total, there are thirty-three glosses to these first nine canons of X 5.7. Specifically, X 5.7.2, 4, and 7 each has one gloss; X 5.7.1, 3, 5, and 6 each has three glosses; X 5.7.8 has four glosses; and X 5.7.9, the canon *Ad abolendam*, has fourteen glosses. The number of glosses of each canon roughly matches the length of that canon, that is, the longer the canon the more points Bernard found himself should explicate. The length of each gloss, nevertheless, has nothing to do with the length of the canon that it comments on. Only one gloss, for instance, has been composed for the short X 5.7.4 in the *Glossa*. However, it is a sophisticated comment of notable length and with many allegations that deserves careful examination. A couple of glosses to X 5.7.9, a rather long canon, on the other hand, have simply one sentence or even just an allegation.

Thus, the selection of glosses to be analyzed both in this chapter below and in this dissertation does not depend on the lengths of and the number of allegations in the glosses, nor does it favor the longer canons and their glosses. I have extracted distinctive themes, representing important juridical ideas in glosses of the titles chosen. Glosses are selected as they embody these themes either per se or in their allegations. One even encounters glosses where the glossator hid at least part of his real thinking or attitude in specific sections of certain allegations. In other words, sometimes a brief gloss contains an allegation that was carefully selected by the glossator to imply a point that he was hesitant about stating state directly. The glosses selected for detailed analysis, one third of the total in this chapter, are organized under a series of themes, and translated and discussed below. Glosses that simply employ synonyms to explain the canons' points, merely refer to other canons on the same topic without detectable subtexts, or do not demonstrate particularly representative juridical thought are not discussed in this chapter.

## **2.2 Reaching for a Juridical Definition of Heresy**

### **2.2.1 *Infidelis and Haereticum***

The *Glossa* offers a clear and detailed definition of heresy in its comment on the third canon of X 5.7, where the word “haereticum” is mentioned for the first time in this title. The flexibility of the concept, however, requires Bernard to establish some legal definitions and to probe implications of heresy from the very beginning. Most of the canons in this title come from the *QCA*, in a broadly chronological order. Apparently, Raymond of Peñafort did not feel the need to highlight the concept of heresy—which surely would be familiar to thirteenth-century churchmen—when he gathered and edited the first two canons.

#### **X 5.7.1**

| Transcription                     | Translation                  |
|-----------------------------------|------------------------------|
| Stephanus Papa omnibus Episcopis. | Pope Stephan to All Bishops. |

|  |   |
|--|---|
| Dubius <u>in fide</u> infidelis est; nec eis omnino <u>credendum est</u> , qui fidem veritatis ignorant. | A person who has doubts <u>about the faith</u> is unbelieving/untrustworthy ( <i>infidelis</i> ). <u>Credibility</u> is completely lacking in people who are ignorant of the truth. |
|--|---|

### X 5.7.2

| Transcription   | Translation   |
|---|---|
| Leo Papa.   | Pope Leo.   |
| Qui alios, cum potest, ab errore <u>non revocat</u> , se ipsum errare demonstrat. | He who <u>does not recall</u> others from error when he is able, demonstrates that he himself errs. |

One of the continuous issues throughout the *Decretales* that the *Glossa* as an educational text treats is the succinctness, often also the vagueness, of the canons. The glosses are, therefore, responsible for both explicating concepts and delving into their implications.<sup>23</sup> The *Glossa* for canon 1 implies that a person who is *infidelis* equals a heretic in the legislation of Roman law. This was decades before Thomas Aquinas (d. 1274) in his *Summa theologica* straightforwardly claimed that heresy “is a subspecies of unbelief (*sub infidelitate continentur*).”<sup>24</sup> The matter is, however, not spelled out explicitly, and the medieval law student had to look into the allegations to follow it. The first allegation in the gloss on “about the faith (*in fide*)” points the reader to the *Codex Justinianus*, book one, title five, “Heretics, Manichaeans, and Samaritans (*De haereticis et manichaeis et samaritis*),” and a direct definition of heretics: “heretics... are included those who are found to deviate from the doctrine and path of the Catholic Religion (*Haereticorum autem vocabulo continentur et latis adversus eos sanctionibus debent succumbere, qui vel levi*

<sup>23</sup> For a detailed discussion of twelfth-thirteenth-centuries canonists’ definitions of heresy and the historical context, see Othmar Hageneder, *Il sole e la luna: Papato, impero e regni nella teoria e nella prassi dei secoli XII e XIII* (Milan: Vita e Pensiero, 2000), 69–130; and “Häresiebegriff bei den Juristen des 12. und 13. Jahrhunderts,” in W. Lourdaux and D. Verhelst, eds., *The Concept of Heresy in the Middle Ages (11th–13th C.): Proceedings of the International Conference Louvain, May 13–16, 1973* (Leuven: University Press, 1976), 50.

<sup>24</sup> *Summa theologica*, II-II, Q. 11, Art. 1, contra.

*argumento iudicio catholicae religionis et tramite detecti fuerint deviare.*) [Cod. 1.5.2.1].”<sup>25</sup>

Maceratini has briefly summarized the diverse definitions of heresy in Roman law collections, and here, it seems, the gloss precisely picks up what he regards as “la definizione propriamente giuridica.”<sup>26</sup> Also significant is that after the edition represented by MS F, which was produced in 1239, the *Glossa* curiously added Roman *slavery* law texts, rather than citing more laws following this definition from the same title, which all deal with *heresy*. This will be further discussed in the section on Roman law of this chapter.

### 2.2.2 New Conjecture versus New Sect

Canon 2 of this title comes from a letter of Pope Leo I (440–461) addressing the dualistic Priscillian heresy. However, the historical context or the description of the specific issue was completely omitted when this text became a canon in the *Decretales*.<sup>27</sup> The result is an imprecise ruling that in the textual context of *De haereticis* can be interpreted in an extreme manner as “whoever does not correct a heretic is a heretic him/herself.” This understanding not only is harsh, but also potentially conflicts with later more nuanced regulations. The *Glossa* here, as we will see in section III of this chapter, analyzes in detail the applicability of this short text under different circumstances, but essentially avoids confronting this extreme definition of heretic.

The most comprehensive definition of heresy in the *Glossa* on this title, however, comes from the gloss on “omnem haereticum” in X 5.7.3, which is also the first canon in this title that

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<sup>25</sup> The Latin text here is taken from *Codex Iustinianus recognovit et retractavit Paulus Krueger*, <https://droitromain.univ-grenoble-alpes.fr/>. The English translation is taken from Frier et al., trans. *The Codex of Justinian*, 189.

<sup>26</sup> See Maceratini, “Innocenzo III, il Concilio Lateranense IV e lo status giuridico dell’eretico nella Glossa ordinaria al Decreto di Graziano ed in quella di Accursio al Codice di Giustiniano,” 20–21.

<sup>27</sup> The original letter claims that bishops who do not forbid the possession of apocryphal writings or permit the Priscillian writings to be read in churches are considered heretics.

directly uses the word “haereticum.” Mostly taken from Tancred’s *Glossa ordinaria* on *Comp. I.* 5.6.3,<sup>28</sup> the *Glossa* here seems to demonstrate a shared understanding of the legal definition of heresy among the thirteenth-century canonists when compared with the equally influential *Glossa ordinaria* to Gratian’s *Decretum* on C. 24 q. 3 dict. ante c. 26, s.v. *haeresim*. This gloss offers a comprehensive and systematic definition of *haereticus*:<sup>29</sup>

|  |   |
|--|---|
| <b>C. 24 q. 3 dict. ante c. 26 glos. ord. s.v. <i>haeresim</i></b> <sup>30</sup>   | <b>X 5.7.3 glos. ord. s.v. <i>omnem haereticum</i></b> <sup>31</sup>  |
| A heretic is designated in many ways. The first is that whoever doubts in the faith is unbelieving/untrustworthy ( <i>infidelis</i> ), as in <b>extra. de haere. dubius</b> . <sup>32</sup> The second is that | A heretic is designated in many ways: he is called a heretic, who subverts the sacraments of the Church, like a simoniac. [See] <b>i. q. i. eos qui per pecuniam</b> , <sup>41</sup> and <b>vi. q. i. +cap.</b> |

<sup>28</sup> A large part of this gloss indeed comes from Tancred’s *Glossa ordinaria* on *Comp. I.* 5.6.3. According to both MS BAV, Vat. lat. 2509, fol. 79r (original version of Tancred’s *Glossa* on *Comp. I.*) and MS Vat. lat. 1377, fol. 83v (final version), only the last category, regarding “who understands wickedly concerning the sacraments of the Church,” and the allegation of X 5.7.9, i.e., the *Ad abolendam*, have been added by Bernard of Parma. Another selected manuscript of Tancred’s *Glossa* on *Comp. I.*, MS Paris, BnF lat. 3932, fol. 99r, however, only shows a lemma for “*haereticum*” without any comments. MS BAV, Vat. lat. 1365, fol. 554v, representing the version of Bernard of Parma’s *Glossa* published between 1243 and 1245, together with the 1582 *ER* (vol. 2, col. 1670), includes the siglum for Tancred “t/T.” at the end of the gloss, while MSs BAV, Vat. lat. 1383, Borgh. 237, and Munich, BSB, Clm 26301 do not.

<sup>29</sup> Laurentius Hispanus’ *Glossa Palatina* on C. 24 q. 3 c. 26 might constitute a source for the last part of this gloss. See Hageneder, “Häresiebegriff bei den Juristen des 12. und 13. Jahrhunderts,” 50.

<sup>30</sup> C. 24 q. 3 c. 25 glos. ord. s.v. *haeresim*: “Vario modo dicitur haereticus. Uno modo quicumque est dubius in fide, infidelis est, ut **extra. de haere. dubius**. Secundo modo dicitur haereticus omnis simoniacus, ut **i. q. i. quisquis**. Tertio omnis praecisus ab ecclesia, secundum quod excommunicatus dicitur haereticus, ut **iv. q. i. cap. ii**. Quarto modo omnis qui male interpretatur sacram scripturam, ut **infra. ead. haeresis**. Quinto modo qui novam opinionem invenit, ut **infra. ea. haereticus**. Sexto modo qui vult auferre privilegium Romanae ecclesiae, ut **xxii. dist. omnes**. Septimo qui transgreditur praecepta sedis apostolicae, ut **supra xix. d. nulli**. Item quandoque large dicitur haereticus omnis, qui non tenet articulos fidei, et secundum hoc Iudaei et gentiles sunt haeretici, et secundum hoc non omnis haereticus est excommunicatus. Stricte sumitur haereticus omnis qui remotus est ab ecclesia, quia errat in fide: et secundum hoc omnis haereticus est excommunicatus, ut **extra. de haere. ad abolendam et cap. excommunicamus**.”

<sup>31</sup> X 5.7.3 glos. ord. s.v. *omnem haereticum*: “Haereticus multis modis dicitur: ille dicitur haereticus, qui pervertit sacramenta Ecclesiae, ut symoniacus. **i. q. i. eos qui per pecuniam**. et **vi. q. i. +cap. nos sequentes.**+ §. **sed licet**. Item qui scindit se ab unitate Ecclesiae. **vii. q. i. denique**. Item omnis excommunicatus. **iiii. q. i. quod autem hii**. Item qui errat in expositione sacrae scripturae. **xxiii. q. iii. haeresis**. Et item qui confingit novam sectam, vel confictam sequitur. **xxiii. q. iii. haereticus**. Item qui aliter sentit de articulis fidei, quam Romana Ecclesia, **xxiii. q. i. hec est fides**. et **c. quoniam**., vel qui male sentiunt de sacramentis Ecclesiae. **infra. e. ad abolendam. in prin.** +Tanc.+”

<sup>32</sup> X 5.7.1 [Fr. v.2 col. 778].

<sup>41</sup> C. 1 q. 1 c. 21 [Fr. v.1 cols. 364-366].



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|--|---|
| <p>every simoniac is said to be a heretic, as in <b>i. q. i. quisquis.</b><sup>33</sup> The third is that whoever is cut away from the Church through excommunication is a heretic, as in <b>iv. q. i. cap. ii.</b><sup>34</sup> The fourth is that who misinterprets the scriptures, as in <b>infra ead. haeresis.</b><sup>35</sup> The fifth is that whoever invents a new conjecture (<i>novam opinionem invenit</i>), as in <b>infra ea. haereticus.</b><sup>36</sup> The sixth is that whoever wants to deprive the Roman Church of its privileges, as in <b>xxii. dist. omnes.</b><sup>37</sup> The seventh is that whoever disobeys the precepts of the Apostolic See, as in <b>xix. d. nulli.</b><sup>38</sup> Likewise, sometimes broadly speaking whoever does not hold the articles of faith and therefore Jews and gentiles are heretics, and thus not every heretic is excommunicated. Strictly</p> | <p><b>nos sequentes.+ §. sed licet.</b><sup>42</sup> Likewise, he who separates himself from the unity of the Church. [See] <b>vii. q. i. denique.</b><sup>44</sup> Likewise, all excommunicated persons. [See] <b>iiii. q. i. quod autem hii.</b><sup>45</sup> Likewise, he who errs in exposition of the sacred scripture. [See] <b>xxiii. q. iii. haeresis.</b><sup>47</sup> And likewise, he who fabricates a new sect (<i>confingit novam sectam</i>), or follows a fabricated one. [See] <b>xxiii. q. iii. haereticus.</b><sup>49</sup> Likewise, he who in any other way understands differently the articles of the faith from the Roman Church, [see] <b>xxiii. q. i. hec est fides</b><sup>50</sup> and <b>c. quoniam.</b><sup>51</sup> or who understands wickedly (<i>male</i>) concerning the sacraments of the Church, [see] <b>infra e. ad abolendam. in prin.</b><sup>52</sup> +<b>Tanc.</b>+</p> |
|--|---|

<sup>33</sup> C. 1 q. 1. c. 5 [Fr. v.1 col. 358].

<sup>34</sup> C. 4 q. 1 c. 2 [Fr. v.1 col. 537].

<sup>35</sup> C. 24 q. 3 c. 27 [Fr. v.1 cols. 997-998] (also used in the *Glossa* to the *Decretales*).

<sup>36</sup> C. 24 q. 3 c. 28 [Fr. v.1 col. 998]. Here Gratian, citing Augustine, is giving a definition for a “heretic,” which is also used in Bernard’s *Glossa* to the *Decretales*.

<sup>37</sup> Dist. 22 c. 1 [Fr. v.1 col. 73].

<sup>38</sup> Dist. 19 c. 5 [Fr. v.1 col. 61].

<sup>42</sup> C. 6 q. 1 dict. post c. 19 [Fr. v.1 col. 559].

<sup>43</sup> “ii” in MS F, which is likely a scribal mistake.

<sup>44</sup> C. 7 q. 1 c. 9 [Fr. v.1 cols. 569-570].

<sup>45</sup> C. 4 q. 1 c. 2 [Fr. v.1 col. 537].

<sup>46</sup> “q. i” in MS F, which is likely a scribal mistake, or that the manuscript of the *Decretum* consulted by the MS F edition is different. For the same mistake happens in the following allegation here, see n. 48.

<sup>47</sup> C. 24 q. 3 c. 27 [Fr. v.1 cols. 997-998].

<sup>48</sup> “q. i” in MS F. See n. 46.

<sup>49</sup> C. 24 q. 3 c. 28 [Fr. v.1 col. 998].

<sup>50</sup> C. 24 q. 1 c. 14 [Fr. v.1 col. 970].

<sup>51</sup> C. 24 q. 1 c. 25 [Fr. v.1 cols. 975-976].

<sup>52</sup> X 5.7.9 [Fr. v.2 cols. 780-782].

|  |  |
|--|--|
| speaking a heretic is whoever has been removed from the Church when he/she errors in the faith and hence every heretic should be excommunicated, as in <b>extra. de haere. ad abolendam.</b> <sup>39</sup> and <b>cap. excommunicamus.</b> <sup>40</sup> |  |
|--|--|

It is difficult to be clear about the chronological relationship of these two glosses, yet not so to observe the similarities between them. But more importantly, one thing often overlooked by modern scholars is that they differ in a significant detail. While it is “whoever invents a new conjecture (*novam opinionem invenit*)” is a heretic in the left column, it is “he who fabricates a new sect (*confingit novam sectam*), or follows a fabricated one” in the right. Further, both glosses here cite the same allegation from Augustine of Hippo’s *De utilitate credendi*, but apparently they pay attention to different parts of it: Augustine in this text argued that a heretic is a person who either gives birth to or follows false and new opinions.<sup>53</sup> The *Glossa* to the *Decretales* in this sense of focusing on sects and followers also, compared with the one to the *Decretum*, also steps further from the thirteenth-century definition of heresy made by influential theologians. Thomas Aquinas in his discussion of heresy and heretics largely followed Augustine’s definition above.<sup>54</sup> Similarly, Bishop Robert Grosseteste of Lincoln’s (d. 1253) definition, which was quickly quoted in his contemporary English chronicles, stated that “[h]eresy is an opinion (*sententia*) chosen by human faculties, contrary to Holy Scripture, openly held, and pertinaciously defended.”<sup>55</sup>

<sup>39</sup> X 5.7.9 [Fr. v.2 cols. 780-782].

<sup>40</sup> X 5.7.13/15 [Fr. v.2 cols. 787-789/col. 789], as both canons start with “excommunicamus.”

<sup>53</sup> C. 24 q. 3 c. 28 [Fr. v.1 col. 998]: “Hereticus est, qui...falsas ac novas oppiniones vel gignit, vel sequitur.”

<sup>54</sup> See *Summa theologica*, II-II, Q. 11, Art. 1.

<sup>55</sup> “Haeresis est sententia humano sensu electa, scripturae sacrae contraria, palam edocta, pertinaciter defensa.” Henry Richards Luard, ed., *Flores historiarum*, vol. 2 (London: H. M. Stat. Off, 1890), 392. This passage was also quoted in Matthew Paris, *Matthæi Parisiensis, monachi Sancti Albani, Chronica majora*, ed. Henry Richards Luard,

This emphasis on “new sect” in the *Decretales’ Glossa* echoes the specific mention of contemporary heretical groups such as the Cathars in X 5.7.8<sup>56</sup> and especially X 5.7.15.<sup>57</sup> The formation of sects of heresy is one of the major legal concerns for its definition in the *Glossa*.<sup>58</sup> Furthermore, the *Glossa* of the *Decretales* here also reflects its contemporary papal-ecclesiastical concern about heretics through this novel emphasis on the formation of heretical *sects*: a sense of self-conscious gathering that would remain a key feature of medieval literature on heresy.<sup>59</sup> Moreover, this new set of definition of heretics would soon become influential in the medieval canonical landscape. For example, it was largely repeated by eminent canonists such as Hostiensis (d. 1271).<sup>60</sup>

Admittedly, this definition also contains vague language, such as “who understands wickedly (*male*) concerning the sacraments of the Church” towards the end of X 5.7.3 *glos. ord. s.v. omnem haereticum*. It has to wait for canon X 5.7.9 to clarify its meaning—that is, understanding the sacraments differently from the Roman Church.<sup>61</sup> Nevertheless, this

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vol. 5 (London: Longman, 1872), 401. The translation here is taken from Edward Peters, *Inquisition* (Berkeley: University of California Press, 1989), 42.

<sup>56</sup> X 5.7.8 [Fr. v.2 cols. 779-780]: “Quia in partibus Tolosanis, haereticorum, quos alii Catharos, alii Patarenos, et alii aliis nominibus vocant.”

<sup>57</sup> X 5.7.15 [Fr. v.2 col. 789]: “Excommunicamus et anathematizamus universos haereticos, Catharos, Patarenos, Pauperes de Lugduno, Pasaginos, Iosepinos, Arnaldistas, Speronistas, et alios.”

<sup>58</sup> By contrast, C. 24 q. 3 c. 39 [Fr. v.1 cols. 1001-1006], in which Isidore extensively lists different Christian heretical sects, is not cited in the *Glossa* to the *Decretum*.

<sup>59</sup> See Euan Cameron, *Enchanted Europe: Superstition, Reason, and Religion 1250–1750* (New York: Oxford University Press, 2010), 8–9.

<sup>60</sup> See Alexander Patschovsky, “Spuren böhmischer Ketzerverfolgung in Schlesien am Ende des 14. Jahrhunderts,” in Miloslav Polívka and Michal Svatos, eds., *Historia docet: sborník prací k počtě šedesátých narozenin Prof. PhDr. Ivana Hlaváčka, CSc.* (Praha: Historický ústav Československé akademie věd, 1992), 373.

<sup>61</sup> X 5.7.9 [Fr. v.2 cols. 780-782]: “Universos, qui de sacramento corporis et sanguinis Domini nostri Iesu Christi, vel baptismate, seu peccatorum confessione, vel de matrimonio vel reliquis ecclesiasticis sacramentis aliter sentire aut docere non metuunt, quam sacrosancta Romana ecclesia +*praedicat et observat* [It is likely a scribal mistake for omitting this phrase, as the *Glossa ordinaria* of this manuscript (MS F) does include a gloss on it.], et generaliter, quoscunque eadem Romana ecclesia vel+ *ut* singuli episcopi per dioeceses suas cum consilio clericorum, vel clerici

explanation of heresy was comprehensive enough to guide the medieval students through their study of this long title.

## 2.3 The Scholastic *Glossa* on Heresy

“[T]he dialectical method of laying out contextual, categorical, and etymological distinctions”<sup>62</sup> employed by the *Glossa* to the *Decretales* has been discussed in this dissertation.<sup>63</sup> In the case of X 5.7, the usage of the dialectical method seems to increase, with more attention paid to the juridical details, as the *Glossa* gets to the late-twelfth- and then thirteenth-century papal decretals and conciliar canons.

### 2.3.1 Mercy, Ecclesiastical Hierarchy, and Apostolic Authority

The first dialectical treatment by the *Glossa* on heresy appears in the gloss on the phrase “non revocat” in X 5.7.2. We have seen this short canon above and have discussed the potential extreme inclusivity in legal practice that it may lead to. The *Glossa* here does not dwell on the issue of definition, but narrows down the scope of the culpable by laying out contextual distinctions. In terms of the first part of the gloss, it is sufficient to say that it begins with a short but straightforward delimitation of the canon, which is followed by a couple of allegations. But

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*ipsi sede vacante* cum consilio, si oportuerit, episcoporum vicinorum haereticos iudicaverint, vinculo perpetui anathematis innodamus.” The *Glossa* then employs an allegation from Pope Innocent I (Dist. 11 c. 11 [Fr. v.1 col. 26]) in its gloss on *praedicat et observat* to strengthen this interpretation. Nonetheless, it should be noted that the other allegation in the same gloss points to a paragraph in Jerome’s commentary on Galatians (C. 24 q. 3 c. 27 [Fr. v.1 cols. 997-998]). This paragraph defines “heretic” as “[w]hoever understands Scripture in a way other than how the Holy Spirit intended, even if he does not actually leave the church (*Quicumque igitur aliter scripturam intelligit, quam sensus Spiritus sancti flagitat, a quo scripta est, licet ab ecclesia non recesserit, tamen hereticus appellari potest*).” For the English translation here see Saint Jerome, *Commentary on Galatians*, trans. Andrew Cain, Fathers of the Church 121 (Washington, D.C.: Catholic University of America Press, 2010), 233. For the Latin text of this commentary, see G. Raspanti, ed., *Commentarii in epistolam Pauli apostoli ad Galatas*, CCSL, vol. 77A (Turnhout: Brepols, 2006).

<sup>62</sup> Somerville and Brasington, eds. and trans., *Prefaces to Canon Law Books in Latin Christianity*, 143.

<sup>63</sup> We already have seen that the *Glossa* in implementing this method occasionally even manipulates the canons to the extent that it distorts/challenges their original intention of them to suit its own agenda.

one must analyze the allegations to understand the “principle” behind them, which connects different legal systems and areas, that makes them supportive of this delimitation, because a superficial reading of the cited texts reveals nothing that contains the meaning of “when one can.” This will be dealt with in the section below on the “underlying system” of the *ius commune*.

### X 5.7.2 glos. ord. s.v. non revocat

| Transcription  | Translation  |
|--|--|
| <p>Cum potest. <b>ff. ad leg. Aquil. scientiam.</b>,<sup>64</sup> et <b>lxxxiii. di. error.</b>,<sup>65</sup> et ar. <b>supra t. proxi. etsi.</b><sup>66</sup> et <b>ii. q. vii. negligere.</b><sup>67</sup> Sed nunquid istud pertinet ad omnes? Respondo: de crimine iam commisso soli praelati tenentur corripere. <b>xxiii. q. iii.</b><sup>68</sup> <b>duo ista.</b><sup>69</sup> et <b>c. ita plane.</b><sup>70</sup></p> <p>A peccato autem committendo quilibet tenetur alium occulte corripere. <b>infra e. cum ex iniuncto.</b><sup>71</sup> et ar. <b>xxiii. q. iii. ipsa pietas.</b><sup>72</sup> et <b>xxii. q. v. hoc videtur.</b><sup>73</sup> et <b>xciii. di. diaconi.</b><sup>74</sup> et <b>supra de cog. spirituali. tua.</b><sup>75</sup></p> | <p>When one can. [See] <b>ff. ad leg. Aquil. scientiam.</b>, and <b>lxxxiii. di. error.</b>, the argument in <b>supra t. proxi. etsi.</b>, and <b>ii. q. vii. negligere.</b> But can that pertain to all? I respond: in the case of a crime already committed, only prelates (<i>praelati</i>) are obligated to reprove (<i>corripere</i>). [See] <b>xxiii. q. iii.</b><sup>77</sup> <b>duo ista.</b> and <b>c. ita plane.</b></p> <p>However, anyone is obligated to reprove (<i>corripere</i>) another privately for a sin about to be committed. [See] <b>infra e. cum ex iniuncto.</b>, and the arguments [in] <b>xxiii. q. iii.</b></p> |

<sup>64</sup> Dig. 9.2.45.

<sup>65</sup> Dist. 83 c. 3 [Fr. v.1 cols. 293-294].

<sup>66</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>67</sup> C. 2 q. 7 c. 55 [Fr. v.1 col. 501].

<sup>68</sup> “23. q. 4” in the 1582 *ER*, which matches the lemma “duo ista.”

<sup>69</sup> C. 23 q. 4 c. 35 [Fr. v.1 cols. 915-916].

<sup>70</sup> C. 23 q. 4 c. 6 [Fr. v.1 col. 900].

<sup>71</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>72</sup> C. 23 q. 4 c. 24 [Fr. v.1 col. 909-910].

<sup>73</sup> C. 22 q. 5 c. 8 [Fr. v.1 cols. 884-885].

<sup>74</sup> Dist. 93 c. 23 [Fr. v.1 cols. 326-327].

<sup>75</sup> X 4.11.7 [Fr. v.2 cols. 695-696].

<sup>77</sup> “23. q. 4” in the 1582 *ER*.

|   |   |
|---|---|
| <p>et <b>ii. q. vii. quapropter.</b><sup>76</sup> Sed duo intelliguntur in denuntiatione. +<u>Tanc.</u>+ </p> | <p><b>ipsa pietas.</b>, and <b>xxii. q. v. hoc videtur.</b>, and <b>xciii. di. diaconi.</b>, and <b>supra de cog. spirituali. tua.</b>, and <b>ii. q. vii. quapropter.</b> But both are realized through denunciation (<i>denuntiatione</i>). +<u>Tanc.</u>+ </p> |
|---|---|

After asking “[b]ut can it pertain to all?” the gloss proposes a dialectical qualification that essentially indicates not everyone who does not correct others’ error errs (or even becomes a heretic). More importantly, an examination of the allegations in this gloss reveals the lawyer’s underlying concern here: mercy. Firstly, it claims that “only clerics are obligated to reprove (*corripere*),” possibly referring to the denunciation procedure. Secondly, it discusses in what manner one should correct others’ err. The former argument invokes two allegations from Augustine of Hippo, one regarding episcopal pastoral duty (C. 23 q. 4 c. 35) and the other about one’s responsibility concerning another’s sin (C. 23 q. 4 c. 6). In the latter, Augustine in his letter to the Donatist bishop Parmenian implied that if a person without an official function (*personam*) does not correct another’s sin, he is not guilty as long as he does not participate in or approve the crime.<sup>78</sup> More importantly, both allegations mention mercy. The second part of this gloss supplements its former statement by adding that everyone should still chastise another secretly (*occulte*) for the idea of committing a crime. Therefore, as discussed above, the *Glossa* here does not clearly define heresy.

<sup>76</sup> C. 2 q. 7 c. 47 [Fr. v.1 cols. 499-500].

<sup>78</sup> C. 23 q. 4 c. 6 [Fr. v.1 col. 900]: “Ita plane, sociatur, id est si mali aliquid cum eis committit, aut committentibus fauet. Si autem neutrum facit, nullo modo sociatur. Porro, si addat tertium, ut non sit in uindicando piger, sed uel corripiat iustus in misericordia et arguat, uel etiam, si eam personam gerit, et ratio conseruandae pacis admittit, et coram omnibus peccantes arguat, ut ceteri timeant, remoueatur etiam uel ab aliquo gradu honoris, uel ab ipsa communionem sacramentorum, et hec omnia cum dilectione corrigendi, non cum odio persequendi faciat, plenissimum offitium non solum castissimae innocentiae, sed etiam diligentissimae seueritatis impleuit. Ubi autem cetera impediuntur, illa duo semper retenta incorruptum castumque custodiunt, ut nec faciat malum, nec approbet factum.”

But when we examine the other allegations in this gloss, the two underlying concerns of the *Glossa* emerge: the operation of the ecclesiastical system from the local level to the Roman Pontiff, and mercy as a starting point for assigning penance. Regarding the former, the first allegation points to a canon in the same title (X 5.7.12) from Innocent III, where the pope claimed that while a prelate by his own will can be accused by his subordinates, the latter should not perform the accusation “with a mind not only for reprehension, but also for reviling, recklessly ris[ing] up against the prelate.”<sup>79</sup> Nonetheless, meanwhile in the last allegation of this gloss all clerics are required to report to the Roman Church transgressors among clergy, i.e., bishops, presbyters, and deacons, of what the *auctoritas apostolica* has commanded, lest they cause disgrace to the Apostolic See.<sup>80</sup>

Mercy is implied again in another allegation from Augustine in this gloss.<sup>81</sup> One can only speculate how the *Glossa* carefully selected these allegations that on the one hand support its arguments while on the other hand keep implying to its readers the presence of mercy. In any case, it is clear that Bernard, drawing on Tancred, was trying to mitigate the harsh message of the canon, or, as Ivo of Chartres suggests in his preface to his *Decretum* and *Panormia*, to “interpret

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<sup>79</sup> X 5.7.12 [Fr. v.2 cols. 786-787]: “Rursus aliud est, quod praelatus sponte, de sua confisus innocentia, subditorum se accusationi supponit *propria voluntate*, in quo casu praemissum Domini verbum debet intelligi; et aliud quod subditus non tam animo reprehendendi quam detrahendi exurgit temerarius in praelatum, cum ei potius incumbat necessitas obsequendi.”

<sup>80</sup> C. 2 q. 7 c. 47 [Fr. v.1 cols. 499-500]: “Quapropter nec clericorum quisquam apostolicae offensae se confidat futurum immunem, si in his, que salubriter sequenda deprompsit auctoritas apostolica, sive episcopum, sive presbiterum, seu diaconum viderit excedentem, et non protinus ad aures Romani Pontificis deferre curaverit.”

<sup>81</sup> C. 22 q. 5 c. 8 [Fr. v.1 cols. 884-885]: “[V]idetur michi, quod se soluat ab hoc peccati vinculo, si indicet talibus, qui magis possunt prodesse quam obesse periuro, sive eum corrigendo, sive Deum pro eo placando, si et ipse confessionis sibi adhibeat medicinam.”

or moderate ecclesiastical rules so that he may refer to the kingdom of charity those matters that he teaches.”<sup>82</sup>

Such implicit employment of mercy in order to moderate the judicial application of canons by the *Glossa* also appears in X 5.7.6 *glos. ord. s.v. nihil conferant*. X 5.7.6 is a short canon forbidding present and future clerics from giving inheritance to non-Catholics—which certainly includes heretics—even if they were relatives.<sup>83</sup> The glossator here did not challenge the canon, which he actually further supported by citing canon 3 from the Fourth Lateran Council (X 5.7.13). But Bernard immediately offered a limit on it while painstakingly employing papal, theological, and conciliar sources encouraging judicial leniency.

**X 5.7.6 *glos. ord. s.v. nihil conferant***

| Transcription  | Translation   |
|--|---|
| Non distinguitur in morte vel in vita, ergo nec nos distinguamus: quia nichil capere possunt ex testamento. <b>infra e. excommunicamus. §. credentes.</b> <sup>84</sup> Causa pietatis forte posset ei dari <sup>85</sup> ne pereat fame. <b>lxxxvi. d.</b> <sup>86</sup> <b>pasce fame.</b> <sup>87</sup> Quia adhuc posset converti ad fidem: quia de nemine desperandum est. <b>de pen. d. vii. nemo.</b> <sup>88</sup> et <b>xxxii. q. ii.</b> <sup>89</sup> <b>ancillam.</b> <sup>90</sup> et ar. | No distinction is made according to death or life, therefore, we should make no distinction because they can receive nothing from a testament. [See] <b>infra e. excommunicamus. §. credentes.</b> By reason of charity ( <i>causa pietatis</i> ) perhaps something can be given to him [i.e., the non-Catholic], lest he dies of hunger, [see] <b>lxxxvi. d. pasce fame.</b> Because at this point he could be converted to the faith: since one should not give up on anyone. |

<sup>82</sup> Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 114.

<sup>83</sup> X 5.7.6 [Fr. v.2 col. 779]: “To those who are not Catholics, even if they were kinsmen, bishops and presbyters should not bestow. Indeed, this, which has been said regarding bishops and presbyters, should be understood by clergymen of the future.”

<sup>84</sup> X 5.7.13 [Fr. v.2 col. 788 §. 5].

<sup>85</sup> “dare” in MS F.

<sup>86</sup> “[lxxxii. di.]” in MS F, which is likely a scribal mistake.

<sup>87</sup> Dist. 86 c. 21 [Fr. v.1 col. 302].

<sup>88</sup> *De pen. D. 7 c. 1* [Fr. v.1 col. 1244].

<sup>89</sup> “xxii. q. ii” in MS F, which is likely a scribal mistake. Similarly, it is “xxiii. q.ii.” in MS BAV, Borgh. 237.

<sup>90</sup> C. 32 q. 2 c. 11 [Fr. v.1 col. 1123].



etiam ad hoc **xlii. di. quiescamus.**<sup>91</sup> et **xi. q. iii. quoniam multos.**<sup>92</sup> +Ber.+

[See] **de pen. d. vii. nemo.**, and **xxxii. q. ii. ancillam.**, and also the argument on this [in] **xlii. di. quiescamus.** and **xi. q. iii. quoniam multos.** +Ber.+

The humble tone of the *Glossa* here, with the word “perhaps,” indicates that the gloss is less about raising a juridical antithesis against the canon, but more about providing a judicial suggestion. But as I demonstrate below, through the allegations—most of which *do not concern heresy at all*—Bernard once more implied the principle of mercy that he believed should be applied to the treatment of heretics. Two allegations from Pope Leo I order pity toward judging young people in affairs such as entering marriage while separating from lovers with whom they have had children (C. 32 q. 2 c. 11). Another allegation, coming from the same pope, emphasizes the necessity of helping starving people (Dist. 86 c. 21). One allegation from John Chrysostom’s homilies underlines the hospitality demonstrated by Abraham as he showed it to people who came to him (Dist. 42 c. 2). Finally, the allegation from Pope Gregory VII (1073–1085) from one of his 1078 Roman Synods<sup>93</sup> at the end (C. 11 q. 3 c. 103) touches upon the group of the excommunicated, which is closely related to the status of the heretics. As a “relaxation of the Apostolical rule,”<sup>94</sup> Gregory VII here permits, out of *miser cordia*, communicating with the excommunicated under some situations, such as between family members, providing that the interaction does not support their obstinacy.<sup>95</sup> This rule, later reaffirmed by Pope Paschal II

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<sup>91</sup> Dist. 42 c. 2 [Fr. v.1 col. 152].

<sup>92</sup> C. 11 q. 3 c. 103 [Fr. v.1 cols. 672-673].

<sup>93</sup> For an examination of the documentary evidence concerning these and the other Gregorian councils, including conciliar legislations from 1078 and 1080 in Gregory VII’s Register, see Robert Somerville, “The Councils of Gregory VII,” *Studi Gregoriani* 13 (1989): 33–53, esp. 44–52.

<sup>94</sup> Herbert Thorndike, *The Theological Works of Herbert Thorndike*, vol. 1 (J. H. Parker, 1844), pt. 2, 566, n. r.

<sup>95</sup> C. 11 q. 3 c. 103 [Fr. v.1 cols. 672-673]: “Quoniam multos peccatis nostris exigentibus pro causa excommunicationis perire cottidie cernimus, partim ignorantia, partim nimia simplicitate, partim timore, partim

(1099–1118) and incorporated into Gratian’s *Decretum*, is clearly an influential one.<sup>96</sup> The *Glossa*, extracting the principle of mercy from a variety of canonical traditions, thus constitutes here a nuanced counter-balance in its legal interpretation of a strict canon.

### 2.3.2 From Heretical Writings to Outdated Laws: A Canonist’s Concern over Legitimacy, Usefulness, and Apostolic Authority

One of the key aspects of the Early Church’s struggle with heresy was obliterating the heretical writings. This was inherited by Raymond of Peñafort in the *Decretales*. X 5.7.4, a short canon from Pope Gregory I (590–604) regarding the writings of Pelagius and his disciple Coelestius, argues that the legitimacy of their writings is negated, since the authors of them are condemned. At first glance, the *Glossa* for this canon follows the classic *sic et non* dialectical approach. It lays out statements and citations supporting the canon, and then raises counter arguments by bringing up exceptional contexts. But the examination below will reveal that what Bernard was concerned about is not only about the legitimacy of the writings of heretics, but also about the legitimacy of different laws—especially the study of them.

#### X 5.7.4

|                                 |                                   |
|---------------------------------|-----------------------------------|
| Gregorius Anastasio Antiocheno. | Gregory to Anastasius of Antioch. |
|---------------------------------|-----------------------------------|

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etiam ex necessitate, deuicti misericordia anathematis sententiam ad tempus, prout possumus, temperamus. Apostolica itaque auctoritate ab anathematis uinculo hos subtrahimus, uidelicet uxores, filios, seruos, ancillas, seu mancipia, nec non rusticos et seruientes nec non et omnes alios, qui non adeo curiales sunt, ut eorum consilio scelera perpetrentur, et eos, qui ignoranter excommunicatis communicant, siue illos, qui communicant cum illis, qui excommunicatis communicant. Quicumque autem aut orator, siue peregrinus, aut uiator in terram excommunicatorum deuenerit, ubi non possit emere uel non habeat unde emat, ab excommunicatis accipiendi damus licentiam. Et si quis excommunicatis non in sustentatione superbiae, sed humanitatis causa dare aliquid uoluerit, non prohibemus.”

<sup>96</sup> See Uta-Renate Blumenthal, “The Collection of St Victor (= V), Paris: Liturgy, Canon Law, and Polemical Literature” in Roger E. Reynolds, Kathleen G. Cushing, and Richard Gyug, eds., *Ritual, Text, and Law: Studies in Medieval Canon Law and Liturgy Presented to Roger E. Reynolds* (Aldershot; Burlington: Ashgate, 2004), 303. See also Jean Edme Auguste Gosselin, *The Power of the Pope During the Middle Ages*, vol. 2 (London: C. Dolman, 1853), 87–88.

|   |  |
|---|--|
| Fraternitatis tue, et infra. Cum <u>Celestinus</u> <u>atque Pelagius</u> in Ephesina synodo sint dampnati, quomodo poterunt illa capitula recipi, quorum dampnantur auctores? | Of your fraternity, and below. Since <u>Coelestius and Pelagius</u> were condemned in the Synod of Ephesus, how can those chapters be accepted, whose authors are condemned? |
|---|--|

The first part of X 5.7.4 *glos. ord. s.v. Celestinus atque Pelagius* below supports the canon by adding that the usefulness of the writings by heretics does not excuse their condemnation. The citation of X 2.20.47 further parallels the legitimacy of writings in theology with the validity of evidence in courts, claiming that hearsay evidence can only be used in marital cases concerning consanguinity when it comes from at least two persons of good faith without infamy.<sup>97</sup> This allegation actually implies the underlying dual structure of discussion for the rest of the gloss: on the one hand, the legitimacy of useful products created by problematic sources (such as writings by heretics) in the realm of religion; on the other hand, the usage of questionable sources in the realm of law.

In the aspect of religion, one can see here that usefulness is a controversial and difficult point for the argumentation of legitimacy. Augustine of Hippo's arguments against Petilian the Donatist and Faustus of Mileve are cited, where Augustine defends the validity of sacraments by heretics and writings by non-Christian authors against pagans where necessity demands. To support further this defense of legitimacy based on usefulness, the gloss takes the example of Origen (d. 253/254), one of whose homilies entered the *Decretum* of Gratian.<sup>98</sup> Antitheses arise again, however, from the Fourth Lateran Council, where it states clearly that documents drafted

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<sup>97</sup> X 2.20.47 [Fr. v.2 col. 337]: "Licet ex quadam necessitate praeter communem formam olim fuerit institutum, in consanguinitatis et affinitatis gradibus computandis valere testimonium de auditu...; quia tamen pluribus exemplis et certis experimentis didicimus, ex hoc multa pericula contra legitima provenisse coniugia, statuimus, ne super hoc recipiantur de cetero testes de auditu... nisi forte personae graves exstiterint, quibus fides sit merito adhibenda, ... non utique ab uno, quum non sufficeret ille, si reveret, sed duobus ad minus; nec ab infamibus et suspectis, sed a fide dignis et moni exceptione maioribus."

<sup>98</sup> C. 16 q. 7 c. 9 [Fr. v.1 cols. 802-803].

by condemned authors (notaries in this canon) are to be condemned as well.<sup>99</sup> A scholastic thinker might be able to solve the contradiction by arguing that writings are essentially different from sacraments, and heretics from non-Christians. But the case of Origen is a strong one, and perhaps it is the reason why the *Glossa* does not employ these arguments and decides to bypass this contradiction for the final solution.

#### X 5.7.4 *glos. ord. s.v. Celestinus atque Pelagius*

| Transcription  | Translation   |
|--|---|
| <p>Isti duo dampnati erant in synodo Ephesina de haeresi: dubitabat Patriarcha Antiochenus, an scripta ipsorum essent recipienda. Et dicitur quod non, quia ex quo actor condemnatus est et scripta illius admitti non debent, +ut <b>iii. q. iii. nullus.</b><sup>100</sup> et+<sup>101</sup> <b>xvi di. canones.</b><sup>102</sup> quamvis aliqua utilia sint ibi. ar. <b>supra de test. licet.</b><sup>103</sup></p> <p>Ar. tamen quod ratione bonae sententiae recipi possent. <b>i. q. i. Dominus declaravit.</b><sup>104</sup> et <b>xxxvii. di.</b><sup>105</sup> <b>si quid veri.</b><sup>106</sup> et sicut notitia legis abrogatae necessaria est. <b>d. vii. Moyses.</b><sup>107</sup> et Papa etiam argumentatur ex lege Theodosia abrogata. <b>supra de iudic. novit.</b><sup>108</sup></p> | <p>These two were condemned for heresy in the Council of Ephesus. The Antiochene Patriarch doubted whether their writings should be accepted. And it was said “No,” because when an actor is condemned, his writings ought not to be admitted, [see] +<b>iii. q. iii. nullus.</b> and+ <b>xvi di. canones.</b>, however much they might be useful to some extent in that place. [See] the argument [in] <b>supra de test. licet.</b></p> <p>Yet the argument is that by reason of the good opinions (<i>ratione bonae sententiae</i>) [in them] they could be accepted, [see] <b>i. q. i. Dominus declaravit.</b> and <b>xxxvii. di. si quid veri.</b>, just as the knowledge of abolished law is</p> |

<sup>99</sup> X 5.7.13 [Fr. v.2 col. 788 §. 5]: “[S]i tabellio, instrumenta confecta per ipsum nullius sint momenti, sed cum auctore damnatio damnentur.”

<sup>100</sup> C. 3 q. 4 c. 6 [Fr. v.1 col. 513].

<sup>101</sup> Appears in the edition represented by MS BAV, Vat. lat. 1383, fol. 215r and later editions.

<sup>102</sup> Dist. 16 c. 1 [Fr. v.1 col. 41].

<sup>103</sup> This title includes three canons that begin with “*licet*”: X 2.20.23 [Fr. v.2 cols. 322-323], X 2.20.47 [Fr. v.2 col. 337], and X 2.20.49 [Fr. v.2 col. 338]. X 2.20.47 is more plausible.

<sup>104</sup> C.1 q. 1 c. 87 [Fr. v.1 cols. 389-390].

<sup>105</sup> Both MS F and MS Munich, BSB, Clm 26301 here render “xxxviii.”

<sup>106</sup> Dist. 37 c. 13 [Fr. v.1 col. 139].

<sup>107</sup> Dist. 7 c. 1 [Fr. v.1 col. 12].

<sup>108</sup> X 2.1.13 [Fr. v.2 cols. 242-244].

|  |  |
|--|--|
| <p>Sed verum est quod scripta istorum non valent, etiam si alias bona sint, nec sunt recipienda. <b>infra e. excommunicamus. §. credentes.</b><sup>109</sup> ar. ad hoc. <b>xvi. di.</b><sup>110</sup> <b>bene quidem.</b><sup>111</sup> Tamen ratione bonę sententię scripta Origenis approbata fuerunt, <b>xvi. q. vii. et hec diximus.</b>,<sup>112</sup> qui dampnandus +fuit post<sup>113</sup> mortem. <b>xxiii. q. ii. sane profertur.</b><sup>114</sup> +et si approbarentur,<sup>115</sup> valerent: alias non. ar. <b>supra de sum. Tri. c. ii. in fi.</b><sup>116</sup> Item ar. quod destructo principali, destruitur accessorium, sic in <b>c. praedicto</b><sup>117</sup> et hoc diximus. +Ber.+</p> | <p>necessary, [see] <b>d. vii. Moyses.</b>, and even the Pope reasons from the abolished Theodosian Law, [see] <b>supra de iudic. novit.</b></p> <p>But it is true that their writings are not valid, even if they were otherwise good, they should not be accepted. [See] <b>infra e. excommunicamus. §. credentes.</b> [and] the argument on this [in] <b>xvi. di. bene quidem.</b> However, by the reckoning of usefulness of thought (<i>ratione bonę sententię</i>) the writings of Origen have been approved, [see] <b>xvi. q. vii. et hec diximus.</b>, who was condemned +after+ death.<sup>118</sup> [see] <b>xxiii. q. ii. sane profertur.</b> +and if they [i.e., the writings] were approved,+ they are of value, otherwise not. [See] the argument [in] <b>supra de sum. Tri. c. ii. in fi.</b> Likewise, the argument that when the principal has been destroyed, the accessory is destroyed, as in <b>c. praedicto</b> and we said here. +Ber.+</p> |
|--|--|

Before tackling the final solution, let us examine the other side of the discussion.

Regarding the area of law, the glossator was not concerned about heresy, but about the potential

<sup>109</sup> X 5.7.13 [Fr. v.2 cols. 787-789 §. 5].

<sup>110</sup> “96. dist” in the 1582 *ER*. But it is “xvi. di.” in MS F and “xxvii. di” in MS Munich, BSB, Clm 26301. More needs to be studied to explain this significant variance.

<sup>111</sup> Dist. 96 c. 1 [Fr. v.1 cols. 335-338].

<sup>112</sup> C. 16 q. 7 c. 9 [Fr. v.1 cols. 802-803].

<sup>113</sup> Appears in the edition represented by MS BAV, Vat. lat. 1365 (fol. 554v) and later editions.

<sup>114</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987].

<sup>115</sup> Appears in the edition represented by MS BAV, Vat. lat. 1365 (fol. 554v) and later editions.

<sup>116</sup> X 1.1.2 [Fr. v.2 cols. 6-7].

<sup>117</sup> X 5.7.3 or X 1.1.2?

<sup>118</sup> If one reads this phrase according to the reading of MS F, here Bernard was claiming that Origen “ought to have been damned to death.” It is likely a scribal mistake in MS F, as none of Bernard’s glosses for X 5.7 in any of the examined versions of the *Glossa* indicates death penalty for the crime of heresy.

argument that the abolishment of some laws invalidates their usefulness. Such argument would jeopardize the study of legal traditions. We will see similar cases in the *Glossa*, such as the one on apostasy and rebaptism in X 5.9, where the gloss on “duabus viis” to X 5.9.4 steps out of the subject of the canon, and raises a separate topic that particularly concerns the legal profession.

Thus, to support its argument that “the knowledge of abolished law is necessary,” the gloss first resorts to a variety of laws chronologically listed by Isidore of Seville’s (d. 636) *Etymologiae* in Dist. 7 c. 1, from those of Moses to those on the Twelve Tables. The following allegation brings forth an even more powerful *auctoritas*: Pope Innocent III. In the midst of his decretal *Novit ille qui nihil ignorat* of 1215, the pope cited, not without respect, ordinances from the Emperors Valentinian (364–375), Theodosius II (402–450), and Charlemagne (800–814). These ordinances concern submitting the imperial authority to the papacy and directing various lawsuits to episcopal jurisdiction. It is a particularly interesting allegation, as Innocent III after his citation immediately added that the Apostolic See rests upon divine rather than human constitutions, and that its power comes from God instead of human.<sup>119</sup>

The counter example, however, is not avoided: a Roman Synod in 502 under Pope Symmachus (498–514) unanimously refuted a decree from Basil the *praefectus praetorio* under Odoacer (d. 493). This rejected decree instructs that no successor to the Apostolic See should be elected without consulting the King of Italy, and that popes who sell church properties will be

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<sup>119</sup> X 2.1.13 [Fr. v.2 col. 243]: “Non igitur iniuriosum sibi debet regia dignitas reputare, si super hoc apostolico iudicio se committat, quum Valentinianus inclitus imperator suffraganeis Mediolanensis ecclesiae dixisse legatur: ‘Talem in pontificali sede constituere procuretis, cui et nos, qui gubernamus imperium, sincere nostra capita submittamus, et eius monita, quum tanquam homines deliquerimus, suscipiamus necessario velut medicamenta curantis.’ Nec sic illud humillimum omittamus, quod Theodosius statuit imperator, et Carolus, innovavit, de cuius genere rex ipse noscitur descendisse: ‘Quicumque videlicet litem habens, sive petitor fuerit sive reus, sive in initio litis vel decursis temporum curricula, sive quum negotium peroratur, sive quum iam coeperit promi sententia, si iudicium elegerit sacrosanctae sedis antistitis, illico sine aliqua dubitatione, etiamsi pars alia refragetur, ad episcoporum iudicium cum sermone litigantium dirigatur.’ Quum enim non humanae constitutioni, sed divinae *legi* potius innitamur, quia potestas nostra non est ex homine, sed ex Deo.”

anathematized.<sup>120</sup> It seems, therefore, that the usefulness and the legitimacy of studying which outdated or abolished laws are decided by their convenience for the Apostolic *auctoritas* (thus also for canonists), not by their current legal status. In other words, the *Glossa*'s solution here essentially does not lie in contextual distinctions, but in an implied, over-arching authority, that is, the papacy.

This leads to the final solution to the legitimacy of useful writings by heretics, although with a twist in the subject. The glossator, already in the first edition in MS F, employed an allegation from the second canon from the Fourth Lateran Council (X 1.1.2). In the beginning of it Joachim of Fiore's (d. 1202) *De unitate seu essentia Trinitatis* is condemned. However, toward the end (and this is where the *Glossa* calls its readers to pay attention), even after the defenders and supporters of Joachim's teaching are denounced as heretics, Joachim himself and his monastery are not condemned to be heretical. This, according to the canon, is mainly due to the fact that Joachim submitted his writings to be judged by the Apostolic See and confessed that he holds the same faith as the Roman Church.<sup>121</sup> This of course does not closely match the key

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<sup>120</sup> Dist. 96 c. 1 [Fr. v.1 cols. 336-337]: "Quamquam studii vestri et religionis intersit, ut in episcopatus electione concordia principaliter servetur ecclesiae, ne tamen per occasionem seditionis status civitatis vocetur in dubium, admonitione beatissimi viri Papae nostri Symmachi Simplicii, quam ante oculos semper habere debemus, hoc nobis meministis sub obtestatione fuisse mandatum, ut propter illum strepitum et venerabilis ecclesiae detrimentum, si eum de hac luce transire contigerit, non sine nostra consultatione cuiuslibet celebretur electio... Ne umquam predium siue rusticum siue urbanum, uel ornamenta aut ministeria que nunc sunt ecclesiarum, uel que ex quibuslibet titulis ecclesiarum iure peruenerint, ab eo, qui nunc antistes sub electione communi fuerit ordinandus, et illis, qui futuris seculis sequuntur, quocumque titulo aut commento alienari liceat. Et quicumque hoc facere uoluerit, inefficax atque irritum iudicetur, sitque facienti, consentienti accipientique anathema." For the historical context of church councils under Pope Symmachus during this period, see Hefele, ed., *Histoire des conciles d'après les documents originaux*, vol. 2, pt. 2, 957–969, originally published in German in Hefele, ed., *Conciliengeschichte*, vol. 2 (Freiburg im Breisgau: Herder, 1856), 615–627.

<sup>121</sup> X 1.1.2 [Fr. v.2 col. 7]: "Si quis igitur sententiam vel doctrinam praefati Ioachim in hac parte defendere vel approbare praesumpserit, tamquam haereticus ab omnibus confutetur. In nullo tamen propter hoc Florensi monasterio, cuius ipse Ioachim exstitit institutor, volumus derogari: quoniam ibi et regularis est institutio, et observantia salutaris: maxime, cum ipse Ioachim omnia scripta sua nobis assignari mandaverit apostolicae sedis iudicio approbanda seu etiam corrigenda, dictans epistolam, quam propria manu subscripsit, in qua firmiter confitetur, se illam fidem tenere, quam Romana tenet ecclesia, quae disponente Domino cunctorum fidelium mater est et magistra."

subject of the gloss. Maybe because of this, soon after the first edition, the glossator made it clearer by adding before the allegation that “if they [the writings] were approved, they prevail.” That is, in the end, it is the Apostolic authority which decides the legitimacy of the writings, not the usefulness of them.

### 2.3.3 “[I]n detestationem criminis”: From Scholastic Canonists to Inquisitors

Other than resorting to a separate/overarching authority such as the Apostolic See, the *Glossa* sometimes employs or even creates a new (criminal) category to harmonize contradicting legal opinions, such as in the case of X 5.7.5. The canon discusses the anathema punishment for any bishop—even after his death—who institutes heretics, pagans, or people outside of his consanguinity as heirs.<sup>122</sup> It does not straightforwardly claim that such a bishop by doing so becomes a heretic, nor does the *Glossa*. Nonetheless, it seems that the glossator indeed held this understanding in the gloss on “post mortem,” and further contemplated whether death could abolish such bishop’s crimes.

#### X 5.7.5 glos. ord. s.v. *post mortem*

| Transcription   | Translation  |
|---|--|
| Sic <b>xxiiii. q. ii. sane profertur.</b> <sup>123</sup> et ar. <b>C. e. I. Manichaeos.</b> <sup>124</sup> Ar. contra, quia crimina morte extinguuntur. <b>xxiii. dist.</b> <sup>125</sup> <b>quorundam.</b> <sup>126</sup> et <b>xxiiii. q. ii. c. i.</b> <sup>128</sup> et crimen cum pena sit extinctus. <b>C. si reus vel</b> | As [in] <b>xxiiii. q. ii. sane profertur.</b> and the argument [in] <b>C. e. I. Manichaeos.</b> For a counterargument that crimes are canceled by death [see] <b>xxiii. dist. quorundam.</b> , and |

<sup>122</sup> X 5.7.5 [Fr. v.2 col. 779]: “Si quis episcopus heredes instituerit extraneos a consanguinitate sua, vel haereticos, etiam consanguineos, aut paganos pertulerit, saltem post mortem ei anathema, atque eius nomen inter Dei sacerdotes nullo modo recitetur.”

<sup>123</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987].

<sup>124</sup> Cod. 1.5.4.

<sup>125</sup> “23. dist” in the 1582 *ER* and other selected manuscripts. “xxiiii” in MS F, which is likely a scribal mistake.

<sup>126</sup> Dist. 23 c. 14 [Fr. v.1 col. 84].

<sup>127</sup> “23. q.” in the 1582 *ER*. But it is “xxiiii” in the selected manuscripts. It is likely a mistake in the 1582 *ER*.

<sup>128</sup> C. 24 q. 2 c. 1 [Fr. v.1 col. 984].



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|---|---|
| <p><b>actor. mor. l. ii.</b><sup>129</sup> Hoc enim speciale est in crimine haeresis, in detestationem criminis, ut post mortem possit accusari et excommunicari, et ne ecclesia<sup>130</sup> oret pro eo, quia non +fuit+<sup>131</sup> accusatus in vita. +Ber.+</p> | <p><b>xxiii. q.</b><sup>132</sup> <b>ii. c. i.</b>, and a crime with penalty would be canceled. [See] <b>C. si reus vel actor. mor. l. ii.</b> In fact, it is special in the crime of heresy, according to the detestation (<i>detestationem</i>) of the crime, that after death one could be accused and excommunicated, and the Church would not pray for him, since he was not accused in life. +Ber.+</p> |
|---|---|

Besides the example of Origen again (but this time focusing on his anathematization after death),<sup>133</sup> the *Glossa* here cites a particularly important Roman law text with regard to the high medieval canonical treatment of heresy, Cod. 1.5.4.<sup>134</sup> Pope Innocent III’s influential decretal concerning the crime of heresy, the 1199 *Vergentis in senium* (X 5.7.10), clearly was informed by the same text. In Cod. 1.5.4, the crime of heresy is analogous to the *crimen maiestatis* with respect to the accusation after the death of the criminal. This analogy, together with the extensive

<sup>129</sup> Cod. 9.6.2. 1582 *ER*: “C. si reus vel accu. mor. fue. l. 2.”

<sup>130</sup> “ecclesie” in MS F.

<sup>131</sup> It is likely a scribal mistake in MS F. Other selected manuscripts, such as MS BAV, Vat. lat. 1365, fol. 554v, all contain this word.

<sup>132</sup> “23. q.” in the 1582 *ER*.

<sup>133</sup> C. 24 q. 2 c. 6 [Fr. v.1 col. 987]: “Si ad tempora Theophili sanctae memoriae uel superius aliquis recurrerit, etiam Origenem post mortem inueniet anathematizatum.”

<sup>134</sup> Cod. 1.5.4: “Imperatores Arcadius, Honorius. Manichaeos seu manichaeas vel donatistas meritissima severitate persequimur. Huic itaque hominum generi nihil ex moribus, nihil ex legibus sit commune cum ceteris. 1. Ac primum quidem volumus esse publicum crimen, quia, quod in religione divina committitur, in omnium fertur iniuriam. Quos bonorum etiam publicatione persequimur: quae tamen cedere iubemus proximis quibusque personis, ita ut ascendentium vel descendentium vel venientium ex latere cognatorum usque ad secundum gradum velut in successione ordo servetur. Quibus ita demum ad capiendas facultates esse ius patimur, si non et ipsi pari conscientia polluuntur. 2. Ipsos quoque volumus amoveri ab omni liberalitate et successione quolibet titulo veniente. 3. Praeterea non donandi, non emendi, non vendendi, non postremo contrahendi cuiquam convicto relinquimus facultatem. 4. In mortem quoque inquisitio tendatur. Nam si in criminibus maiestatis licet memoriam accusare defuncti, non immerito et hic debet subire iudicium. 5. Ergo et suprema illius scriptura irrita sit, sive testamento sive codicillo sive epistula sive quolibet genere reliquerit voluntatem qui manichaeus fuisse convincitur: hoc quoque casu eadem illa circa gradus superius comprehensos condicione servata. 6. Sed nec filios heredes existere aut adire permittimus, nisi a paterna pravitate discesserint: delicti enim veniam paenitentibus damus. 7. In eos etiam auctoritatis aculei dirigantur, qui eos domibus suis damnanda provisione defendent. 8. Servos insuper extra noxam esse volumus, si dominum sacrilegum evitantes ad ecclesiam catholicam servitio fideliore transierint. D. VIII k. Mart. Romae Honorio vn et Theodosio II AA. cons.”

scope of punishments for heretics and their relatives listed in this ruling, has clearly impacted the thirteenth-century legal landscape beyond the realm of canon law. The “old laws (*veteribus legibus*)” cited in the very first ruling in the 1231 *Liber Augustalis* or *Constitutions of Melfi*, promulgated by Emperor Frederick II as the King of Sicily (1198–1250), apparently refer to this text, as does the aforementioned decretal from Pope Innocent III.<sup>135</sup>

But the *Glossa*, unlike Emperor Frederick II or Pope Innocent III, significantly does not accept this analogy in the Roman law tradition without question. It tries to challenge this rule by citing from both canon and Roman law traditions, but actually none of the allegations concerns heresy, at least not directly. In order to understand the mechanism of the *ius commune* here, what the *Glossa* deems to be valid counter materials must be considered. A canon from the Second Council of Seville in 619 (Dist. 23 c. 14) deals with a priest who goes beyond his authority and blesses clergymen who sacramentally ought to be blessed by the bishop. But since the priest has passed away, the canon claims that the human judgment (*humano iudicio*) cannot accuse him.<sup>136</sup> The following Roman law allegation, on the other hand, cancels the charge of falsification

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<sup>135</sup> *Liber Augustalis*, I.I.2 (thus numbered after the preface): “Quod acerbissimum reputantes, statuimus in primis ut crimen hereos et damnate secte cujuslibet, quocumque censeantur nomine sectatores, prout veteribus legibus est indictum inter publica crimina numeretur. [Immo crimine lese majestatis nostre debet ab omnibus horribilius judicari quod in divine majestatis injuriam dignoscitur attentatum, quamquam in judicii potestate alter alterum non excedat.] Nam sicuti perduellionis crimen personas adimit damnatorum et bona, et damnat post obitum etiam memoriam defunctorum, sic et in predicto crimine quo Patareni notantur per omnia volumus observari. Et ut ipsorum nequitia, qui quia Deum non sequuntur in tenebris ambulant, detegatur, nemine etiam deferente, diligenter investigari volumus hujusmodi scelerum patratores, et per officiales nostros sicut et ulios malefactores inquiri, ac inquisitione notatos, etsi levis suspicionis argumento tangantur, a viris ecclesiasticis et prelatiis examinari jubemus.” J.-L.-A. Huillard-Bréholles, *Historia Diplomatica Friderici Secundi*, vol. 4 (Paris: Henricus Plon, 1854), pt. 1, 6–7.

<sup>136</sup> Dist. 23 c. 14 [Fr. v.1 col. 84]: “Quorundam clericorum, dum unus ad presbiterium, duo ad Leuitarum ministerium sacrentur, episcopus, oculorum dolore detentus, fertur super eos manum suam tantum posuisse, et presbiter quidam illis contra ecclesiasticum ordinem benedictionem dedisse. Sed quia ille iam examini diuino relictus humano iudicio accusari non potest, hi, qui supersunt, gradum sacerdotii uel leuitici ordinis, quem peruerse adepti sunt, amittant.”

(*crimine falsi*) against a deceased member in the lawsuit.<sup>137</sup> The only overlap here seems to be that heresy, overstepping one's proper ecclesiastical authority, and falsification are all *crimina*.

To unravel this mess among authoritative Romano-canonical sources, the *Glossa* thus makes an exception by this new category for heresy: “according to the detestation of the crime (*in detestationem criminis*),” with which heretics should be accused after death. Considering the effort taken throughout this gloss, this particular formula perhaps should not be understood as simply a rhetorical expression, but also a legal condition used—or even created—by Bernard to qualify his argument that the judgment in question *speciale est in crimine haeresis*.

Admittedly, this expression appears in none of the canons in the *Decretales*, nor in the later entire *Corpus Iuris Canonici*. But it is important to note that this judicial formula, together with the same judgment regarding deceased heretics, was certainly current in the thirteenth-century canonical-inquisitorial landscape. It was mentioned verbatim in one of the earliest inquisitorial manuals of the mid-thirteenth century, *Processus inquisitionis*, regarding burning the bones of deceased heretics<sup>138</sup> and then in a similar paragraph from the register of the inquisition of Carcassonne on 22 February 1325.<sup>139</sup>

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<sup>137</sup> Cod. 9.6.2: “Etsi Marcellus qui crimine falsi postulabatur vita functus est ac per hoc crimen in persona eius sit extinctum.”

<sup>138</sup> “Nos inquisitores, etc., visis ac diligenter inspectis et attentis culpis ac demeritis talis superius notati, et defensionibus propositis pro eodem, et circumstantiis quas circa personas et dicta testium et alia considerari oportuit et attendi, adjunctis et assistentibus nobis talibus, etc., eundem talem, etc., definitive pronunciendo, iudicamus hereticum decessisse atque ipsum et ipsius memoriam pari severitate dampnantes, ossa ejus, si ab aliis discerni poterunt, de cemeterio ecclesiastico exhumari simulque comburi decernimus in detestationem criminis tam nefandi.” Tardif and Balme, “Document pour l’histoire du *Processus per inquisitionem* et de l’*Inquisitio heretice pravitatis*,” 677; Kurt-Victor Selge, *Texte zur Inquisition* (Gütersloh: Mohn, 1967), 75. An English translation of this important inquisition manual can be found in Wakefield, *Heresy, Crusade, and Inquisition in Southern France, 1100–1250*, 250–258.

<sup>139</sup> “[D]eclaramus magistrum Arnaudum Morlana predictum per bec que contra ipsum invenimus bereticum fuisse et in sectam hereticorum detestabilem decessisse, precipientes eius ossa de sacris cimiteriis si possint discerni ab aliis fidelium ossibus exhumari et comburi in detestationem criminis tam nephandi, eius memoriam in futuro perpetuo damnantes.” Jean Duvernoy, ed., “Le registre DDD de l’inquisition de Carcassonne 1325–1327,” 75.

## 2.4 The “Underlying” *Ius commune*: The *Glossa*’s Principles for Analogy and Reference

The legal system of *ius commune* comprises “principles of substantive law and procedure that were in common use throughout Christendom.”<sup>140</sup> Studied and employed by jurists and canonists during this period, this *sistema iuris* is also woven into the *Glossa* through numerous analogies between Roman and canon law. Admittedly, the analogical method implemented by medieval law masters with their citations from the Romano-canonical tradition has received some scholarly attention in recent decades. However, studies in area are still limited and focus more on the side of Roman jurists.<sup>141</sup>

But the exact working mechanism and/or principles behind these legal analogies that permeated through the *Glossa* has never been examined in detail. The glosses, as we see in other chapters (such as the one on apostasy), often employ seemingly irrelevant sources from Roman law, canon law, or even theological writings, while ignoring other clearly more related materials available for citation. Sometimes even if there is a section dealing with the same topic in the Justinianic collections, which Bernard was certainly familiar with, the *Glossa* invokes materials from elsewhere. This perhaps makes part of what Richard Helmholz calls “the jerky style of argument”<sup>142</sup> throughout medieval canonists’ legal literature. The manifestation of the operating

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<sup>140</sup> James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 60, see also 176–177. For recent discussions on this subject, see James A. Brundage, “Universities and the ‘ius commune,’” *RIDC* 11 (2000): 237–253; Hermann Lange, *Römisches Recht im Mittelalter*, vol. 1 (Munich: C.H. Beck, 1997), 461–462; Kenneth Pennington, “Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept,” *RIDC* 5 (1994), 197–209, reprinted in Peter Landau and R. H. Helmholz, eds., *Grundlagen des Rechts: Festschrift für Peter Landau zum 65. Geburtstag* (Paderborn: F. Schöningh, 2000), 349–366; Manlio Bellomo, *L’Europa del diritto comune*, 5th ed. (Rome: Cigno Galilei Edizioni di Arte e Scienza, 1991).

<sup>141</sup> See, for instance, James Gordley, *The Jurists: A Critical History* (Oxford: Oxford University Press, 2013), 33–58.

<sup>142</sup> R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens: University of Georgia Press, 2010), 22.

*ius commune* is straightforward to understand, when an ordinary gloss, for example, employs Roman familial law principles to help solve a thirteenth-century lawsuit between parents over the custody of their child. But when it invokes Roman property law tenets in such cases—as we have discussed in the *Glossa* on X 3.33.2—without further explanation, the “underlying” *ius commune* at work calls for scholarly attention. This section, therefore, tries to investigate the implicit connections and principles beneath selected analogies or references from the *utrumque ius* utilized by the *Glossa* concerning the crime of heresy and the punishments for heretics.

#### 2.4.1 Educational Analogy: Heretics, Slaves, and *Publicum crimen*

Despite ample supporting materials from canons of the title itself, the *Glossa* to X 5.7 in one allegation specifically invokes Roman law on slaves to discuss the punishments for heretics. As mentioned above, in the gloss on “in fide” of X 5.7.1, the glossator first cited from Roman law a definition of heretics based on their deviation from the Catholic articles of faith.<sup>143</sup> This definition appears in the title “On Heretics, Manicheans, and Samaritans (*De haereticis et manichaeis et samaritis*)” from the *Codex Justinianus*, which includes detailed judicial discussions on heretics. Nonetheless, the *Glossa* shortly after the first edition represented in MS F<sup>144</sup> inserts here a passage on slavery from Cod. 6.7, “On Freedmen and Their Children (*De libertis et eorum liberis*),” which then became part of the *textus receptus* of the *Glossa*.

##### X 5.7.1 glos. ord. s.v. *in fide*

| Transcription   | Translation  |
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| Id est in tenui articulo, <b>C. de haeret. l. ult.</b> <sup>145</sup><br><b>in fi.</b> <sup>146</sup> +Sic ex levi offensa revocatur libertus | That is, in a subtle article. [See] <b>C. de haeret. l. ult. in fi.</b> +Thus as a result of a light offense |

<sup>143</sup> Cod. 1.5.2.1: “Haeticorum autem vocabulo continentur et latis adversus eos sanctionibus debent succumbere, qui vel levi argumento iudicio catholicae religionis et tramite detecti fuerint deviare.”

<sup>144</sup> See MS BAV, Vat. lat. 1365, fol. 554r.

<sup>145</sup> “l. 2” in the 1582 *ER*. It remains to be studied whether the medieval *Codex Justinianus* only has two canons.

<sup>146</sup> Cod. 1.5.2.1.

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| in servitutum. <b>C. de liber. et eorum lib. si manumissus.</b> <sup>147</sup> +... + <u>Lau.</u> + <sup>148</sup> | a freedman is recalled into servitude. <sup>149</sup> [See] <b>C. de liber. et eorum lib. si manumissus.</b> +... + <u>Lau.</u> + |
|--|---|

Thus, while the gloss equates deviating from orthodox doctrines with “light offense (*levi offensa*),” the implied legal consequence for being a heretic is paralleled with losing one’s freeman status. But it is important to note that the *Glossa* here does not appear to be grafting the Roman law sentence of degrading one into a slave onto the punishment for heretics. It must be understood differently from X 5.7.10, where Pope Innocent III himself applied Roman law on *lèse-majesté* to the Church-secular trials on heresy. As we will see below, none of the canons nor glosses orders enslaving convicted heretics as part of their punishments. Instead, the gloss here interprets for its readers the special nature of heresy as a crime (that is based on theological articles): a “minor” offense that nonetheless can have serious repercussions. It may harm the legal status of the culprit—such as getting recognized to be infamy and thus losing rights of being a witness in courts, inheriting or instituting testament, holding public offices, etc., which the readers will indeed encounter studying the rest of the title.

Regarding the nature of crimes, we have already seen another example discussed above in the gloss on “post mortem” to X 5.7.5, where heretics are ordered to be punished even after death *in detestationem criminis*. Recall that when the gloss tries to support its counter argument, i.e., that in some legal cases death can absolve the offender from a human tribunal’s punishment, canon and Roman law sources on different topics are employed together. A deceased priest who

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<sup>147</sup> Cod. 6.7.2.

<sup>148</sup> Manuscripts of Laurentius Hispanus’ glosses on *Comp. I.* (5.6.1 in this case), according to Stephen Kuttner, have not been found yet. See Kuttner, *Repertorium*, 326.

<sup>149</sup> Cf. “Revocare in servitutum,” in Berger, 684.

had performed liturgy outside of his authority (Dist. 23 c. 14) is paralleled with a deceased party charged with falsification in court (Cod. 9.6.2). The assigned punishments for both are excused due to their death. However, the judicial link between these two transgressions perhaps can only be sought from that between their counterpart pair in the gloss: heretics are (much more straightforwardly) analogized to the criminals of *lèse-majesté* by the Roman law system itself, as in Cod. 1.5.4.<sup>150</sup> Both heresy and *lèse-majesté* are categorized under *publicum crimen*, whereas mistakes done by the deceased priest and the falsifier are not. In other words, what shaped the glossator’s understanding and usage of post-death punishment—and what he implied to his readers—in this gloss is the underlying differentiation with respect to whether an act can be interpreted to be harmful to the general public.

#### **2.4.2 The Boundaries of Privileges: Jurisdiction, Incurability, and Judicial Consistency**

Privileges granted by ecclesiastical or secular authorities can easily become potential thorny jurisdictional and judicial problems in medieval trials. Several canons from popes and church councils throughout X 5.7 raise the issues of privileges of heretics and, importantly, the people who do not help suppress them. The *Glossa* often deals with these details with thorough discussions and allegations. However, again, the allegations sometimes come from Roman law sources that do not concern heretics, and need further investigation to reveal the glosses’ rationale for including them. The *Glossa* on X 5.7.8, for example, contains such citations. A canon from the Third Lateran Council, X 5.7.8, focuses on punishing not only heretics, but also those who help them:

#### **X 5.7.8**

| Transcription | Translation |
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<sup>150</sup> Cod. 1.5.4: “1. Ac primum quidem volumus esse publicum crimen, quia, quod in religione divina committitur, in omnium fertur iniuriam.... 4. In mortem quoque inquisitio tendatur. Nam si in criminibus maiestatis licet memoriam accusare defuncti, non immerito et hic debet subire iudicium.”

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| <p>Ex concilio Laternanensi.</p> <p>... eos, et <u>defensores</u> et receptatores eorum anathemati decernimus subiaccere, et sub anathemate prohibemus, ne quis eos in domo vel interra<sup>151</sup> sua tenere vel fovere, aut negotiationem cum eis exercere praesumat.</p> <p>Si autem in hoc peccato decesserit, neque sub privilegiorum nostrorum quibuscunque indultorum <u>obtentu</u>,<sup>152</sup> neque sub alia quacunque occasione oblatio pro eo fiat, aut inter Christianos accipiat sepulturam.</p> | <p>From the Lateran Council.</p> <p>“... we decree that they [heretics] and all who <u>defend</u> and receive them are anathematized, and under penalty of anathema we forbid everyone to give them shelter, to admit them to his land, that no one pressure to hold or sustain them in their home or territory, or to transact business with them.”<sup>153</sup></p> <p>If anyone should die in this sin, neither under pretext of our privileges <u>granted</u> to anyone at all nor for any other reason at all shall <u>an offering</u> be made for him, nor shall he receive Christian burial.</p> |
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Therefore, the ruling in the end claims that no privileges, even the ones provided by the Roman Pontiff, can exempt the deceased heretics and their defenders from anathema and the impossibility of Christian burial. This, on the one hand, leads us back to the issue of the specific criminal nature of heresy, as discussed above. On the other hand, however, it highlights the problem of the boundary of privileges. The gloss on “obtentu” in the first place indeed echoes the gloss on “post mortem” to X 5.7.5 by arguing that privileges are to be abrogated due to this specific transgression, i.e., heresy. It is easy to see why this gloss cites X 5.7.9 from Pope Lucius III, where the pope straightforwardly ordered convicted heretics to be stripped of privileges. Nevertheless, toward the end, the glossator further invoked two Roman law texts that have nothing to do with heresy:

**X 5.7.8 glos. ord. s.v. obtentu**<sup>154</sup>

| Transcription | Translation |
|---------------|-------------|
|---------------|-------------|

<sup>151</sup> “terra” in MS F.

<sup>152</sup> “obtemptu” in MS F.

<sup>153</sup> This part of the translation is taken from Rev. H. J. Schroeder, O.P., trans., *Disciplinary Decrees of the General Councils: Text, Translation, and Commentary* (London: B. Herder Book, 1937), 234.

<sup>154</sup> “optentum” in MS F.



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| <p>Sic ergo ratione delicti perditur privilegium, et <b>infra c. proxi. in fi.</b>,<sup>155</sup> quia privilegium non extenditur ad delictum casum, nec tenetur aliquem in malo. <b>infra de senten. exco. nulli.</b>,<sup>156</sup> et omni privilegio cessante mali puniendi sunt. <b>C. ubi de crimi. agi oportet. aut. qua in provincia.</b><sup>158</sup> +Ber.+</p> | <p>Therefore, because of the crime thus the privilege is lost, and [see] <b>infra c. proxi. in fi.</b>, since the privilege is not extended to the committed delict (<i>delictum casum</i>), nor to anyone held in evil, [see] <b>infra de senten. exco. nulli.</b>, and when every privilege ceases, the wicked ones are to be punished. [See] <b>C. ubi de crimi. agi oportet. aut. qua in provincia.</b> +Ber.+</p> |
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The intention behind these two allegations appears to be further setting the legal boundaries of privileges from a jurisdictional-procedural perspective. The first allegation from the *Codex Justinianus* orders that criminals ought to be tried and judged where the crimes take place.<sup>159</sup> The second allegation points to a section in the Justinianic *Novels* of which the long title reads “[a]ll persons should obey provincial judges in criminal and financial cases, and trials should proceed there without exception for privilege, except for imperial enactment.”<sup>160</sup> It is unsurprising that the glossator would check this title to support the limitation on privileges. His selection focuses on, again, jurisdictional principle, ruling that, whatever the offence is, the offender should be tried where the crime happens, and that no one can bypass local judgment to enjoy unfair advantage.<sup>161</sup>

<sup>155</sup> X 5.7.9 [Fr. v.1 cols. 780-782].

<sup>156</sup> X 5.39.8 [Fr. v.1 col. 891].

<sup>157</sup> Cod. 3.15. It should be Cod. 3.15.1—unless the *Codex Justinianus* used by Bernard in the thirteenth century only contains one *lex* in this title.

<sup>158</sup> It is possibly Nov. 69.1, which contains the phrase “in qua provincia.”

<sup>159</sup> Cod. 3.15.1: “Quaestiones eorum criminum, quae legibus aut extra ordinem coercentur, ubi commissae vel inchoatae sunt vel ubi reperiuntur qui rei esse perhibentur criminis, perfici debere satis notum est.”

<sup>160</sup> Nov. 69, “Ut omnes oboediant iudicibus provinciarum et in carnalibus et in pecuniariis, et ibi negotia examinentur, nullo except per privilegium, nec huc conventi deducantur nisi sacra pragmatica forma exhiberi quempiam iusserit.” The translation here is mine. Cf. “Pragmatica sanctio,” in Berger, 648. I thank Professor Roger Bagnall for his suggestion about the translation of this phrase.

<sup>161</sup> Nov. 69.1: “Et praecipimus omnibus in provinciis iudicibus quicumque nostris oboediunt sceptris in universa ditione et quae ascendente videt et quae occidentem solem et quae ex utroque est latere; ut unusquisque in qua

Unlike in the gloss on “post mortem” to X 5.7.5 or in the first part of this present gloss, clearly it is not the nature of the offense under discussion in these two Roman law allegations that determines the judicial order. We thus are seeing two tracks of argumentation for the punishments concerning heretics. On the one hand, due to the serious nature of the crime of heresy, their transgression is not to be forgiven after death nor to be exempted from trials through privileges. On the other hand, heretics and their defenders cannot use granted privileges to avoid local trials, for as criminals they fall under the local jurisdiction. The practical concern behind the second track seems to be that these offenders might use their privileges to resort to an external authority of judgment beyond their local tribunals, which will judge the matter according to their favor. Thus, in the case of X 5.7.8, the *Glossa* on the one hand agrees with the canon by emphasizing that privileges are, indeed, lost *ratione delicti*. On the other hand, through two Roman law allegations defending provincial jurisdiction against privileges regardless of types of crimes, the *Glossa* adds to the canon that even if their whatever-kind-of privileges remain, jurisdictionally they are still to be judged through local courts.

We have seen, therefore, how the *Glossa* supports the invalidation of using privileges for exculpation/protection in the legal treatment of heresy through its allegations with respect to both the nature of the crime and the jurisdictional limit put onto them by Roman law. However, it is one thing to forbid the usage of privileges to avoid getting tried as heretics, it is another to deprive all privileges from people who are convicted of heresy. X 5.7.9 prescribes the latter for clerics:

### **X 5.7.9**

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provincia delinquit aut in qua pecuniarum aut criminum reus fit, sive de terra et de terminis sive de proprietate sive de possessione aut hypotheca vel de qualibet alia occasione, illic etiam iuri subiaceat (hoc enim apud praecedentes legislatores varie quidem, tamen dictum est, licet non pure et sicut nos illud consideravimus), et ultra terminos litigare non quaerat.”

| Transcription  | Translation   |
|--|---|
| <p>Lucius III.</p> <p>... Praesenti nihilominus ordinatione sancimus, ut, quicumque fuerint manifeste in haeresi <u>deprehensi</u>, si clericus est vel cuiuslibet religionis obumbratione fucatus, totius ecclesiastici ordinis <u>praerogativa</u> nudetur, sic omni officio et beneficio spoliatus ecclesiastico, saecularis <u>relinquatur</u> arbitrio potestatis, animadversione debita puniendus, nisi continuo post deprehensionem erroris ad fidei catholicae unitatem <u>spon</u><u>te</u> <u>recurrere</u>, et errorem suum ad <u>arbitrium</u> <u>episcopi</u> regionis publice consenserit abiurare, et satisfactionem congruam exhibere.</p> | <p>Lucius III.<sup>162</sup></p> <p>... Nonetheless, we decree in the present ruling that whoever is <u>apprehended</u> (<i>deprehensi</i>) clearly in heresy, if a cleric or disguised in the shadow of some devotion/cult/religious practice (<i>religionis obumbratione</i>), should be stripped of the <u>privilege</u> of all ecclesiastical office, and thus deprived of every office and benefice, <u>should be left to</u> the discretion of the secular power to receive due punishment; unless, immediately after the detection (<i>deprehensionem</i>) of his error, he consents <u>voluntarily to return</u> to the unity of the Catholic faith, and publicly to abjure his error, <u>as the bishop of the diocese shall direct</u>, and shall make such satisfaction as shall be fitting.”</p> |

Bernard, on the other hand, was less strict about the deprivation. He put more emphasis on the second part of the canon, where the pope prescribed conditions for withdrawing punishments. In the gloss on “praerogativa,” he challenged Alanus (fl. 1190–1210), who embraced the strict prescription, and then pointed out to his readers an unsaid principle behind the conditions laid out in this canon, which decides whether the offenders can be excused from their crime: the incorrigibility of the offenders.<sup>163</sup> It is important to note the last allegation, i.e., X 2.1.10, a canon from Pope Celestine III (1191–1198). This canon rules that clerics deposed because of committing murder, theft, or other crimes should be excommunicated if they are

<sup>162</sup> The following translation considers Peters, *Heresy and Authority*, 170–173, but with alterations.

<sup>163</sup> X 5.7.9 *glos. ord. s.v. praerogativa*: “Ar. quod clericus depositus non habet privilegium clericale: et hoc concedit. Ala. Ar. liiii. di. ex antiquis in fi., quod non est verum, quia tenetur vivere regulariter, +quamvis sit depositus:+ unde si hoc faciat, adhuc gaudet privilegio clericali. lxxxi. d. dictum. Et hoc dixit H. Si vero incorrigibilis esset, tunc non solum perderet privilegium clericale, verum etiam seculari curiae traderetur. supra. de iudic. cum non ab homine. Sed in casu isto perdit omne privilegium ubi revertatur, ut sequitur.”

incorrigible. In other words, it says nothing about heresy or privileges.<sup>164</sup> The vaguely listed crimes are not analogues to heresy. The principle of incorrigibility, therefore, appears to be a general rule held by the glossator, which he readily extracts from Pope Lucius III's decretal.

This condition of incorrigibility is re-emphasized by Bernard to his readers in the following gloss on "relinquatur." As listed above, X 5.7.9 here instructs that deposed clerics, losing their privileges, also will be sent to secular authorities for punishment. The first half of the gloss, as we will see later, agrees with the ruling by analogizing heresy to the crimes of forgery and false accusation. But the second half of the gloss again invokes the concept of incorrigibility while referring to the previous gloss on "praerogativa" that we have just seen, and reminds its readers that unless there is contumacy, the deposed cleric "is not handed over immediately to a court, on the contrary still he is to be kept to live clerically, as it has been said in the most recent note."<sup>165</sup> This insistence on incorrigibility could be seen as more examples of how the *Glossa* embeds mercy into its legal discussion.

But why did Bernard painstakingly support the prohibition of the usage of privileges to avoid trial, while carefully putting emphasis on the condition of incorrigibility in terms of depriving all privileges from clerics who are convicted of heresy? It is important to remember that in both cases Bernard extracted precisely matching supports from canon and Roman law

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<sup>164</sup> X 2.1.10 [Fr. v.2 col. 242]: "A nobis fuit ex parte tua quaesitum, utrum liceat regi vel alicui saeculari personae iudicare clericos cuiuscunque ordinis, sive in furto, sive in homicidio, vel periurio, seu quibuscunque fuerint criminibus deprehensi. Consultationi tuae taliter respondemus, quod, si clericus in quocunque ordine constitutus in furto, vel homicidio, vel periurio, seu alio *mortali* crimine fuerit deprehensus legitime atque convictus, ab ecclesiastico iudice deponendus est. Qui si depositus incorrigibilis fuerit, excommunicari debet, deinde contumacia crescente anathematis mucrone feriri. Postmodum vero, si in profundum malorum veniens contempserit, quum ecclesia non habeat ultra quid faciat, ne possit esse ultra perditio plurimorum, per saecularem comprimendus est potestatem ita, quod ei deputetur exsilium, vel alia legitima poena inferatur."

<sup>165</sup> X 5.7.9 *glos. ord. s.v. relinquatur*: "Alias autem licet clericus sit depositus, non traditur statim curiae +seculari+, immo adhuc tenetur vivere clericaliter, et ccclesia ipsam tenebitur, et gaudet privilegio clericali, ut dictum est in proxima notula."

materials, including the canons that the glosses are commenting on. In other words, there are no *lacunae* which the glossator had to twist his sources or come up with various specific conditions to address. Perhaps partly because of this, throughout its treatment of privileges in the matter of heresy, the *Glossa* achieves an underlying judicial consistency.

### 2.4.3 Shared Nature and Punishment: Marriage Laws for Heretics

Structurally speaking, canonical marriage laws, unlike laws concerning heretics as in X 5.7, are categorized by Raymond under the fourth book of the *Decretales*. Nonetheless, this arrangement does not stop the *Glossa* from citing Romano-canonical materials on marriage in its discussion of heresy and heretics. Two such allegations, each from Roman and canon law traditions, appear in the glosses to X 5.7.9, i.e., the papal bull *Ad abolendam* from Pope Lucius III in 1184, part of which we have discussed above. This decretal is the first canon in the title that systematically lays out punishments for clerical and lay heretics as well as secular authorities that do not help persecute them. What are the roles of rulings over marriage in it? In the gloss on the “haeresi deprehensi,” the only allegation that is cited is a Roman marriage law:

#### X 5.7.9 glos. ord. s.v. deprehensi

| Transcription  | Translation   |
|--|---|
| Facti evidentia, puta quia publice praedicant haeresim. ar. <b>ff. de ritu. nupt. palam. §. ult.</b> <sup>166</sup> vel legitima probatione, puta per testes: vel ex sua confessione. +Ala.+ | By the evidence of fact: for example, because they publically proclaim heresy, [see] ar. <b>ff. de ritu. nupt. palam. §. ult.</b> ; or by the legitimate proof: for example, through witnesses or out of his confession. +Ala.+ |

This gloss, inspired by Alanus’ gloss but with significant variants and supplements,<sup>167</sup> is concerned with legal procedure, a subject that we have seen in the *Glossa* to X 3.33.2. The focus

<sup>166</sup> Dig. 23.2.43.13.

<sup>167</sup> According to one of the selected manuscripts for Alanus’ glosses on the *Comp. I.*, MS Munich, BSB, Clm 3879, fol. 83v: “Facti evidentia vel probatione legitima, alias deprehensio non sufficit. ar. **C. d. defen. civitatum. defensores.** [Cod. 1.55.2],” no Roman marriage law has been invoked by Alanus. This gloss does not appear in another selected manuscript, MS Paris, BnF lat. 3932 (Alanus’ glosses on this canon are copied on fols. 59v–60r).

of the discussion is the requirement of evidence/proof for the offence committed by the heretics, and this is where we get the allegation from the Justinianic *Digesta*. In this Roman law text, Ulpian analyzed the *lex Julia* regarding adultery committed by women. The jurist argued that whether or not a wife's husband or someone else catches her practicing adultery, as long as she is convicted of the crime, she will suffer the punishment, that is, the brand of *infamia*.<sup>168</sup> What the gloss suggests here, therefore, is that catching heretics on the spot of their public preaching is not necessary for their arrest, as long as their conviction of the crime of heresy can be established.

But why did the glossator particularly invoke this law? One can speculate that the *Glossa* employs this Roman ruling on marriage and adultery based on two interlocking tracks of analogy: one is the type of punishment, the other is the nature of crime. The infliction of infamy on the heretics is prescribed in X 5.7.13, i.e., canon 3 from the Fourth Lateran Council. This share of the same punishment might be the key clue for the glossator: as the conviction of adultery without the on-the-spot capture is enough for the prescription of infamy, the conviction of heresy without the on-the-spot catching of public preaching is enough for the same prescription. On the other hand, it is possible that the gloss also finds the underlying connection between adultery and heresy in their shared treacherous nature against the union of marriage and religion. After all, heresy has been analogized by the *Codex Justinianus* and Pope Innocent III himself to *crimen maiestatis*, of which high treason, as a betrayal against the Roman nation and people, is a major type.

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<sup>168</sup> Dig. 23.2.43.13: "Non adicitur hic ut in lege Iulia de adulteriis a quo vel ubi deprehensam: proinde sive maritus sive quis alius deprehendisse proponatur, videtur notata: sed et si non in domo mariti vel patris sui deprehensa sit, erit notata secundum verba legis." Dig. 23.2.43.12 regards the offense of adultery as a crime: "Quae in adulterio deprehensa est, quasi publico iudicio damnata est. Proinde si adulterii condemnata esse proponatur, non tantum quia deprehensa est erit notata, sed quia et publico iudicio damnata est."

We can find this potential linkage between marriage and religion with respect to the legal treatment of heretics in another gloss to X 5.7.9. Here the glossator was commenting on Pope Lucius III’s ruling to deprive honor from secular authorities who fail to aid the Church against heretics. The *Glossa* in this case supports this ruling with two allegations. The first one is a papal decree in the Pseudo-Isidore collections, claiming to strip the dignity or military power of those who threaten the peace of the Church:<sup>169</sup>

**X 5.7.9 glos. ord. s.v. honore**

| Transcription   | Translation  |
|---|--|
| Quia hoc ipso contra ecclesiam esse videtur: unde dignitate debent privari. <b>xxiii. q. i. qui contra pacem.</b> <sup>170</sup> et si. <b>xxxii. q. v. praeceptum.</b> <sup>171</sup> +Ber.+ | Since by this he seems to be against the Church: whence they should be deprived of dignity. [See] <b>xxiii. q. i. qui contra pacem.</b> , and likewise [in] <b>xxxii. q. v. praeceptum.</b> +Ber.+ |

But in the following allegation the glossator again invoked a marriage law, although this time coming from the canonical tradition. A canon from the Twelfth Council of Toledo, C. 32 q. 5 c. 21, rules to remove the dignity of husbands who abandon their wives who do not commit adultery and ignore three admonishments from the bishop to correct themselves.<sup>172</sup> Thus we see again the two tracks of analogy, this time between abandoners of marriage and sympathizers of heresy. The similarity in terms of the disruptive/treacherous nature of the two offenses is obvious

<sup>169</sup> C. 24 q. 1 c. 32 [Fr. v.1 col. 978]: “Qui contra pacem ecclesiae sunt, si dignitatem aut cingulum maliciae habent, nudentur eis.”

<sup>170</sup> C. 24 q. 1 c. 32 [Fr. v.1 col. 978].

<sup>171</sup> C. 32 q. 5 c. 21 [Fr. v.1 col. 1138].

<sup>172</sup> C. 32 q. 5 c. 21 [Fr. v.1 col. 1138]: “Preceptum Domini est, ut excepta causa fornicationis uxor a uiro dimitti non debeat, et ideo quicumque citra culpam criminis supradicti uxorem suam quacumque occasione reliquerit, quia quod Deus iunxit ille separare disposuit, tamdiu ab ecclesiastica communione priuatus, et a cetu omnium Christianorum maneat alienus, quamdiu societatem relictæ coniugis sinceriter amplectatur et foueat. Itaque qui iam admoniti sacerdote semel et bis et ter, ad suæ coniugis noluerint redire consortium ipsi se suis meritis et a palatinae dignitatis officio separabunt, et insuper generosæ dignitatis testimonium, quamdiu in culpa fuerint, amissuri sunt, quia carnem suam discidii iugulo tradiderunt.”

when the conciliar canon blames the abandoners for “separat[ing] what God joined... [and] surrender[ing] their flesh to the knife of discord.” And the punishment of depriving dignity, as the infliction of *infamia*, is ordered in both cases.

Such employment of analogy based on the similarities in the ways of punishment further appears in a more straightforward manner in another gloss to X 5.7.9. The canon rules here that all clerics who are convicted of heresy will be deposed and sent to the secular authority, unless they voluntarily return to the Church, publicly abjure their error, and perform the assigned satisfaction. Supporting the command, the first part of the gloss on “relinquatur” lists three crimes that incur this same punishment: heresy, fraud, and false accusation (*calumniam/contumeliam*).<sup>173</sup>

## 2.5 Procedural Rules and *Lacunae* for Treating Heretics: Proof and Violence

We have seen the *Glossa*’s concern over procedural details when it elaborates on Pope Gregory IX’s note regarding the submission of valid appeals in X 3.33.2. In X 5.7 the *Glossa* offers more discussions that help demonstrate thirteenth-century canonists’ procedural concerns and also (possibly intentional) *lacunae* regarding the legal treatment of heresy. In the gloss on “deprehensi” from X 5.7.9, which has been discussed above in the section on *Glossa*’s use of marriage laws, the glossator argued that the conviction of heresy does not require the on-the-spot capture of heretical acts. The gloss does not stop there, but briefly adds two more supporting

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<sup>173</sup> X 5.7.9 *glos. ord. s.v. relinquatur*: “In tribus enim casibus relinquatur aliquis curiae seculari statim post depositionem. In crimine haeresis, ut hic, et **infra e. excommunicamus**. Item in crimine falsi. +**infra de cri. fal. ad falsariorum**. Et in alio, cum propter calumniam vel contumeliam, quam contulit episcopo suo aliquis depositus est. **xi. q. i. si quis sacerdotum**.” On the second allegation here, which refers to X 5.20.7, where Pope Innocent III inflicts similar punishment on those laymen and clerics who forge papal letters, as well as a similar, later decretal by the same pope (X 5.40.27), see Anne J. Duggan, “Clerical Exemption in Canon Law from Gratian to the Decretals,” *Medieval Worlds* 6 (2017): 93–94.



ways of convicting heresy: taking proof from witnesses, and from the confession of the heretics themselves.

Can the confession then be produced through compulsion, or even torture? The *Decretales* is silent on this matter.<sup>174</sup> The *Glossa* to X 5.7 does not address this issue either, at least not directly. Nevertheless, the gloss on “sponte recurrere” to X 5.7.9, i.e., the *Ad abolendam*, offers a window for speculation, together with more information concerning the usage of compulsion in the treatment of heretics. As mentioned above, Pope Lucius III instructed in the canon that clergymen convicted of heresy will lose their clerical position and privileges unless they voluntarily return to the Church and perform required penitential actions. Of course, Lucius III in this context was not implying that the returning action is optional, but that spontaneous repentance leads to leniency and the possibility of rehabilitation in terms of ecclesiastical censure. Bernard’s comment on this ruling further emphasizes such *voluntarity*, while essentially remarking at the very beginning that compulsion should be used, however, for returners to *stay* in the faith.

**X 5.7.9 glos. ord. s.v. sponte recurrere**

| Transcription  | Translation   |
|--|---|
| Sed videtur quod etiam compelli debeat servare fidem. <b>xliv. di. de Iudaeis.</b> <sup>175</sup> Postquam est condempnatus haereticus, non compellitur.... +Ber.+ | But it seems that still he ought to be compelled to preserve the faith, [see] <b>xliv. di. de Iudaeis.</b> After he has been condemned as a heretic, he is not compelled.... +Ber.+ |

The single allegation in this gloss refers to canon 57 from the Fourth Council of Toledo in 633 (Dist. 45 c. 5), through which the *Glossa* analogizes the situation under discussion to the conversion of Jews. On the one hand, this conciliar canon forbids forcing Jews to convert. On the

<sup>174</sup> So was Frederick II in his contemporary constitutions against heresy. See Henry Charles Lea, *Superstition and Force: Essays on the Wager of Law, the Wager of Battle, the Ordeal, Torture*, 4th ed. (Philadelphia: Lea Brothers, 1892), 484.

<sup>175</sup> Dist. 45 c. 5 [Fr. v.1 cols. 161-162].

other hand, nonetheless, it commands that the Jews who are already converted through compulsion should still be forced to retain Christianity.<sup>176</sup> The two parallels are not difficult to see. Convicted heretics are like Jews, since they should come (return) to the Christian faith by their own will and not be forced; nonetheless, once they convert, they can be compelled to preserve the faith, as the beginning of the gloss indicates.

Does this analogy mean that a “potential” heretic who does not admit his/her guilt of heresy in the first place (and has not been condemned as a heretic yet) can be compelled to confess using force, or the opposite? The gloss does not yield an answer. Notably, nothing was added after Pope Innocent IV (1243–1254) promulgated his *Ad extirpanda* in 1252, which legitimizes the usage of torture against heretics for secular rulers *before* the arrested are transferred to the ecclesiastical court.<sup>177</sup> The silence of the *Glossa* on this matter throughout the entire title on heresy in the *Decretales* leaves its modern readers in wonder, and perhaps also left a grey area for its medieval readers in terms of the practice of law.

In terms of the general use of force in the ecclesiastical-judicial system, the popes until this point had been condemning the practice of the ordeal—although it is important to remember that ordeal is a form of divination rather than torture—for decades: from Alexander III’s (1159–1181) denunciation of a hot iron ordeal that some priests in Sweden went through in 1171/2, Lucius III’s rejection of an acquittal of a clerical homicide case through a water ordeal in 1181,

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<sup>176</sup> Dist. 45 c. 5: “De Iudeis autem precepit sancta sinodus, nemini deinceps uim ad credendum inferred... Ergo non ui, sed libera arbitrii facultate ut conuertantur suadendi sunt, non potius inpellendi. Qui autem iampridem ad Christianitatem coacti sunt, ... oportet, ut fidem, quam ui uel necessitate susceperint, tenere cogantur.”

<sup>177</sup> For a brief summary and discussion of this decretal, see Leandro Rust, “Bulas Inquisitoriais: *Ad Extirpanda* (1252),” *Revista Diálogos Mediterrânicos* (2014), 201–215. See also Jordan Bishop, “Aquinas on Torture,” *New Blackfriars* 87 (2006): 229–232; Lea, *A History of the Inquisition of the Middle Ages*, vol. 1, 337. It is also important to note that this decretal has never been included into official decretal collections after the *Decretales Gregorii IX*, thus never made its way into the *Corpus Iuris Canonici*.

to the formal prohibition against ordeal trials by Innocent III and Honorius III respectively in 1215 and 1222.<sup>178</sup> Nevertheless, as studies by Henry Ansgar Kelly demonstrate, the twelfth- to the early-thirteenth-century ecclesiastical judicial system and canonists since Gratian had not been so averse to torture as historians used to assume.<sup>179</sup> Further, compulsion as an effective way of inducing confessions was undoubtedly employed in the developing inquisitorial practice against heretics. If Innocent IV's 1252 *Ad extirpanda* does not formally invite the inquisitors to do so, Alexander IV's (1254–1261) *Ut negotium* in 1256, which allows inquisitors to absolve one another's canonical irregularity incurred through inquisitorial actions (thus including torture, or even unintentional killing victims), certainly was taken as an endorsement of such practice.

But again, *Ut negotium* does not appear in the *Glossa*'s references either. It is possible that the glossator was not following closely the clandestine side of the inquisitorial practice of his day (especially that under some overzealous judges) and thus neglected to consider this issue.<sup>180</sup> It is also probable that the *Glossa*'s silence on using compulsion to induce confessions reflects its unease about proofs that are produced through torture. Ulpian's influential remark about torture as a *res fragilis et periculosa* would certainly sound familiar to high medieval law professors and students.<sup>181</sup> Within one decade or two after the death of Bernard, Albertus

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<sup>178</sup> See Henry Charles Lea, *Superstition and Force: Essays on the Wager of Law, the Wager of Battle, the Ordeal, Torture* (Philadelphia: Lea Brothers, 1892), 417–418, 423. On the history of the ordeal, see also Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford; New York: Clarendon Press; Oxford University Press, 1986).

<sup>179</sup> See Kelly, "Judicial Torture in Canon Law and Church Tribunals: From Gratian to Galileo," 754–793. See also Henry Ansgar Kelly, "Inquisition and the Prosecution of Heresy: Misconceptions and Abuses," *Church History* 58 (1989): 439–451.

<sup>180</sup> "[T]he great canonistic commentators of the time... failed to confront the theoretical and practical problems raised by the prosecution of heresy and who failed to instruct the inquisitors." Kelly, "Inquisition and the Prosecution of Heresy," 451.

<sup>181</sup> See Kenneth Pennington, "Torture and Fear: Enemies of Justice," *RIDC* 19 (2008): 210.

Gandinus, a Bolognese judge, would warn against “judges that are ferocious beyond measure (*iudicibus immodice sevientibus freni*)” when discussing investigative torture.<sup>182</sup>

In sum, the *Glossa* remains silent on the issue of using force to extract confession. It straightforwardly acknowledges the legitimacy of forcing converts to preserve the Christian faith, but does not do so for the torturing of potential heretics for confession in either ecclesiastical or secular courts. Admittedly, the *Glossa* does not warn against such practice either. The two contemporary papal decrees listed above, which it does not incorporate (perhaps intentionally), demonstrate the increasing toleration or even encouragement of employing force to deal with heresy. The *Glossa*, understandably, cannot challenge this trend from the institutional top of the Church. But its silence on this matter—either because of mercy or the suspicion of evidence extracted by torture, or both—could potentially serve as a counter-balance. Such hesitancy about procedures that involve bodily harm can also be seen in the *Glossa*’s scruples about handing over heretics to secular courts, as demonstrated below.

## 2.6 Scruples about Handing Over Heretics to Secular Courts

Regarding the trial of heretics—especially concerning the cases of lay heretics—the procedural balance between the jurisdictions of the Church and secular authorities is another major concern for the *Glossa*. As a canonist, Bernard was eager to emphasize the active role to be performed by the ecclesiastical tribunal in collaboration with that of the secular. After laying out treatments for clerical heretics, as mentioned above, *Ad abolendam*, i.e., X 5.7.9, turns to laymen and simply orders them to be sent to secular courts for punishment.<sup>183</sup> The *Glossa*,

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<sup>182</sup> Hermann Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik*, vol. 2 (Berlin; Leipzig: J. Guttentag, 1926), 156.

<sup>183</sup> X 5.7.9: “Laicus autem, nisi, prout dictum est, abiurata haeresi et satisfactione exhibita confestim ad fidem confugerit orthodoxam, saecularis iudicis arbitrio relinquatur, debitam recepturus pro qualitate facinoris ultionem.”

however, carefully supplements the procedural lacuna here and reminds its readers that the ecclesiastical condemnation of the heretics needs to *precede* the punishments by the secular court, which was indeed the normal practice in the mid-thirteenth century:

**X 5.7.9 glos. ord. s.v. laicus**

| Transcription   | Translation  |
|---|--|
| Laici enim per ecclesiam condemnandi sunt de haeresi, sed iudex saecularis illum punire debet, nec trahitur <sup>184</sup> laicus curiae saeculari, sed clericus solummodo. <b>infra de verb. sig. novimus.</b> <sup>185</sup> Quia laicus semper est de foro saeculari, sed in casu isto +sententia debet ferri per ecclesiam:+ <sup>186</sup> executio solummodo fit per saecularem iudicem. Qualiter tales puniri debeant, dicitur <b>infra e. excommunicamus.</b> <sup>187</sup> +Ber.+ | Indeed, laymen ought to be condemned for heresy through the Church, but a secular judge should punish him, and the layman is not dragged/handed over to a secular court, but only a clergyman, [see] <b>infra de verb. sig. novimus.</b> Because a layman always belongs to the secular jurisdiction, but in this case +the sentence must be produced by the Church:+ only the execution occurs through a secular judge. How such people ought to be punished will be told below, [see] <b>infra e. excommunicamus.</b> +Ber.+ |

The gloss invokes X 5.40.27 from Pope Innocent III again, though this time for a different emphasis. In the decretal, which is a canon that does not concern laymen, the pope ordered clerics degraded by the Church because of heavy crimes such as forgery, after losing their privilege, to be sent to secular courts for punishment. In the meantime, however, Innocent III claimed that the Church would intervene if there is danger of death involved.<sup>188</sup> Although it seems that Innocent III's command is supporting X 5.7.9's ruling that heretics, as criminals, are

<sup>184</sup> In editions later than MS F, including the 1582 *ER*, the verb here is “traditur” (thus “handed over”).

<sup>185</sup> X 5.40.27 [Fr. v.2 col. 924].

<sup>186</sup> This part was only added since the edition represented by MS Munich, BSB, Clm 26301, fol. 201v.

<sup>187</sup> X 5.7.13/15 [Fr. v.2 cols. 787-789/789].

<sup>188</sup> X 5.40.27: “[C]lericus, qui propter hoc vel aliud flagitium grave, non solum damnabile, sed damnosum, fuerit degradatus, tanquam exutus privilegio clericali saeculari foro per consequentiam applicetur, quum ab ecclesiastico foro fuerit proiectus; eius est degradatio celebranda saeculari potestate praesente, ac pronunciandum est eidem, quum fuerit celebrata, ut in suum forum recipiat degradatum, et sic intelligitur tradi curiae saeculari; pro quo tamen debet ecclesia efficaciter intercedere, ut citra mortis periculum circa eum sententia moderetur.”

to be sent to secular courts, it is important to note that the degradation of the clergy by the ecclesiastical court happens first in the cited decretal. The revision made by Bernard himself during the thirteenth century further demonstrates his concern over this procedural matter, perhaps owing to his fear for the abuse of secular power, or for the dereliction of duty by the church courts. Although earlier redactions of the *Glossa*, represented by manuscripts from MS F to MS BAV, Borgh. 237, are careful enough to indicate that only the punishment is to be produced by secular judges, the post-1263 edition(s), as represented by MS Munich, BSB, Clm 26301 (fol. 201v), accentuates the message. The text stresses that “the sentence must be produced by the Church.”

Nevertheless, the *Glossa* sometimes encounters substantial difficulties as it tries to embed mercy, which we have seen a couple of times throughout our investigation during this chapter, in the legal procedures concerning heretics. In the same decretal, *Ad abolendam*, Pope Lucius III strictly instructed that those who have abjured their heretical mistake or even completed penance assigned by their bishop, if convicted of relapsing into heresy, will be sent to secular courts without ecclesiastical sentencing.<sup>189</sup> The following gloss, however, calls this strict ruling into question:

**X 5.7.9 glos. ord. s.v. audientia**

| Transcription   | Translation   |
|---|---|
| Si. <b>xxiii. d. in nomine Domini.</b> <sup>190</sup> Sed si volunt redire, nonne debent audiri et recipi: quia ecclesia non claudit gremium volentibus redire ad ipsam? <b>C. de summa. Tri. inter claras. circa fi.</b> <sup>191</sup> Et delicti enim veniam | Likewise [in] <b>xxiii. d. in nomine Domini.</b> But if they wish to return, should they not be heard and accepted—since the Church does not close its bosom to those who wish to return to her? [See] <b>C. de summa. Tri. inter</b> |

<sup>189</sup> X 5.7.9: “Illos quoque, qui post abiurationem erroris, vel, postquam se, ut diximus, proprii antistitis examinatione purgaverint, deprehensi fuerint in abiuratam haeresim recidisse, saeculari iudicio sine ulla penitus audientia decernimus relinquendos.”

<sup>190</sup> Dist. 23 c. 1 [Fr. v.1 cols. 77-79].

<sup>191</sup> Cod. 1.1.8.35.

|  |  |
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| <p>penitentibus non negamus, dicit Imperator. <b>C. e. t. Manichaeos.</b><sup>192</sup> et <b>de pen. d. iii. adhuc instant.</b><sup>193</sup> Bene credo<sup>194</sup> quod debet recipi, quia Dominis non vult mortem peccatoris, +etc. <b>xxvi. q. vi. agnovimus.</b><sup>195+</sup> sed ut convertatur et <i>vivat</i><sup>196</sup> et in perpetuum carcerem detrudatur. <b>infra e. c. penult.</b><sup>197 198</sup> Sed audientia denegatur quo ad bona, vel si alias vellet se defendere. +&lt;Tamen littera ista contradicit <u>Tanc.</u>&gt;<sup>199</sup> hodie servandum est prout traditur. <b>infra eod. c. penult. §. si qui.</b><sup>200</sup> <u>Ber.</u><sup>201+202</sup></p> | <p><b>claras. circa fi.</b> And indeed the Emperor says that we do not deny pardon for a crime to those who repent, [see] <b>C. e. t. Manichaeos.</b> and <b>de pen. d. iii. adhuc instant.</b> I properly believe that he should be accepted, since the Lord does not wish the death of a sinner,<sup>203</sup> +and [see] <b>xxvi. q. vi. agnovimus.</b>+ but that he should be converted, <i>live (convertatur et vivat)</i>,<sup>204</sup> and be put into perpetual incarceration (<i>carcerem</i>), [see] <b>infra e. c. penult.</b> But a hearing is denied for good reason (<i>quo ad bona</i>), in case otherwise he would wish to defend himself. +&lt;Despite</p> |
|--|--|

<sup>192</sup> Cod. 1.5.4.6.

<sup>193</sup> *De pen. D. 3 c. 32* [Fr. v.1 cols. 1219-1221].

<sup>194</sup> “Videtur” in the 1582 *ER*.

<sup>195</sup> C. 26 q. 6 c. 13 [Fr. v.1 col. 1040], this added allegation appears in post-1243 editions since the one represented by MS BAV, Vat. lat. 1365 (fol. 554v). See also MS BAV, Vat. lat. 1383, fol. 215v; MS BAV, Borgh. 237, fol. 184v; and MS Munich, BSB, Clm 26301, fol. 201v.

<sup>196</sup> This word only appears in MS F. Cf. Ezekiel 18:23, which is quoted in C. 26 q. 6 c. 13.

<sup>197</sup> “ult.” in MS F, which is likely a scribal mistake.

<sup>198</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>199</sup> Texts within “<>” have been added since the post-1243 edition represented in MS BAV, Vat. lat. 1365, fol. 554v.

<sup>200</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>201</sup> In MS BAV, Vat. lat. 1383, fol. 215v and MS BAV, Borgh. 237, 184v, it is “t.” here, instead of “Ber.” MS Munich, BSB, Clm 26301 does not copy any siglum here.

<sup>202</sup> This part exists in post-1245 editions after (including) the one represented by MS BAV, Vat. lat. 1383.

<sup>203</sup> Cf. Pope Innocent III’s bull “Etsi Karissimus in Christo filius noster Johannes” from 1215, which was addressed to King John of England to condemn the Magna Carta: “Under the inspiration of Him who does not wish the death of a sinner but a conversion that the sinner may live, [the king] has now had a change of heart ([I]llo misericorditer inspirante qui non vult mortem peccatoris sed ut convertatur et vivat, tandem reversus ad cor).” English translation taken from Kenneth Pennington, “Decretal Letters of Pope Innocent III Touching on Church and State,” <http://legalhistorysources.com/ChurchHistory220/Lecture%20Four/InnocentIIIChurchState.html>. Latin text taken from C. R. Cheney and W. H. Semple, eds., *Selected Letters of Pope Innocent III Concerning England (1198–1216)*, Medieval Texts (London; New York: T. Nelson, 1953), 212. Cheney and Semple’s English translation here renders this passage as “[B]y the merciful inspiration of Him who desireth not the death of a sinner but rather that he would turn from his wickedness and live, the king at length returned to his senses.” Significantly, the phrase “convertatur et vivat” appears both in Innocent III’s bull and the gloss.

<sup>204</sup> This word only appears in MS F.

|  |   |
|--|---|
|  | Tancred's contradiction>, today this [principle] is to be adhered to, as it has been handed down. [See] <b>infra eod. c. penult. §. si qui. Ber.</b> +. |
|--|---|

Admittedly, Bernard also commented that once these people come back, they need to be put into perpetual incarceration (under the Church).<sup>205</sup> Perpetual incarceration or imprisonment would soon, if not already, become one of the most common sentences prescribed by medieval inquisitors.<sup>206</sup> While this ecclesiastical penalty does not necessarily mean that the imprisoned person will never be released, it certainly does not offer amicable conditions either. Pope Honorius III in one decretal on apostates who abandon their religious habits summarized the situation of ecclesiastical incarceration: “to the extent that only a miserable life would be preserved for them, until their obstinacy would recover from wickedness.”<sup>207</sup> Nevertheless, the multiple allegations emphasizing mercy from the *Codex Justinianus* and Gratian’s *Tractatus de penitentia* imply that Bernard clearly still considered ecclesiastical reacceptance to be more lenient than secular judgment. Not unlike Pope Innocent III in X 5.40.27, the gloss associates secular courts with death, which, as a matter of fact, had been prescribed in some contemporary secular law codes including the aforementioned *Liber Augustalis*<sup>208</sup> and the *Sachsenspiegel*.<sup>209</sup>

<sup>205</sup> This part, from “Bene credo” through “**infra. e. c. penult.**” was added by Bernard, as Tancred’s gloss on this canon in MS BAV, Vat. lat. 1377 does not contain this passage.

<sup>206</sup> For instance, almost fifty percent of more than six hundred penalties recorded in Bernard Gui’s register in the early fourteenth century are different forms of perpetual imprisonment. See James Buchanan Given, *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc* (Ithaca: Cornell University Press, 1997), 68–69.

<sup>207</sup> X 5.9.5 [Fr. v.2 cols. 791-792]: “Ita, quod solummodo vita sibi misera reservetur, donec a suae praesumptionis nequitia resipiscant.”

<sup>208</sup> *Liber Augustalis* I.I.2: “[I]n erroris concepti constantia perseverent, presentis nostre legis edicto damnatos mortem pati Patarenos decernimus quam affectant, ut vivi in conspectu Populi comburantur flammaram commissi iudicio.” Huillard-Bréholles, *Historia Diplomatica Friderici Secundi*, vol. 4, pt. 1, 7.

<sup>209</sup> *Sachsenspiegel* II.13.7: “Swelk kersten man ungelovich is oder mit tovere umme geit oder mit vorgiftnisse, unde des verwunnen wert, den scal men op der hort bernen.” Karl August Eckhardt, ed., *Sachsenspiegel: Landrecht* (Göttingen; Berlin; Frankfurt: Mustersmidt Verlag, 1955), 143–144. Madelyn Bergen translates this passage as “The Christian who commits heresy, or deals in witchcraft, or with poison shall be burned at the stake.” Madelyn



Nevertheless, Bernard still speculated and agreed with the rationale behind the canon that people relapsed into heresy should not be given the opportunity of another hearing to defend themselves. The pre-1239 redaction of the *Glossa* represented in MS F abruptly stops here. After considering and rejecting his teacher Tancred's opinion in his revisions after 1243, in the end, Bernard decided to support the papal ruling in his comment by acknowledging that "today this [principle] is to be adhered to, as it has been handed down."

But the very end of the post-1245 version of the gloss invokes X 5.7.15, a decretal from Pope Gregory IX in the same title, where the pope instructed that repentant heretics should be put into perpetual incarceration.<sup>210</sup> Apparently, Gregory IX here was not ruling the same matter as Lucius III, but no more argumentation was added by the glossator to justify this allegation that contradicts his final line of comment in the gloss. It therefore almost seems like Bernard was making a desperate and humble attempt through this confusing allegation to suggest that putting relapsed heretics, who again wish to return to the Church into ecclesiastical prison, still could be a potential option, rather than immediately and directly sending them to secular courts to face judgement and possibly capital punishment.

## 2.7 Conclusion

While an overall evaluation of the *Glossa* on the *Decretales'* treatment of heresy and heretics has to wait until the glosses to the entire X 5.7 are examined, a brief summary of what

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Ute Bergen, "The *Sachsenspiegel*: A Preliminary Study for a Translation," PhD diss., (The Ohio State University, 1966), 144. A newer translation based on a fourteenth-century illuminated manuscript at Wolfenbüttel lists this law in II.14 and renders it as "A Christian man or woman who is without faith and practices magic or mixes potions and is convicted must be burned on the pyre." Maria Dobozy, trans., *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century*, The Middle Ages Series (Philadelphia: University of Pennsylvania Press, 1999), 97.

<sup>210</sup> X 5.7.15: "Dampnati vero per ecclesiam saeculari iudicio relinquuntur, animadversione debita puniendi, clericis prius a suis ordinibus degradatis. Si qui autem de praedictis, postquam fuerint deprehensi, redire noluerint ad agendam condignam penitentiam, in perpetuo carcere detrudantur. Credentes autem eorum erroribus haereticos similiter iudicamus."

we have analyzed so far is in order. First of all, similar to the ordinary glosses to other titles, the *Glossa* here performs its educational function mainly through definition, clarification, and limitation. While the title only starts using the word heresy/heretic from the third canon, the *Glossa* indicates the concept of a heretic from its comment on the first one, and further lays out a rather systematic and comprehensive canonical definition of heresy in the first gloss to X 5.7.3. It is also important to note that the *Glossa* to X 5.7.5 essentially provides a new judicial category for heresy *in detestationem criminis*, which seems to have been directly inherited by the early inquisitors. On the other hand, we can also readily detect a law professor's concern over the usefulness and legitimacy of studying outdated legal materials in the gloss on "Celestinus atque Pelagius" to X 5.7.4, where the glossator switched the focus of discussion from excommunicated theologians' writings to old legal codes such as the laws of Moses and the Theodosian Code. In the gloss on "duabus viis" to X 5.9.4, as a matter of fact, we see a similar situation where the *Glossa* sensitively digresses from its current topic in order to defend the career of lawyers/legal scholars.

In terms of its major concerns, the *Glossa* does not care much about the specific theological problems of heresies. Further, at least in this chapter, which deals with the *Glossa* to X 5.7.1-9, none of the glosses discusses any twelfth- and thirteenth-century heretical sects/movements such as the Cathars, not to mention what they believe or practice. A theme that often emerges throughout the glosses is the infusion of mercy into the treatment of heretics in general. For succinct and tough rulings, such as X 5.7.2, which can be easily interpreted as "whoever does not correct a heretic is a heretic him/herself," the accompanying glosses often on the one hand offer supporting allegations to clarify the canon, but on the other hand limit the scope of punishments by inserting specific conditions such as the requirement of

public/ecclesiastical responsibility, as we have seen in the gloss to “non revocat.” Further, when the canons, such as X 5.7.5 and X 5.7.6, rule to disinherit the heretics, the *Glossa* quickly reminds its readers that there are still possibilities of repentance for these people, and that supplements—out of compassion—should be given to them for surviving.

Another topic that the *Glossa* is concerned about the most throughout this chapter is the usage or deprivation of privileges. This appears to demonstrate some common issues that the thirteenth-century ecclesiastical courts might encounter in practice. The first is the employment of privileges to be exempted from trials, or to be transferred to other courts instead of the local tribunals. The glosses, such as the gloss on “obtentu” to X 5.7.9, painstakingly deny these strategies from the perspectives both of the heretical crime’s nature and of the Roman law’s defense of local jurisdiction against privileges, which the *Glossa* digs out of both the *Codex Justinianus* and the *Novellae*. The second issue is the deprivation of privileges of all clerics who have been convicted of heresy. On this the theme of mercy appears again when the ordinary glosses repeatedly emphasize the necessary condition of incorrigibility after the conviction for such deprivation. Nonetheless, it is even more notable that, in both these cases concerning privileges, the *Glossa* preserves judicial consistency by extracting solid Romano-canonical materials without twisting its arguments/allegations, which is often not the case in the entire *Glossa* to the *Decretales*.

Further, digging into the mechanisms of the *Glossa*’s usage of Romano-canonical resources, this chapter also tries to investigate the underlying *ius commune* among the allegations and legal analogies. Besides those Roman laws that precisely match the glosses’ arguments, such as Cod. 1.5.4 for the punishment of heretics, we have particularly examined many cases where the glossator employed texts that do not directly concern the current topic. For instance, Roman

laws on slaves, forgery, false accusation, etc. are all invoked to illuminate the nature/punishments of the crime of heresy, whereas Roman law on local jurisdiction, as mentioned above, is applied to the issue of using privileges to avoid local trial. The undeniable existence of *ius commune* in such cases can only be revealed by comparing and scrutinizing the inner logics behind similar definitions and/or treatments of issues from different legal categories, on a case-by-case basis. This quest to identify and illustrate the hidden *ius commune* will be continued in the following chapters.

It is also important to note that the gloss on “audientia” to X 5.7.9 serves as a good example demonstrating the gradual revisions that Bernard did to the *Glossa* over the thirteenth century. Only after at least two editions and consulting opinions from his teacher, Tancred of Bologna, did Bernard finalize his opinion regarding whether relapsed heretics deserve further ecclesiastical hearings and, more importantly, whether they should be sent to secular courts.

Not all questions of the *Glossa*’s readers—at least of its modern ones—had been answered by Bernard. One major procedural lacuna, whether intentionally left or not, is particularly significant: can suspected heretics be forced to confess? The *Glossa* is curiously silent on this matter, even after the papacy offered clear instructions on torture in the 1250s. Bernard’s gloss provides an allegation concerning the conversion of Jews, and argues that on the one hand, once heretics are convicted, they should not be compelled to return to the Church. On the other hand, however, once they voluntarily returned to the Church, they can be compelled to preserve the faith. One can only speculate why the *Glossa* says nothing about compelling the hidden heretics to admit their guilt.

## Chapter Three: “Sometimes miracles happen through evil men”:

### The *Glossa* to X 5.7 on Heretics (II)

#### 3.1 Introduction

This chapter examines the *Glossa* to the second half of X 5.7, i.e., canons 10-16 of the title *De haereticis*. Compared with the diverse and sometimes fragmentary topics concerning heresy and heretics treated in X 5.7.1-9, the remaining seven canons of this title are relatively more focused.

Here follows a quick summary of each canon. X 5.7.10, *Vergentis in senium*, comes from a papal bull sent by Pope Innocent III (1198–1216) on 25 March 1199 regarding the punishments for heretics and for secular authorities who are reluctant to penalize the former.<sup>1</sup> It is different from previous canonical regulations mainly in the sense that it directly invokes the Roman legal concept of *crimen laesae maiestatis*, which indicates wrongs such as treason,<sup>2</sup> to discuss the nature of heresy as a canonical crime. Our investigation begins with this canon. The next canon, X 5.7.11, *Si adversus nos*, again from Innocent III, prohibits functionaries such as advocates and notaries from providing service to heretics.<sup>3</sup> X 5.7.12, *Cum ex iniuncto*, and X 5.7.14, *Sicut in uno corpore*, respectively from Popes Innocent III and Gregory IX (1227–1241), each forbids

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<sup>1</sup> For a recent discussion of the historical context of this bull, see Rust, “Bulas Inquisitoriais,” 141–149.

<sup>2</sup> See “Crimen maiestatis,” in Berger, 418.

<sup>3</sup> Significantly, this papal bull also claims that heretics, together with those who defend them, are “more perfidious than Jews, and crueler than pagans (*facti perfidiores Iudaeis et crudeliores paganis*).” Deana Copeland Klepper, “Disentangling Heretics, Jews, and Muslims: Imagining Infidels in Late Medieval Pastoral Manuals,” in *Late Medieval Heresy: New Perspectives. Studies in Honor of Robert E. Lerner*, Heresy and Inquisition in the Middle Ages 5 (York: York Medieval Press, 2018), 141. However, this section was truncated by Raymond of Peñafort in the *Decretales*.

laymen to preach—echoing the beginning of X 5.7.9 (i.e., the 1184 papal bull *Ad abolendam* from Pope Lucius III (1181–1185)).

X 5.7.13 comes from the third canon of the Fourth Lateran Council of 1215, *Excommunicamus et anathematizamus*. It largely builds upon canon 27 from the Third Lateran Council under Pope Alexander III (1159–1181) in 1179 (i.e., X 5.7.8, *Sicut ait beatus Leo*), the *Ad abolendam*, and the *Vergentis in senium*. One should note that parts of these latter texts, truncated by Raymond of Peñafort (d. 1275), were incorporated into this canon. It contains, therefore, the most comprehensive and detailed set of punishments for heretics and their various sympathizers/supporters within the title. Of particular import, echoing the contemporary Albigensian Crusade, it specifically grants those combatants fighting the heretics the same indulgence and privilege that are enjoyed by those crusaders defending the Holy Land.<sup>4</sup>

X 5.7.15 repeats in an abbreviated manner punishments stipulated in X 5.7.13 against lay and clerical heretics. It further indicates, however, that should the apprehended and repentant heretics wish to re-enter the catholic Church, they would face perpetual imprisonment. Moreover, this canon emphasizes that the same punishments ought to apply to both the *credentes* as well as the *perfecti*.<sup>5</sup> X 5.7.16, from Pope Gregory IX, largely repeats a similar rule from the

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<sup>4</sup> Notably, in the aforementioned 1179 *Sicut ait beatus Leo*, the spiritual benefit granted to those who fight “Brabantians, Aragonians, Basques, Navarese, and others who practice such cruelty toward the Christians that they respect neither churches nor monasteries, spare neither widows nor orphans, age nor sex, but after the manner of pagans destroy and lay waste everything” is “remission of their sins (*remissionem peccatorum*),” or, in another place within the same canon, “a remission of two years’ penance (*biennium de poenitentia injuncta relaxamus*); or if they are engaged there for a longer period, we leave it to the discretion of the bishops.” This group of antagonists is also referred to as heretics in the same paragraph. See Schroeder, *Disciplinary Decrees of the General Councils*, 234–235 and 243.

<sup>5</sup> The former denotes those who have not received the *consolamentum* yet and did not follow the rigorous Cathar life style of the latter, but will take the *consolamentum* towards the end of their lives. See Malcolm Barber, *The Cathars: Dualist Heretics in Languedoc in the High Middle Ages*, 2nd ed. (New York; London: Routledge, Taylor & Francis Group, 2013), 1. See also Nicholas Weber, “Albigenses,” in CE, vol. 1, 269.

1179 *Sicut ait beatus Leo* (a measure that belongs to the part abridged by Raymond in X 5.7.8) which concerns the absolution of a vassal's allegiance to whoever may have fallen into heresy.

There are 77 ordinary glosses for X 5.7.10-16. That number drops to 75 if one counts only glosses from MS F. In comparison, there are 33 ordinary glosses for X 5.7.1-9. This contrast in the number of glosses is mainly caused by X 5.7.12 and 13, which respectively have 27 and 32 glosses.<sup>6</sup> Most, nonetheless, provide simple clarification and/or allegations that do not require readers to ponder over their meaning. Other than these two long canons, X 5.7.10, 11, 14, 15 and 16 each has 6, 4, 2, 4, and 2 ordinary glosses respectively.

In keeping with the inclusion criteria stipulated for previous chapters, the following discussion examines those glosses that feature important displays of legal thinking, either directly in the comments or implicitly in their allegations. These inclusions help illustrate the judicial reflections embedded in and inherent to the *Glossa*.

### **3.2 A Romano-Canonical *Crimen laesae maiestatis***

Pope Innocent III's *Vergentis in senium*, i.e., X 5.7.10, has long been considered a watershed in the history of the medieval Church's treatment of heresy and heretics. The main reason for this is that, as mentioned above, the Apostolic See in this decretal employs the concept of *crimen laesae maiestatis*.<sup>7</sup> But it is a common overgeneralization that the papacy equated high

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<sup>6</sup> According to MS F, X 5.7.13 has 30 glosses. *Glos. ord. s.v. damnati* and *glos. ord. s.v. quilibet regulares* were added, after examining the selected manuscripts, and in the 1582 *ER* edition of the *Decretales*.

<sup>7</sup> It should be noted, however, that this analogical connection was already in the Roman legal tradition. In Cod. 1.5 (*De haereticis et manichaeis et samaritis*).4.4, we have "In mortem quoque inquisitio tendatur. Nam si in criminibus maiestatis licet memoriam accusare defuncti, non immerito et hic debet subire iudicium." Also we read in Dig. 48.4.1.pr. "Proximum sacrilegio crimen est, quod maiestatis dicitur."

treason with heresy.<sup>8</sup> Strictly speaking, Innocent III claimed that the canonical crime of heresy is far more grave than *crimen laesae maiestatis* as expressed in Roman law:<sup>9</sup>

#### X 5.7.10

| Transcription   | Translation  |
|---|--|
| <p>Innocentius III.</p> <p>Vergentis in senium saeculi corruptelam, et infra. In terris vero, temporali nostrae iurisdictioni subiectis, bona haereticorum statuimus publicari, et in aliis eadem fieri <u>praecipimus</u> per potestates et principes saeculares, quos ad id exsequendum, si forte negligentes exstiterint, per censuram ecclesiasticam appellatione remota compelli volumus et mandamus.</p> <p>Nec ad eos bona eorum ulterius revertantur, nisi eis, ad cor revertentibus et abnegantibus haereticorum consortium, <u>misereri</u> aliquis voluerit, ut temporalis saltem pena corripiat quem spiritualis non corrigit <u>disciplina</u>.</p> <p>Cum enim secundum legitimas sanctiones, reis laesae maiestatis punitis capite, bona confiscantur eorum, filiis suis vita solummodo ex misericordia conservata: quanto magis, qui aberrantes in fide Domini Dei filium Iesum Christum offendunt, a capite nostro, qui est Christus, ecclesiastica debent districtione puniri, et bonis temporalibus spoliari, cum <u>longe sit gravius</u> aeternam quam temporalem laedere maiestatem? ....</p> | <p>Innocent III.</p> <p>[Regarding] the corruption of the present age, declining in gloom, and below. On lands subjected to our temporal jurisdiction, we order the property of heretics to be confiscated; and, elsewhere, <u>we order</u> that the same measure to be applied by the magistrates (<i>potestates</i>) and secular princes (<i>principes saeculares</i>): whom we want and demand to be compelled to execute it—if perchance they appear careless—through ecclesiastical censure (<i>censuram ecclesiasticam</i>) without appear.</p> <p>And that the property of them will not be returned to them later, unless, with them returning to heart and giving up the relationship (<i>consortium</i>) with the heretics, [if] someone would like <u>to pity</u> them: so that at least a temporal <u>discipline</u> would punish (<i>corripiat</i>) whom the spiritual one does not correct.</p> <p>Indeed, according to the lawful sanctions, the culprits (<i>reis</i>) of lèse-majesté [are] punished by capital punishment, [and] their property is confiscated and the life of their children is spared only by mercy: how much more should the people—who, wandering in the faith of the Lord, offend Jesus Christ the son of God—be separated from our head, which is Christ, with ecclesiastical rigor, and be stripped of their temporal goods, since it is <u>far</u></p> |

<sup>8</sup> For one example of such overgeneralization, see Sackville, “The Church’s Institutional Response to Heresy in the 13th Century,” 117.

<sup>9</sup> On this canon see Kenneth Pennington, “‘Pro Peccatis Patrum Puniri’: A Moral and Legal Problem of the Inquisition,” *Church History* 47 (1978), 137-154, reprinted in Kenneth Pennington, *Popes, Canonists and Texts, 1150–1550* (Collected Studies Series 412; Aldershot: Variorum, 1993), XI.



|  |   |
|--|---|
|  | <u>more serious</u> to injure the eternal majesty than the temporal one? .... |
|--|---|

What Innocent III equated with *lèse-majesté*, based on his later 1199 bull *Licet Heli* (i.e., X 5.3.31) that introduces the inquisitorial procedure for the first time and is also included in the *Decretales*, is the crime of simony.<sup>10</sup> In both places the pope directly invoked the phrase *laesae maiestatis*. However, only in *Vergentis in senium* did Innocent dictate that, “it is far more serious to injure the eternal majesty than the temporal one.” An eleventh-century text attributed to Pope Nicholas II (1059–1061) contains a similar but not identical message. The text argues that heretics violate faith, for they act against the Roman Church as the mother of faith.<sup>11</sup> But in any case, Innocent III seems to be the first medieval pope who transplanted this concept from Roman law into a direct claim that that heresy injures the eternal majesty.

### 3.2.1 Confiscation: Transplantation and Legitimization

Did this conceptual transplantation bring Roman measures of punishment? Yes, but only to a limited extent, if we look at the specific penalties. The more important thing is that it brought a new, secular dimension to the medieval papal treatment of heresy in the late twelfth century. This is particularly evident when we compare the 1179 *Sicut ait beatus Leo*, the 1184 *Ad*

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<sup>10</sup> X 5.3.31 [Fr. v.2 col. 761]: “[A]liis asserentibus in crimine simoniae, sicut [et] in crimine laesae maiestatis, omnes indifferenter.” See Henry Ansgar Kelly, “The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy,” 78, n. 9.

<sup>11</sup> Dist. 22 c. 1 [Fr. v.1 col. 73]: “Qui autem Romanae ecclesiae priuilegium ab ipso summon omnium ecclesiarum capite traditum auferre conatur, hic proculdubio in heresim labitur; et cum ille notetur iniustus, hic est dicendus hereticus. Fidem quippe uiolat, qui aduersus illam agit, que est mater fidei: et illi contumax inuenitur, qui eam cunctis ecclesiis pretulisse cognoscitur.” According to Rebecca Rist, here Nicholas II “declared that anyone who tried to seize the prerogative of the Roman church conferred by Christ fell into heresy because his action injured Christ himself.” See Rebecca Rist, “The Medieval Papacy, Crusading, and Heresy, 1095–1291” in Keith Sisson and Atria A. Larson, eds., *A Companion to the Medieval Papacy: Growth of An Ideology and Institution* (Leiden; Boston: Brill, 2016), 314. I however was unable to extract the latter half of her reading from the original text.

*abolendam*, and the 1199 *Vergentis in senium* in their full forms, that is before Raymond of Peñafort abridged and inserted them into X 5.7.8, 9, and 10.

Innocent III in *Vergentis* ordered (1) heretics' property to be confiscated; (2) secular authorities who are careless in carrying out the ecclesiastical directives to be stripped of rank and property; and (3) that the Catholic children of heretics should be disinherited. This last penalty was indeed newly imported by Innocent III from Roman law, though itself within the latter is not without complex scenarios that the pope ignored.<sup>12</sup> We will discuss more about this in a later section. The second penalty, concerning the removal of rank and property of secular authorities who do not help eradicate heretics, owes more to the previous *Sicut ait beatus Leo* and *Ad abolendam* than to Roman law.<sup>13</sup>

The first penalty, the confiscation of heretics' property, on the one hand, has papal-canonical precedents. Pope Alexander III, through canon 4 from the 1163 Council of Tours, a

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<sup>12</sup> The main Roman law sections on treason in the Justinianic collections is located at Cod. 9.8 and Dig. 48.4. Dig. 48.4.9 orders that “[e]orum, qui maiestatis crimine damnati sunt, libertorum bona liberis damnatorum conservari divus Severus decrevit et tunc demum fisco vindicari, si nemo damnati liberorum existat.” Besides, Dig. 48.4.11 claims that the inheritance of a deceased criminal guilty of treason will be confiscated only when the criminal “perduellionis reus est, hostili animo adversus rem publicam vel principem animatus.” In other cases, as long as the criminals' successors cleared the charge of them, their inheritance will not be confiscated. However, Cod. 9.8.5.1 strictly orders that the sons of the criminals “a materna vel avita, omnium etiam proximorum hereditate ac successione habeantur alieni, testamentis extraneorum nihil capiant.” The same law, nevertheless, grants the criminals' daughters one-fourth share of their mother's estate. *Perduellio* during the pre-Justinianic period has been incorporated into the concept of *crimen lese maiestatis*. See “Perduellio,” and “Crimen maiestatis,” in Berger, 626 and 418. See also John Percy Vyvian Dacre Balfour and Andrew William Lintott, “maiestas,” in *The Oxford Classical Dictionary*, ed. Simon Hornblower and Antony Spawforth (Oxford University Press, 2005), <https://www-oxfordreference-com.ezproxy.cul.columbia.edu/view/10.1093/acref/9780198606413.001.0001/acref-9780198606413-e-3890>.

<sup>13</sup> It should be noted that canon 27 from the Third Lateran Council removes the rank and confiscates the property of “[t]hose who are bound to them [Brabantians, Aragonians, Basques, Navarreses, and others] by any agreement.” See Schroeder, *Disciplinary Decrees of the General Councils*, 234. These groups listed in the square brackets are differed from the “Cathari, others Patarini, and others again Publicani” in the canon. However, all of them are considered “heretics.”

landmark in medieval legislation against the Cathars,<sup>14</sup> instructed Catholic princes to confiscate properties of heretics originating in Toulouse. *Ad abolendam* commands that “the goods of the condemned persons shall be applied to the service of those churches to which they belong, under proper regulations.”<sup>15</sup> On the other hand, compared with Alexander III’s and Lucius III’s orders, the confiscation penalty in the *Vergentis* seems to be more “Roman.” Cod. 9.8.5 directly states that the property of people who are guilty of treason is to be confiscated by the Imperial Treasury. Innocent III, invoking this rule together with the concept of *lèse-majesté*, emphasized that heretics’ property is to be claimed “on lands subjected to our [the papacy’s] temporal jurisdiction” and then “the same measure [is] to be applied by the magistrates and secular princes.” The secular authorities had been long required by the papacy to help root out heresy, as noted above. However, after *Vergentis*, they could, with papal (both as the Apostolic See and a temporal ruler) support, *canonically* confiscate heretics’ property under their *secular* jurisdiction. This constituted a Romano-canonical tradition. What had been decreed by Alexander III in 1163 now received a more solid theoretical ground.

Indeed, this principle implemented by Innocent III in 1199 clearly helped shape contemporary rulers’ perception of heretics. Emperor Frederick II (1220–1250), for example, repeated the pope’s exact words, “cum longe sit gravius aeternam quam temporalem laedere maiestatem,” in the ruling against heretics issued at the time of his imperial coronation on 22

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<sup>14</sup> On this canon, its relevant literature, and its historical-conciliar setting, see Robert Somerville, *Pope Alexander III and the Council of Tours (1163): A Study of Ecclesiastical Politics and Institutions in the Twelfth Century* (Berkeley: University of California Press, 1977), especially 53 and 98, n. 93.

<sup>15</sup> Peters, ed., *Heresy and Authority in Medieval Europe*, 172. However, it is important to acknowledge that Lucius III here was unclear about whether this rule is applied to all convicted heretics, or only those who, after abjuration, returned their previous heresy.

November 1220.<sup>16</sup> While the exact meaning of the secular *animadversio debita* and *imperialis statuta* against heretics from 1184 *Ad abolendam* was still uncertain, after 1220 those measures could mean execution, property-confiscation, etc. Frederick II did not, admittedly, specify *crimen laesae maiestatis* in his decree for Lombardy in March 1224, which is “the first law in which death by fire is contemplated.”<sup>17</sup> But in the 1231 *Liber Augustalis*, where both penalties of death and confiscation of property were mandated by the Emperor against heretics, the notion of *lèse-majesté* was employed in the same way as Innocent III stipulated thirty-two years before.<sup>18</sup>

The *Glossa* clearly feels the necessity to buttress or at least explain the legitimacy of property confiscation here. After all, the precedent in *Ad abolendam*, as mentioned above, instructs that the property of the condemned persons be placed in the service of their diocesan church. Put plainly, it at least partially still bears a penitential character. On the other hand, the papal instruction from X 5.7.10, technically speaking, granted a more secular tone to the measure. That characterization was new and lacked canonical precedents, and thus might trouble the thirteenth-century readers of the *Decretales*.

“Bona eorum confiscentur,” X 5.7.10 *glos. ord. s.v. disciplina* confirms this. The note of the gloss offers no further reasoning. Nonetheless, examining the three following allegations reveals its strategy to defend the ruling: highlighting the connections between Roman law, Gratian, and X 5.7.10, situating this canon firmly in both canonical and Roman tradition.

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<sup>16</sup> See Lvdewicus Weiland, ed., MGH Leges, 4.2, 108. While the ruling at one point specifically says “in generali concilio promulgatis,” which seems to be referring to the Fourth Lateran Council (1215), the language in this case is clearly copied from the *Vergentis in senium*. On this constitution and relevant literature see also James M. Powell, “Frederick II and the Church: A Revisionist View,” CHR 48 (1963): 488, n. 3 and n. 5.

<sup>17</sup> Joseph Blötzer, “Inquisition,” in CE, vol. 8, 30.

<sup>18</sup> *Liber Augustalis*, I.I.2 (thus numbered after the preface). See Wolfgang Stürner, ed., *Die Konstitutionen Friedrichs II. für das Königreich Sizilien*, MGH. Constitutiones et acta publica imperatorum et regum, Tomus. 2, Supplementum (Hanover: Hahnsche Buchhandlung, 1996), 150. See also Huillard-Bréholles, *Historia Diplomatica Friderici Secundi*, vol. 4, pt. 1, 6–7.

### X 5.7.10 *glos. ord. s.v. disciplina*

| Transcription  | Translation   |
|--|---|
| ... Bona eorum confiscentur, ut dicit hic, habes. <b>vi. q. i. §. verum.</b> , <sup>19</sup> ut +c.+ <b>si quis cum militibus.</b> <sup>20</sup> et C. ad l. Iul. <b>quisquis.</b> <sup>21</sup> | ... Their property should be confiscated, as it says here, you have <b>vi. q. i. §. verum.</b> , [in] +c.+ <b>si quis cum militibus.</b> and C. ad l. Iul. <b>quisquis.</b> |

In the first allegation, a *dictum Gratiani*, the Master directly equated heresy with *lesè-majesté*. It is difficult for us to see whether or not Gratian actually inspired Innocent III in *Vergentis in senium*, especially since the former's *dictum* here did not mention anything about confiscation of property.

The second and third allegations might baffle their readers—medieval and modern alike—as their content is essentially the same. The second allegation, C. 6 q. 1 c. 22, is actually Gratian's citation of Cod. 9.8.5, i.e., the third allegation.<sup>22</sup> The text is, as discussed above, one long Roman law *lex*—indeed the most comprehensive one—on treason in the *Codex Justiniani*. Gratian occasionally invoked Roman law in his *Decretum*, especially in the second recension. And needless to say, the *Glossa* often resorts to both the *Decretum* and Roman law for allegations. But consecutively citing the same text from these two sources seems to appear in this case only. This of course could be a simple mistake. However, another way to explain this phenomenon is that the gloss intentionally arranges this to highlight the continuity between canon law and Roman law, particularly on the point of linking heresy with *crimen laese*

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<sup>19</sup> C. 6 q. 1 dict. ante. c. 22 [Fr. v.1 cols. 559-560]: “Verum hoc Augustini, et illud de infamium accusatione, de his intelligendum est, quos constat esse hereticos, non de his, qui se negant in heresim lapsos.... Hec licet ratione niti videantur, exemplo tamen lesae maiestatis uana intelliguntur, ad cuius accusationem dum socius inite factionis admittitur, non queritur, an cogitare contra animam principis sit maiestatem ledere, sed an aliquis de nece eius tractaverit.”

<sup>20</sup> C. 6 q. 1 c. 22 [Fr. v.1 col. 560].

<sup>21</sup> Cod. 9.8.5.

<sup>22</sup> Gratian's citation skips Cod. 9.8.5.3-6.

*maiestatis*. Roman law, Gratian, and Innocent III were connected in a manner that, together, they present a coherent Romano-canonical tradition on the punishment of property confiscation.

Furthermore, the *Glossa* seems to support also the legitimacy of the confiscation of heretics' property *according to secular jurisdiction*. This is underlined, for instance, in the last part of X 5.7.11 *glos. ord. s.v. auxilium/consilium*. Two interesting allegations from Augustine are invoked—both of which argue the validity of human law.

**X 5.7.11 *glos. ord. s.v. auxilium [consilium]***<sup>23</sup>

| Transcription   | Translation  |
|---|--|
| <p>... Et sic haeretici puniantur... cum bona ipsorum debeant confiscari, sicut aliorum haeticorum. Immo licite eis auferuntur sua. +ut <b>viii. distin. quo iure.</b><sup>24+</sup> <b>xxiii. q. v. non vos.</b><sup>25</sup> et <b>q. vii. cap. i.</b><sup>26</sup> +<b>ii. et iii.</b><sup>27+</sup> Melius tamen est si auctoritate iudicis hoc fiat. <b>xxiii. q. iii. sex sunt.</b><sup>28</sup> et <b>C. de pig. l. iii.</b><sup>29</sup> +<b>b.</b><sup>+30</sup></p> | <p>... And the heretics are punished in such a way... since their property should be confiscated, just as [the property] of other heretics. Indeed, their property is confiscated from them legally. [See] +as [in] <b>viii. distin. quo iure.</b>+<b>xxiii. q. v. non vos.</b> and <b>q. vii. cap. i.+ii. et iii.</b>+ However it is better if this would happen by the authority of the judge, [see] <b>xxiii. q. iii. sex sunt.</b> and <b>C. de pig. l. iii.</b> +<b>b.</b>+</p> |

<sup>23</sup> This word is not marked in the MS F as a *lemma* for an independent gloss (i.e., not underlined). Also in MS F, the word in the canon is actually “consilium” instead of “auxilium,” despite the fact that it is “auxilium” in the gloss.

<sup>24</sup> Dist. 8 c. 1 [Fr. v.1 cols. 12-13] This addition appeared between 1243–1245, according to MS Vatican, BAV Vat. lat. 1365, fol. 555r.

<sup>25</sup> C. 23 q. 5 c. 42 [Fr. v.1 cols. 941-942].

<sup>26</sup> C. 23 q. 7 c. 1 [Fr. v.1 col. 950].

<sup>27</sup> C. 23 q. 7 c. 2 and 3 [Fr. v.1 cols. 951-952]. This addition appeared between 1243–1245, according to MS Vatican, BAV Vat. lat. 1365, fol. 555r.

<sup>28</sup> C. 23 q. 3 c. 1 [Fr. v.1 col. 896 (*Sex differentiae sunt*)].

<sup>29</sup> Cod. 8.13.3.

<sup>30</sup> This addition of Bernard's *siglum* appeared between 1243–1245, according to MS Vatican, BAV Vat. lat. 1365, fol. 555r.

One of them claims that by either divine law or human law in the form of a king's power earthly property could be lawfully owned or stripped away.<sup>31</sup> The other allegation is not in MS F, but appears in selected manuscripts following MS BAV, Vat. lat. 1365,<sup>32</sup> thus dating its appearance between 1243 and 1245. The *Glossa* possibly wants to highlight the lawfulness of secular authority through this Augustinian text. It equates human law with imperial and royal law.<sup>33</sup> The gloss, by invoking texts such as these, is probably echoing and buttressing imperial or other secular measures that had emerged during the past decades, following Innocent III's exhortation against heretics by confiscating their property. One such imperial measure is Emperor Frederick II's command in his *Liber Augustalis* of 1231, as we have seen above. It is also notable that we find a lawyer's reservation toward the end of the gloss, after these two texts underscoring secular lords' prerogative. With two allegations from the late antique Romano-canonical tradition—one from Augustine's commentary on the Psalms and the other from the Justinianic *Codex*—the gloss is trying its best to limit the scenarios of secular lords bypassing judicial procedures to confiscate heretics' property.

### 3.2.2 Concretized Images of Heresy

Another canonical dimension of the linkage between heresy and *lèse-majesté* in X 5.7.10 which is sometimes overlooked by modern readers, as mentioned above, is that the former is argued to be much more serious than the latter as a crime due to its religious dimension. Without

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<sup>31</sup> C. 23 q. 7 c. 1 [Fr. v.1 col. 950]: “Et quamuis res queque terrena non recte a quoquam possideri possit, nisi uel iure diuino, quo cuncta iustorum sunt, uel iure humano, quod in potestate est regum terrae, (ideoque falso res appellatis uestras, quas nec iuste possidetis, et secundum leges terrenorum regum amittere iussi estis, frustra que dicitis.”

<sup>32</sup> MS BAV, Vat. lat. 1365, fol. 555r.

<sup>33</sup> Dist. 8. c. 1 [Fr. v.1 col. 13]: “Iure ergo humano dicitur: hec uilla mea est, hec domus mea est, hic seruus meus est. Iura autem humana iura imperatorum sunt: quare? Quia ipsa iura humana per imperatores et reges seculi Deus distribuit generi humano.”

greater context, it is uncertain whether or not this argument stands as a purely rhetorical point by the pope. Nevertheless, the *Glossa* not only supports this claim, but also takes it as an opportunity to demonstrate for its readers some specific images of sacrilegious actions.

**X 5.7.10 glos. ord. s.v. longe sit gravior**

| Transcription   | Translation  |
|---|--|
| xvii. <sup>34</sup> q. iii. sicut qui ecclesiam. <sup>35</sup> et xxiii. q. v. si apud., <sup>36</sup> et quod in religionem divinam committitur, in omnium fertur iniuriam: et publicum crimen committitur, et C. e. t. Manicheos. <sup>37</sup> unde gravior est. | [See] xvii. q. iii. sicut qui ecclesiam. and xxiii. q. v. si apud., and what is committed against divine religion causes injury to all: and a public crime is committed, and [see] C. e. t. Manicheos., whence it is more serious. |

One of the allegations in this gloss above cites Pope Pius I (c. 140–c. 154) in *Pseudo-Isidore*. Illustrated by examples from ravaging churches, plundering churches’ estates and treasuries to attacking priests, *sacrilegium* as a crime is emphasized to be *gravior* than *fornicatio*.<sup>38</sup> Also noteworthy, this gloss highlights another layer of the religio-civil nature of heresy as a crime: it injures the *maiestas aeterna*, and thus becomes a public crime (*crimen publicum*). Here the *Glossa* not only cites Cod. 1.5.4 as an allegation, but copies the words almost verbatim from it in the comment as an emphasis.<sup>39</sup> If Innocent III was not clear enough in his *Vergentis in senium* about the graveness of heresy against both the religious majesty and the public welfare, the *Glossa* here certainly helps define and accentuate its sinful and criminal nature.

<sup>34</sup> “vii.” in MS F, which is likely a mistake.

<sup>35</sup> C. 17 q. 4 c. 12 [Fr. v.1 cols. 818].

<sup>36</sup> C. 23 q. 5 c. 24 [Fr. v.1 cols. 937-938].

<sup>37</sup> Cod. 1.5.4.

<sup>38</sup> C. 17 q. 4 c. 12 [Fr. v.1 cols. 818]: “Sicut qui ecclesiam Dei uastat, et eius predia et donaria spoliat et inuadit, fit sacrilegus sic ille, qui eius sacerdotes insequitur, sacrilegus iudicatur.... Et sicut maius peccatum est, quod in Deo committitur, quam quod in homine, sic gravior est sacrilegium agere quam fornicari.”

<sup>39</sup> Cod. 1.5.4: “Ac primum quidem volumus esse publicum crimen, quia, quod in religione divina committitur, in omnium fertur iniuriam.”



Another effort made by the *Glossa* to connect *crimen laese maiestatis* with a concretized image of heresy/heretics can be excavated from X 5.7.12 *glos. ord. s.v. occulta conventicula*. X 5.7.12, as X 5.7.10, comes from a papal decretal of Innocent III. Though a long text compared with other canons in the title, it is more “biblical” than “canonical:” the pope in this letter profusely cited biblical passages to support his decree that laymen should not preach nor mock priests. Scholars have long recognized the Church’s concern about the dangers of lay preaching in connection with heretics. In this title X 5.7.9, Lucius III’s bull *Ad abolendam*, had already anathematized “all who shall have presumed to preach, either publicly or privately, either being forbidden, or not sent, or not having the authority of the Apostolic See, or of the bishop of the diocese.”<sup>40</sup> Thus, what Innocent III argued using many biblical texts is to a large extent canonically no different than what Lucius III prescribed in 1184. The legal unoriginality here is also reflected in the *Glossa*. Many glosses on this canon are succinct textual clarifications that contain no significant extended judicial reflection.

Innocent III here stipulated a concern that we find particularly underlined in the *Glossa*: heretics forming small and secret societies, echoing the *Glossa*’s definition of heresy in X 5.7.3 *glos. ord. s.v. omnem haereticum* in Chapter Two.

### X 5.7.12

| Transcription  | Translation <sup>41</sup>  |
|--|--|
| Universis Christi fidelibus, tam in urbe Metensi quam in eius dioecesi constitutis.  | To all the faithful in Christ established both in the city of Metz and in its diocese.   |
| ... in eo tamen apparent quidam laici merito arguendi, quod <u>occulta conventicula</u> celebrant, officium praedicationis Christi sibi usurpant, sacerdotum <u>simplicitatem</u> eludunt, | ... however some laymen appear to be accused ( <i>arguendi</i> ) deservedly on this, since they celebrate <u>small, secret assemblies</u> , usurp for themselves the duty of preaching Christ, |

<sup>40</sup> Peters, ed., *Heresy and Authority in Medieval Europe*, 171.

<sup>41</sup> My translation of this canon considers an anonymous translation of *Cum ex iniuncto* on Wikisource ([https://en.wikisource.org/wiki/Translation:Cum\\_ex\\_iniuncto](https://en.wikisource.org/wiki/Translation:Cum_ex_iniuncto)).

|   |  |
|---|--|
| et eorum consortium aspernantur, qui talibus non inhaerent. ... | mock the <u>simplicity</u> of the priests, and despise the company of those who do not take part in such things. ... |
|---|--|

Both X 5.7.12 and Lucius III's *Ad abolendam* passingly speak about "small, secret assemblies." Raymond truncated the part in the latter mentioning it for X 5.7.9, possibly intending to avoid repetition. But the *Glossa* does not overlook this concern. Similar to its emphasis on the "sect" dimension when defining heretics, the ordinary gloss on *occulta conventicula* was quick to point it out to its readers. Heresy here is essentially considered as conspiracy against God. Thus, the gloss underlines that, as Innocent III argued in *Vergentis in senium* (specifically cited as an allegation in this gloss) regarding *crimen laese maiestatis*, the penalty for it should be more severe than that against a person.<sup>42</sup>

### 3.3 *Processus inquisitionis: from the Perspective of a Canonist*

Despite the fact that X 5.7 is a title specially dealing with heretics, it contains only a general order regarding how exactly an "inquisition" against heretics should proceed. X 5.7.13, the third canon from the 1215 Fourth Lateran Council, takes verbatim what Lucius III prescribed in 1184 (again abridged by Raymond for X 5.7.9).<sup>43</sup> Simply speaking, the papacy commanded

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<sup>42</sup> X 5.7.12 *glos. ord. s.v. occulta conventicula*: "Sicut conspiratores. **xi. q. i. conpirationum. lxxix. d. si quis Papa.** Isti enim conspirant contra Deum: unde fortius sunt puniendi, quam si conspirarent contra hominem. **supra. eod. vergentis. ad fi.**" A notable and specific type of conspiracy hides in the second allegation, which does not concern heresy: secret assemblies that consult about the next possible pope when the current one is still alive. See Dist. 79 c. 2 [Fr. v.1 cols. 276-277]: "Si quis superstite Papa pro Romano Pontificatu cuiquam quolibet modo fauorem prestare conuincitur, loci sui honore priuetur. ... Propter occultas fraudes et coniuurationum secretas insidias, quas sententia huius districtiois consequitur, si quis ad ecclesiasticam pertulerit noticiam consilia eorum, qui contra hanc sinodum de pontificali egerint ambitu, et rationabili probatione conuicerit, particeps actionis huiusmodi non solum purgatus ab omni culpa sit, sed etiam remuneratione, que non indigna sit, subleuetur." On this conciliar canon and its historical context see Carl Joseph Hefele, ed., *Histoire des conciles d'après les documents originaux. Nouveau traduction française corrigé et augmenté par H. Leclercq.* vol. II, pt. 2 (Hildesheim; New York: Georg Olms Verlag, 1973), 948, originally published in German in Karl Joseph von Hefele, ed., *Conciliengeschichte*, vol. 2 (Freiburg im Breisgau: Herder, 1856), 608.

<sup>43</sup> X 5.7.13: "Addicimus insuper, ut quilibet archiepiscopus vel episcopus per se vel archidiaconum suum, aut alias honestas ydoneasque personas, bis aut saltem semel in anno propriam parochiam, in qua fama fuit haereticos habitare, circumeat, et ibi tres vel plures boni testimonii viros, vel si expedire videbitur, totam viciniam compellat, quod, si quos ibidem haereticos sciverit, vel aliquos occulta conventicula celebrantes, seu communi conversatione fidelium vita et moribus dissidentes, eos episcopo studeat indicare. Ipse autem episcopus ad praesentiam convocet

ecclesiastical authorities by this order to annually inspect their dioceses, gather locals to tell them about possible heretics, summon the defendants to the court, and convict them of heresy should they refuse to swear.

Except for a brief passage in X 5.7.13, none of the other canons of X 5.7 addresses the procedure of finding, trying, and convicting heretics. It is probably understandable in the sense that a slightly more detailed ruling regarding the procedure of inquisition—though not targeted specifically at heretics—had been included in the *Decretales* as X 5.1.24. It is the eighth canon from the Fourth Lateran Council, which deals with clerical excesses. Innocent III here allowed the summoned suspects to defend themselves and have the witnesses' names and attestations. Further, he listed three categories of procedure: accusation, denunciation, and inquisition.<sup>44</sup> Apparently, these guidelines were not sufficient for law in practice. The following examination of the *Glossa* on procedural issues of heresy trials reveals that during the thirteenth century, canonists were still struggling with, and trying to shed light upon specific and technical issues.

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accusatos, qui, nisi se ab obiecto reatu purgaverint, vel, si post purgationem exhibitam in pristinam fuerint relapsi perfidiam, canonicè puniantur. Si qui vero ex eis iuramenti religionem obstinatione dampnabili respuentes, iurare forte noluerint, ex hoc ipso tanquam haeretici reputentur.”

<sup>44</sup> X 5.1.24 [Fr. v.2 cols. 745-746]: “Qualiter et quando debeat praelatus procedure ad inquirendum et puniendum subditorum excessus, ex auctoritatibus veteris et novi testament colligitur evidenter, ex quibus postea processerunt canonicae sanctiones.... [Q]uum super excessibus suis quisquam fuerit infamatus, *ita* ut iam clamor ascendat, qui diutius sine scandalo dissimulari non possit vel sine periculo tolerari: absque dubitationis scrupulo ad inquirendum et puniendum eius excessus, non ex odii fomite, sed caritatis procedatur affectu.... Debet igitur esse praesens is, contra quem facienda est inquisitio, nisi se per contumaciam absentaverit, et exponenda sunt capitula, de quibus fuerit inquirendum, ut facultatem habeat defendendi se ipsum. Et non solum dicta, sed etiam nomina ipsa testium sunt ei, ut quid et a quo sit dictum appareat, publicanda, nec non exceptiones et replicationes legitimae admittendae, ne per suppressionem nominum infamandi, per exceptionum vero exclusionem deponendi falsum audacia praebatur.... Contra quos, ut de notoriis excessibus taceatur, etsi tribus modis possit procedi, per accusationem videlicet, denunciationem et inquisitionem ipsorum... sicut accusationem legitima debet praecedere inscriptio, sic et denunciationem caritativa monitio, et inquisitionem clamosa insinuatio praevenire, illo semper adhibito moderamine, ut iuxta formam iudicii sententiae quoque forma dictetur.” See Kelly, “The Fourth Lateran Ordo of Inquisition Adapted to the Prosecution of Heresy,” 77–78 with n. 6–9 for a brief discussion of this canon, Innocent III’s application of the *inquisitio* procedure to the issue of heresy in his 1199 decretal *Inter sollicitudines nostras* (of which X 5.34.10 is an excerpt) and his previous list of the three procedures in his 1199 decretal *Licet Heli* (X 5.3.31), together with other useful references.

### 3.3.1 *Inquisitio* as a General/Preliminary Legal Procedure

First of all, the *Glossa* clearly does not consider that the inquisitional procedure only applies to the crime of heresy. As a matter of fact, though written decades after Innocent III, it demonstrates a somewhat similar understanding of the triple routes of opening a legal case—*denunciatio*, *accusatio*, and *inquisitio*—in dealing with general ecclesiastical issues, as revealed in the gloss on *ordinate* to X 5.7.12.

#### X 5.7.12 *glos. ord. s.v. ordinate*

| Transcription   | Translation  |
|---|--|
| Denuntiando, +vel accusando+ <sup>45</sup> secundum quod traditur <b>supra de accusatio. qualiter.</b> <sup>46</sup> <b>supra</b> <sup>47</sup> <b>de symo. licet.</b> , <sup>48</sup> et +est+ ar. iuris ordinem esse servandum. | By denouncing +or accusing+ following what is handed down [in] <b>supra de accusatio. qualiter.</b> and <b>supra de symo. licet.</b> , and +it is+ argued that the order of law should be preserved. |

The word commented on by the *Glossa*, regarding an “orderly” canonical treatment, is not about heresy. Here Innocent III discussed removing the *cura animarum* of priests who reprehend or accuse their superior prelates.<sup>49</sup> The gloss, after offering denunciation and later accusation as options in its clarification of *ordinate*, introduces two allegations—both from Innocent III—on inquisitorial procedure. Again, these allegations do not concern heresy. The first one applies the procedure to clerical excesses, while the second one employs it against simony. Apparently the *Glossa*, emerging in the late 1230s, does not consider inquisition as a

<sup>45</sup> This part has been added between c. 1243 and 1245, see MS BAV, Vat. lat. 1365, 555r.

<sup>46</sup> X 5.1.17 [Fr. v.2 cols. 738-739].

<sup>47</sup> “C(od.)” in MS F.

<sup>48</sup> X 5.3.31 [Fr. v.2 cols. 760-761].

<sup>49</sup> X 5.7.12: “Rursus aliud est, quod praelatus sponte, de sua confisus innocentia, subditorum se accusationi supponit propria voluntate, in quo casu praemissum Domini verbum debet intelligi; et aliud quod subditus non tam animo reprehendendi quam detrahendi exsurgit temerarius in praelatum, cum ei potius incumbat necessitas obsequendi. Quodsi forte necessitas postularet, ut sacerdos tanquam inutilis aut indignus a cura gregis debeat removeri, agendum +est+ et ordinate apud episcopum, ad cuius officium tam institutio quam destitutio sacerdotum noscitur pertinere.”

special apparatus against heresy. It is rather a juridicial process for general ecclesiastical discipline. It is also worth noting that the procedure for accusation seems to have been added to the original recension of the gloss before 1245, demonstrating that these pre-thirteenth-century legal procedures were still active towards then.

But it would be wrong for us to claim that Bernard held the same understanding of the three procedures as Innocent III in X 5.1.24. The procedure of inquisition, according to X 5.7.12 *glos. ord. s.v. ordinate*, seems to take place *before* the procedure of denunciation or accusation. It is possible that this was in action even in 1199, when Innocent made a similar stipulation against simony in *Licet Heli*.<sup>50</sup> Yet, our gloss here demonstrates that even two decades after the Fourth Lateran Council's instruction concerning the categorization, the word *inquisitio* could still be employed loosely to denote a preliminary stage where ecclesiastical authorities simply initiate inquiries to open opportunities for denunciation or accusation.

### 3.3.2 *Suspicio and Infamia*

Beyond this general understanding of the concept of *inquisitio*, the *Glossa*, upon examination, raises many questions about judicial specifics involved in the cases of finding and trying heretics. One such issue is the treatment of suspects. What procedure should the inquisitor—a bishop or later an appointed mendicant friar—take to confirm, and further to deal with a suspect? X 5.7.13, again inheriting much from the 1184 *Ad abolendam*,<sup>51</sup> provides a brief instruction on this issue.

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<sup>50</sup> The relevant passage was given by Friedberg in his apparatus on X 5.3.31 as a variant reading, Fr. v.2, col. 760. See Kelly, “The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy,” 78, n. 9.

<sup>51</sup> *Ad abolendam* (X 5.7.9) from Fr. v. 2 col. 781, provided by Friedberg: “Qui vero inventi fuerint sola suspicione notabiles, nisi ad arbitrium episcopi iuxta considerationem suspicionis qualitatemque personae propriam innocentiam congrua purgatione monstraverint, simili sententiae subiacebunt.” Surprisingly, this passage does not exist in most of our selected manuscripts except for MS Florence, BNC Palat. 157, the earliest extant manuscript of the *Decretales*, which does not contain the *Glossa* (162r/154r). It appears in MS Vatican, BAV Vat. lat. 1383, but as an apparent later addition (215v). Also, none of the copies of the *Glossa* comments on this paragraph. It is highly

### X 5.7.13

| Transcription  | Translation <sup>52</sup>  |
|--|--|
| Idem in concilio generali.<br><br>... +§. 2.+ Qui autem inventi fuerint sola <u>suspicione</u> notabiles, nisi iuxta considerationem <u>suspicionis</u> qualitatemque personae propriam innocentiam congrua purgatione monstraverint, anathematis gladio feriantur, et usque ad satisfactionem condignam ab omnibus evitentur, ita, quod si per annum in excommunicatione persisterint, ex tunc velut haeretici <u>condempnentur</u> . ... | The Same in the General Council<br><br>“... [+§. 2.+] But those who are only <u>suspected</u> , due consideration being given to the nature of the <u>suspicion</u> and the character of the person, unless they prove their innocence by a proper defense, <sup>53</sup> let them be anathematized and avoided by all until they have made suitable satisfaction; but if they have been under excommunication for one year, then let them be <u>condemned</u> as heretics. ...” |

What defines a suspect, or, in other words, establishes a reasonable suspicion? What does the conciliar canon from Fourth Lateran mean when it speaks of the “due consideration” to be “given to the nature of the suspicion and the character of the person”? Neither *Ad abolendam* nor X 5.7.13 addresses these practical questions. The *Glossa* does not seem to focus on this issue either, but it is nonetheless revealed in the two consecutive glosses on *suspicione* and *suspicionis* in X 5.7.13. Infamy, according to Bernard, is the key. X 5.7.13 does not specify the legal procedure. Note that only *inquisitio*, compared with *accusatio* and *denunciatio*, would involve suspects. Thus, Bernard was clarifying for his readers that *infamia*—here not as a canonical punishment, *infamia canonica*, but a bad public reputation, *infamia facti*<sup>54</sup>—constitutes a prerequisite to start an inquisitorial trial of the suspect.

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possible, therefore, that the copy of the *Decretales* owned by Bernard to compose the *Glossa* does not contain this passage.

<sup>52</sup> The following translation is taken from Schroeder, *Disciplinary Decrees of the General Councils*, 242.

<sup>53</sup> Schroeder translated *purgatione* as “defense,” but Innocent III here seemed to be intending the canonical purgation as a specific legal procedure.

<sup>54</sup> See “Infamia,” in Berger, 500. See also Antonia Fiori, *Il giuramento di innocenza nel processo canonico medievale: storia e disciplina della “purgatio canonica”* (Frankfurt am Main: V. Klostermann, 2013), 377–395. For example, according to Innocent III, a priest unintentionally injuring a child by throwing a bar while unloading hay from a cart could potentially cause *infamia* (X 5.12.14). This would be an *infamia facti* instead of an assigned

**X 5.7.13 glos. ord. s.v. suspicione**

| Transcription   | Translation   |
|---|---|
| Id est, praesumptione. Nota quod sola suspicio sive praesumptio purgationem inducit: quod si non fiat, punitur, ut hic patet. ar. <b>supra de coha. clerico. tua nos.</b> <sup>55</sup> Et intellige quod sit probabilis praesumptio sive suspicio: alias non indiceretur purgatio, et sic non obstat. <b>ii. q. i. primo.</b> , <sup>56</sup> et ita hic respicitur infamia. | That is, by presumption. Note that suspicion or presumption alone leads to purgation ( <i>purgationem</i> ): should it not be the case, he is punished, as it shows here, [see] the argument [in] <b>supra de coha. clerico. tua nos.</b> And you should understand that the presumption or suspicion should be probable: otherwise ( <i>alias</i> ), the purgation should not be announced, and thus there is no obstacle, [see] <b>ii. q. i. primo.</b> , and therefore in this case infamy ( <i>infamia</i> ) is considered. |

**X 5.7.13 glos. ord. s.v. suspicionis**

| Transcription  | Translation  |
|--|--|
| Hoc semper est attendendum, ut secundum qualitatem infamiae et personae indicatur expurgatio. <sup>57</sup> <b>ii. q. v. omnibus.</b> <sup>58</sup> et <b>infra de pur. ca. inter.</b> <sup>59</sup> | This always should be attended to, so that, according to the nature of infamy and personality, the vindication ( <i>expurgatio</i> ) is announced. [See] <b>ii. q. v. omnibus.</b> and <b>infra de pur. ca. inter.</b> |

The *Glossa* demonstrates, at first glance, a tradition, stemming from Innocent III, that addresses how the *inquisitio* should be initiated: by considering *fama publica* or *per notorium*, as demonstrated through the second allegation in X 5.7.13 *glos. ord. s.v. suspicionis* given above.<sup>60</sup>

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punishment. For a brief discussion concerning this case, see Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX: systematisch auf Grund der handschriftlichen Quellen dargestellt* (Vatican City: Biblioteca Apostolica Vaticana, 1935), 246.

<sup>55</sup> X 3.2.8 [Fr. v.2 col. 456].

<sup>56</sup> C. 2 q. 1 c. 13 [Fr. v.1 col. 444].

<sup>57</sup> In 1582 *ER* it is “purgatio.” But in selected manuscripts, other than MS Munich, BSB, Clm 26301 (the last recension) fol. 202v, it is “expurgatio.” See MS BAV, Vat. lat. 1365, fol. 555r; MS BAV, Vat. lat. 1383, fol. 216v; and MS BAV, Borgh. 237, fol. 185v.

<sup>58</sup> C. 2 q. 5 c. 19 [Fr. v.1 cols. 461-462].

<sup>59</sup> X 5.34.10 [Fr. v.2 cols. 872-874].

<sup>60</sup> X 5.34.10, i.e., Innocent III’s decretal *Inter sollicitudines nostras* of 1199. On this canon and *fama*-based canonical procedure, see John Sabapathy, *Officers and Accountability in Medieval England 1170–1300* (Oxford: Oxford University Press, 2014), 141; Kelly, “The Fourth Lateran Ordo of Inquisition Adapted to the Prosecution of Heresy,” 77, n. 7. See also R. H. Helmholz, “Crime, Compurgation and the Courts of the Medieval Church,” *Law and History Review* 1 (1983): 1–26; Jessalynn Bird, “The Wheat and the Tares: Peter the Chanter’s Circle and the Fama-Based Inquest Against Heresy and Criminal Sins, c. 1198-c. 1235,” Uta-Renate Blumenthal, Kenneth

Nevertheless, its citation of C. 2 q. 5 c. 19 contains a perplexing message. This canon is a forged letter from Pope Leo III (795–816) to Charlemagne (d. 814) that describes the circumstance in which a problematic priest would be required to deliver a *purgatio canonica*. The latter, simply speaking, indicates swearing a religious, exculpatory oath—in the words of the decretalists, an *innocentiae ostensio*.<sup>61</sup> The forged Leonine letter commands a priest to go through this process, should he be suspicious and untrustworthy to his bishop, *aut* the rest of his fellow priests, *sive* honest and just persons from male and female citizens.<sup>62</sup>

It seems, therefore, that the suspicion from one’s bishop alone can lead to the procedure of *purgatio canonica*. So, does the *Glossa* really understand *infamia* as bad, *public* fame? Does a bishop’s personal suspicion equate to a canonical suspicion? Notably, late-twelfth-century canonists generally interpret this “*aut*” as “*et*.”<sup>63</sup> More importantly, the *Glossa ordinaria* to the *Decretum Gratiani* employed this interpretation in the text of both recensions.<sup>64</sup> Thus there are two possible explanations of Bernard’s citation of C. 2 q. 5 c. 19. The first one is that he

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Pennington, and Atria A. Larson, eds., *Proceedings of the Twelfth International Congress of Medieval Canon Law : Washington, D.C. 1-7 August 2004* (Vatican City: Biblioteca Apostolica Vaticana, 2008).

<sup>61</sup> Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 3, for a discussion of the terminology of *purgatio*, see 1–5. See also X 5.34, *De purgatione canonica* and Adhémar Esmein, *A History of Continental Criminal Procedure: With Special Reference to France*, trans. John Simpson (Boston: Little, Brown, 1913), 79, which traces this procedure to the 800s.

<sup>62</sup> C. 2 q. 5 c. 19 [Fr. v.1 cols. 462]: “Ipse ergo sacerdos, si suspiciosus aut incredibilis suo episcopo aut reliquis suis consacerdotibus, siue bonis et iustis de suo populo uel de sua plebe hominibus fuerit.” For a detailed discussion of the textual transmission of this document, together with relevant historical context, see Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 67–85.

<sup>63</sup> See Antonia Fiori, “*Quasi denunciante fama: note sull’ introduzione del processo tra rito accusatorio e inquisitorio*,” in *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, vol. 3: Strafrecht und Strafprozessrecht (Cologne: Böhlau, 2012), 360–363. See also Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 384–385.

<sup>64</sup> See n. 63. As Fiori points out, the overwhelming opinion from late-twelfth-century canonists interpreting this passage is to read the *aut* as *et*—so does the *Glossa ordinaria* on Gratian. See also the *Glossa ordinaria* on Gratian here, 1582 ER, col. 855, *glos. ord. s.v. aut*: “*pro &*.” See also MS BAV, Pal. lat. 624, fol. 97r (Johannes Teutonicus’ edition of the *Glossa* to the *Decretum Gratiani*) and MS Munich, BSB, Clm 14005, fol. 111v (revised *Glossa* by Bartholomeus Brixiensis).



expected his readers to be familiar with the aforementioned influential interpretation and did not feel it necessary to clarify it further. Or, (with lesser plausibility) he simply assumed that the situation of looking suspicious to a bishop alone could incur the brand of *infamia*. But for medieval law students—who presumably were already familiar with the *aut pro et* canonical opinion—here *infamia* would mean a wide-spread bad reputation, and personal suspicion from an inquisitor probably would not be enough to initiate the procedure of purgation.<sup>65</sup>

### 3.3.3 *Purgatio* and Confiscation

As mentioned above, clarifying *suspicio* with infamy is not the main emphasis of these two glosses. The intention of the *Glossa* is to emphasize that the suspects—not the convicted—of heresy need to go through canonical purgation.<sup>66</sup> Another intention behind the *Glossa* in citing C. 2 q. 5 c. 19 is to introduce an exemplar for the procedure of purgation.<sup>67</sup> There the pseudo-papal letter offers a detailed description of ecclesiastical purgation for priests. The stipulation requires the suspect to swear upon the gospels with three, five, or seven—or more, should the bishop see fit—honest neighboring priests present.<sup>68</sup>

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<sup>65</sup> The *Glossa* in its discussion of *suspicio* and *purgatio* does not treat the problem of the specific number of witnesses to constitute a *suspicio* that in turn to lead to *purgatio*. Perhaps it is because that the decretists before him have had already struggled with this issue. See Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 382–384.

<sup>66</sup> Cf. X 5.9.3 concerning the infamous apostates. On the procedure of the canonical purgation, see R. H. Helmholz, “The Early History of the Grand Jury and the Canon Law,” *The University of Chicago Law Review* 50 (1983): 622.

<sup>67</sup> For an indispensable and recent study on purgation in the medieval canonical tradition, see Fiori, *Il giuramento di innocenza nel processo canonico medievale*. Her analysis of the issue of heresy on this subject (555–579), however, does not fully engage with the *Glossa*, especially its employment of allegations, to the *Decretales*.

<sup>68</sup> C. 2 q. 5 c. 19 [Fr. v.1 cols. 462]: “[N]e in crimine aut predicta suspicione remaneat, cum tribus, aut quinque, uel septem bonis ac uicinis sacerdotibus, exemplo Leonis Papae (qui duodecim episcopos in sua purgatione habuit) uel eo amplius, si suo episcopo uisum fuerit, aut necesse esse propter tumultum populi perspexerit, et cum aliis bonis et iustis hominibus se sacramento coram populo super quatuor euangelia dato purgatum ecclesiae reddat.” For a detailed discussion regarding the number of compurgators, see Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 364–372.

When suspects do not purge themselves, the canon instructs that they are to be excommunicated, and, then, if after a year they have still not made satisfaction, they ought to be condemned as heretics. The *Glossa* with its allegations, however, assigns more canonical restrictions to these obstinate suspects. After essentially repeating the canon in the comment, the gloss first invokes two late antique sources, one from the Fifth Council of Carthage (401) and the other from Pope Gelasius I (492–496), arranged consecutively in the *Decretum*.

**X 5.7.13 glos. ord. s.v. condemnentur**

| Transcription  | Translation   |
|--|---|
| <p>...<b>xi. q. iii. rursus.</b><sup>69</sup> et <b>c. quicumque.</b><sup>70</sup><br/>           Secus in aliis criminibus, quia si bona alicuius contumacis propter crimen annotata sunt, si infra annum non venit, devoluuntur ad fiscum. Sed quo ad crimen non obest quin post annum possit probare innocentiam suam.<br/> <b>ff. de requirendis. reis. l. annus.</b><sup>71</sup></p> | <p>...[See] <b>xi. q. iii. rursus.</b> and <b>c. quicumque.</b><br/>           Unlike with other charges, because if the goods of some contumacious person are noted down (<i>annotata sunt</i>), if within a year he does not come [to court], they are handed over to the treasury (<i>fiscum</i>). But as to the charge, there is no obstacle to prevent him from being able to prove his innocence after a year. [See] <b>ff. de requirendis. reis. l. annus.</b></p> |

While the first allegation simply reiterates that if the suspect does not purge himself within a year, he will lose the opportunity to do so, the latter—after repeating this rule—prescribes another practical order. If the suspect should die within the allotted timeframe of one year, his excommunication may not be withdrawn. It is possible that Bernard was only citing C. 11 q. 3 c. 37 for its first half. Nevertheless, death is certainly something that practically concerned ecclesiastical authorities dealing with heresy in the *Decretales*.<sup>72</sup>

<sup>69</sup> C. 11 q. 3 c. 36 [Fr. v.1 col. 654].

<sup>70</sup> C. 11 q. 3 c. 37 [Fr. v.1 col. 654].

<sup>71</sup> Dig. 48.17.4.

<sup>72</sup> See, for instance, X 5.7.3, 5, and 8.

Besides conviction, the *Glossa* further points out that if after a year the suspect does not show up (to purge himself), his goods are to be confiscated. This per se is not surprising, as we have seen the confiscation of convicted heretics' property when discussing X 5.7.10 above. However, what did Bernard mean when he said "unlike with other charges (*secus in aliis criminibus*)"? Whether this was indeed a common practice for crimes during the thirteenth century or just Bernard's own opinion awaits future examination.

What we do know is that this stipulation, possibly together with the one-year window for ecclesiastical purgation, comes from Roman law. Bernard's citation of Dig. 48.17.4 (towards the end of the excerpt above) demonstrates this. Dig. 48.17 deals with convicting people who are absent, and Dig. 48.17.1-2 contain *leges* giving those who do not appear in court a one-year window to purge themselves,<sup>73</sup> and providing for confiscating their properties if they are absent but still alive.<sup>74</sup> The allegation cited by Bernard here, however, is not these supportive texts. In a sense, his omission of these relevant *leges* demonstrates that what he claims about the confiscation of suspects of crimes including heresy after a one-year window was probably by then a commonly-accepted practice. The *Glossa*, through Dig. 48.17.4, in fact provides its readers new and more practical instruction. On the one hand, it introduces how to calculate the one-year period, that is, starting from the moment that the status of suspicion is made known to the public. On the other hand, however, it re-emphasizes that the suspect should not be obstructed should he want to protest against the suspicion.<sup>75</sup>

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<sup>73</sup> Dig. 48.17.1.3: "Et ex hoc annus computatur ad se purgandos."

<sup>74</sup> Dig. 48.17.2.pr.: "Anni spatium ad occupanda bona eius, qui requirendus adnotatus est, pertinet."

<sup>75</sup> Dig. 48.17.4: "Annus exinde computandus est, ex quo ea adnotatio quae vel edicto vel litteris ad magistratus factis publice innotuit.... In summa sciendum est nulla temporis praescriptione causae defensione summoverti eum, qui requirendus adnotatus est." However, it should be noted that in the Roman law here there seems to be no time-limit (instead of one year) for those who want to defend themselves (and potentially acquire back their confiscated property). Bernard did not comment on this difference, possibly because X 5.7.13 is quite clear on this. Johannes

### 3.3.4 The Accused vs. the Suspected; *Purgatio* vs. *Iuramentum*

But an even more thorny issue for scholars exists in X 5.7.13, the third canon from the Fourth Lateran Council, together with *Ad abolendam* (X 5.7.9 as an excerpt), concerning the use of purgation in convicting heretics. The purgational procedure is available to suspects in section 2 of X 5.7.13, discussed above. However, it—or at least the Latin term *purgatio*—appears again toward the end of the canon in section 7. This section is actually largely taken from *Ad abolendam*, and truncated for X 5.7.9. In any case, here it will create a conceptual mess that scholars of medieval heresy and/or inquisition have yet to confront, it seems.

#### X 5.7.13

| Transcription   | Translation <sup>76</sup>  |
|---|--|
| ... +§. 7.+ ... Ipse autem episcopus ad praesentiam convocet accusatos, qui, nisi se ab obiecto reatu <u>purgaverint</u> , vel, si post purgationem exhibitam in pristinam fuerint <u>relapsi</u> perfidiam, canonice puniantur. Si qui vero ex eis iuramenti religionem obstinatione dampnabili respuentes, <u>iurare</u> forte noluerint, ex hoc ipso tanquam haeretici reputentur. | ... [+§. 7.+] ... “The latter [i.e., the bishop] shall then call together before him those accused ( <i>accusatos</i> ), who, if they do not <u>purge</u> ( <i>purgaverint</i> ) themselves of the matter of which they are accused, or if after the rejection of their error ( <i>post purgationem exhibitam in pristinam fuerint</i> ) they [re]lapse into their former wickedness, shall be canonically punished. But if any of them by damnable obstinacy should disapprove[/reject the binding ( <i>religio</i> )] of the oath ( <i>iuramenti</i> ) and should perchance be unwilling <u>to swear</u> ( <i>iurare</i> ), from this very fact let them be regarded as heretics.” |

Can we readily equate the “accused” here and the “suspected” from section 2? Does the purgation here refer to the same procedure for the suspected? Is the “oath,” which the accused ought to swear, the oath of purgation? Scholars’s conflicting translations of these words underscore ambivalence in the literature. Firstly, when translating the 1184 *Ad abolendam* (X

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Teutonicus, nonetheless, in his *Glossa* on the canons of the Fourth Lateran Council emphasized that for the crime of heresy, one year is the maximum window for whoever wants to prove their innocence. See Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 570, n. 123.

<sup>76</sup> Translation below is taken from Schroeder, *Disciplinary Decrees of the General Councils*, 244.

5.7.9)—which, as mentioned above, contained many abridged sections that were later transmitted verbatim into X 5.7.13—Edward Peters rendered the requirement for the suspects to prove their innocent “congrua purgatione”<sup>77</sup> as “by a sufficient proof.”<sup>78</sup> However, while translating the same phrase in canon 4 of the Lateran Council, Henry Schroeder used “by a proper defense.” Furthermore, when translating that the accused need to perform “purgationem” in *Ad abolendam*,<sup>79</sup> Peters rendered the word as “clearance,”<sup>80</sup> whereas Schroeder, after rendering “purgaverint” as “purge,” put it as “the rejection of... error.” In a more recent translation of canon 4 of the Lateran Council, Norman Tanner translated “congrua purgatione” as “by an appropriate purgation,” “purgaverint” as “clear,” and “purgationem” as “compurgation.”<sup>81</sup>

The variance conveyed with such examples shows the uncertainty with this famous canon. Yet, my analysis of the *Glossa* pertaining to this canon offers clarity. First of all, the scholarly confusion owes to how *Ad abolendam* and X 5.7.13 themselves organize and formulate rulings. Both texts first prescribe punishments against heretical groups as well as suspects, and then—after discussing some other issues—lay out the procedure to convict heretics. The problem emerges when both popes talk about the “suspects” (“[q]ui vero inventi sola ecclesiae suspicione notabiles”) in the former section before switching to addressing the “accused” (“accusatos”) in

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<sup>77</sup> This passage is copied in X 5.7.13, section 2. For information about its appearance in medieval manuscripts of the *Decretales* in X 5.7.9, see n. 51.

<sup>78</sup> Peters, ed., *Heresy and Authority in Medieval Europe*, 172. Fiori seems to understand it as canonical purgation (*purgatio canoinca*). However, she simply leaves it in Latin and does not confront the situation that we are discussing here. See Fiori, *Il giuramento di innocenza nel processo canonico medievale*, 556.

<sup>79</sup> *Ad abolendam* [Fr. v.2 col. 781, not in X 5.7.9]: “Episcopus autem... convocet accusatos, qui, nisi se ad eorum arbitrium iuxta patriae consuetudinem ab obiecto reatu purgaverint, vel si post purgationem exhibitam in pristinam relapse fuerint perfidiam, episcoporum iudicio puniantur.” Again, this passage seems to be copied verbatim by X 5.7.13, except for the last phrase, where X 5.7.13 puts it as “canonice puniantur.”

<sup>80</sup> Peters, ed., *Heresy and Authority in Medieval Europe*, 172.

<sup>81</sup> Norman P. Tanner, ed., *Decrees of the Ecumenical Councils* (London; Washington, D.C.: Sheed & Ward; Georgetown University Press, 1990), 233 and 235.

the latter. The same word purgation is invoked in both cases—but does it mean that the suspects equals the accused? The procedure described by both popes in the second half of their respective canons is unclear and causes even more confusion when compared with that in the first half of the decrees.

In X 5.7.13,<sup>82</sup> for example, the suspects are required to purge themselves (“innocentiam congrua purgatione monstraverint”) under the threat of anathema. And if they remain excommunicated for a year—presumably meaning without a purgational oath within a year—they would be condemned as heretics. However, when the canon proceeds to the “accused,” it instructs, rather unclearly, that if they do not purge (“purgaverint”) themselves, they would be canonically punished (“canonice puniantur”). It is uncertain whether or not this meant excommunication. Adding to this obscurity, the pope ordered those negating the sanctity of the oath (“iuramenti religionem”) and unwilling to swear (“iurare”) to be convicted as heretics. If the suspected and the accused refer to the same group of people, and if purgation means the same thing in both places, why ought those who refuse to swear be condemned as heretics right away? Does not the suspected have a year window, as an excommunicate, to decide whether or not he wants to purge himself before the conviction? Or is the *iuramentum* different from *purgatio*?

No scholarly research so far seems to have addressed this ambiguity. The *Glossa*, at first glance, does not treat the “suspected/accused” confusion either. But an interrogation of its glosses on the terms *purgaverint* and *iurare* will enlighten us on this.

**X 5.7.13 glos. ord. s.v. *purgaverint***

| Transcription | Translation |
|---------------|-------------|
|---------------|-------------|

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<sup>82</sup> As the problematic part under discussion of X 5.7.9 was possibly not included in most medieval manuscripts of the *Decretales*, and certainly was not commented on by the *Glossa* (see n. 51), for our purposes here I will focus on X 5.7.13.

|   |   |
|---|---|
| +Nota+ Deficientem in purgatione puniendum. <b>supra de symonia. de hoc.</b> <sup>83</sup> et <b>c. insinuatum.</b> <sup>84</sup> | +Note+ [that] lacking in terms of purgation ( <i>purgatione</i> ) [is] to be punished. [See] <b>supra de symonia. de hoc.</b> and <b>c. insinuatum.</b> |
|---|---|

### X 5.7.13 *glos. ord. s.v. iurare*

| Transcription  | Translation  |
|--|--|
| <p>Per iuramentum debet quis purgare conscientiam suam de haeresi, <b>de con. d. ii. Ego Berengarius.</b><sup>85</sup> et <b>i. q. vii. quotiens.</b><sup>86</sup> Unde si iurare non vult, pro condempnato debet haberi, sicut quod de calumpnia iurare non vult, actor cadit a causa, reus pro condempnato habetur, <b>supra de iuramen. calump. c. ult.</b><sup>87</sup> et <b>C. e. t. iudices. §. quod si actor.</b><sup>88</sup> Et est similis illi, qui neque defendit neque exhibet, et condempnatur, ut contumax. <b>ff. de noxat. quotiens. §. in potestate.</b><sup>89</sup> Tenui enim religione iuramenta etiam necessaria contempnunt. <b>supra de symonia. etsi quaestiones.</b><sup>90</sup> et <b>C. de fide instru. l. ult.</b><sup>91</sup> +Ber.+</p> | <p>Through an oath (<i>iuramentum</i>) anyone ought to purge his conscience of heresy, [see] <b>de con. d. ii. Ego Berengarius.</b> and <b>i. q. vii. quotiens.</b> Whence, if he does not want to swear, he should be held as condemned, just as because he does not wish to swear regarding calumny, a plaintiff (<i>actor</i>) loses the case, a defendant is regarded as condemned/guilty, [see] <b>supra de iuramen. calump. c. ult.</b> and <b>C. e. t. iudices. §. quod si actor.</b> And it is similar for the one, who neither defends nor exhibits [the accusation], and he is condemned, as [he is] non-compliant, [see] <b>ff. de noxat. quotiens. §. in potestate.</b> Indeed, with little respect (<i>tenui... religione</i>) they despise even the necessary oaths, [see] <b>supra de symonia. etsi quaestiones.</b> and <b>C. de fide instru. l. ult.</b> +Ber.+</p> |

Allegations are key. The two in X 5.7.13 *glos. ord. s.v. purgaverint*, both from Pope Alexander III, address simony. They note it necessary that those who are neither ‘convicted’ nor

<sup>83</sup> X 5.3.11 [Fr. v.2 col. 752].

<sup>84</sup> X 5.3.13 [Fr. v.2 cols. 752-753].

<sup>85</sup> *De cons.* D. 2 c. 42 [Fr. v.1 cols. 1328-1329].

<sup>86</sup> Both C. 1 q. 7 c. 9 [Fr. v.1 cols. 431-432] and c. 14 [Fr. v.1 col. 433] begin with the incipit “quotiens.” Only the former concerns *iuramentum*.

<sup>87</sup> X 2.7.7 [Fr. v.2 col. 268].

<sup>88</sup> Cod. 2.58.2.6.

<sup>89</sup> Dig. 9.4.21.3.

<sup>90</sup> X 5.3.18 [Fr. v.2 cols. 754-755].

<sup>91</sup> Cod. 4.21.21/22 (a Greek text).

‘confessed’—their crime being public and notorious, but nevertheless having produced *infamia*—go through canonical purgation (*canonica purgatio*).<sup>92</sup> Even though neither canon directly refers to such person as *suspecti*, they attest to our analysis above regarding the suspects and the procedure of purgation that they need to perform. Therefore, up to this point, the *Glossa* does not seem to differentiate between the suspected and the accused.

It remains to investigate whether or not the *purgatio* in X 5.7.13, i.e., the oath denying the reason that one becomes infamous, is the same thing as the *iuramentum* in the same text. The denial of the latter would lead to immediate conviction. This *iuramentum*, according to Bernard, is a procedure that purges people’s “conscience of heresy.” It barely helps us regarding the *purgatio-iuramentum* issue: the *purgatio* in cases where people are infamous of heresy would of course entail negation of themselves believing or performing heresy. Bernard’s analogy between the *accusatus* contemptuous of the sanctity of an oath and a contumacious plaintiff refusing to swear against calumny in Roman law also tells us little about our particular concern here, at least for now.

Investigation reveals that some allegations could inspire us on this issue. In two citations, the *Glossa* provides oaths exacted under similar circumstances. First invoked is the “toughly worded confession of belief”<sup>93</sup> on the real presence of the body and blood of Christ in the Eucharist, drafted by Cardinal Humbert of Silva Candida (d. 1061) and signed by Berengar of Tours (d. 1088) under pressure from Pope Nicholas II at the 1059 Roman Lenten synod. Notably, the text, putting words in Berengar’s mouth, reads that “I anathematize all heresies, especially

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<sup>92</sup> X 5.3.11 [Fr. v.2 col. 752]: “Si vero id manifestum est, nec tamen inde convicti vel confessi fuerint, sed tantum publica laborant infamia, eis canonica purgatio debet indicari.” X 5.3.13 [Fr. v.2 cols. 753]: “Illis autem, quorum crimen non est publicum et notorium, si publica laborant infamia... purgationem indicas.”

<sup>93</sup> H. Chadwick, “EGO BERENGARIUS (For Luise Abramowski),” *JTS* 40 (1989): 415.



the one regarding which until now I have become infamous.”<sup>94</sup> The next allegation cites a confessional formula from Pope Gregory I (590–604). The pope instructed the oath-taker, who in this case is a bishop, to swear (“*iuratus dico*”) under threat of deposition and anathema that he would not create schism and that he would remain in communion with the Roman Pontiff through “the omnipotent God and the four holy Gospels which I am holding in my hands.” And should he perjure himself, he would be “bound by eternal punishment.”<sup>95</sup> Both of these two confessions imply *potential*—that is, unproven—heresy/schism, through which clearly Bernard intended to demonstrate examples of *iuramentum* that can purge one’s conscience of heresy.

Especially the first allegation, i.e., about Berengar’s confession, seems to be a fitting formula for persons infamous of heresy—who, according to the passages discussed above, are defined as *qui vero inventi fuerint sola suspicione notabiles*, thus, suspected. Furthermore, the procedure of swearing described in Gregory I’s confessional text also echoes that in C. 2 q. 5 c. 19, which is an allegation cited by X 5.7.13 *glos. ord. s.v. suspicionis* above concerning the procedure of purgation.

Therefore, finally we have reasons to assume that, at least in the *Glossa*, the suspected and the accused in the inquisitorial procedure described in the X 5.7.13 are considered the same, or are at least treated in the same manner. The *purgatio* and *iuramentum* refer to the same

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<sup>94</sup> *De cons. D. 2 c. 42* [Fr. v.1 col. 1328]: “Ego Berengarius... anathematizo omnem heresim, precipue eam, de qua hactenus infamatus sum.”

<sup>95</sup> C. 1 q. 7 c. 9 [Fr. v.1 cols. 431]: “Et ideo postquam ego N. ciuitatis episcopus... spondeo sub ordinis mei casu et anathematis obligatione, atque promitto tibi N. et per te sancto Petro, apostolorum principi, atque eius uicario N. beatissimo uel successoribus eius, me numquam quorumlibet suasionibus uel quocumque alio modo ad scisma, de quo redemptoris nostri gratia liberante ereptus sum, reuersurum; sed semper me in unitate sanctae ecclesiae catholicae et communionis Romani Pontificis per omnia permansurum. Unde iuratus dico per Deum omnipotentem, et haec sancta quatuor euangelia, que in manibus meis teneo, et salutem N. dominorum nostrorum rempublicam gubernantium, me in unitate, sicut dixi, ecclesiae, ad quam Deo propitio sum reuersus, et communionis Romani Pontificis semper et sine dubio permanere. Quod si (quod absit) ab hac me unitate aliqua excusatione uel argumento diuisero, periurii reatum incurrans aeternae poenae obligatus inueniar, et cum auctore scismatis habeam in futuro seculo portionem.”

procedure during which the suspected in the inquisitorial process would swear against the charge of which he was infamous, possibly with the four Gospels in hand. Following this route, we could understand that ordering those who do not purge themselves to be “canonically punished (*canonice puniantur*)” would mean excommunicating them, and, if they remain excommunicated for a year, convicting them as heretics.

A final issue to address is the differentiation of “those who do not purge themselves” from “those who by damnable obstinacy reject the sanctity of the oath and do not want to swear.” After all, the latter are ordered by X 5.7.13 to be convicted immediately without the one-year window under excommunication. Does a manifestly stubborn attitude signal the difference? Perhaps. But the allegation of Dig. 48.17.4 in X 5.7.13 *glos. ord. s.v. condemnentur*, which we have discussed above regarding confiscating suspects’ property who have been absent for a year, seems to imply another possibility. The one-year window is probably not an offer for those who refuse to go through the procedure of purgation, but for those who are absent to present and take the oath.

It is indeed curious why the *Glossa*, not unlike modern scholars who study the third canon of the Fourth Lateran Council, does not attend to these confusing details. Nevertheless, as I have demonstrated so far, interrogating the allegations of the *Glossa*—including synthesizing them from different glosses—could clarify procedural issues and practical details of thirteenth-century canon law.

### **3.4 Evidence and Calumny**

While the infamous reputation and (the rejection of) the oath of purgation, as discussed above, serve as the key evidence for convicting/releasing a person suspected of heresy, the *Glossa* nonetheless also seems to be concerned about the issue of evidence in another procedure

that is not elaborated throughout the canons in *De haereticis*. This is the procedure of convicting and deposing bishops who neglect their duty in exterminating heretics, which is mentioned toward the end of X 5.7.13.

### X 5.7.13

| Transcription  | Translation <sup>96</sup>   |
|--|---|
| Idem in concilio generali.   | The Same in the General Council   |
| ...+§. 8.+... Si quis enim episcopus super expurgando de sua dioecesi haereticæ pravitatis fermento negligens fuerit vel remissus, cum id certis <u>indiciis</u> apparuerit, et ab episcopali officio deponatur, et in locum ipsius alter instituat ydoneus, qui velit et possit haereticam confundere pravitatem. | ... [+§. 8.+]... “If from sufficient <u>evidence</u> ( <u>indiciis</u> ) <sup>97</sup> it is apparent that a bishop is negligent or remiss in cleansing his diocese of the ferment of heretical wickedness, let him be deposed from the episcopal office and let another, who will and can confound heretical depravity, be substituted.” |

Pope Innocent III here vaguely mentioned “sufficient evidence (*certis indiciiis*)” without any clarification. Whether or not bishops, to be deposed, are supposed to go through the inquisitorial procedures laid out in canon 8 of the Fourth Lateran Council (i.e., X 5.1.24) for prelates guilty of “grave excess (*gravis excessus*),”<sup>98</sup> we do not know. The last ordinary gloss for X 5.7.13, as we will examine below, does not give information regarding the procedure of trying episcopal suspects. However, it reveals a practical matter that Bernard as a canonist wanted to emphasize to his readers: collecting evidence (*indiciis*). In other words, while the pope’s intention in this case is to punish irresponsible bishops, the *Glossa* focuses on ensuring that the canonical order is carried out in a legal and careful manner.

### X 5.7.13 *glos. ord. s.v. indiciiis*

| Transcription | Translation |
|---------------|-------------|
|---------------|-------------|

<sup>96</sup> The following translation is taken from Schroeder, *Disciplinary Decrees of the General Councils*, 242–244.

<sup>97</sup> According to my following analysis, here the Latin word *indicia* should be better translated as “circumstantial evidence.”

<sup>98</sup> For the Latin text of this canon, see COGD, vol. II/1, 171.

|   |   |
|---|---|
| <p>Nota quod per indicia probatur<sup>99</sup> crimen. <b>supra e. §. proxi. ibi quod +si+ quis.</b>,<sup>100</sup> etc. et <b>ii. q. viii.</b><sup>101</sup> <b>sciant.</b><sup>102</sup> et <b>xxxii. q. i. dixit Dominus.</b><sup>103</sup> et <b>infra de privil. cum olim.</b><sup>104</sup> et <b>C. de rei ven. indicia.</b><sup>105</sup> ...+Ber.+</p> | <p>Note that the crime is proved through evidence (<i>indicia</i>), [see] <b>supra e. §. proxi., ibi quod +si+ quis.</b>, and so on, and [see] <b>ii. q. viii. sciant., xxxii. q. i. dixit Dominus.</b>, and <b>infra de privil. cum olim.</b>, and <b>C. de rei ven. indicia. ... +Ber.+</b></p> |
|---|---|

First and foremost, Innocent III did not specify whether or not he was using the word *indicia* in its strict Roman law sense as circumstantial evidence.<sup>106</sup> Nor does Bernard’s short note here help us with its exact meaning. An examination of the rich allegations here, however, will shed much light. On the one hand, Bernard combined two *leges* from the Justinianic Codex, one in the form of C. 2 q. 8 c. 2. He instructed the medieval law student about three forms of acceptable courtly evidence: qualified witnesses (*testibus idoneis*), clear documents (*apertissimis documentis*), and indisputable circumstantial evidence/indication for proof (*indiciis ad probationem indubitatis*), while emphasizing that the last one is no less effective than the second.<sup>107</sup> Therefore, it seems, Bernard clearly knew the specific legal meaning of *indicia* and

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<sup>99</sup> “probantur” in MS F.

<sup>100</sup> X 5.7.13 §. 8 [Fr. v.2 cols. 789]? The format of this allegation is confusing, and it is uncertain which text is being quoted here.

<sup>101</sup> “iii. q. ix” in MS F.

<sup>102</sup> C. 2 q. 8 c. 2 [Fr. v.1 col. 503] = Cod. 4.19.25.

<sup>103</sup> C. 32 q. 1 c. 2 [Fr. v.1 col. 1116].

<sup>104</sup> X 5.33.12 [Fr. v.2 col. 853-854].

<sup>105</sup> Cod. 3.32.19.

<sup>106</sup> See “Indicia,” in Berger, 399.

<sup>107</sup> Cod. 4.19.25: “Sciant cuncti accusatores eam se rem deferre debere in publicam notionem, quae munita sit testibus idoneis vel instructa apertissimis documentis vel indiciis ad probationem indubitatis et luce clarioribus expedita.” Cod. 3.32.19: “Indicia cetera, quae iure non respuuntur, non minorem probationis quam instrumenta continent fidem: quo iure, si de proprietate domus ambigis negotiumque integrum est, uti non prohiberis.”

was possibly using it this way when he underlined that the *crimen* of irresponsible bishops should be proved through it.

But we must also acknowledge that the *indicia* here—at least as Bernard understood it—does not seem to exclude the usage of witnesses. This is revealed by his citation of Innocent III’s bull *Cum olim essemus* (X 5.33.12), where the pope claimed that a lost privilege (i.e., documentation) could be substituted for by the testimony of witnesses.<sup>108</sup> In other words, circumstantial evidence, according to the *Glossa* here, can also be produced through the testimony of witnesses.

Finally, another major concern of the *Glossa* on this subject is the authenticity of the accusation itself. As we will see presently, it will also lead us back to the discussion of oaths, though not those of purgation. In the same gloss, i.e., X 5.7.13 *glos. ord. s.v. indiciis*, allegation C. 32 q. 1 c. 2 comes from Jerome’s commentary on the Gospel of Matthew with regard to fornication and divorce. Bernard’s focus of attention, however, is the last sentence of the canon. There Jerome argued that in case there is calumny, that if a man’s first wife is still alive, he cannot divorce her [on account of fornication], while he has a second wife.<sup>109</sup>

This same concern about calumny is demonstrated again when Bernard in X 5.7.13 *glos. ord. s.v. totam viciniam* commented on the canon’s instruction that an entire community could be summoned to testify if they know about heretical signs in the neighborhood when churchmen are

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<sup>108</sup> X 5.33.12 [Fr. v.2 col. 854]: “[P]rivilegium illud... Lucii Papae... quod sine reprehensione bullae, chartae vel literae apparebat, quando fuit nobis ostensum, illius fuisse tenoris, cuius per depositiones testium et assertiones fratrum nostrorum noscitur exstitisse.” For a brief discussion of this bull with its context, see Lotte Kéry, “Klosterfreiheit und päpstliche Organisationsgewalt: Exemption als Herrschaftsinstrument des Papsttums?” in Jochen Johrendt and Harald Müller, eds., *Rom und die Regionen: Studien zur Homogenisierung der lateinischen Kirche im Hochmittelalter, Rom und die Regionen* (Berlin; Boston: De Gruyter, 2012), 104.

<sup>109</sup> C. 32 q. 1 c. 2 [Fr. v.1 col. 1116]: “Et quia poterat accidere, ut aliquis calumpniam faceret innocenti, et ob secundam copulam nuptialem ueteri copulae crimen inpingeret, sic priorem dimittere iubetur uxorem, ut prima uiuente secundam non habeat.”

conducting the inquisitorial visiting. There the *Glossa* straightforwardly says that the reason behind this is that the *tota vicinia* can better perform (*praestare*) the oath regarding calumny.<sup>110</sup> Similarly, an allegation in X 5.7.13 *glos. ord. s.v. iurare*—while the gloss itself is mainly about the oath of purgation, as we have analyzed above—invokes a Roman *lex* that a plaintiff will lose his case should he refuse to swear the oath regarding calumny.<sup>111</sup>

We could also detect concern from the *Glossa* about the authenticity/verification of legal elements in general in a very short gloss to X 5.7.11. The canon mainly prohibits officials and functionaries from helping heretics during litigation procedures. The gloss on the functionaries, if we only read the note, is a simple phrase of definition:

**X 5.7.11 *glos. ord. s.v. scriniariis***

| Transcription   | Translation  |
|---|--|
| Id est, tabellionibus, sic <b>xxv. q. ii. +c. dicenti.</b><br><b>§.+ universa.</b> <sup>112</sup> | That is, legal clerks, as in <b>xxv. q. ii. +c. dicenti. §.+ universa.</b> |

This allegation, though in the form of a *dictum* in Gratian’s *Decretum*, actually comes from a *lex* in the Justinianic *Codex*. The concept of *scriniarius* is indeed mentioned in this text, while the content is particularly rich. It is about legal procedures around the authenticity of both the plaintiff’s petition and the rescripts. It requires the verification of a testified petition (in the form of a written component of the rescript) and that court officials—including the *magistri scriniorum*—who dictate a rescript without that information would be punished. Further, *scrinii memoriales* and other officials who write down unlawfully dictated rescripts would be deprived

<sup>110</sup> X 5.7.13 *glos. ord. s.v. totam viciniam*: “Ar. quod universitas praestare potest iuramentum calumniae. si. **xxxv. q. vi. episcopus in synodo.**, sic *supra. de accu. sicut olim.*”

<sup>111</sup> Cod. 2.58.2.6: “Quod si actor noluerit subire sacramentum calumniae et hoc legitime fuerit approbatum, non liceat ei penitus ad litem pervenire, sed cadat ab instituta actione quasi improbus litigator, et tristitia iudicum ei cum sancta interminatione occurrat et ab iudicio eum quam longissime expellat.”

<sup>112</sup> C. 25 q. 2 dict. post c. 16 §. 8 [Fr. v.1 col. 1016].

of their office. Apparently, the intention behind this gloss is to both define the terminology and provide practical crime-committing scenarios concerning the official under discussion. This brief but dense gloss also demonstrates for us, together with glosses analyzed above in this section, how the *Glossa* weaves its concerns over the particular issue of authenticity into its text.

### 3.5 The Preaching Heretics: Martyrdom and Miracle vs. Ecclesiastical Unity

The *Glossa* upon investigation also reveals sophisticated judicial reflection on some substantial themes in X 5.7. Lay preaching, as mentioned above, was a major concern of the late-twelfth- and early-thirteenth-century institutional Church. Innocent III invoked and interpreted numerous biblical passages, as we can see in the long X 5.7.12, to argue against laymen assuming the function of preaching. The pope directly confronted the problem of potentially heretical laymen claiming that they have been secretly commissioned by God.<sup>113</sup>

#### X 5.7.12

| Transcription   | Translation   |
|---|---|
| Universis Christi fidelibus, tam in urbe Metensi quam in eius dioecesi constitutis.   | To all the faithful in Christ residing in both the city of Metz and its diocese.  |
| ... <u>Quodsi forte</u> quis argute respondeat, quia tales invisibiliter mittuntur a Deo..., <u>non sufficit</u> cuiquam nude tantum asserere, quod ipse sit missus a Deo, cum hoc quilibet haereticus asseveret: sed oportet, quod asserat illam invisibilem missionem per operationem | ... <u>And if perchance</u> anyone would respond shrewdly, that such are invisibly sent by God..., it can be reasonably answered that when that inner mission is hidden, <u>it does not suffice</u> for anyone to assert so brazenly ( <i>nude</i> ) that he himself was sent by God, since any heretic might declare this. But it is necessary |

<sup>113</sup> In an interesting canon attributed to Pope Urban II, the so-called *Duae inquit/sunt* (JL 5760 (4313)), the pope instructed that a divinely-inspired secular cleric who wishes to enter a monastery can do so even without the local episcopal sanction. According to the canon, “what is written in the heart by the inspiration of the Holy Spirit” is termed private law, while canon law is regarded as public law, which is inferior to the former. Even though the canon itself by its content is speaking to this specific circumstance, it finds at least one “parallel” in an earlier eleventh-century narrative concerning local heretics, where the heretics proclaims in their trial that “[w]e believe in the law written within us by the Holy Spirit.” Innocent III in X 5.7.12 did not refer to the *Duae inquit*, but the scenario that he described here potentially could entail similar conceptual and/or linguistic elements from this canon. On the text, translation, origin, etc. of the *Duae inquit*, together with the eleventh-century narrative about heretics mentioned here, see Robert Somerville, “Canon Law, Inspired Law, and Papal Authority” in Yaakov Elman, Ephraim Bezalel Halivni, and Zvi Arie Steinfeld, eds., *Neṭi’ot le-David: sefer ha-yovel le-David ha-Livni* (Jerusalem: Orhot, 2004), 119–134.

|  |   |
|--|---|
| <u>miraculi</u> , vel scripturae testimonium speciale. ... | that he should claim ( <i>asserat</i> ) that invisible mission by an operation of a <u>miracle</u> , or by a special, Scriptural testimony. ... |
|--|---|

This is understandably a practical concern, which the *Glossa* shares. The latter treats cautiously the issue of special and non-institutional granting of religious authority. In two consecutive glosses, this issue is provided with new perspectives absent from the canon. In the first place and curiously, pretentious lay preachers are compared with martyrs, which echoes the millennium-old issue of martyrs' prestige versus that of the ecclesiastical authorities during the time of the Early Church:

**X 5.7.12 glos. ord. s.v. non sufficit**

| Transcription  | Translation   |
|--|---|
| Bene dicit, quia etsi martires etiam aliqua mandant +fieri+, non statim sunt facienda, sed ante est, ut sciamus illos <sup>114</sup> impetrare de Deo quae postulant. <b>i. d. si quis praepostera.</b> <sup>115</sup> et <b>xlii. d. quiescamus.</b> <sup>116</sup> <i>ar.</i> +Ber.+ | It speaks correctly, since even if the martyrs order something +to be done+, they are not to be done immediately, because first it is the case that we should know that they [have] obtain[ed] what they demand from God. [See] <b>i. d. si quis praepostera.</b> and <b>xlii. d. quiescamus.</b> <i>for the argument.</i> +Ber.+ |

**X 5.7.12 glos. ord. s.v. miraculi**

| Transcription  | Translation   |
|--|---|
| Nec istud statim credendum est: quia quandoque miracula fiunt per malos, et <b>i. q. i. teneamus.</b> <sup>117</sup> | Even that should not be believed immediately: since sometimes miracles happen through evil men, and [see] <b>i. q. i. teneamus.</b> |

Bernard clearly intended to echo this, invoking two antique authorities, Cyprian (d. 258) and John Chrysostom (d. 407). The former in particular, who once had fled from the persecuting Roman soldiers, listed profusely in the allegation things one should ponder before he

<sup>114</sup> Here MS F copies the word "illos" twice.

<sup>115</sup> Dist. 50 c. 27 [Fr. v.1 col. 188].

<sup>116</sup> Dist. 42 c. 2 [Fr. v.1 col. 152].

<sup>117</sup> C. 1 q. 1 c. 56 [Fr. v.1 col. 379].



follows/gives credence to martyrs.<sup>118</sup> The identity of a martyr, in other words, does not automatically bring religious authority—in the allegation, for instance, the license of proffering to others remission of sins. Bernard actually paraphrased Cyprian’s words, emphasizing that we need to ensure those martyrs have indeed received from God the legitimacy they demanded.

But a more clear and practical instruction still hides in the content of the allegation: the commands of martyrs could be carried out only “if it does not contradict God Himself and His priests (*si non contra ipsum Dominum ac Dei sacerdotem*).” Therefore, it seems that religious authority claimed to have been invested outside the ecclesiastical system, according to Bernard, is at best questionable and requires further approval by the institutional system. This gloss seems to offer us a canonical attestation to the papal-ecclesiastical approval practices concerning the mendicant-friar movements, e.g., the poor Catholics and the Franciscans during the late-twelfth and early-thirteenth centuries.

Even more practical concern emerges when we examine the next allegation. The text from John Chrysostom is mainly encouraging indiscriminate hospitality. But the medieval reader will soon realize that the *Glossa* is pointing at being discriminative with regard to whoever claims that he is a cleric.<sup>119</sup> This circumstance is not part of Innocent III’s canon, but again clearly the canonist here was warning his readers about the potential scenario of people pretending to be clerics.

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<sup>118</sup> Dist. 50 c. 27 [Fr. v.1 col. 188]: “Si quis prepostera festinatione temerarius remissionem peccatorum cunctis putat dare se posse, aut audet Domini precepta rescindere, non tantum nichil prodest, sed obest lapsis... Mandant martires aliqua fieri, si iuta, si licita, si non contra ipsum Dominum ac Dei sacerdotem sunt facienda; si obtemperantis facilis et prona confessio, si penitentis fuerit religiosa modertatio. Mandant martires aliqua fieri; sed si scripta non sunt in Domini lege, que mandant, ante est, ut sciamus illos de Deo inpetrasse que postulant, tunc facere quod mandant.”

<sup>119</sup> Dist. 42 c. 2 [Fr. v.1 col. 152]: “Si enim in clero electrum se esse dicat, si sacerdotem se nomet, scrutare: non enim sine periculo in talibus indiscussa communication est; circa maiora periculum uertitur: non enim das, sed accipis.”

Furthermore, it is important to note that the *Glossa* is quite suspicious of miracles here, to the extent of contradicting the pope. Innocent III, as we read in the canon, required ones who claim that they have been commissioned secretly by God to either perform a miracle or demonstrate a “special, Scriptural testimony (*scripturae testimonium speciale*).” The pope then invoked the Biblical example of Moses turning a staff into a snake, claiming that this is the sign that God offered him to establish credibility among the Israelites. But the *Glossa*, as one sees here, reminds its readers that—however theologically questionable this claim seems to be—evil men can create *miracula* as well.

Finally, in this case, the *Glossa* seems to be even more concerned about ecclesiastical order and unity than the canon itself. We saw above that Bernard cited Cyprian’s idea that martyrs cannot contradict God’s priests to interpret the words “non sufficit” in Innocent III’s text, despite the fact that the pope was actually asking for a miraculous or Scriptural evidence. The one allegation in X 5.7.12 *glos. ord. s.v. miraculi* further testifies to that observation. This allegation demonstrates how cautious the *Glossa* is when challenging a pope as prominent as Innocent III. The authority invoked is Augustine, who was, just as the pope, discussing Moses and his miracle. However, the Church father argued that Pharaoh’s magicians could work miracles as well, but they are *nichil* without unity.<sup>120</sup>

### **3.6 Oath-Absolution: from Papal Authority to the Problem of Debt**

A key measure taken by the Church and the Papacy to exterminate the heretics, which is embodied by X 5.7, is to urge—under various threats—secular authorities to facilitate the extermination. In X 5.7.9, we have already seen that they shall take an oath to carry out what the

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<sup>120</sup> C. 1 q. 1 c. 56 [Fr. v.1 col. 379]: “Preter unitatem et qui facit miraculum nichil est; in unitate erat populus Israel, et non faciebat miracula; preter unitatem erant magi Pharaonis, et faciebant similia Moysi.”

Church orders about fighting heretics. Should they fail to obey the order, they would be excommunicated, their lands interdicted, and their ranks/honor/dignity stripped away without chance of rising to any other positions.<sup>121</sup> Similarly, should they neglect the duty, according to X 5.7.13, they would be excommunicated. If they do not make satisfaction within a year, the pope can absolve their vassals of allegiance to them.<sup>122</sup> Another closely related order is laid out by Pope Gregory IX in X 5.7.16, where the pope instructed that fidelity and allegiance are to be absolved when either the oath-taker or the recipient of the oath has fallen into manifest heresy.<sup>123</sup>

The *Glossa* to X 5.7 on the one hand in both its notes and allegations supports the legitimacy of the papacy depriving secular authorities of their dignity for not diligently following the Church's command. On the other hand, as I shall demonstrate now, it concerns more than the canons themselves about absolving oath of allegiance to these excommunicated lords and princes, "because the Pope can act where sin is involved."<sup>124</sup> X 5.7.10 *glos. ord. s.v. praecipimus*, the very first gloss to this canon, supports the papal claim and emphasizes this Apostolic authority by immediately invoking the famous decretal from Innocent III, *Novit ille*. X 5.7.10's threats against careless lords include rank-removal and property-confiscation by the

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<sup>121</sup> X 5.7.9 [Fr. v.2 cols. 780-782]: "Si vero id observare noluerint, honore, quem obtinent, spolientur et ad alios nullatenus assumantur, eis nihilominus excommunicatione ligandis, et terris ipsorum interdicto ecclesiae supponendis."

<sup>122</sup> X 5.7.13 [Fr. v.2 col. 788]: "Si vero dominus temporalis, requisitus et monitus ab ecclesia terram, suam purgare neglexerit ab haeretica feditate, per metropolitanum ceteros comprovinciales episcopos excommunicationis vinculo innodetur, et, si satisfacere contempserit, infra annum significetur hoc summo Pontifici, ut ex tunc ipse vasallos ab eius fidelitate denunciet absolutos, et terram exponat catholicis occupandam."

<sup>123</sup> X 5.7.16 [Fr. v.2 cols. 789-790]: "Absolutos se noverint a debito fidelitatis hominii et totius obsequii, quicumque lapsis manifeste in haeresim aliquo pacto, quacunque firmitate vallato, tenebantur adstricti."

<sup>124</sup> See X 5.7.10 *glos. ord. s.v. praecipimus*: "Quod facere potest Papa ratione peccati, **supra. de iudic. novit.**, et potest eos dignitate privare: ut **supra c. proxi. §. statuimus.**, et propter alias iniquitates potest etiam Papa eos remove. **xv. q. vi. alius.**, et imperium ipse transtulit de loco ad locum: propterea quia +non+ defendebant ecclesiam. **supra. de elect. venerabilem.** ut ibi notatur."

papacy.<sup>125</sup> Two consecutive allegations in the gloss, however, raise the issue of papal absolution of the allegiance to a sworn oath.<sup>126</sup> When X 5.7.13 mentions this order in the canon,<sup>127</sup> the *Glossa* again is quick to support papal authority and strengthen the papal prerogative to absolve an oath by pointing readers to the last canon of the title, i.e., the short X 5.7.16.<sup>128</sup> This slightly differs from X 5.7.13 on this issue in the sense that it straightforwardly singles out those who have fallen into heresy.

### X 5.7.16

| Transcription   | Translation <sup>129</sup>   |
|---|--|
| Idem.   | The Same.  |
| <u>Absolutos</u> se noverint a debito fidelitatis hominii et totius obsequii, quicumque lapsis manifeste in haeresim <u>aliquo pacto</u> , quacunq[ue] firmitate vallato, tenebantur adstricti. | Those who are held obliged <u>by any agreement</u> and furnished with whatever firmness, to [the ones] manifestly fallen into heresy, let them know that they are <u>absolved</u> from the duty of fidelity, homage, and all allegiance. |

Unsurprisingly, both glosses on this short canon, as the glosses on X 5.7.10 and X 5.7.13 analyzed above, focus on the papal absolution of oaths. Notably, the reforming popes have a strong presence in this case. Allegations in X 5.7.16 *glos. ord. s.v. absolutos* come from Popes Gregory VII (1073–1085), Urban II (1088–1099), and Innocent III (the last’s *Venerabilem*

<sup>125</sup> X 5.7.10 [Fr. v.2 cols. 782-783]: “Vergentis in senium saeculi corruptelam, et infra. In terris vero, temporali nostrae iurisdictioni subiectis, bona haereticorum statuimus publicari, et in aliis eadem fieri praecipimus per potestates et principes saeculares, quos ad id exsequendum, si forte negligentes exstiterint, per censuram ecclesiasticam appellatione remota compelli volumus et mandamus. Nec ad eos bona eorum ulterius revertantur.”

<sup>126</sup> C. 23 q. 6 c. 3 [Fr. v.1 cols. 948-949] and X 1.6.34 [Fr. v.2 cols. 79-82].

<sup>127</sup> X 5.7.13 [Fr. v.2 col.788 §. 3]: “Si vero dominus temporalis, requisitus et monitus ab ecclesia terram, suam purgare neglexerit ab haeretica feditate, per metropolitanum ceteros comprovinciales episcopos excommunicationis vinculo innodetur, et, si satisfacere contempserit, infra annum significetur hoc summo Pontifici, ut ex tunc ipse vasallos ab eius fidelitate denuncient absolutos.”

<sup>128</sup> X 5.7.13 *glos. ord. s.v. absolutos*: “**infra. e. c. ult.**<sup>128</sup> Et ita Papa potest propter haeresim deponere omnes<sup>128</sup> tam laicos quam clericos ad dignitatibus suis, ut **supra. e. ad abolendam. §. statuimus.**<sup>128</sup> et **supra. e. vergentis.**<sup>128</sup> ubi de hoc.”

<sup>129</sup> My translation here considers William L. Sullivan, *Letters to His Holiness, Pope Pius X* (Chicago: The Open Court Publishing Company, 1910), 21–22.

*fratrem nostrum* (X 1.6.34) is thus invoked again, as in X 5.7.10 *glos. ord. s.v. praecipimus*).<sup>130</sup>

Particularly, the note in this gloss underlines that the reason why popes can invalidate oaths is because the interpretation of oaths belongs to the popes themselves. Indeed, this is the first time that the *Glossa* explains the legitimacy of this papal prerogative. The note stops here, and to uncover further implications of this claim we must refer to the following allegation: Innocent III's *Venerabilem fratrem nostrum*.

Admittedly, this canon does not specifically mention papal authority to interpret oaths. However, the pope first instructed that the authority of examining the candidate elected king and promoting him to be the emperor firmly belongs to the Apostolic See.<sup>131</sup> Then toward the very end of the text he ordered that since the duke (i.e., Duke Phillip of Swabia in the original papal bull) was deprived of the imperial throne, the oath of fidelity that they have sworn to him need not to be observed.<sup>132</sup> Therefore ultimately, the oath is absolved because its recipient has been rejected/deemed unworthy *by the Apostolic See*. In other words, the pope's authority over the recipients empowers him to invalidate the oath between the latter and their vassals. This is possibly what the *Glossa* means when it says "quia ad ipsum (i.e., the pope) spectat

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<sup>130</sup> X 5.7.16 *glos. ord. s.v. absolutos*: "Ipso iure: ex quo manifeste lapsi sunt. Simil. **xv. q. vi. iuratos. nos sanctorum**. Et est ar. quod Papa potest laicum absolvere a iuramento fidelitatis, ar. praedictorum c. quia ad ipsum spectat interpretationem iuramenti. **supra de elect. venerabilem**." Scholars have discussed some of these papal claims with respect to the construction of medieval papal monarchy and the contemporary canonists' concerns. See, for instance, Maura Mordini, "Aspetti della disciplina nel feudo ecclesiastico nei secoli XII e XIII. Parte II. Graziano e l'apparato ordinario al decretum," *Studi Senesi* CXXIII/1 (2011): 85–88; Natalie Fryde, Pierre Monnet, and Otto Gerhard Oexle, *Die Gegenwart des Feudalismus* (Göttingen: Vandenhoeck & Ruprecht, 2002), 57–58; Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum* (Berkeley: University of California Press, 1972), 216–217.

<sup>131</sup> X 1.6.34 [Fr. v.2 cols. 79-82]: "Sed et principes recognoscere debent, et utique recognoscunt, sicut iidem in nostra recognovere praesentia, quod ius et auctoritas examinandi personam electam in regem et promovendam ad imperium ad nos spectat, qui eum inungimus, consecramus et coronamus. Est enim regulariter et generaliter observatum, ut ad eum examinatio personae pertineat, ad quem impositio manus spectat."

<sup>132</sup> X 1.6.34 [Fr. v.2 cols. 79-82]: "[E]rgo tuam monentes per apostolica scripta mandamus, quatenus... a praefato duce *Philippo* recedas omnino, non obstante iuramento, si quod ei ratione regni fecisti, quum, eo quantum ad obtinendum imperium reprobato, iuramentum huiusmodi non debeat observari."

interpretationem iuramenti.” Considering what we have analyzed so far, we can conclude that Bernard was particularly concerned about this and was eager to emphasize it to his readers repeatedly, directly and indirectly.

It is possible that the implementation of such an order from the papacy would spawn practical issues that could foster hesitation and unexpected difficulties. Much could not be foreseen. For example, what about the vassals, i.e., oath-takers, who are in debt to their (former) recipients of the oath? The popes’ decretals discussed above are, as we have seen, resolute and categorical about terminating the bond of allegiance. The *Glossa* indeed seems quite eager to highlight, as revealed throughout the rich glosses and allegations, the papal oath-absolving order for its readers. Yet the relationship between the two parties may well entail a circumstance in which the vassals owe lords money. The very last gloss to X 5.7, X 5.7.16 *glos. ord. s.v. aliquot pacto*, finally tackles this practical question.

**X 5.7.16 *glos. ord. s.v. aliquot pacto***

| Transcription  | Translation  |
|--|--|
| Ergo si sub poena +aliquis+tenetur eis aliquid soluere certa die, licet non soluat, non incidit in poenam. Et eodem modo, si per iuramentum, quod est verum: quia in illa obligatione et iuramento tacite subintelligitur: si talis permanserit, cui communicare liceat. <b>xxii. q. ii. ne quis arbitretur.</b> <sup>133</sup> <b>ff. de solut. pr. cum quis. i.</b> <sup>134</sup> <b>R. supra de iureiuran. iii. quemadmodum.</b> <sup>135</sup> <b>et supra e. excommunicamus. §. credentes.</b> <sup>136</sup> +Ber.+ | Therefore, if someone under penalty is held to pay them something [i.e., those who has fallen into heresy] by a certain day, even if he does not pay, he does not fall into penalty. And in the same way, if through an oath—which is true [i.e., which has been sworn]: because in the obligation and oath it is tacitly assumed, if he remains such a person with whom it is lawful to be in association, [see] <b>xxii. q. ii. ne quis arbitretur.</b> [and] <b>ff. de solut. pr. cum quis. i.</b> [For] responses, [see] |

<sup>133</sup> C. 22 q. 2 c. 14 [Fr. v.1 col. 871].

<sup>134</sup> Dig. 46.3.38.1. However, Dig. 46.3.38.pr. is apparently the text that Bernard intended to support his note, as Dig. 46.3.38.1 does not concern any tacit principle within obligation/oath. Curiously this issue was not fixed in the 1582 *ER*.

<sup>135</sup> X 2.24.25 [Fr. v.2 cols. 368-369].

<sup>136</sup> X 5.7.13 [Fr. v.2 col.788 §. 5].

|  |  |
|--|--|
|  | <b>supra de iureiuran. iii. quemadmodum. and<br/>supra e. excommunicamus. §. credentes.<br/>+Ber.+</b> |
|--|--|

Here the *Glossa* offers a straightforward instruction for the issue: no payment needed for the penalized ones. The major reason for this is laid out in his comment: there is a tacit rule within the oath that one must remain his original status to receive the money. Bernard, here claiming a *clausula rebus sic stantibus*, was possibly inspired by Johannes Teutonicus. Johannes in his *Glossa ordinaria* to C. 22 q. 2 c. 14 of Gratian's *Decretum*—which is actually employed by Bernard as an allegation here—argued that oaths are in effect only when the circumstances (under which the oaths were taken) remain the same.<sup>137</sup> This parallel becomes even more apparent when we note that these two authors of the *glossae ordinariae* both employed the same Roman law text, Dig. 46.3.38. pr..

However, Bernard's usage of this Roman law appears to be more literal than his counterpart for the *Decretum Gratiani*. Dig. 46.3.38. is about money payment and the contractual stipulation involved—which, according to the *lex*, requires the payment to be lawfully made to the recipient only if the recipient's legal status has not changed since the stipulation.<sup>138</sup> When instructing that the debtors, i.e., the vassals, do not need to pay their creditors, i.e., their (former) lords with whom their oath of allegiance has been absolved by the papacy, Bernard not only invoked the medieval *clausula rebus sic stantibus*, but also revived a specific Roman law

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<sup>137</sup> Johannes Teutonicus, C. 22 q.2 c. 14 *glos. ord. s.v. furens*: “Ergo semper subintelligitur haec conditio, si res in eodem statu manserit, ut **ff. de sol. cum quis. in princ.**” On this issue, see Heikki Pihlajamäki, Markus Dirk Dubber, and Mark Godfrey, eds., *The Oxford Handbook of European Legal History*, Oxford Handbooks (Oxford: Oxford University Press, 2018), 326–327. See also Melodie H. Eichbauer, “Rethinking Causae 23–26 as the Causae hereticorum,” *ZRG Kan. Abt. 101* (2015): 84–149.

<sup>138</sup> Dig. 46.3.38. pr.: “Cum quis sibi aut Titio dari stipulatus sit, magis esse ait, ut ita demum recte Titio solvi dicendum sit, si in eodem statu maneat, quo fuit, cum stipulatio interponeretur: ceterum sive in adoptionem sive in exilium ierit vel aqua et igni ei interdictum vel servus factus sit, non recte ei solvi dicendum: tacite enim inesse haec conventio stipulationi videtur ‘si in eadem causa maneat’.”

practice. With respect to the shared allegation Dig. 46.3.38 pr., medieval canonists such as Johannes Teutonicus employed it analogically to discuss oath in general and to illustrate the legal principle. However, Bernard took the analogy as equivalence, brought the medieval principle back to his usage of Roman law sources, and in the end transplanted the legal practice.

### **3.7 Disinheriting the Catholic Sons: Building Canonical Support**

We have seen above the penalty of disinheriting the heretics' orthodox sons by Innocent III in X 5.7.10 and especially its connection with the crime of treason in Roman law, as demonstrated through allegations in X 5.7.10 *glos. ord. s.v. disciplina*. However, this punishment is not without confusing contradictions within the Roman law system itself. As mentioned above in this chapter, Dig. 48.4.9 and Cod. 9.8.5, while both centering around treason, contain different financial treatment of the children of criminals convicted of treason. The former instructs that the criminal's property should be left for his children, if there is any.<sup>139</sup> The latter, however, orders not only that his property be confiscated, but also that his son(s) be disinherited from their mother and other close relatives.<sup>140</sup> To further complicate the picture, the major section on heretics in the Justinianic collections—Cod. 1.5—prescribes that non-heretical children of the heretics could inherit their property.<sup>141</sup> Innocent III's command, therefore, seems to be in line with Cod. 9.8.5, while contradicting the other two Roman *leges*.

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<sup>139</sup> Dig. 48.4.9: "Eorum, qui maiestatis crimine damnati sunt, libertorum bona liberis damnatorum conservari divus Severus decrevit et tunc demum fisco vindicari, si nemo damnati liberorum existat."

<sup>140</sup> Cod. 9.8.5.1: "Filiis vero eius, quibus vitam imperatoria specialiter lenitate concedimus (paterno enim deberent perire supplicio, in quibus paterni, hoc est hereditarii, criminis exempla metuentur), a materna vel avita, omnium etiam proximorum hereditate ac successione habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes."

<sup>141</sup> Cod. 1.5.4.1: "Ac primum quidem volumus esse publicum crimen, quia, quod in religione divina committitur, in omnium fertur iniuriam. Quos bonorum etiam publicatione persequimur: quae tamen cedere iubemus proximis quibusque personis, ita ut ascendentium vel descendendum vel venientium ex latere cognatorum usque ad secundum gradum velut in successione ordo servetur. Quibus ita demum ad capiendas facultates esse ius patimur, si non et ipsi pari conscientia polluuntur."



This situation concerns the *Glossa*.<sup>142</sup> Here the confiscation of the heretics' property is assumed: the argument in Dig. 48.4.9 seems to be simply ignored. As a matter of fact, Dig. 48.4, the section in the Justinianic *Digesta* on treason, has never been invoked by the ordinary glosses to the titles in the *Decretales* selected by this dissertation. This curious omission awaits further investigation.

**X 5.7.10 glos. ord. s.v. exhaeredatio**

| Transcription   | Translation   |
|---|---|
| <p>Hic expresse habes, quod bona haereticorum confiscantur: sive habeant filios, sive non, nec catholicis filiis haereticorum aliquid est relinquendum, ut hic dicitur. Sed contra dicit lex. <b>C. e. Manichaeos.</b><sup>143</sup> et <b>I. cognovimus.</b><sup>144</sup> et <b>aut. idem de Nestorianis.</b><sup>145</sup> ubi dicitur, quod filii catholici propter hoc haereditate paterna non privantur.</p> <p>Statur enim hodie huic decret. in odium criminis, sicut in crimine laesae maiestatis, ubi filii puniuntur quo ad bona, ut hic dicit, et <b>vi. q. i. §. verum</b><sup>146</sup> et +<b>cap.+ si quis cum militibus.</b><sup>147</sup> multo fortius in isto crimine, ut hic dicitur. Et hoc est expressum in constitutione Frederici, hac decret,<sup>148</sup> quae olim erat in <b>v compilatione +eodem tit.</b><sup>149</sup> et in alio casu filii etiam pro delicto parentum puniuntur temporaliter et usque ad quartam generationem, quam habes. <b>infra de poenis.</b></p> | <p>Here you have clearly that the property of the heretics is confiscated, whether they have sons or not: nor should anything be left for the catholic children of the heretics, as it is said here. But the law in <b>C. e. Manichaeos.</b>, and <b>I. cognovimus.</b> and <b>aut. idem de Nestorianis.</b>, says the opposite, where it is said that catholic sons are not to be deprived of their paternal inheritance.</p> <p>Indeed, it stands today concerning this decretal because of the disgust of crime, just as in the crime of <i>lèse-majesté</i>, where the sons are punished in terms of property (<i>quo ad bona</i>), as it says here, and [in] <b>vi. q. i. §. verum</b> and +<b>cap.+ si quis cum militibus.</b>, all the more so in such crime, as it is said here. And this has been described in the constitution of Frederic by this decretal, which once was in <b>v compilatione +eodem</b></p> |

<sup>142</sup> Note that Bernard also partially considered here texts from Johannes Teutonicus and Laurentius Hispanus in his gloss on *exhaeredatio* to X 5.7.10 (= *Comp. III. 5.4.1*).

<sup>143</sup> Cod. 1.5.4.

<sup>144</sup> Cod. 1.5.19.

<sup>145</sup> Nov. 115.3 §14 = Authen. post Cod.1.5.19.

<sup>146</sup> C. 6 q. 1 dict. ante. c. 22 [Fr. v.1 col. 559-560].

<sup>147</sup> C. 6 q. 1 c. 22 [Fr. v.1 col. 560].

<sup>148</sup> "edictali." in the 1582 *ER*.

<sup>149</sup> *Comp. V. 5.4*.

|  |   |
|--|---|
| <b>in quibusdam.</b> <sup>150</sup> +et in hac opinione fuerunt<br><u>Ioan.</u> et <u>Lau.</u> + | <b>tit.</b> +, and in another case the sons are even<br>punished for the crime/sin of the parents and<br>up to the fourth generation, as you have [in]<br><b>infra de poenis. in quibusdam.</b> +and<br>Johannes and Laurentius hold this opinion.+ |
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The focus of *Glossa*'s argumentation thus is the (dis)inheritance of catholic children. Seemingly inspired by Laurentius Hispanus,<sup>151</sup> the *Glossa* invokes three Roman law texts. Particularly, two counter-allegations come from Cod. 1.5, which we have just discussed above. Innocent III's order in X 5.7.10 squarely contradicts the Roman law tradition against heretics on this issue. The *Glossa*'s following defense of the papal stance, as we examine below, not only implies the seriousness of this contradiction, but also demonstrates a synthesized understanding of heresy as a special crime during this period. Its logic of argumentation is two-fold: first, solidifying the legitimacy of the analogy between heresy and *lèse-majesté*; and second, analogizing the punishment under discussion to an authoritative order against another similar crime.

A wide range of legal sources are resorted to in this gloss. The first defense, following the logic of the pope in the *Vergentis in senium*, recapitulates the analogy between the nature of heresy and that of the *crimen laesae maiestatis* in Roman law. The *Glossa* actually repeats its citation of Cod. 9.8.5 (in X 5.7.10 *glos. ord. s.v. disciplina*) in the form of C. 6 q. 1 c. 22<sup>152</sup>—and emphasizes in the comment, in line with that Roman *lex*, that sons of criminals in this case shall be deprived of inheritance. Notably, the *Glossa* also cites Gratian's *dictum* preceding this Roman

<sup>150</sup> X 5.37.12 [Fr. v.2 cols. 883-884].

<sup>151</sup> His gloss on *Comp. III. 5.4.1* (=X 5.7.10) invokes three Roman law allegations that were adopted by the ordinary gloss here. See MS Admont, Stiftsbibliothek 55, fol. 208r.

<sup>152</sup> Friedberg here in his footnote wrongly attributes it to Cod. 9.8.8.

law text, where the canon law master himself analogized heresy to the crime of *lèse-majesté*.<sup>153</sup>

As if this was not enough, after citing Roman law and Gratian, the *Gloss* further provides an allegation from contemporary secular law—a constitution from Emperor Frederick II in 22 November 1220<sup>154</sup> in the form of *Comp. V. 5.4* (this title only contains one text).<sup>155</sup>

Legitimizing the papal rule continues to preoccupy the *Glossa*. After invoking Roman, canon, and contemporary secular legal opinions to strengthen the connection between the crimes of heresy and of *lèse-majesté*, the *Glossa* employs X 5.37.12, i.e., canon 45 from the Fourth Lateran Council. Notably, unlike the allegations discussed above, this canon has nothing to do with heresy. It punishes secular powers like patrons of churches who physically injure clerics by stripping their positions, which their heirs shall not inherit either.<sup>156</sup> Here we need to understand the logic behind this analogy by considering this allegation together with the preceding comment of the gloss. The analogy does not start with the nature of heresy as a crime, but a similar punishment of sons carrying the weight of penalty for their guilty fathers. This is actually in line with what the popes said in the canon. The intention behind this section of X 5.7.10 *glos. ord. s.v. exhaereditio*—together with allegations in the following X 5.7.10 *glos. ord. s.v. canonicas*, which all embody the same method of punishment-analogy—therefore seems to be removing the hesitation of judges about executing this papal order.

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<sup>153</sup> C. 6 q. 1 dict. ante. c. 22 [Fr. v.1 col. 560]: “[E]xemplo tamen lesae maiestatis uana intelliguntur.”

<sup>154</sup> For the original text of this constitution, see Weiland, ed., MGH Leges, 4.2, 108–109.

<sup>155</sup> Fr. QCA, 182–183.

<sup>156</sup> X 5.37.12 [Fr. v.2 cols. 883-884]: “Sacri nihilominus concilii approbatione statuimus, quatenus, si patroni, vel advocati, aut feudatarii, seu vicedomini aut alii beneficiarii alicuius ecclesiae rectorem vel clericum alium ipsius ecclesiae per se vel per alios occidere vel mutilare ausu nefando praesumpserint, patroni ius patronatus, advocati advocatiam, feudatarii feudum, vicedomini vicedominatum, et beneficiarii beneficium prorsus amittant. Et ne minus vindictae quam excessus memoria prorogetur, non solum de praemissis nihil perveniat ad heredes, sed etiam usque ad quartam generationem posteritates talium in clericorum collegium nullatenus admittantur, neque in domibus regularibus alicuius praelationis assequantur honorem, nisi cum eis fuerit misericorditer dispensatum.”

### 3.8 A Final Remark: Raymond of Peñafort's *Consilia* and Bernard of Parma's

#### *Glossa*

With this, we come to the close of our examination of the *Glossa* for *De haereticis* in the *Decretales*. For medieval law students and us, these ordinary glosses provide not only a juridical definition of heresy, which is absent in the canons, but also judicial insights into specific legal procedures and canonical penalties against heretics during the late twelfth and especially early thirteenth centuries. Some concerns manifested in glosses to X 5.7.1-9, such as those over mercy, ecclesiastical hierarchy, and Apostolic authority, also can be detected in the *Glossa* to X 5.7.10-16. Nevertheless, commenting on texts including *Vergentis in senium* of Innocent III, the glosses investigated in this chapter illuminate more legal details involved in the general inquisition against heretics of this period.

To what extent, in the end, did the *Glossa*'s inclination toward leniency influence the contemporary development of inquisitorial practice as well as literature, and the overall treatment of heretics? Surviving in hundreds of medieval manuscripts, Bernard's *Glossa* with little doubt was well received in law schools and universities during the High and Late Middle Ages. Nonetheless, references to it in contemporary inquisitorial literature and records such as inquisitors' manuals and registers are few. And when indication of potential references appears, it often does not concern mercy, as the transmission of the phrase "in detestationem criminis" demonstrates. Moreover, the year 1239, when the earliest dated manuscript of the *Glossa* (already surrounding the texts of the *Decretales* on the folios' margins) was copied, saw the burning of 183 heretics at Mont Wimer by a former heretic and now Dominican inquisitor

Robert le Bougre.<sup>157</sup> Around 1266, the year when Bernard passed away, the Dominican master general Humbert de Romans—who once studied canon law in Paris—in a treatise claimed that heretics “multiply ways of going to hell by inventing new sects of errors (*vias descendendi ad infernum multiplicant, dum novas inveniunt sectas errorum*),” and that they deserve death.<sup>158</sup> The emphasis on the fabrication of new sects here reminds us of the *Glossa*’s definition of heretics discussed earlier in this chapter, but the sense of infusing mercy into the treatment of heretics is nowhere to be found.

In the end, further to illustrate the character of the *Glossa* on the topic of heresy, including its separation from its contemporary inquisitorial literature, let us make a quick comparison between it and two procedural *consilia* on the same subject.<sup>159</sup> The author of the latter, Raymond of Peñafort,<sup>160</sup> is also the compiler of the *Decretales*, i.e., the base text that the *Glossa* comments upon. Raymond composed the first *consilium*, i.e., *Credo quod*, one year after the promulgation of the *Decretales*. It accompanied Gregory IX’s letters *Ex parte tua* to the archbishop-elect of Tarragona in 30 April 1235.<sup>161</sup> Considering that the promulgation of the

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<sup>157</sup> According to a contemporary chronicle written by a Cistercian monk, Aubry de Trois-Fontaines. See Aubry de Trois-Fontaines, *Albrici monachi Triumfontium Chronicon*, ed. P. Scheffer-Boichorst, in Georg Heinrich Pertz, ed. MGH SS 23:944.

<sup>158</sup> See Marguerin de La Bigne, *Maxima bibliotheca veterum patrum et antiquorum scriptorum ecclesiasticorum*, vol. 25 (Lyons: apud Anissonios, 1677), 556.

<sup>159</sup> For a discussion on the definition of procedural *consilia*, see Parmeggiani, *I consilia procedurali per l’Inquisizione medievale (1235–1330)*, IX–XIII.

<sup>160</sup> For a recent study on Raymond and his works on heresy, see Sergi Torras, “Ramon de Penyafort i el procediment inquisitorial contra els heretges,” *Revista de Dret Històric Català* 13 (2014): 143–176.

<sup>161</sup> Lucien Auvray, ed., *Les Registres de Grégoire IX*, Bibliothèque des Écoles françaises d’Athènes et de Rome. 2e Série, vol. 2 (Paris: A. Fontemoing, 1896), 41–42. For a brief discussion of these two papal letters and the *Credo quod*, see Kelly, “The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy,” 82–83.

*Decretales* through the papal bull *Rex pacificus* happened on 5 September 1234, *Credo quod* appeared before the first edition of Bernard of Parma's *Glossa*.

In this instructional text, Raymond instructed that heretics are, according to the papacy, to be incarcerated, kept alive, and required to do penance. Significantly, the word “inquisitor” emerges in the text—which does not appear in neither the *Decretales* nor the *Glossa*—who is supposed to “interview and advise the bishop with due respect.”<sup>162</sup> The confiscation of property is suggested, but the tone is not without hesitation.<sup>163</sup> Those who do not confess their heresy and those who do are discussed separately; so are those who practice heresy without the public's knowledge and those who have been exposed to the public. Notably, it directly mentions that the Church is persecuting Waldensians, and that the secular princes can burn them.<sup>164</sup> It seems to testify to what we have discussed above regarding the connection between infamy and the suspect. When there is only one witness reporting, the *consilium* instructs, the reported should not be condemned, unless he is being infamous and the public supports the condemnation.

The second *consilium* composed by Raymond, *Queritur qui*, appeared in 1242, circulated through the effort of the archbishop of, again, Tarragona. The existence of MS F testifies that the earliest edition of Bernard's *Glossa* appeared before *Queritur qui*. This text, compared with the 1235 *Credo quod*, is more detailed and influential.<sup>165</sup> It discusses a series of subcategories of

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<sup>162</sup> “Credo quod quicumque sit Inquisitor a sede Apostolica constitutus potest rogare et munere episcopum cum debita reverentia, ut taliter deprehensos in suo episcopatu incarceret vel incarcerari faciat secundum domini Papae statuta, et incarceratos custodiri faciat diligenter.” Parmeggiani, *I consilia procedurali per l'Inquisizione medievale (1235–1330)*, 6–7.

<sup>163</sup> Ibid., “Licet forsitan posset dici, quod bona talium veleant confiscari.”

<sup>164</sup> Ibid., “Si quis recepit aliquando Valdenses credens illos esse bonos homines, licet sciret quod ecclesia sequeretur [Parmeggiani's footnote here: “Evidentemente per *persequeretur*, come giustamente proposto nelle successive riedizioni.”] eos, et principes seculares igni traderent cremandos.”

<sup>165</sup> See Ibid., 13.

heretics, the punishments against and penances to be imposed on them, together with the formulas for abjuration, purgation, and compurgation.<sup>166</sup> Importantly, similar to the *Glossa*, this manual pays particular attention to the suspect. It defines the suspect as a person who hears the preaching or lecture of, prays with, gives kiss to, etc. the heretics, or, to be more specific, the Waldensians (*Insabbatati*).<sup>167</sup> Furthermore, depending on how frequent their interaction with the heretics, the category of suspects is also subdivided into “simple suspect (*suspectus simpliciter*),” “flagrant suspect (*vehementer suspectus*),” and “the most flagrant suspect (*vehementissime suspectus*).” Unlike the other categories of heretics, suspects are not to be excommunicated through anathema. Nonetheless, the suspect is required to perform the oath of purgation in public in the presence of the diocesan bishop. In the end, continuing what is said in his first *consilium*, Raymond in *Queritur qui* claimed that dead heretics are to be exhumed and burnt.

Did Bernard consider these two works by the compiler of the *Decretales* as he composed and revised his *Glossa*? We have no clear sign of it: certainly, the glossator cited neither of these two *consilia* as allegations. Raymond in *Credo quod* carefully discussed the incarceration of heretics, including details such as preventing suspects communicating with prisoners. When the *Glossa* passingly mentions imprisoning heretics, however, it simply rests upon X 5.7.15 as its source.<sup>168</sup> The specifics provided by Raymond, in other words, are nowhere to be found in the ordinary glosses.

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<sup>166</sup> For its text, see *Ibid.*, 15–22.

<sup>167</sup> For a recent discussion of Waldensians’ names during the Middle Ages, see P. Gerard Damsteegt, “Decoding Ancient Waldensian Names: New Discoveries,” *Andrews University Seminary Studies* 54 (2016): 237–258.

<sup>168</sup> See X 5.7.9 *glos. ord. s.v. sponte recurrere* and *glos. ord. s.v. audientia*; as well as X 5.7.13 *glos. ord. s.v. potestatibus*.

Similarly, what Raymond said without hesitation in his *consilia* regarding the burning of the Waldensians—whether alive or posthumous after exhumation—does not exist in the *Glossa* on X 5.7. The text of X 5.7.3 and X 5.7.5 indeed prescribes posthumous *condemnatio*, so does X 5.7.5 *glos. ord. s.v. post mortem*. As we have discussed in Chapter Two, the gloss claims that because of the detestable nature of the crime of heresy (*in detestationem criminis*), even “after death one could be accused and excommunicated.”<sup>169</sup> But still throughout its comment on X 5.7, the *Glossa* does not mention the death penalty, nor posthumous burning. “I agreeably believe that he [i.e., the heretic] should be accepted [by the Church], since the Lord does not wish the death of a sinner,”<sup>170</sup> said Bernard in X 5.7.9 *glos. ord. s.v. audientia*. We have analyzed this overall inclination toward mercy by the *Glossa* in Chapter Two with respect to delivering convicted heretics to secular courts and death sentence.

Furthermore, there is no sign that Bernard took Raymond’s categorization of different levels of suspects in the second *consilium* into consideration when he revised his *Glossa*. A comparison of the selected manuscripts of *Glossa* demonstrates that no addition had been made to X 5.7.13 *glos. ord. s.v. suspicione* and *glos. ord. s.v. suspicionis*, where Bernard focused on the suspect. As a matter of fact, Raymond was being much clearer about what behavior qualifies a suspect than Bernard. In other words, defining the suspect, unlike the heretic, does not seem to be a concern of the *Glossa*. The latter’s focus in this case is emphasizing the precise assignment of purgation: only a sufficient suspicion can lead to the process of purgation, and a case beyond suspicion does not require purgation. Thus, on this issue, the *Glossa* is more about assuring appropriate legal procedure in general, whereas the *consilium* of Raymond provides more

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<sup>169</sup> X 5.7.5 *glos. ord. s.v. post mortem*: “[E]nim speciale est in crimine haeresis, in detestationem criminis, ut post mortem possit accusari et excommunicari.”

<sup>170</sup> “Bene credo quod debet recipi, quia Dominis non vult mortem peccatoris.”



practical instructions. On this note, finally, while the *Glossa* invokes allegations to illustrate the nature and religious significance of canonical purgation, the *consilium* simply lays out a formula of purgation.

Did Raymond, as he was composing his second *consilium* in 1242, consider the *Glossa*, of which the first edition was already in circulation by then? There is little evidence attesting to this. After all, the *Glossa* rarely challenges the *Decretales* without reservations and reconciliations following dialectical reasoning. The *consilia* of Raymond, on the one hand, also often stay in line with the papal decretals in the *Decretales*. Reservations occasionally could be detected, such as the aforementioned case about property-confiscation, though certainly not in the form of contention. On the other hand, the *consilia* also add straightforward and detailed orders to the canons that do not exist in the glosses.

However, a combination of the aforementioned *Glossa*'s phrase condemning heresy, *in detestationem criminis*, and Raymond's instruction of posthumous burning, seems to have become a heritage for contemporary and later inquisitorial literature and practice. The formula *in detestationem criminis* appears in none of the canons in the *Decretales*, nor in the later entire *Corpus Iuris Canonici*. But it was mentioned verbatim in *Processus inquisitionis*, one of the earliest inquisitorial manuals (following Raymond's *consilia*) by the mid-thirteenth-century inquisitors, Bernard de Caux (d. 1252) and Jean de Saint-Pierre, regarding burning the bones of

deceased heretics.<sup>171</sup> Then, it appears again in a similar paragraph from the register of an inquisitorial trial in Carcassonne on 22 February 1325.<sup>172</sup>

We also must continue to question how canonical and universal Raymond's orders were. The burning of heretics, for instance, was not mentioned in the *Decretales* nor the *Glossa*, as I have said above. Such practice, however, had been no stranger to the medieval Latin West from the burning of heretics at Orleans in 1022 under King Robert II the Pious.<sup>173</sup> Also, it would be difficult for us to imagine that Gregory IX, Bernard, and Raymond would be ignorant of what Frederick II prescribed in his 1224 rescript for Lombardy, which is "the first law in which death by fire is contemplated,"<sup>174</sup> or in his 1231 *Liber Augustalis* concerning the death penalty by fire against heretics. But still, unlike Raymond's *consilia*, the *Glossa* emphasizes "the Lord does not wish the death of a sinner" and is clearly hesitant about sending heretics to secular courts, as demonstrated by this chapter. This sentiment apparently did not affect Robert le Bougre nor the Council of Narbonne in 1243/1244. This council repeated the 1184 *Ad abolendam*, which states that relapsed heretics must be relinquished to secular courts for judgement without a further

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<sup>171</sup> "Nos inquisitores, etc., visis ac diligenter inspectis et attentis culpis ac demeritis talis superius notati, et defensionibus propositis pro eodem, et circumstantiis quas circa personas et dicta testium et alia considerari oportuit et attendi, adjunctis et assistentibus nobis talibus, etc., eundem talem, etc., definitive pronunciando, iudicamus hereticum decessisse atque ipsum et ipsius memoriam pari severitate dampnantes, ossa ejus, si ab aliis discerni poterunt, de cemeterio ecclesiastico exhumari simulque comburi decernimus in detestationem criminis tam nefandi." Tardif and Balme, "Document pour l'histoire," 677.

<sup>172</sup> "[D]eclaramus magistrum Arnaudum Morlana predictum per bec que contra ipsum invenimus hereticum fuisse et in sectam hereticorum detestabilem decessisse, precipientes eius ossa de sacris cimiteriis si possint discerni ab aliis fidelium ossibus exhumari et comburi in detestationem criminis tam nefandi, eius memoriam in futuro perpetuo damnantes." Jean Duvernoy, ed., "Le Registre DDD de l'inquisition de Carcassonne 1325–1327," 75.

<sup>173</sup> On this event and the contemporary accounts of it, see Michael Barbezat, "The Fires of Hell and the Burning of Heretics in the Accounts of the Executions at Orleans in 1022," *Journal of Medieval History* 40 (2014): 399–420; Michael Frassetto, "The Heresy at Orleans in 1022 in the Writing of Contemporary Churchmen," *Nottingham Medieval Studies* 49 (2005): 1–17.

<sup>174</sup> Joseph Blötzer, "Inquisition," 30. However, it is important to note that such practice has long existed before 1224.

hearing.<sup>175</sup> Nevertheless, the *Glossa*'s willingness to accept relapsed but repentant heretics back into the Church might be the reason that the inquisitors Bernard de Caux and Jean de Saint-Pierre did not send relapsed heretics Pons Bladier, Pierre d'Albigeois, Raymond Sabbatier, and others to secular courts on 6 May 1246.<sup>176</sup>

Was Raymond, by contrast, simply following what was already in practice by the secular authorities? Or was he delivering some tacit papal intention and/or approval unexpressed in the *Decretales*? How did medieval law students, canonists, Roman law legists, and inquisitors respectively understand the different attitudes manifested in the *Glossa* and Raymond's *consilia*? Needless to say, the two of them belong to different categories of legal literature and have different intended audiences. Nonetheless, let us not forget that the three groups of people listed above were not mutually exclusive. Many inquisitors from the thirteenth century onwards were well trained in canon law. How would they use the *Decretales*, the *Glossa*, and the *consilia* in law schools and in judicial offices? Further examinations await before we can have a deeper insight into the thirteenth century legal landscape.

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<sup>175</sup> “[I]llos qui post abjuratorem erroris seu purgationem, deprehensi fuerint in abjuratam haeresim recidisse: saeculari iudicio sine ulla penitus audientia relinquatis, animadversione debita puniendos.” Kurt-Victor Selge, ed. *Texte zur Inquisition* (Gütersloh: Mohn, 1967), 63.

<sup>176</sup> See Douais, ed., *Documents pour servir à l'histoire de l'Inquisition dans le Languedoc*, 8–10.

## Chapter Four: “No one can be the son of God and of the Devil simultaneously”: Apostasy and Rebaptism in the *Glossa* to X 5.9

### 4.1 Introduction

Around the time of the first Crusade (1095–1099), an exiled Norman Christian named Johannes from southern Italy near Bari converted to Judaism, and changed his name to Obadiah/Obadyah.<sup>1</sup> Other than his own autobiographical letter—which contains few explanations of his unusual conversion at this precarious time for Jews—this event did not leave much trace in the historical record.<sup>2</sup> Evidence such as this from the twelfth and the early thirteenth centuries is “few and fragmentary,” as Paola Tartakoff points out.<sup>3</sup> Yet, an event like this was clearly a concern in the late thirteenth century.<sup>4</sup> One year after Bernard’s death in 1266,

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<sup>1</sup> For a brief discussion of him and an excerpt from Obadiah’s autobiographical letter, see Goodich, *Other Middle Ages*, 68–74.

<sup>2</sup> See Joshua Prawer, “The Autobiography of Obadyah the Norman, A Convert to Judaism at the Time of the First Crusade,” in *Studies in Medieval Jewish History and Literature*, ed. Isadore Twersky (Cambridge, Mass: Harvard University Press, 1979), 110–134. See also Goodich, *Other Middle Ages*, 68–74.

<sup>3</sup> Paola Tartakoff, *Conversion, Circumcision, and Ritual Murder in Medieval Europe*, The Middle Ages Series (Philadelphia: University of Pennsylvania Press, 2020), 72. She argues that “As Christian conversions to Judaism were punishable by death in medieval Christendom, they were clandestine and their numbers are difficult to estimate,” and observes that “[e]xtant records... including archival documents in Catalonia and England, rabbinic responsa, chronicles, talmudic commentaries, inquisitorial records, documents from the Cairo geniza, Jewish liturgical poetry, and tombstone inscriptions... refer to about forty conversions of European Christians to Judaism that transpired during the thirteenth and fourteenth centuries (and to about forty additional conversions of European Christian Christians to Judaism that transpired during the eleventh and twelfth centuries).” *Ibid.*, 70–71. On the relationship between apostasy from Judaism (instead of Christianity) and inquisition, see Paola Tartakoff, *Between Christian and Jew: Conversion and Inquisition in the Medieval Crown of Aragon, 1250–1391* (Philadelphia: University of Pennsylvania Press, 2012).

<sup>4</sup> In King Alfonso X of Castile’s (1252–1284) *Fuero real*, for example, “Christians are forbidden, under the threat of death, to convert or to permit their children to convert to Judaism or Islam.” Maya Soifer Irish, *Jews and Christians in Medieval Castile: Tradition, Coexistence, and Change* (Washington, D.C: The Catholic University of America Press, 2016), 183, see n. 54 for the original text (*Fuero real* IV.i. I). For a complete edition of this code, see *Opúsculos legales del rey don Alfonso el Sabio, publicados y cotejados con varios códices antiguos por la Real Academia de la Historia*, vol. 2: *El fuero real, las leyes de los adelantados mayores, las nuevas y el Ordenamiento de las tafurerías; y por apéndice, las Leyes del estilo*. Madrid: Imprenta Real, 1836. In the *Siete Partidas*, Christian apostasy is understood as spiritual adultery. Thus “a person who becomes a heretic, a Moor, or a Jew, cannot accuse his wife of adultery.” Samuel Parsons Scott, trans. *Las siete partidas*, The Middle Ages Series, vol. 4 (Philadelphia: University of Pennsylvania Press, 2001), 920 (*Siete Partidas* IV.ix. VIII). More importantly, the same code also

Pope Clement IV (1265–1268) in his bull *Turbato corde audivimus*, following the 1263 Barcelona Dispute, condemned Christians defecting to Judaism, and ordered punishments against Jews who induced them to do so.<sup>5</sup> This bull was later repromulgated by several subsequent popes including Gregory X (1271–1276) in 1274 and Nicholas IV (1288–1292) in 1288 and 1290.<sup>6</sup> This situation, that is, the renunciation of one’s faith, is the most common meaning of apostasy, or *apostasía*, especially today.<sup>7</sup> This meaning had possibly been fixed from the fall of the Roman Emperor Julian the Apostate (361-363).<sup>8</sup> Such usage also appeared in the Justinianic *Codex*,<sup>9</sup> which inherited laws from the Theodosian Code.<sup>10</sup> Apostasy, defined in this way, differs from heresy, though the punishments for both tended to be similar.<sup>11</sup>

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decrees a variety of penalties from confiscation, infamy and disinheritance to death for Christians who convert to other religions, including the ones who repent and return to Christianity after apostasy. See *Ibid.*, vol. 5, 1193 (*Siete Partidas* VI.iii. IV); 1229-1230 (*Siete Partidas* VI.vii. VII-VIII); 1435 (*Siete Partidas* VII.xxiv. VII); 1439-1441 (*Siete Partidas* VII.xxv. IIII-VIII). Notably, the same volume also points out that “the drift of converts from Christianity to Islam both in Spain and in the wider Mediterranean world was not inconsiderable and can be documented in detail for Alfonso’s era.” *Ibid.*, xxxiv. For a recent, electronic edition of this code, see *Las Siete Partidas. Texto antiguo*. Barcelona: Red Ediciones S.L., 2016. <https://www-digitaliapublishing-com.ezproxy.cul.columbia.edu/a/48659>.

<sup>5</sup> For a brief summary and an edition of the Latin text, see Solomon Grayzel, *The Church and the Jews in the XIIIth Century*, ed. Stow Kenneth, vol. 2: 1254–1314 (Detroit: Wayne State University Press, 1989), 102–104. See also Simonsohn, *The Apostolic See and the Jews*, 236–237.

<sup>6</sup> See Rebecca Rist, *Popes and Jews, 1095–1291* (Oxford: Oxford University Press, 2016), 24–25; Goodich, *Other Middle Ages*, 62.

<sup>7</sup> See F. X. Lawlor, “Apostasy,” in NCE, vol. 1, 570. This meaning is also how theology commonly employs the term. See A. Beugnet, “apostasie,” in DThC, vol. 2/2, col. 1602. See also J. Bouché, “apostasie,” in DDC, vol. 1, col. 640.

<sup>8</sup> Cf. C. 11 q. 3 c. 94 [Fr. v.1 col. 669]. For its meaning’s vacillation during Antiquity, see Fr. Schmidtke, “Apostasie,” in *Reallexikon für Antike und Christentum: Sachwörterbuch zur Auseinandersetzung des Christentums mit der antiken Welt*, eds. Theodor Klauser et al., vol. 1 (Stuttgart: Hiersemann, 1950), cols. 550–551.

<sup>9</sup> Cod. 1.7.

<sup>10</sup> C. Th. 16.8.7, 16.7.3-4, 16.7.7, and Nov. Th. (*Liber legum novellarum divi Theodosii Augusti*) 3.1.4 were inherited by the Justinianic Code.

<sup>11</sup> DDC, vol. 1, cols. 642–649.

During the High Middle Ages, however, *apostasia* most often meant the religious crime committed by someone abandoning their religious vows and thus retreating from clerical/monastic orders to secular lives.<sup>12</sup> It is noteworthy that although ecclesiastical regulations for this crime already existed during Antiquity and the Early Middle Ages, the concept of *apostasia* was not usually associated with those punishments. Both canon 7 of the Council of Angers (453) and canon 37 of the Council of Meaux (845), for example, ordered the deposition of clerics who become laymen and/or soldiers—without naming them as apostates.<sup>13</sup> Nevertheless, as F. Donald Logan notes, apostates (sometimes referred to by contemporaries as *fugitivi*, *vagabundi*, or *vagantes*, but most commonly as *apostatae*), “[were] clearly seen as... deviant person[s] in medieval society... violator[s] of vows and... scandal[s] to the faithful.”<sup>14</sup> An ecclesiastical council in Paris, held in 1212, decreed that *apostatae* abandoning their religious orders were to be excommunicated and avoided by all (“ab omnibus evitentur”).<sup>15</sup> Just one year before Bernard’s death in 1266, on 12 November 1265, a Benedictine monk and former prior in England named Stephen de Wateringbury was identified for arrest for the crime of apostasy. His

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<sup>12</sup> See Joseph R. Strayer, “Apostasy,” in DMA, vol. 1, 349. For a more detailed discussion of the multiple meanings of this concept, see Alphonse Van Hove, “Apostasy,” in CE, vol. 1, 624–626. It should be noted that F. Donald Logan argues that people who abandon their monastic habits must be distinguished from those who forsake their clerical orders, as the latter are subject to “positive, man-made laws of the church,” rather than *religious* laws. See F. Donald Logan, *Runaway Religious in Medieval England, c. 1240–1540*, Cambridge Studies in Medieval Life and Thought, 4th ser., 32 (Cambridge; New York: Cambridge University Press, 1996), 1–2. However, as demonstrated below in this chapter, the *Decretales* and the *Glossa* do not seem to embody this distinction.

<sup>13</sup> See Mansi, vol. 7, col. 901; vol. 14, col. 827. For other Church councils which provided such canons during the Early Middle Ages, see DDC, vol. 1, cols. 654–655.

<sup>14</sup> Logan, *Runaway Religious in Medieval England, c. 1240–1540*, 5 and 9.

<sup>15</sup> Pars. II, Canon 14. Mansi, vol. 22, col. 829. See also Albert Joseph Riesner, “Apostates and Fugitives from Religious Institutes: An Historical Conspectus and Commentary,” The Catholic University of America. Canon Law Studies 168, PhD diss. (The Catholic University of America, 1942), 29.

is but one among the many names, both male and female, listed in the register of English apostates between 1240 and 1530, prepared by Logan.<sup>16</sup>

It is this meaning of apostasy—withdrawing from one’s religious life and going back to secular life—that the six canons of X 5.9, *De apostatis et reiterantibus baptisma*, employ. As its name suggests, X 5.9 is a title dealing with the canonical issues around apostasy and rebaptism. These canons respond to specific questions that can be grouped into several thematic categories: (1) What is the general procedure for dealing with the crime of apostasy, and what is the penalty therefor?<sup>17</sup> (2) Can monks, abandoning their original professions, join and serve other religious orders? (3) What is the canonical crime associated with rebaptism? (4) May a cleric, after performing rebaptism, still be promoted in the Church?

One may wonder why Raymond treated two different subjects, namely, apostasy and rebaptism, in one title. Apostasy and rebaptism, each indicating both theological and canonical problems in Christian life, were crucial issues in the Early church. By the time of the Theodosian Code (438), as well as a century later in the Justinianic Code (529 and 534), regulations about these two issues appeared next to each other in legislation (C. Th. 16.6 and 7; Cod. 1.6 and 7). With Bernard of Pavia (d. 1213) and *Comp. I.*, seemingly for the first time, canons on these problems are grouped under one title, i.e., *De apostatis et reiterandis baptisma* (*Comp. I.* 5.8), a title incorporated verbatim into the *Decretales*.<sup>18</sup> The jurisprudential rationale for this pairing in

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<sup>16</sup> Logan, *Runaway Religious in Medieval England, c. 1240–1540*, 184–267. An important recent study also should be noted here, which focuses on the nuns withdrawing from their religious orders: Elizabeth M. Makowski, *Apostate Nuns in the Later Middle Ages*, Studies in the History of Medieval Religion (Woodbridge: The Boydell Press, 2019).

<sup>17</sup> For a brief summary of the regulations on apostasy in the *Decretales*, see Riesner, “Apostates and Fugitives from Religious Institutes: An Historical Conspectus and Commentary,” 28–30. However, this thesis is not about medieval jurisprudence and consults no canonical works, such as Bernard’s *Glossa*.

<sup>18</sup> See Stephan Kuttner, ed., *Index titulorum decretalium ex collectionibus tam privatis quam publicis conscriptus*, Ius Romanum Medii Aevi. Subsidia 2 (Milan: Giuffrè, 1977), 13.

the thirteenth century, however, can only be seen clearly by investigating the canons together with the *Glossa* and its allegations. As this chapter reveals, some of the provisions for apostasy and rebaptism actually derive from the same canonical tradition disciplining Jews who violate the Christian religion after converting to Christianity.

The following investigation of the *Glossa* consists of four parts: two on the crime of apostasy and two on the issue of rebaptism. The first part, discussing Bernard's glosses to X 5.9.1, 3, and 5, analyzes his understanding of the legal implications of apostasy as a canonical crime. These glosses not only define fundamental concepts such as apostasy, but also clarify succinct phrases in the canons such as "to be tolerated" or "by threats," instructing exactly how to carry out these orders in court. The second part explicates Bernard's comment on the phrase "dispensation by the Roman Pontiff" in X 5.9.6, which he considered the necessary condition in order for an apostate to move legally to another form of religious life. The third part deals with three glosses to X 5.9.4. In these glosses, Bernard defined and discussed rebaptism as a canonical crime. Furthermore, interestingly, he defended the legitimacy of simultaneously holding clerical and judicial offices (such as, for example, being an archdeacon and arbitrator at the same time). His concern seems rooted in the possibility that accusations could be brought using Biblical sources, a potential threat that is missing from the actual texts of the canons. The last part tackles the issue of ecclesiastical promotion in X 5.9.2. In the first place, Bernard asked to what extent can a due punishment be lightened for a minor in the case under discussion. He then painstakingly investigated the legal ramifications of a vague but crucial phrase in the canon, "by the benefit of the religious life (*favore religionis*)."

As the analysis below demonstrates, the accompanying *Glossa* to the cited canons provides specific regulations, counter arguments, descriptions of varied legal situations, as well



as Romano-canonical allegations, that cover judicial circumstances far beyond the cases in the canons. These glosses, therefore, deepen and broaden our understanding of the meanings of apostasy and rebaptism in thirteenth-century canon law in practice, with implications far beyond that century.

## 4.2 The Legal Implications of Apostasy

Three brief canons in this title, X 5.9.1, 3, and 5, deal with the first category, i.e., the general procedure and penalty for handling apostates. These canons were chosen by Raymond of Peñafort (d. 1275) from three papal decretals by Popes Eugene III (1145–1153),<sup>19</sup> Innocent III (1198–1216), and Honorius III (1216–1227). These texts all commanded that apostates subjected to ecclesiastical censure (*ecclesiastica censura*)<sup>20</sup> not be released by the Church. It should be noted, however, that the first of these canons is a little different. It specifically states that apostates are not to be released *if they are arrested for crimes*, possibly denying them the privilege or benefit of clergy.

### X 5.9.1

| Transcription  | Translation  |
|--|--|
| Alexander III.<br><br>Praeterea clerici, qui, relicto ordine +clericali+ et habitu suo, in apostasia tanquam laici conversantur, si in criminibus comprehensi teneantur, per ecclesiasticam censuram non praecipimus liberari. | Alexander III. [Eugene III]<br><br>Besides, clerics who, with their +clerical+ order and habit abandoned, in apostasy live as laymen, if they are held arrested for crimes, we order through ecclesiastical censure ( <i>per</i> |

<sup>19</sup> Though this canon. i.e., X 5.9.1, was wrongly attributed to Pope Alexander III in the *Decretales*.

<sup>20</sup> For the definition, history, and development of ecclesiastical censures, see Leo Gans, “Ecclesiastical Censures,” in CE, vol. 3, 527–532. Gans points out that Pope Innocent III demonstrated different usages of this concept in his decretals: “Innocent III, who in 1200 (cap. 13 X De judicious, II, 1) had used the term for punishment in general, at a later date (1214), answering a query as to the meaning of ecclesiastical censure in pontifical documents, expressly distinguished (cap. 20, X De verb, signif. V, 40) censure from any other ecclesiastical penalty (*respondemus quod per eam non solum interdicti, sed suspensionis et excommunicationis sententia valet inteligi*), thereby authentically declaring that by ecclesiastical censure were meant the penalties of interdict, suspension, and excommunication.” Nevertheless, the exact meaning of *ecclesiastica censura* in the context of Pope Eugene III’s decretal, which was about fifty years older than Innocent III, awaits clarification from the gloss, as we shall see soon below.

|  |  |
|--|--|
|  | <i>ecclesiasticam censuram</i> ) that [they are] not to be released. |
|--|--|

Questions regarding definitions and clarifications arise from this short canon. The first question that the *Glossa* tackles is the specific legal definition and implication of apostasy in these cases. Gratian’s presentation and discussion of apostasy in his *Decretum* is rather unsystematic. Citing Augustine, one canon (Dist. 26 c. 2) uses apostasy as a metaphor to condemn bigamy, while another canon from the so-called Second Council of Arles (443 or 452)<sup>21</sup> (Dist. 50 c. 69) defines apostates as those who abandon their religious profession and return to the secular world. C. 3 q. 4 c. 2 vaguely talks about apostates as those who break the law of Christian religion.<sup>22</sup> Dist. 79 c. 1 and 9 even cite the same passage from Pope Nicholas II (1059–1061)<sup>23</sup> stating that a pope enthroned without a canonical, agreed-upon election by the Cardinals as well as other clerics is not a pope but an *apostaticus*. By contrast, the *Glossa* on the word *apostasia* in X 5.9.1 discusses in an orderly fashion the triple implications of apostasy—perfidy, disobedience, and irregularity<sup>24</sup>—which later shaped the influential canonist Hostiensis’ thought on this issue.<sup>25</sup>

**X 5.9.1 glos. ord. s.v. apostasia**

| Transcription   | Translation  |
|---|--|
| Est autem triplex apostasia, scilicet perfidiae, quando quis recedit a fide. <b>ii. q. vii. non</b> | There are three types of apostasy: [1] of perfidy, when someone withdraws from the |

<sup>21</sup> For a discussion of the historical setting and selected canons of this council see Ralph Mathisen, “The ‘Second Council of Arles’ and the Spirit of Compilation and Codification in Late Roman Gaul,” *Journal of Early Christian Studies* 5 (1997): 511–554. However, this canon is not mentioned in this article.

<sup>22</sup> “Accusandi uel testificandi licentia denegetur his, qui Christianae religionis et nominis dignitatem, et suae legis uel sui propositi normam aut regulariter prohibita neglexerint. Transgressores enim sponte legis suae, eiusque uiolatores, apostatae nominantur.” Fr. v.1 col. 512.

<sup>23</sup> JL 4399 (Jaffé, 1<sup>st</sup> ed. 3332).

<sup>24</sup> Whether this entire gloss, or parts of it, comes from Vincentius Hispanus (d. 1248), who composed the oldest *apparatus* on the *Decretales*, as suggested by the *siglum* at the end of this gloss, remains to be examined through further manuscript studies.

<sup>25</sup> Hostiensis adopted this categorization in his famous *Summa aurea*. See Goodich, *Other Middle Ages*, 61.

|  |  |
|--|--|
| <p><b>potest.</b><sup>26</sup> Inobedientiae, quando quis transgreditur praeceptum. <b>supra de maio. et obe. si quis venerit.</b><sup>27</sup> et <b>c. illud.</b><sup>28</sup> Irregularitatis, cum quis recedit ab ordine suo, sive sumptae religionis: ut hic, et <b>l. d. c. ult.</b><sup>29</sup> Et dicitur apostata, id est, retro stans. <b>xxvi. q. ult. non observetis.</b><sup>30</sup> <i>et apostata testis esse non potest vel alium accusare</i><sup>31</sup> <b>iii. q. iii. si quis vero.</b><sup>32</sup> et <b>c. beatus.</b><sup>33</sup> +<u>Vin.</u>+</p> | <p>Faith, [see] <b>ii. q. vii. non potest.</b>; [2] of disobedience, when someone transgresses a precept, [see] <b>supra de maio. et obe. si quis venerit.</b> and <b>c. illud.</b>; [3] [and] of irregularity, when someone withdraws from his order, or an undertaken religious life: as here, and [see] <b>l. d. c. ult.</b> And he is declared an apostate, that is, facing backwards (<i>retro stans</i>), [see] <b>xxvi. q. ult. non observetis.</b> and an apostate is not able to be a witness or to accuse another. [See] <b>iii. q. iii. si quis vero.</b> and <b>c. beatus.</b> +<u>Vin.</u>+</p> |
|--|--|

One may notice the surprisingly identical structure of the first half of this gloss and Thomas Aquinas's (d. 1274) triple categorization of apostasy in his *Summa theologiae*,<sup>34</sup> which

<sup>26</sup> C. 2 q. 7 c. 24 [Fr. v.1 col. 488].

<sup>27</sup> X 1.33.2 [Fr. v.2 cols. 195-196].

<sup>28</sup> X 1.33.5 [Fr. v.2 col. 196].

<sup>29</sup> Dist. 50 c. 69 [Fr. v.1 col. 203].

<sup>30</sup> C. 26 q. 7 c. 16. Here the 1582 *ER* reads "q. vlt. cap. potest."

<sup>31</sup> This section in italics does not exist in the 1582 *ER*.

<sup>32</sup> C. 3 q. 4 c. 3 [Fr. v.1 col. 512].

<sup>33</sup> C. 3 q. 4 c. 2 [Fr. v.1 col. 512].

<sup>34</sup> See Thomas Aquinas, *Summa theologiae* 2.2.12.1 co.: "Respondeo dicendum quod apostasia importat retrocessionem quandam a Deo. Quae quidem diversimode fit, secundum diversos modos quibus homo Deo coniungitur. Primo namque coniungitur homo Deo per fidem; secundo, per debitam et subiectam voluntatem ad obediendum praeceptis eius; tertio, per aliqua specialia ad supererogationem pertinentia, sicut per religionem et clericaturam vel sacrum ordinem." Available at Thomas Aquinas, *Corpus Thomisticum* (Pamplona, Spain: Ad Universitatis Studiorum Navarrensis, 2000), <http://www.corpusthomisticum.org/>. This categorization of apostasy does not exist in the *Libri quattuor sententiarum* of Peter Lombard, who only uses the concept of apostasy unsystematically (1) to explain "Belial" as one of the names of demons (*Libri quattuor sententiarum* 2.10.2); (2) to denote (citing Augustine, *De nuptiis et concupiscentia*, book 1, chapter 10) the action of withdrawing from the Christian faith (*Libri quattuor sententiarum* 4.31.2); and (3) to mean (citing Benedict the Levite, *Capitularia*, add. 4 c. 88) the action of withdrawing their religious habit. For an edition of the *Libri quattuor sententiarum*, see Petrus Lombardus, *Textus sententiarum cum conclusionibus magistri Henrici Gorichem et concordantiis Bible ac Canonum* (Basel: Kessler, 1502). This work has been translated in Peter Lombard, *The Sentences*, trans. Giulio Silano. 4 vols. (Toronto: Pontifical Institute of Mediaeval Studies, 2007-2010).

was composed about three decades after the *Glossa*.<sup>35</sup> But the reasons why Bernard dwelled on the word *apostasia* can only be deciphered by delving into the legal allegations.

#### 4.2.1 *Perfidia* and the Deprivation of Legal Rights

Supporting the accusation of perfidy with canon 64 from the Fourth Council of Toledo (633, C. 2 q. 7 c. 24), the gloss implies that apostasy, legally speaking, results in losing the legal right to offer testimony or to be a witness in court. What is interesting about this allegation is that the canon actually was targeting converted Jews who, after conversion, violated the Christian faith. In other words, here the glossator, without mentioning the Jews and the conversion issue, adopted another definition, or subcategory, of apostasy, and applies its specific legal consequence—missing in X 5.9.1—to the kind of apostates in the papal decretal. Furthermore, this deprivation of legal rights is echoed and extended at the end of this gloss, whereby the apostates are further forbidden to sue other people.<sup>36</sup>

It is noteworthy that, as mentioned above, in the *Codex* of Justinian there is a specific title—*De apostatis*—dealing with the issue of apostasy. Although there the concept of apostasy is simply defined as abandoning the Christian faith, the penalties that follow include losing the right to make a will, succeed to estates, or testify in court.<sup>37</sup> Furthermore, if apostates convert to Judaism, their property will be confiscated. It seems implausible that Bernard would have been unaware of this section in the *Codex*. Therefore, we should expect him to draw on it to support the idea of depriving apostates of legal rights; however, this is not the case. Canonists of the twelfth and thirteenth centuries, on the other hand, debated whether an excommunicate loses

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<sup>35</sup> For a brief chronology of the *Summa theologiae*, see W. A. Wallace, J. A. Weisheipl, and M. F. Johnson, “Thomas Aquinas, St.,” in NCE, vol. 14, 19.

<sup>36</sup> This sentence, for a reason yet to be discovered, seemed to be purged by the *Correctores Romani* for the 1582 *ER*.

<sup>37</sup> Cod. 1.7. See also “Apostata,” in Berger, 364.

his/her legal right to bring cases to court.<sup>38</sup> The *Glossa* here, it seems, provides a legal base using canonical instead of Roman law sources for medieval law students to solidify the judgment of legal rights-deprivation.

#### 4.2.2 *Disobedientia and Irregularitas*

For the accusation of disobedience, the allegations do not directly concern apostasy in the sense of withdrawing from one's religious profession. Nevertheless, they were employed to discuss the ecclesiastical censures triggered by disobedience, which, according to the gloss, is inherent in the crime of apostasy. The first allegation (X 1.33.2), attributed to Pope Gregory I (590-604), orders those who oppose episcopal decrees to be cast away from the Church (*ab ecclesia abiiciatur*), while the second (X 1.33.5), derived from Pope Innocent III, forbids the bishop of Hildesheim to incur the brand/sign of disobedience (*inobedientiae notam*) by acting against the apostolic order "for secular benefit (*pro temporali commodo*)."<sup>39</sup> The former allegation from Gregory I raises further questions for the glossator here: what would "to be cast away from the Church" mean in this legal case? Can the arrested criminal—i.e., the apostate—manipulate this papal decree to seek freedom?

These questions, together with our query about the exact meaning of "ecclesiastical censure" in Pope Eugene III's letter, will be answered in the gloss on the word "liberari" in the same canon (X 5.9.1). But before proceeding to that gloss, the current one continues to clarify the conditions of apostasy: since the apostate has withdrawn from his order, he has committed

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<sup>38</sup> See Vodola, *Excommunication in the Middle Ages*, 70–112. One rights-losing case caused by apostasy was observed in early-thirteenth-century England under King John (1199–1216), where an apostate nun failed in an attempt to sue her brother-in-law as well as his son for disinheriting her from her father's property. For a detailed study of this case, see Vodola, 102–110. However, the specific legal rationale for such deprivation was not mentioned.

<sup>39</sup> Cf. John C. Moore and Brenda Bolton, eds., *Pope Innocent III and His World* (Aldershot; Brookfield; Singapore; Sydney: Ashgate, 1999), 59.

irregularity.<sup>40</sup> The legal treatment of irregularity, again, is embedded in the allegation. By pointing to the aforementioned Second Council of Arles (Dist. 50 c. 69), it claims that such irregularity, caused by apostasy, forbids the apostate to attain clerical office, followed by a quick lexical definition of apostate, “the one facing backward (*retro stans*).”

The legal allegation immediately after this definition (C. 26 q. 7 c. 16), while present in all of the collated manuscripts, interestingly disappeared from the 1582 *ER*. It refers to Augustine of Hippo’s (d. 430) commentary on Galatians 4:10-11,<sup>41</sup> whereby Augustine assigns penance for the practice of believing in the “Egyptian days (*dies egiptiaci/aegyptiaci*).” He attributed this widespread belief (that during this time of the year “it was considered extremely unfortunate and ill-omened to begin anything”<sup>42</sup>) to paganism and apostasy. Choosing this allegation to define apostasy here, inasmuch as it differs from other definitions of apostasy under discussion, may seem a little farfetched, which probably led the *Correctores Romani* to delete it. However, Bernard might have had a particular reason for including it. Sets of mnemonic verses to help people remember the *dies egiptiaci*, such as, for example, the *Armis gunfe*, were actively circulating during the early thirteenth century. Even the famous Johannes de Sacrobosco (c. 1195-c. 1256), a teacher and astronomer at the University of Paris, helped popularize this belief and practice by studying the Egyptian days in his *De anni ratione*.<sup>43</sup> This book emerged around the same time as the *Decretales*, c. 1235. It is probable that the glossator, seeing this problematic

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<sup>40</sup> For definition and discussion of this canonical condition, see William Fanning, “Irregularity,” in CE, vol. 8, 170–173. See also G. Osterlé, “Irrégularités,” in DDC, vol. 6, cols. 42–66.

<sup>41</sup> Augustine of Hippo, *Expositio epistolae ad Galatas* 35: 2-4. For translation and bibliographical information see Eric Plumer, trans., *Augustine’s Commentary on Galatians: Introduction, Text, Translation, and Notes* (Oxford: Oxford University Press, 2003), 186–189.

<sup>42</sup> Cameron, *Enchanted Europe*, 66.

<sup>43</sup> For a discussion of the *Armis gunfe* in the *De anni ratione*, and a bibliography of the study of the Egyptian days in the Middle Ages, see Don C. Skemer, “*Armis Gunfe*: Remembering Egyptian Days,” *Traditio* 65 (2010): 75–106.

practice coming under increasing discussion, included this allegation as a call for his contemporary jurists and judges' caution.

This gloss ends with two allegations. The first one recapitulates the claim that an apostate loses the right to accuse others (C. 3 q. 4 c. 2). The second, on the other hand, implies that apostates, by “facing backward” and voluntarily transgressing a papal order, are to be marked with infamy (*infamia*). It echoes the legal implication of irregularity discussed above, to which the infamy of law (*infamia iuris*) leads.<sup>44</sup> Again, Roman law sources on *infamia*, which do not concern apostasy but occasionally forbid people with such a stigma from appearing in court (thus in a sense supporting the canonical allegations) are not cited by the glossator.<sup>45</sup>

### 4.2.3 *Ecclesiastica censura*

In this very first gloss of the title, it seems, the glossator avoided using the Justinianic materials in that they, even as analogous references, fit poorly with the thirteenth-century ecclesiastical understanding of the crime of *apostasia*. In the following gloss, he analyzed the decision in Pope Eugene III's (1145–1153) decretal and pondered why apostates arrested for crimes *per ecclesiasticam censuram* are not to be released, or, in other words, rescued by the Church.

#### X 5.9.1 *glos. ord. s.v. liberari*

| Transcription  | Translation   |
|--|---|
| Ar. contra. <b>infra de senten. exco. si vero aliquis.</b> <sup>46</sup> Illud intelligiter, quando clericus +licet+ <sup>47</sup> tonsuram non portat, alias clericaliter se habet. Isti vero tamquam laici | [For a] counterargument, [see] <b>infra de senten. exco. si vero aliquis.</b> That is understood, when a cleric, +although+ he does not bear the tonsure, otherwise regards |

<sup>44</sup> For definition and canonical consequences of infamy, see Joseph Delany, “Infamy,” in CE, vol. 8, 1; R. Naz, “Infamie,” in DDC, vol. 5, cols. 1358–1361.

<sup>45</sup> See “Infamia,” in Berger, 500.

<sup>46</sup> X 5.39.4 [Fr. v.2 col. 890].

<sup>47</sup> This addition appears in MS Munich, BSB Clm 26301, fol. 203v.

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|---|--|
| <p>per omnia se habebant. Vel sic, non denegatur hoc quin capientes tales sint excommunicati, sed ecclesia non preci[p]it illos liberari, si <b>supra ne clerici. vel mona. c. ii.</b><sup>48</sup></p> <p>Si vero tertio essent admoniti, +ut se non correxerint, et<sup>49</sup> nullo privilegio postea gauderent. <b>infra de senten. exco. in audientia.</b><sup>50</sup> et +<b>c. contingit.</b> et<sup>51</sup>+ Si de talibus vis intelligere, quod hic dicit, planum est.</p> | <p>himself in a clerical manner. But these people [i.e., the apostates] regarded themselves as laity in all ways. Indeed, therefore, it is not denied that those arresting people of such kind [i.e., clerics] are excommunicated, but the Church does not command that they [i.e., the apostates] are to be released, as [in] <b>supra ne cleri. vel mona. c. ii.</b></p> <p>Truly, if they had been admonished three times, [and] +had not corrected themselves, and+ afterwards they would enjoy no privilege. [See] <b>infra de senten. ex. in audientia.</b> and +<b>c. contingit.</b> and+ if you wish to understand what it says here about such people, it is straightforward.</p> |
|---|--|

This gloss begins with an argument that seemingly contradicts the papal judgment. The allegation (X 5.39.4), attributed to Pope Alexander III (1159–1181), orders that people who physically assault a cleric without realizing the latter’s clerical identity are not to be excommunicated, as long as that ignorance can be proved through an oath (*iuramentum*); otherwise they are subjected to excommunication, until ordered to be absolved (*absolvatur*) by the Roman Pontiff.<sup>52</sup> How does this allegation, which essentially deals with laymen, constitute a counterargument against Eugene III’s decree that apostates—defined as clerics who abandon their order and habit—are not to be released?

<sup>48</sup> X 3.50.2 [Fr. v.2 col. 658].

<sup>49</sup> This addition appears in MS Munich, BSB Clm 26301, fol. 203v.

<sup>50</sup> X 5.39.25 [Fr. v.2 cols. 897-898].

<sup>51</sup> X 5.39.36 [Fr. v.2 cols. 904-905]. This addition appears only in the 1582 *ER*.

<sup>52</sup> X 5.39.4 [Fr. v.2 col. 890]: “Si vero aliquis in clericum violentam comam, *ignorans, quod clericus fuerit*, manus iniecerit violentas, propter hoc non debet apostolico praesentari conspectui, nec etiam excommunicatione notari, dummodo ipsum esse clericum ignoraverit, vel, si hoc dubium fuerit, propria manu duntaxat praestiterit iuramentum, quod eum esse clericum ignorasset. Ab illo autem, si praestare noluerit iuramentum, quia violentas manus constat eum in clericum iniectisse, sicut ab excommunicato, donec de mandato summi Pontificis absolvatur, convenit abstineri.”



The gloss focuses on explaining the line between clerics and apostates in terms of the privilege of avoiding secular judgement. Those who arrest (thus in a sense “physically assault”) clerics are indeed to be excommunicated: the glossator solved the contradiction between this claim and Alexander III’s decree in X 5.39.4 by emphasizing that the latter only exculpates those who are ignorant of the fact that the persons whom they assault are actually clergy. The implication behind the excommunication of the laymen who arrest clerics, therefore, seems to be that the arrested clerics are to be released, retaining their ecclesiastical privilege. But for apostates the situation is different. Since they see themselves “as laity in all ways,” the Church does not help them. As the second half of the gloss indicates, should they refuse to correct themselves after three admonitions, “nullo privilegio postea gauderent”—including, of course, the privilege of not subjecting to secular courts. The following allegation (X 3.50.2) echoes the distinctive feature of X 5.9.1 in that it also deals with apostates who, after committing crimes, are arrested. Attributed to Pope Eugene III, it orders that if some clergymen, contrary to canonical regulation, are involved with secular business and are later arrested for crimes involving money (thus in a sense *laici se habebant*), they will not be rescued (*subvenitur*) by the Church.

Here, analyzing the *Glossa*, we finally see the implication of *ecclesiastica censura* and the rationale behind it in the context of X 5.9.1. In this specific case, it is the loss of the ecclesiastical privilege of not being detained by secular courts. Citing a decretal from Pope Clement III (1187–1191), the remaining section of this gloss claims that, as mentioned above, these apostates would lose all their privileges as clergymen *had they been warned three times*—a condition nowhere to be found in the canon, yet we will encounter it again in the glosses to Pope Innocent III’s decretal below.

### X 5.9.3

|               |             |
|---------------|-------------|
| Transcription | Translation |
|---------------|-------------|

|  |   |
|--|---|
| <p>Innocentius III.</p> <p>Tuae fraternitatis, et infra. Super secundo articulo inquisitioni tuae duximus respondendum, quod clerici <i>sponte</i>,<sup>53</sup> qui sunt de apostasiae crimine infamati, qui videlicet <u>habitum abiecerunt clericalem</u>, non sunt in saeculari habitu <u>tolerandi</u>, sed per distractionem ecclesiasticam coercendi, donec deficiente probatione, ad infamiam abolendam purgationem canonicam curaverint exhibere.</p> | <p>Innocent III.</p> <p>To your fraternity, see below. Concerning the following matter, we are led to respond to your inquiry, that clerics <i>of their own will</i>, who have been defamed by the crime of apostasy, who for example have abandoned the clerical habit, are not to be tolerated in secular habit, but are to be coerced through ecclesiastical discipline, until, in the absence of proof, they shall strive to undergo the canonical purgation for removing the infamy.</p> |
|--|---|

Here the focus shifts from *apostates committing crimes* to *the crime of apostasy (crimen apostasiae)* itself—which, as in X 5.9.1, means the abandonment of clerical life by clergymen. Pope Innocent III ordered that these apostates are to be coerced (*coercendi*) by ecclesiastical discipline until they reject infamy and undergo canonical purgation. Significantly, the word *sponte* (“voluntarily”) in this canon occurs only in MS F and MS Munich BSB Clm 26301, while disappearing from other collated manuscripts and the *ER*. Whether this reflects legal uncertainty concerning the complicated relationship between free will and guilt from the High Middle Ages to the sixteenth century remains to be examined.<sup>54</sup>

The glossator, as mentioned above, in the first place recapitulated, using the same allegation (X 5.39.25), the rule of three warnings before depriving privileges. As a matter of fact, manuscripts later than MS F strengthened this gloss by another allegation from Pope Innocent III

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<sup>53</sup> This word in X 5.9.3 appears in MS F only.

<sup>54</sup> Stephan Kuttner comprehensively presents the debates among medieval canonists around *sponte* in various legal circumstances concerning suicide, mental illness, murder, conditional coercion, self-defence, inevitable necessity, etc. See Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX: systematisch auf Grund der handschriftlichen Quellen dargestellt* (Vatican City: Biblioteca Apostolica Vaticana, 1935), 81–84, 105–106, 117–118, 307, 361 n. 2, 365.

himself (X 5.39.45), stating that clerical privileges are not to be stripped before the triple admonition:

**X 5.9.3 glos. ord. s.v. habitum clericalem**

| Transcription   | Translation  |
|---|--|
| Qui habitum clericalem abieat, nisi trina monitione praemissa reassumunt, ipsum perdit privilegium clericale. <b>infra de senten. exco. in audientia.</b> <sup>55</sup> +et <b>cap. contingit.</b> <2.> <sup>56</sup> | Whoever abandons the clerical habit, unless [he complies with] the three previously-sent admonitions, will lose the clerical privilege himself. [See] <b>infra de senten. exco. in audientia.</b> +et <b>cap. contingit.</b> <2.>+ |

The following gloss<sup>57</sup> picks up an idea that is seemingly unambiguous in the canon: that apostates are not to be tolerated in the secular habit:

**X 5.9.3 glos. ord. s.v. tolerandi**

| Transcription   | Translation  |
|---|--|
| Sed quare non sunt tolerandi in habitu seculari, <sup>58</sup> cum liceat illis qui sunt in minoribus ordinibus, uxorem accipere, +et+ cum ea conmorari? <b>supra de cleri. con. c. i.</b> <sup>59</sup> <b>xxxii. di. si qui vero.</b> <sup>60</sup> <b>lectores.</b> <sup>61</sup> <b>seriatim.</b> <sup>62</sup> Apostata enim excommunicatus non est. | But in what way exactly are they not to be tolerated in secular habit, since it would be permitted for those who are in minor orders to have a wife +and+ to live with her? [See] <b>supra de cleri. con. c. i.</b> [and] <b>xxxii. di. si qui vero.</b> [and] <b>lectores.</b> [and] <b>seriatim.</b> For, an apostate is not excommunicated. |
| Ut cesset omnis obiectio, intellige quod hic dicitur, de eo qui infamatus est quod est in ordine sacro, vel in aliqua professione. Cui non licet ultra ad seculum redire, unde  | In order that every objection could be dealt with, you should understand that here the discussion is about the person—who has been   |

<sup>55</sup> X 5.39.25 [Fr. v.2 cols. 897-898].

<sup>56</sup> X 5.39.45 [Fr. v.2 col. 908]. Note that X 5.39 actually has another canon that begins with “contingit,” i.e., X 5.39.36 [Fr. v.2 cols. 904-905], while only the 1582 *ER* adds a “2” following this word to clarify the situation. It remains to be investigated how Bernard and his medieval readers distinguished these two canons.

<sup>57</sup> Whether it comes from Johannes Teutonicus or Bernard himself awaits examination. In MS F this gloss ends with the siglum “Io.”. However, the 1582 *ER* adds “Ber.” following “Io.,” causing the confusion over the authorship of this gloss.

<sup>58</sup> “habitum secularem” in MS F.

<sup>59</sup> X 3.3.1 [Fr. v.2 col. 457].

<sup>60</sup> Dist. 32 c. 3 [Fr. v.1 col. 117].

<sup>61</sup> Dist. 32 c. 8 [Fr. v.1 col. 120].

<sup>62</sup> Dist. 32 c. 14 [Fr. v.1 col. 121].

|  |   |
|--|---|
| <p>tollerandi non sunt in habitu seculari,<sup>63</sup> sed per censuram ecclesiasticam compellendi, nisi se purgaverint, accusatore deficiente redire ad ordinem vel religionem. ar. <b>supra de regul. c. plt.</b><sup>64</sup> et <b>xx. q. iii. eos qui semel.</b><sup>65</sup></p> <p>Immo incarcerari possunt, <b>infra e. c. plt.</b><sup>66</sup> ne dampnabiliter evagentur. De aliis in inferioribus ordinibus constitutis non posset intelligi: quia possunt renuntiare in totum ordini clericali. <b>supra de vita. et ho. c. ult.</b><sup>67</sup> et <b>supra de clericis. coniu. c. plt.</b><sup>68</sup> et <b>ulti.</b><sup>69</sup> <u>Io.</u> +<u>Ber.</u>+</p> | <p>defamed—that is either in sacred orders or in some profession. It is not allowed for anyone to return to the secular life on the other side—whence they are not to be tolerated in the secular habit, but are to be compelled by ecclesiastical censure, unless they purge themselves, to return to their order or religious life in the absence of an accuser, as the arguments [in] <b>supra de regul. c. plt.</b> and <b>xx. q. iii. eos qui semel.</b></p> <p>They, rather, can be incarcerated, [see] <b>infra e. c. plt.</b>, lest they would wander around condemned. This cannot be understood to refer to those in minor orders: because they [in minor orders] can renounce completely the clerical order. [See] <b>supra de vita. et ho. c. ult.</b> and <b>supra de clericis. coniu. c. plt.</b> and <b>ulti.</b> <u>Io.</u> +<u>Ber.</u>+</p> |
|--|---|

Here the gloss pushes the canonical regulation to be more precise by pointing out that people in minor orders—porters/doorkeepers (*clerici ostiarii*), lectors (*lectores*), exorcists (*exorcistae*), and acolytes (*acolyti*),<sup>70</sup> which are specified in the allegation (Dist. 32 c. 14)—can legally take wives without incurring excommunication.<sup>71</sup> To support this potential opposition to

<sup>63</sup> “habitum secularem” in MS F.

<sup>64</sup> X 3.31.23 [Fr. v.2 col. 578].

<sup>65</sup> C. 20 q. 3 c. 3 [Fr. v.1 col. 849].

<sup>66</sup> “1.” in the 1582 *ER* (= X 5.9.5 [Fr. v.2 cols. 791-792]).

<sup>67</sup> X 3.1.16 [Fr. v.2 cols. 453-454].

<sup>68</sup> X 3.3.9 [Fr. v.2 col. 459].

<sup>69</sup> X 3.3.10 [Fr. v.2 col. 460].

<sup>70</sup> For a list and discussion of the minor orders, see Auguste Boudinhon, “Minor Orders,” in *CE*, vol. 1, 332–333.

<sup>71</sup> See *DDC*, vol. 1, col. 655.

the canon, Bernard employed four allegations from Pope Alexander III, Pope Gregory I, the Third Council of Carthage (397), and Pope Leo IX (1049–1054).

However, the glossator quickly reaffirmed the papal decision in the canon, and made the legal distinction between people in sacred orders and those in minor orders. While the latter can withdraw from a clerical order, Bernard argued, the former, once they abandon their religious habits, are to be incarcerated through ecclesiastical censure until they return to their orders. He puts much emphasis on this distinction by citing several allegations, including decretals from Pope Gregory IX (X 3.31.23) and Pope Honorius III (X 3.1.16, X 3.3.9, and X 3.3.10), as well as the seventh canon from the Council of Chalcedon (451), which claimed that once people become clergymen or monks, they can no longer join the army nor take on secular business.<sup>72</sup>

#### 4.2.4. Threats and Blandishments

Overall, Pope Honorius III (1216–1227) has a strong presence in this gloss. He is cited not only to accentuate the triple admonition rule (X 3.1.16), but also to support the confinement of the apostates with his severe decretal on incarcerating them (X 5.9.5), which is analyzed below:

#### X 5.9.5

| Transcription   | Translation  |
|---|--|
| Honorius III. Archiepiscopo Turonensi.<br><br>A nobis expetiit tua fraternitas edoceri, quid de apostatis sit agendum, cum in custodia detinentur, qui <u>minis</u> vel <u>blanditiis</u> nullatenus possunt induci, ut abiectum habitum reassumant. Ad quod tibi breviter respondemus, quod tales, si volueris, <u>poteris</u> sub gravi custodia incarcerare. Ita, quod solummodo <u>vita sibi misera</u> reservetur, donec a suae praesumptionis nequitia <u>resipiscant</u> . | Honorius III to the Archbishop of Tours.<br><br>Your fraternity inquired of us, [concerning] what ought to be done regarding apostates, who, while kept in custody, by no means can be induced by either <u>threats</u> or <u>blandishments</u> , to resume the abandoned religious habit. With respect to which we respond to you briefly, that such [people], if you would like, can be incarcerated under serious custody, to the extent that only a <u>miserable life</u> would be |

<sup>72</sup> See DDC, vol. 1, cols. 654–655.

|  |  |
|--|--|
|  | preserved for them, until they <u>repent of the wickedness of their presumption.</u> |
|--|--|

In this canon Pope Honorius III revealed more details about the treatment of clerics who abandoned their religious habits. Both admonitions and blandishments are to be used to persuade the apostates. Failing that, the Church may employ harsh incarceration to the extent that the apostates can barely survive. The reader might wonder what exactly are the “threats” and “blandishments” that the Church can apply. Medieval law students and judges likely wondered about this as well. The first two glosses, therefore, deal with these terms.

**X 5.9.5 glos. ord. s.v. minis**

| Transcription   | Translation  |
|---|--|
| Comminando diuinum iudicium. <b>ii. q. i. si peccaverit.</b> <sup>73</sup> <b>xiiii. q. ulti. si res.</b> <sup>74</sup> <b>xxvii. q. i. c. ulti.</b> <sup>75</sup> <b>et ff. de temp.</b> <sup>76</sup> <b>or. c. ulti.</b> <sup>77</sup> | Threatening divine judgment. [See] <b>ii. q. i. si. peccaverit., xiiii. q. ulti. si res., xxvii. q. i. c. ulti., and ff. de temp. or. c. ulti.</b> |

This short gloss condenses the legal implications, especially the legal procedure of denunciation, in its allegations. The first allegation (C. 2 q. 1 c. 19) refers to Augustine of Hippo’s sermon on Matthew 18:15-17, where Augustine noted that for some internal church affairs it is better to reprove the sinner in secrecy rather than to denounce him/her publicly—“We do not betray such openly, but rebuke them in secret.”<sup>78</sup> The second allegation (C. 13 q. 6 c. 1),

<sup>73</sup> C. 2 q. 1 c. 19 [Fr. v.1 cols. 447-448].

<sup>74</sup> C. 13 q. 6 c. 1 [Fr. v.1 cols. 742-743].

<sup>75</sup> C. 27 q. 1 c. 43 [Fr. v.1 col. 1062].

<sup>76</sup> Scribal mistake in MS F. “supra. de tempo” in the 1582 *ER* and all of the other collated manuscripts.

<sup>77</sup> X 1.11.17 [Fr. v.2 col. 124].

<sup>78</sup> “Nos non prodimus, sed in secreto arguimus.” For the complete Latin text of this sermon, see Augustine of Hippo, *Sancti Aurelii Augustini. Sermones in Matthaem II.*, ed. Luc De Coninck and Bertrand Coppieters ’T Wallant, CCSL, vol. 41 Ab, 326–347. For the translation here and discussion of this sermon, see John H. Hopkins, *The History of the Confessional* (New York: Harper, 1850), 128–129.

coming from Augustine’s letter to Macedonius (414), points back to the beginning of this gloss. Discussing how to deal with those identified as thieves, Augustine stated that “we act within the limits of our episcopal jurisdiction, threatening them sometimes with human, but especially and always with divine, judgment... we rebuke them and reproach them, showing our detestation of them, some in private, some in publicly, according as the diversity of characters shows the possibility of reforming them.”<sup>79</sup>

An example of such threat of divine judgment is then provided in the next allegation (C. 27 q. 1 c. 43)—or more precisely, in Gratian’s *dictum* following this incomplete canon.<sup>80</sup> Here Gratian discussed several canonical judgments on women who vowed to remain virgins but later married. He emphasized that such women—who seem to be understood as analogous to apostates—cannot perform penance and thus cannot be reconciled to God, unless they leave their husbands and take up their religious habits again.<sup>81</sup> In the end Gratian cited Ezekiel 33:12 as a threatening illustration: “[a]nd you, mortal, say to your people, the righteousness of the righteous shall not save them when they transgress; and as for the wickedness of the wicked, it shall not

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<sup>79</sup> “Agimus, quantum episcopalis facultas dat, et humanum quidem nonnumquam, sed maxime ac semper diuinum iudicium conminantes. ... arguimus, increpamus, obtestamur, quosdam clam, quosdam palam, sicut diuersitas personarum diuersam uidetur posse uel accipere medicinam.” For the complete Latin text of this letter see PL, vol. 33, cols. 653–665. For the English translation here see Saint Augustine, *Letters (131-164)*, trans. Sister Wilfrid Parsons, vol. 3, Fathers of the Church 20 (Baltimore: Catholic University of America Press, 2008), 298.

<sup>80</sup> This entire canon reads “De eodem. Item Theodorus. Si quis votum uirginitatis habens, etc.” In D. 27 c. 3 one actually can find the full version of this canon, which reads “Si uir uotum uirginitatis habens adiungitur uxori, postea non dimittat uxorem, sed tribus annis peniteat.” Fr. v.1 col. 99.

<sup>81</sup> It should be noted, however, that with this synthesizing *dictum* Gratian, while agreeing with Theodore (i.e., the authority for C. 27 q. 1 c. 43), was presenting an opinion in opposition to some previous decisions in this *quaestio*. Here his major argument is that such marriage does not need to be dissolved. For detailed discussions of the relationship between religious vows and marriage in medieval jurisprudence, see Andrzej Sosnowski, *L’impedimento matrimoniale del voto perpetuo di castità (CAN. 1088 CIC): Evoluzione storica e legislazione vigente* (Rome: Pontificia Università Gregoriana, 2007), 117–126; Lars-Arne Dannenberg, *Das Recht der Religiosen in der Kanonistik des 12. und 13. Jahrhunderts* (Berlin: Lit, 2008), 216; Regine Birkmeyer, *Ehetrennung und monastische Konversion im Hochmittelalter* (Berlin: Akademie Verlag, 1998), 64–65; Anton Scharnagl, *Das feierliche Gelübde als Ehehindernis: in seiner geschichtlichen Entwicklung* (St. Louis: Herder, 1908), 111–114.

make them stumble when they turn from their wickedness; and the righteous shall not be able to live by their righteousness when they sin.” (NRSV) The last allegation (X 1.11.17), coming from Pope Gregory IX (1227–1241), orders that crimes neither proven through legal procedure nor causing any notoriety are to be tried. And the clergymen involved in such crimes, which are unknown to the public, can continue their ministration in the Church after performing penance.<sup>82</sup>

It becomes clear that this gloss interprets the key phrase “by threats (*minis*)” in this canon as signifying one of the major canonical procedures, that is, the procedure of denunciation.<sup>83</sup> This procedure avoids the time-consuming search for and validation of evidence, trial in court, and promotion of scandal in and/or for the Church. We have seen already in the glosses to X 5.9.1 that the Church was particularly concerned about the issue of scandal. Furthermore, the denunciation procedure grants rights to the defender, i.e., the apostate in this case, such that if he follows this procedure and repents, he may resume his ecclesiastical position.

By contrast, the next gloss deals with blandishments, that is, gentle persuasion or even inducements to bring the apostates back to the Church. It cites the same letter from Augustine to Macedonius (C. 23 q. 4 c. 53), exhorting Christians to use “the comforting force of kindness (*beneficentiae consolatione*)” to convert others to Christianity.<sup>84</sup> In another allegation (Dist. 45 c. 3), the gloss takes a canon from Pope Gregory I concerning converting Jews and applies it to clergy who have abandoned their religious profession. After the stage demonstrated by MS F, significantly, the glossator quickly added another allegation, which points back to Pope Innocent

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<sup>82</sup> Lotte Kéry, *Gottesfurcht und irdische Strafe*, 435–436; Sebastian B. Smith, *Elements of Ecclesiastical Law*, vol. 3 (New York: Benziger Brothers, 1889), 189.

<sup>83</sup> For a discussion of this legal procedure, see Brundage, *Medieval Canon Law*, 143.

<sup>84</sup> For the English translation here, see Augustine, *Letters (131-164)*, vol. 3, 316. For the complete Latin text of this letter see PL, vol. 33, cols. 666–673.



III's decretal in X 5.9.3. By this means he appeared to threaten that those who retreat from sacred orders and do not return following "the comforting force of kindness" will end up facing severe ecclesiastical coercion.

#### 4.2.5 Apostasy, *Crimen laesae maiestatis*, and Incarceration

To further explain such coercion, the gloss on the phrase "miserable life (*misera vita*)" refers to both Roman law and papal decretals:

##### X 5.9.5 glos. ord. s.v. *misera vita*

| Transcription  | Translation   |
|--|---|
| <p>Simile reservatur vita de misericordia filiis eorum, qui crimen laesae maiestatis committunt. <b>vi. q. i. §. verum.</b><sup>85</sup> <i>et l. +ver. fin. C. ad l. Iul. ma. si</i><sup>86</sup> <b>quisquis cum militibus,</b><sup>87</sup> ut vitam sibi penam existiment. <b>lxxiii. di. quorundam.</b><sup>88</sup> Sic clericus potest uxorem suam ligare. <b>xxiii. q. ii. placuit.</b><sup>90</sup> Ut sic pena docente humiliter debeant obedire. <b>supra de electio. cum in cunctis.</b><sup>91</sup> +et <b>xxvii. q. i. si homo esses.</b><sup>92+93</sup></p> | <p>Similarly, life is spared by mercy for the children of those who committed <i>crimen laesae maiestatis</i>, [see] <b>vi. q. i. §. verum.</b> and <i>l. +ver. fin. C. ad l. Iul. ma. si</i>+ <b>quisquis cum militibus.</b>, so that they would believe that life is a penalty for themselves. [See] <b>lxxiii. di. quorundam.</b> Just as a cleric can bind his wife. <b>xxiii. q. ii. placuit.</b> In order that, thus, the penalty teaching them, they [i.e., the apostates] ought humbly to obey it. [See] <b>supra de electio. cum in cunctis.</b> +and [see also] <b>xxvii. q. i. si homo esses.</b>+</p> |

<sup>85</sup> C. 6 q. 1 dict. post c. 21 [Fr. v.1 cols. 559-560].

<sup>86</sup> This addition appears in MS Munich BSB Clm 26301.

<sup>87</sup> Cod. 9.8.5.

<sup>88</sup> Dist. 74 c. 6 [Fr. v.1 col. 263].

<sup>89</sup> "33. q." in the other manuscripts and the 1582 *ER*.

<sup>90</sup> C. 33 q. 2 c. 10 [Fr. v.1 cols. 1154-1155].

<sup>91</sup> X 1.6.7 [Fr. v.2 cols. 51-52].

<sup>92</sup> C. 27 q. 1 c. 19 [Fr. v.1 col. 1054].

<sup>93</sup> This addition appears in MS Munich BSB Clm 26301.

The first part of the gloss implies a connection among apostasy, the crime of *lèse-majesté*, i.e., *crimen laesae maiestatis* in Roman law, and possibly the issue of heresy around the mid-thirteenth century. The glossator started by pointing out that the life of an apostate is spared as are the lives of the children of those who commit *crimen laesae maiestatis*—“[a] crime ‘committed against the Roman people and its security’ according to the Lex iulia maiestatis (D. 48.4.1.1).”<sup>94</sup> Significantly, this phrase, i.e., *crimen laesae maiestatis*, had been applied to heresy at least since Pope Innocent III’s decretal *Vergentis* (1199).<sup>95</sup> Bernard was clearly conscious of this connection. At the very end of the *Glossa* to this canon, in the gloss to *resipiscant*, he again compared apostasy to heresy by referring to the first act of the Second Council of Nicaea (787), where clergymen accused of being Iconoclastic heretics were accepted back by the council.<sup>96</sup>

Similarly, the following *dictum* of Gratian cited here (C. 6 q. 1 dict. post c. 21)<sup>97</sup> concerns the accusation of infamy against heretics. Gratian first indicated that if the defenders are of good reputation and deny that they have fallen into heresy, they could avoid being accused. Nevertheless, he quickly shifted his ground and pointed out that they are to be dealt with according to the severe procedure for the *crimen laesae maiestatis*.<sup>98</sup> A Roman law reference

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<sup>94</sup> Berger, 418.

<sup>95</sup> For a discussion of this decretal and how it impacted medieval heresy, as well as bibliography on this topic, see Peter D. Clarke, “Innocent III, Canon Law and the Punishment of the Guiltless,” in *Pope Innocent III and his World* (Aldershot; Singapore; Sydney: Ashgate, 1999), 272–278.

<sup>96</sup> See Richard Price, trans., *The Acts of the Second Council of Nicaea (787)*, Translated Texts for Historians LUP (Oxford: Oxford University Press, 2018), vol. 1.

<sup>97</sup> Curiously, C. 6 q. 1 dict. post c. 11 also starts with “Verum.” It awaits examination whether Bernard—and the *Correctores Romani*—were using a different text of the *Decretum* of Gratian from the ones accessible to us.

<sup>98</sup> For a brief discussion of Gratian’s use of the phrase, see Vito Piergiovanni, “La lesa maestà nella canonistica fino ad Ugucione,” *Materiali per una storia della cultura giuridica* 2 (1972): 59–63. Reprinted in Vito Piergiovanni, *Norme, scienza e pratica giuridica tra Genova e l’Occidente medievale e moderno*, vol. 1 (Genova: Società Ligure di Storia Patria, 2012), 550–552.

(Cod. 9.8.5.1)<sup>99</sup> then supports the glossator’s argument in the beginning. This imperial edict from emperors Arcadius (395-408) and Honorius (395-423) grants life to children whose fathers were to be put to death for committing the crime of treason, i.e., one of the forms of *crimen laesae maiestatis*.

The argument then switches to confinement and specifies Bernard’s vision concerning the severity of ecclesiastical incarceration. The glossator first consulted a letter from Pope Gregory I to the bishop of Syracuse (Dist. 74 c. 6). In this letter Gregory I instructed that a priest who withdraw from his order is to be recalled and made an incardinated priest.<sup>100</sup> Yet the gloss quickly makes a comparison to the binding of clergy’s adulterous wives (*[s]ic clericus potest uxorem suam ligare*), citing canon 7 of the First Council of Toledo (397-400, C. 33 q. 2 c. 10). This canon suggests that unless they perform penance, not even food will be provided to the sinning wives—and this also may be the nature of the *misera vita* of the incarcerated apostates. During the stage demonstrated by MS Munich BSB Clm 26301, the glossator added another allegation emphasizing the severe confinement of apostates ordered by Pope Gregory I (C. 27 q. 1 c. 19). In this harsh letter the pope urged a defender of the papal patrimony to

arrest the daughter of Tullianus... as she has thrown out the religious garments which she had assumed of her own accord, and has disgraced herself with lay attire. Recall her quickly to her religious habit, and send her to the convent, where she can be strictly guarded in every way. And do not permit her custody to be relaxed to any extent, until you receive a letter from us again.<sup>101</sup>

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<sup>99</sup> Part of the allegation was curiously partially truncated in all of the collated manuscripts.

<sup>100</sup> “[M]agnae benignitatis est, si eum in ecclesia ubi subdiaconi est functus officio sanctitas uestra reducere atque illic presbyterum uoluerit constituere cardinalem.” Norberg, ed., *S. Gregorii Magni Registrum epistularum Libri VIII-XIV, Appendix*, CCSL, vol. 140 A, 1031. For an English translation of this text, see Pope Gregory I, *The Letters of Gregory the Great*, trans. John R.C. Martyn, vol. 3 (Toronto: Pontifical Institute of Mediaeval Studies, 2004), 847–848 (ep. 13.30).

<sup>101</sup> “[F]iliam... Tulliani..., quae proiectis quas sponte assumpsit religiosis uestibus indumentis se laicis deturpauit... comprehendere atque ad religiosum rursus habitum reuocare ac in monasterio mittere, ubi stricte omnino ualeat custodiri.” Dag Norberg, ed., *S. Gregorii Magni Registrum epistularum Libri VIII-XIV, Appendix*, CCSL, vol. 140

### 4.3 Dispensation by the Roman Pontiff and the Eligibility for Ecclesiastical Offices

The last canon of this title, X 5.9.6, deals with a different issue: may a monk, after withdrawing from his monastery, join and serve in another religious order? To this, Pope Honorius III replied to the archbishop of Lyon in 1225 that without dispensation from the Roman Pontiff, the apostate could not serve in any other religious order:<sup>102</sup>

#### X 5.9.6

| Transcription   | Translation  |
|---|--|
| Idem Archiepiscopo Ludunensi.<br><br>Consultationi tuae breviter respondemus, quod monachus, aliquem sacrum ordinem in apostasia recipiens, quantumlibet suo fuerit reconciliatus abbati, et receperit penitentiam, absque <u>dispensatione Romani Pontificis</u> ministrare non poterit in ordine, sic suscepto. | The Same to the Archbishop of Lyon.<br><br>We are briefly answering your inquiry, that a monk, accepting another sacred order in the state of apostasy, however much he may be reconciled to his abbot and may have received penance, without <u>dispensation by the Roman Pontiff</u> , may not serve the order taken up in such way. |

With this seemingly clear decretal, Bernard felt obliged to develop four points: (1) the application of papal dispensation; (2) possible repeated unction/baptisms of the apostate; (3) possible ordination of the apostate by heretics; (4) and whether the papal decision here can be applied to transfers between religious orders:

#### X 5.9.6 glos. ord. s.v. *dispensatione Romani Pontificis*

| Transcription  | Translation  |
|--|--|
| Hic ergo Papa sibi reservat dispensationem. sic <b>supra de haeret. excommunicamus. §. sane.</b> <sup>103</sup> <b>Supra de filiis presbyt. c. plt. et</b> | Therefore here the Pope reserves to himself the [right to offer] dispensation. As [in] <b>supra de haeret. excommunicamus. §. sane., supra de filiis presbyt. c. plt. and ulti.</b> Likewise, for one polluted by repeated unction, [see] <b>i. q. ult. saluberrimum. in fi.</b> |

A, 526. The English translation here is taken from Pope Gregory I, *The Letters of Gregory the Great*, vol. 2, 507 (ep. 8.9).

<sup>102</sup> Potthast 7455. Note here Honorius III, contrary to what Lars-Arne Dannenberg suggested, did not order the monk to be incarcerated. See Lars-Arne Dannenberg, *Das Recht der Religiösen in der Kanonistik des 12. und 13. Jahrhunderts* (Berlin: Lit, 2008), 412.

<sup>103</sup> X 5.7.13 [Fr. v.2 cols. 787-789].

|  |  |
|--|--|
| <p><b>ulti.</b><sup>104</sup> Item si iterata<sup>105</sup> unctione +fuerit+ maculatus. <b>i. q. ult. saluberrimum. in fi.</b><sup>106</sup> Item qui rebaptizati sunt. <b>de con. d. iiiii. quibus.</b><sup>107</sup> et <b>c. eos quos.</b><sup>108</sup></p> <p>Item et qui in subversionem fidei, ordinationem recipiunt ab haereticis. <b>i. q. vii. invenientibus. in fi.</b><sup>109</sup> in quibus casibus solus Papa dispensare potest. Tamen si ad aliam religionem transisset, et ibi ordinem suscepisset, sine dispensatione posset in suscepto ordine ministrare. <b>supra de tempor. or. ex parte.</b><sup>110</sup> quia ordinem non suscepisset in apostasia. +Ber.+</p> | <p>Similarly, for those who are rebaptized, [see] <b>de con. d. iiiii. quibus.</b> and <b>c. eos quos.</b></p> <p>And, similarly, those who, in subversion of the faith, accept ordination from heretics, see <b>i. q. vii. invenientibus. in fi.</b>, in which cases only the Pope can dispense. However, if he had transferred to another religious way of life, and had accepted an order there, without dispensation he would be able to serve in the undertaken order. [See] <b>supra de tempor. or. ex parte.</b>, because he did not take up the order in the state of apostasy. +Ber.+</p> |
|--|--|

For the first point, the gloss cites three thirteenth-century sources presenting various applications of papal dispensation. The first (X 5.7.13) is canon 3 from the Fourth Lateran Council (1215), which concerns both heretics and clerics who perform sacraments or conduct Christian burial for—or accept alms/offerings from—heretics. It instructs that such clerics should be deposed from their ecclesiastical office, to which only papal dispensation can restore them. The other two allegations (X 1.17.17 and 18), from Pope Honorius III and Pope Gregory IX,<sup>111</sup> each claims that without papal dispensation sons of clerics—especially illegitimate ones—cannot inherit their fathers’ ecclesiastical office, nor be promoted to curates for the benefice. Notably,

<sup>104</sup> X 1.17.17 and X 1.17.18 [Fr. v.2 cols. 140-141] and [Fr. v.2 col. 141].

<sup>105</sup> “iteratam” in MS F.

<sup>106</sup> C.1 q. 7. c. 21 [Fr. v.1 col. 435].

<sup>107</sup> *De cons.* D. 4 c. 117 [Fr. v.1 cols. 1397-1398]. The incipit for this allegation is “Quis bis” in Fr. v.1 cols. 1397-1398.

<sup>108</sup> *De cons.* D. 4 c. 118 [Fr. v.1 col. 1398].

<sup>109</sup> C.1 q. 7 c. 4 [Fr. v.1 cols. 428-429] (in MS Vatican Borgh. 237, MS Munich BSB Clm 26301, MS BAV Vat. lat. 1365, and the 1582 *ER* it is “convenientibus”).

<sup>110</sup> X 1.11.10 [Fr. v.2 cols. 120-121].

<sup>111</sup> Potthast 7722 and 9551.

all of these instances concern eligibility for ecclesiastical office—which is admittedly not the focus of this specific canon, but is nevertheless a concern mentioned frequently throughout the *Glossa* to this title.

The gloss moves to the topics of repeated unction/baptisms and ordination by heretics (which are not inconceivable for a thirteenth-century apostate entering another—possibly illegitimate—religious profession). The legal decisions for these circumstances are mostly embedded in the allegations, and the punishments intensify with each situation—until only the pope, according to Bernard, can dispense the penalty. An allegation (C.1 q.7. c.21) from a letter of Pope Leo I (440–461) warns that returning heretics could, after public profession, return to their previous rank only if they did not accept a second baptism. Two other allegations (*De cons.* D.4 c. 117 and c. 118), respectively, attributed to the Penitential of Theodore and Pope Felix III (483–492), then prescribe how many years those who have been rebaptized by heretics should spend in repentance before undergoing another ordination. In the end, again referring to the first act of the Second Council of Nicaea (787, C.1 q. 7 c. 4)—especially the statements from Tarasios, Patriarch of Constantinople (784-806)<sup>112</sup>—Bernard implied that those who accept ordination from heretics cannot be reconciled to the Church. Significantly, in this case the glossator added a solution that is not contained in the conciliar act in order to buttress his main point: that those ordained by heretics actually *can* be reconciled, but only with dispensation from the Apostolic See.

Toward the end of this gloss Bernard stepped outside of the case in Honorius III's decretal. He clarified for medieval law students that if the person is not in a state of apostasy, that is, not withdrawing from his previous profession *to become a layman*, but transferring to another

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<sup>112</sup> See Price, *The Acts of the Second Council of Nicaea (787)*, vol. 1.

religious order with ordination, then it is legal for him to serve in that new religious order. The allegation supporting this argument refers to a decretal (1198) from Pope Innocent III to the abbot of Charlieu Abbey,<sup>113</sup> a Benedictine monastery. In this situation, a monk transferred of his own accord from Charlieu to the Dominican Order, took on the Dominican habit, and was ordained there for the priesthood. Innocent III instructed the Benedictine abbot to permit the transferred monk to execute his sacred duties freely.

#### 4.4 *Duabus viis*: Rebaptism as a Canonical Crime

For X 5.9.4, Raymond of Peñafort drew on the seventieth canon of the Fourth Lateran Council, omitting its original subject—Jews who continue to follow Jewish rites after converting to Christianity.<sup>114</sup> We have already seen a similar grafting in the gloss on the word “apostasia” in X 5.9.1, where a legal allegation originally concerning converted Jews (C. 2 q. 7 c. 24) was employed by Bernard to demonstrate the legal implications of apostasy. In the same way, this conciliar text from the Fourth Lateran Council become a canon in the *Decretales* on rebaptism and potentially heresy as well, ordering the rebaptized to be coerced into submission to the Church.

#### X 5.9.4

| Transcription              | Translation <sup>115</sup>      |
|----------------------------|---------------------------------|
| Idem in concilio generali. | The Same in the General Council |

<sup>113</sup> Potthast 241.

<sup>114</sup> This subject has been examined through a series of studies. See, for instance, Rebecca Rist, *Popes and Jews, 1095–1291* (Oxford: Oxford University Press, 2016), 209; Anne J. Duggan, “Conciliar Law 1123–1215: The Legislation of the Fourth Lateran Councils,” in Hartmann and Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140–1234*, 352; Linda Ray Beckum, “The Fourth Lateran Council of 1215: Church Reform, Exclusivity, and the Jews,” PhD diss., (University of Kentucky, 2005), 131–133; Solomon Grayzel, “Jews and the Ecumenical Councils,” *The Jewish Quarterly Review* 57 (1967): 298; Christoph Ulrich Hahn, *Geschichte der Ketzer im Mittelalter, besonders im 11., 12. und 13. Jahrhundert*, vol. 3 (Stuttgart: J. F. Steinkopf, 1845–1850), 219–220.

<sup>115</sup> Canon 70. Translation here is taken from Schroeder, *Disciplinary Decrees of the General Councils*, 291–292.

|  |   |
|--|---|
| <p>Quidam, sicut accepimus, +qui+ ad sacri undam baptismatis <u>voluntarie</u> accesserunt, veterem hominem omnino non exuunt, ut <u>novo</u> perfectius induantur, cum, prioris ritus reliquias retinentes, Christianae religionis decorem tali commixtione confundant. Cum autem maledictus sit homo, qui terram <u>duabus viis</u> ingreditur, et indui veste non debeat lino <u>lanaque</u> contexta, statuimus: ut per praelatos ecclesiarum talis observantia veteris ritus omnimode compescatur, ut, quos Christianae religioni liberae <u>voluntatis</u> arbitrium obtuerit, salutiferae coactionis necessitas in eius observatione conservet; cum minus malum existat viam Domini non adnoscere, quam post agnitam <u>retroire</u>.</p> | <p>“Some, we understand, +who+ voluntarily approached the waters of holy baptism, do not entirely cast off the old man that they may more perfectly put on the new one, because, retaining remnants of the former rite, they obscure by such a mixture the beauty of the Christian religion. But since the man is accursed, who goeth on the two ways (Ecclesiasticus 2:14), and a garment that is woven together of woolen and linen (Deuteronomy 22: 11) ought not to be put on, we decree: that such persons be in every way restrained by the ecclesiastical prelates from the observance of the former rite, that, having given themselves of their own free will to the Christian religion, salutary and necessary coercion may preserve them in its observance, since not to know the way of the Lord is a lesser evil than to retrace one’s steps after it is known.”</p> |
|--|---|

#### 4.4.1 Defending the Legal Office

While the meaning of the Biblical references (Ecclesiasticus 2:14 and Deuteronomy 22:11) in this papal decretal appears to be clear, Bernard seemed to be primarily concerned about the potential misuse of such references in other cases. Therefore in the gloss on “duabus viis” he does not discuss the theological messages, but presents—integrating Roman and canonical procedural law—situations in which this Biblical text is not applicable, especially with respect to legal duties:

#### X 5.9.4 glos. ord. s.v. duabus viis

| Transcription  | Translation   |
|--|---|
| <p>Nisi quandoque ratione officii. <b>iii. q. vii. §. tria. in fi.</b><sup>116</sup> et <b>supra de praesumpt. litteras.</b><sup>117</sup> et <b>ff. de rei ven. inter officium.</b><sup>118</sup></p> | <p>Unless occasionally for reason of offices, [see] <b>iii. q. vii. §. tria. in fi.</b> and <b>supra de praesumpt. litteras.</b> and <b>ff. de rei ven. inter</b></p> |

<sup>116</sup> C. 3 q. 7 dict. post c. 1 [Fr. v.1 col. 524].

<sup>117</sup> X 2.23.14 [Fr. v.2 col. 357].

<sup>118</sup> Dig. 6.1.54.



Sed id ignoravit, quod praestaret patrocinium in re sua.

**officium.** But he [i.e., the rebaptized] was unaware that he would be giving advocacy on a matter relating to his own property.

The first allegation (C. 3 q. 7 dict. post c. 1) offers an example. It comes from Gratian's *dictum*, which in turn reference a Roman law jurisprudential opinion (Dig. 5.1.12.2-3). Toward the end of Gratian's words, as indicated by Bernard, it is claimed that even a slave can be a judge—thus being *duabus viis*—and order valid sentences if his authority has been legally delegated. The following allegation (X 2.23.14) returns from Roman law to a canonical-institutional arrangement made by Pope Innocent III at the beginning of the thirteenth century (1206).<sup>119</sup> Dealing with complicated and persistent disputes over heresy in northern France, the pope appointed a local bishop William of Nevers (1202–1221), the archdeacon of Bourges, and the abbot of Chalivoy as judges-delegate. The pope also ordered that their sacramental powers as clergy were to be preserved while they served in a judicial capacity.<sup>120</sup> The glossator here appeared to imply that being an arbitrator and a clergyman simultaneously is also in a sense “on the two ways”—and in such a case it is canonically sound.

After discussing the offices of judges and arbitrators, Bernard in his last allegation (Dig. 6. 1. 54) invoked Roman procedural and property law. At this point in the *Digest*, Ulpian introduced a short yet complicated case in which an advocate, successfully assisting his client to sue for his property, finds out that he himself (the advocate) owns the property. The glossator, apparently agreeing with the Roman jurist here in granting the right to the unknowing advocate

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<sup>119</sup> Potthast 2787.

<sup>120</sup> For historical investigations of these disputes, see Jessalynn Bird, “The Wheat and the Tares: Peter the Chanter's Circle and the Fama-based Inquest Against Heresy and Criminal Sins, c.1198-c.1235,” 815–816; Émile Chénon, “L'hérésie à La Charité-sur-Loire et les débuts de l'inquisition monastique dans la France du Nord au XIIIe siècle,” *Nouvelle revue historique de droit français et étranger* 41 (1917): 314; Charles H. Haskins, “Robert Le Bougre and the Beginnings of the Inquisition in Northern France,” *The American Historical Review* 7 (1902): 446.

to defend his own case, thus presented another situation where the accusation of *duabus viis* does not apply. The effort taken by Bernard here sensitively to defend the legal offices seems to suggest heated social resentment of lawyers, who during the thirteenth century had become closely identified with—thus in a sense *duabus viis*—the elite ecclesiastical class.<sup>121</sup> With the legal profession defended against potential accusations from Biblical references such as Ecclesiasticus 2:14 and Deuteronomy 22:11, the glossator, now at ease, used such references as a platform to discuss the issue of rebaptism.

#### 4.4.2 Analogies for the Crime of Rebaptism

##### X 5.9.4 *glos. ord. s.v. de lana*

| Transcription   | Translation  |
|---|--|
| <p><b>xvi. q. vii. in nova.</b><sup>122</sup> et <b>supra de electio.</b> +et <b>electi pot.+ cum causam.</b><sup>123</sup> Et nemo debet claudicare in duas partes. <b>xlix. di. c. uli.</b><sup>124</sup> et nemo potest duobus dominis servire. <b>xxvii. d.</b><sup>125</sup> <b>acutius.</b><sup>126</sup> et <b>supra de cleri. con.</b> +<b>diversis fallaciis.</b><sup>127</sup> Nemo autem filius Dei, et diaboli simul esse potest. <b>de peniten. d. i. §. item ut Christus ait.</b><sup>128</sup> Nec duobus dominis servire, ut ibi.</p> | <p>[See] <b>xvi. q. vii. in nova.</b> and <b>supra de electio.</b> +and <b>electi pot.+ cum causam.</b> And no one should waver between two parties. [See] <b>xlix. di. c. uli.</b> And no one can serve two lords. [See] <b>xxvii. d. acutius.</b> And [see] <b>supra de cleri. con.</b> +<b>diversis fallaciis.</b> +Also, no one can be the son of God and of the Devil simultaneously. [See] <b>de peniten. d. i. §. item ut Christus ait.</b> Nor to serve two lords, as in the allegation.</p> |

<sup>121</sup> See James A. Brundage, “The Teaching and Study of Canon Law in the Law Schools,” in Hartmann and Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140–1234*, 118.

<sup>122</sup> C. 16 q. 7 c. 22 [Fr. v.1 cols. 806-807].

<sup>123</sup> X 1.6.27 [Fr. v.2 col. 71].

<sup>124</sup> Dist. 49 c. 2 [Fr. v.1 col. 177].

<sup>125</sup> Scribal mistake in MS F. “26. dist.” in the other collated manuscripts and the 1582 *ER*.

<sup>126</sup> Dist. 26 c. 2 [Fr. v.1 col. 95].

<sup>127</sup> X 3.3.5. It is likely a scribal mistake in MS F (no canon specified).

<sup>128</sup> *De pen. D. 1 dict. post c. 35* [Fr. v.1 cols. 1166-1167].

Here again Bernard drew on allegations dealing with other legal situations—ecclesiastical arrangements, marital affairs, clerical celibacy—and applied them to the judgment of rebaptism. He first cites canon 9 from the Second Council of Seville (619, C. 16 q. 7 c. 22), which forbids a lay person to be a treasurer in the Church, “since it is improper for a lay person to be the vicar of the bishop and to judge the laity in the Church.”<sup>129</sup> Further, he refers to Augustine’s writings on the sacraments of marriage and ordination (Dist. 49 c. 2).<sup>130</sup> The glossator seemed to imply that just as according to Augustine a man who has two wives—thus committing bigamy—loses his right to be ordained in the Church for damaging the sacred nature of the sacrament, a person also violates it by receiving repeated baptisms.

In the end Bernard drew from a decretal of Pope Innocent III (X 3.3.5),<sup>131</sup> where the pope instructed that married secular clerics are not to hold ecclesiastical benefices. Note that in this case Innocent III was not targeting (repeated) marriage, but secular clergy holding ecclesiastical and secular salaries at the same time—a heated topic during this period<sup>132</sup> that is analogous to the crime of rebaptism in the lawyer’s eyes.

As discussed above, the last sentence of X 5.9.4, originally targeting converted Jews who return to their previous religious rites, was reworked by Raymond of Peñafort to accuse the rebaptized. Here the glossator, in his gloss on “retroire,” added a Biblical support (Luke 9:62) for this accusation:

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<sup>129</sup> “Indecorum est enim laicum uicarium episcopi, esse et uiros ecclesiasticos iudicare.” Translated by me.

<sup>130</sup> Augustine, *De bono coniugali*, 21:18. For English translation see Augustine of Hippo, *De bono coniugali; De sancta virginitate*, trans. P.G. Walsh (New York: Oxford University Press, 2001), 39–41. Cf. Dist. 26 c. 2 [Fr. v.1 col. 95].

<sup>131</sup> Potthast 1944.

<sup>132</sup> For a discussion and recent literature on this topic, see Michèle Bégou-Davia, “Au risque de se perdre ? Le système bénéficial à l’épreuve des réalités économiques (fin XIIe s. - XIIIe s.),” in Orazio Condorelli et al., eds., *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, vol. 5 (Cologne: Böhlau, 2009), 1–22.

#### X 5.9.4 glos. ord. s.v. retroire

| Transcription   | Translation   |
|---|---|
| Quia qui posuerit manum ad aratrum, et respexerit retro, non est aptus regno Dei. Et <b>supra de vo. magna<sup>133</sup> si xii. q. i. scimus. in fi.<sup>134</sup> +de poeni. dist. 4. si refugientes. versus fin.<sup>135</sup> Ber.+</b> | Because he who would put hand to the plough, and would look back, is not fit for the kingdom of God. And [see] <b>supra de vo. magna. as [in] xii. q. i. scimus. in fi. +de poeni. dist. 4. si refugientes. versus fin. Ber.+</b> |

Throughout the *Glossa*, Bernard rarely cited the Bible directly, and in this case he was pointing the reader to a decretal from Pope Innocent III to the bishop of Troyes (X 3.34.7).<sup>136</sup> In his letter, after a detailed dialectical argumentation, the pope released the bishop from his crusading vow to go to the Holy Land.<sup>137</sup> But apparently Bernard was not looking at the papal decision at the end, but the pope's counterargument in the middle of the letter, where the Biblical passage above, Luke 9:62, is cited. Similarly, while referring to a Pseudo-Isidorian decretal of Pope Urban I (222-230, C. 12 q. 1 c. 9),<sup>138</sup> the glossator did not focus on the Apostolic call for a common life for the secular clergy. He again picked up the argument in the middle of the letter, where the pope warned that those who make a vow but then betray it will receive a harsher punishment after death than those who do not vow but nevertheless do good work.

It is significant to see from these two cases the requirement posed by Bernard for his reader's familiarity with the referenced legal allegations. More interestingly, these cases also demonstrate that even when citing papal decretals, the glossator might still select excerpts from

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<sup>133</sup> X 3.34.7 [Fr. v.2 cols. 591-593].

<sup>134</sup> C. 12 q. 1 c. 9 [Fr. v.1 col. 679].

<sup>135</sup> *De pen.* D. 4 c. 18 [Fr. v.1 col. 1236].

<sup>136</sup> Potthast 48.

<sup>137</sup> Kenneth Pennington, "Ecclesiastical Liberty on the Eve of the Reformation," *BMCL* 33 (2016): 186–187.

<sup>138</sup> JK 87 (Jaffé 1<sup>st</sup> ed. LXXI).

the texts that may not concern—or may even contradict—the final decision in the allegation.

Therefore, in cases like these, Bernard required medieval law students to closely follow his flow of argumentation when they read the legal allegations, rather than simply learning what the *auctoritates* claimed in the cited texts.

#### 4.5 The Issue of Promotion

The last part of this chapter concerns a canon from Pope Alexander III, X 5.9.2, on how to deal with minor clergy who perform a second baptism:

##### X 5.9.2

| Transcription   | Translation   |
|---|---|
| <p>Idem Abbati ecclesiae. Genovefae.</p> <p>Ex literarum tuarum tenore perpendimus, quod quidam, aegritudine longa confectus, <u>insano</u> sortilegarum mulierum credens consilio, ut sanaretur, per iterationem fecit <u>iniuriam</u> baptismatis sacramento. Quia ergo nos tua duxit prudentia consulendos, qualiter puniri debeat <u>acolutus</u>, quem minor <u>aetas</u> et <u>intentio</u> fraternae salutis excusare videtur, discretioni tuae praesentibus ut respondemus, quod, ad superiores ordines promoveri, si publicum est quod proponitur, <u>non</u> valebit, nisi ad religionem transire voluerit, ut favore <u>religionis</u> ipsius circa eum valeat dispensari. Si vero occultum est, promoveri poterit, et excessum suum dignis penitentiae fructibus expiare.</p> | <p>The Same to the Abbot of the Church of St. Genevieve</p> <p>From the course of your letter we have recognized that a certain someone, consumed by lengthy illness, believing the <u>insane</u> advice of sorceresses that he would be healed, made an <u>injury</u> to the sacrament of baptism through repetition. Therefore, consequently, your prudence thought that we should be consulted, [regarding] how the <u>acolyte</u> should be punished, whom <u>minority</u> and his <u>concern</u> for fraternal health seem to excuse. We are responding to you in the present letter, that he will <u>not</u> be able to be promoted to higher orders if what is done is public, unless he is willing to enter a religious order, so that by the benefit of that <u>religious</u> life he is able to be dispensed. If, however, it has been concealed, he can be promoted, and is able to expiate his transgression with the proper fruits of penance.</p> |

It is important to note the focus of the papal instruction here: neither the rebaptized person nor the sorceress who gives him the “insane advice” seems to trouble the pope, but it is the punishment and the promotion of a minor cleric who performs the sacrament that bothers the inquiring abbot. The papal response confirms this. Furthermore, according to Alexander III, it is

the publicity/secretcy of the case that determines whether or not the acolyte can be promoted in the future. As discussed above in Part II of this chapter, it is apparent that the reputation of the Church constitutes a major concern for the papacy in treating these kinds of crimes.

#### 4.5.1 *Delictum* in Roman Law versus Rebaptism in Canon Law

In this case, the pope also indicated that the minority of the acolyte can excuse him from punishment. The glossator, understandably, looked for explanations and potential counterarguments for this position, while clarifying to what extent the punishment will be excused:

#### X 5.9.2 *glos. ord. s.v. minor aetas*

| Transcription   | Translation  |
|---|--|
| <p>Ar. quod aetati minori subvenitur. <b>de con. d. iii. eos.</b><sup>139</sup> et <b>c. quibus.</b><sup>140</sup> et <b>xv. q. i. § ut itaque. in fi.</b><sup>141</sup> et <b>ff. de minori. auxilium. §. in delictis. ibi nisi quatenus miseratio.</b><sup>142</sup> et contra. ar. <b>ff. +eo+ si ex causa. §. nunc videndum.</b><sup>143</sup></p> <p>Sed illud verum est, quod minor aetas non excusat in totum: sed in obseratione aetatis mitius punitur. <b>ff. e. auxilium. §. in delictis.</b><sup>144</sup> et <b>infra de delic. pue. pueris.</b><sup>145</sup> ubi de hoc.</p> | <p>The argument is that he is excused by minority, see <b>de con. d. iii. eos.</b> and <b>c. quibus.</b> and <b>xv. q. i. § ut itaque. in fi.</b> and <b>ff. de minori. auxilium. §. in delictis ibi nisi quatenus miseratio.</b>, and [see] a counterargument in <b>ff. +eo+ si ex causa. §. nunc videndum.</b></p> <p>However, the truth is, that minority does not excuse him totally: but he is punished less severely out of deference to age. [See] <b>ff. e. auxilium. §. in delictis.</b> and <b>infra de delic. pue. pueris.</b> where you find this.</p> |

<sup>139</sup> *De cons.* D. 4 c. 118 [Fr. v.1 col. 1398].

<sup>140</sup> *De cons.* D. 4 c. 117 [Fr. v.1 cols. 1397-1398].

<sup>141</sup> C. 15 q. 1 dict. post c. 2 [Fr. v.1 col. 746].

<sup>142</sup> Dig. 4.4.37.

<sup>143</sup> Dig. 4.4.9.

<sup>144</sup> Dig. 4.4.37.

<sup>145</sup> X 5.23.1 [Fr. v.2 col. 824].

Before bringing up the counterargument and to support the papal decision, the glossator presented allegations from four different sources: a rule from the Penitential of Theodore (*De cons.* D.4 c.117), a decretal from Pope Felix III (*De cons.* D.4 c.118),<sup>146</sup> a *dictum* from Gratian (C.15 q.1 dict. post c. 2), and a Roman marriage/property law text (Dig. 4.4.37). Both Pope Felix and Gratian argued for *no* penalty for the *puer/puera* and *pupillus* who commit transgressions. Gratian further specifically clarified that it is because children do not proceed from reason by deliberation. Gratian's clarification in turn partially explains the reference to the penitential rule, which claims that "[t]hose who in ignorance have been twice baptized are not required to do penance for this."<sup>147</sup> Nevertheless, it seems that the glossator used this allegation only as an analogous reference, since it is targeting the *rebaptized* rather than the *rebaptizer*.

The Roman law text, however, grants no exemption but only a lighter punishment, and emphasizes that if the defender—confessing himself to be an adulterer—has already reached majority,<sup>148</sup> then no relief of penalty will apply.<sup>149</sup> Apparently, Bernard noticed this contradiction between his canonical and Roman law references, and wants to present the disagreement forcefully. What follows in the gloss, therefore, is a counterargument from the same section in the *Digest* (Dig. 4.4.9), where it is argued that if a minor commits a *delictum*—“[a] wrongdoing prosecuted through a private action of the injured individual and punished by a pecuniary penalty

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<sup>146</sup> JK 609 (Jaffé 1<sup>st</sup> ed. 370).

<sup>147</sup> For this translation, see John T. McNeill and Helena M. Gamer, trans. *Medieval Handbooks of Penance: A Translation of the Principal Libri Poenitentiales and Selections from Related Documents* (New York: Columbia University Press, 1938), 193. The Latin text reads “Qui bis baptizati sunt ignoranter non indigent pro eo penitentia.” Carine Van Rhijn, ed., *Paenitentiale Pseudo-Theodori*, CCSL, vol. 156 B, 87 (XXXII. 1.).

<sup>148</sup> For definition of *impubes* and *minores* in Roman law, see “Minores,” in Berger, 583.

<sup>149</sup> “Sed ut ad legis Iuliae de adulteriis coercendis praecepta veniamus, utique nulla deprecatio adulterii poenae est, si se minor annis adulterum fateatur.”

paid to the plaintiff<sup>150</sup>—he is not to receive the help of *restitutio in integrum*, that is, the reinstatement of the loss he suffers from the case.<sup>151</sup>

Bernard seemed to be conscious of the difference between the crime of rebaptism and the concept of *delictum* in the Roman law context, which mainly concerns private offenses to personal property. Thus in the end by adding one more allegation attributed to Pope Gregory IX (X 5.23.1),<sup>152</sup> he proposed, agreeing with Gregory IX, that the young acolyte in this case is to be punished less severely rather than excused for his crime *in total*. It is possible that the glossator intentionally added this last qualifier to avoid directly contradicting Alexander III’s order—even though the last part of this gloss, as a synthesis, does differ from the opinions of Pope Felix III and Gratian.

#### 4.5.2 “Favore religionis”

With respect to the future career of the acolyte, Alexander III granted him the possibility of promotion if the rebaptism has taken place in secret. Nevertheless, the pope instructed that if the event is publicly known, in order to be promoted in the future the young cleric must enter a religious life and then be dispensed by the benefit of a religious order. Bernard wondered which condition exactly brings the dispensation—joining a religious order, or *favore religionis* after the entry:

##### X 5.9.2 glos. ord. s.v. favore religionis

| Transcription | Translation |
|---------------|-------------|
|---------------|-------------|

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<sup>150</sup> “Delictum,” in Berger, 430.

<sup>151</sup> “Et placet in delictis minoribus non subveniri.” For detailed definition of *restitutio in integrum*, see “Restitutio in integrum,” in Berger, 682.

<sup>152</sup> Gallus Kleinschrod points out that in this case canon law is more severe than Roman law with respect to fully acknowledging the underage’s capability—together with the responsibility that follows—to commit crimes including not only adultery but also stealing, lying, perjuring, etc. See Gallus Aloys Kaspar Kleinschrod, *Systematische Entwicklung der Grundbegriffe und Grundwahrheiten des peinlichen Rechts nach der Natur der Sache und der positiven Gesetzgebung*, vol. 1 (Erlagen: Johann Jacob Palm, 1799), 172.



Ex hoc videtur, quod ingressus religionis non tollat irregularitatem, ex quo sine dispensatione, promoveri non potest. Ar. contra. **supra de fil. presby. cap. i.**<sup>153</sup> et **lvi. di. c. i.**<sup>154</sup> et in **aut. de monach. in prin.**<sup>155</sup> ubi dicitur, quod ingressus religionis omnem tollit irregularitatem, tollit etiam ingratitude. **xix. q. ulti. non licet.**<sup>156</sup>

Solutio: irregularitas illa que surgit ex proprio delicto, non tollitur per ingressum religionis, +sed favore religionis+<sup>157</sup> cum eo dispensatur: ut hic, et **infra de eo qui fur. or. re. c. i.**<sup>158</sup> Cum vero non surgit ex delicto proprio: ut **infra de pur. c. accedens.**<sup>159</sup> tunc per ingressum religionis tollitur illa irregularitas, ita quod sine dispensatione potest ad ordines promoveri, ut in ecclesiis, sed non ad dignitatem sine dispensatione. **infra de penis. in quibusdam.**<sup>160</sup> et **supra de fil. presbyt. c. i.**<sup>161</sup> Quidam dicunt, cum in neutro casu tollitur, sed defertur tantum ad facilitatem dispensandi. L.<sup>162</sup> +Ber.+

According to this, it seems that the entry into a religious life does not remove an irregularity, since without dispensation he cannot be promoted. [But see] the counterargument in **supra de fil. presby. cap. i.** and **lvi. di. c. i.** and in **aut. de monach. in prin.**, where it is said that the entry into a religious life removes all irregularity and ingratitude.<sup>163</sup> [See] **xix. q. ulti. non licet.**

Solution: that irregularity which arises from one's own fault (*ex proprio delicto*), is not removed through the entry into religious life, +but by the benefit of the religious life+ with which he is dispensed: as here, and [see] **infra de eo qui fur. or. re. c. i.** When, however, it [i.e., irregularity] does not arise from the delict per se, as [see] **infra de pur. c. accedens.**, then through the entry into a religious life that irregularity is removed, so that without dispensation he can be promoted to orders, as in churches, he cannot be promoted to the ecclesiastical dignitary without dispensation. [See] **infra de penis. in quibusdam.** and **supra de fil. presbyt. c. i.** Certain people say, that it [the irregularity] is not removed in either case, but is only

<sup>153</sup> X 1.17.1 [Fr. v.2 col. 135].

<sup>154</sup> Dist. 56 c. 1 [Fr. v.1 col. 219].

<sup>155</sup> Nov. 5 Preface / Auth. 5 Preface.

<sup>156</sup> C. 19 q. 3 c. 10 [Fr. v.1 col. 843].

<sup>157</sup> This key phrase does not exist in MS F, but appears in all other selected manuscripts and the 1582 *ER*. This omission is likely a scribal mistake, judging from the integrity of the logic in this passage.

<sup>158</sup> X 5.30.1 [Fr. v.2 col. 834].

<sup>159</sup> X 5.34.4 [Fr. v.2 col. 870].

<sup>160</sup> X 5.37.12 [Fr. v.2 cols. 883-884].

<sup>161</sup> X 1.17.1 [Fr. v.2 col. 135].

<sup>162</sup> This *siglum* "L." does not appear in the 1582 *ER*.

<sup>163</sup> In the context of Roman law ingratitude involves "[n]on-fulfillment of his duties towards the patron." See "Ingratus," in Berger, 501.

|  |  |
|--|--|
|  | reduced for the facility of dispensation. <u>L.</u><br><u>+Ber.+</u> |
|--|--|

Bernard observed that the papal decision implies that joining a religious order does not automatically bring a dispensation that removes the irregularity that has resulted in the acolyte's exclusion from ecclesiastical offices. Nevertheless he quickly referred to three counter allegations from both canonical and Roman law sources. Sons—even bastards—of priests are clearly allowed to be promoted to sacred orders if they become members of religious orders, according to canon 8 from the Council of Poitiers (1087, X 1.17.1)<sup>164</sup> and canon 14 from the Council of Melfi (1089, Dist. 56 c. 1).<sup>165</sup> The following allegation from the preface to the Justinianic Nov. 5 even argues that one who embraces the monastic life automatically removes from himself all human stains and becomes pure. To strengthen further the benefit of joining religious orders, Bernard also added the allegation C. 19 q. 3 c. 10, which in turn refers to a family/inheritance law in the *Novellae* (Nov. 123.41). This reference, diverging from the topic of the acolyte's promotion in the Church, instructs that children who join monasteries retain rights of inheritance from their parents.

Until this point, Bernard had demonstrated two conflicting opinions, and by his allegations had made the counterargument to Alexander III's decision quite strong. Now it was time for him to provide a solution that will distinguish between different types of irregularities. He offered the conclusion in the first place, with an emphasis on specificity. He argued that the irregularity caused by the acolyte *in this specific case*, through performing rebaptism, can only be removed—and thus he needs to be dispensed—through the benefit of the religious order that

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<sup>164</sup> See Kriston Rennie, "The Council of Poitiers (1078) and Some Legal Considerations," *BMCL* 27 (2008): 7 for the translation of this canon.

<sup>165</sup> See Robert Somerville, *Pope Urban II, the Collectio Britannica, and the Council of Melfi (1089)* (Oxford: Clarendon Press, 1996), 257 for the critical edition of this canon and 262 for the translation.

he joins. Here it should be noted that the concept of *delictum* appears again in the gloss, employing a broader meaning than it has in Roman law.<sup>166</sup> Situating himself in line with the authority behind X 5.9.2, Bernard presented another decretal from Alexander III (X 5.30.1),<sup>167</sup> which indicates that a person who secretly receives an order needs dispensation from a bishop and an abbot—if he has not yet been excommunicated, in which case only the pope can dispense him.

Bernard then argued, along with an allegation from Pope Innocent III (1207, X 5.34.4),<sup>168</sup> that in other circumstances—which do not cause the kind of irregularity specified above—the irregularity can be removed through joining the religious life itself, and the wrongdoer can be promoted to orders without dispensation. However the glossator quickly added that he still cannot be promoted to an ecclesiastical dignitary—for example, to the position of provost or dean in a chapter<sup>169</sup>—without dispensation. Following this argument, canon 45 from the Fourth Lateran Council (1215, X 5.37.12) is used analogously, noting that heirs of patrons, advocates, feudal tenants, and others who have killed or mutilated Church officials, may only hold the office of prelate in a religious house—such as an abbot—with a dispensation.<sup>170</sup>

While the argumentation seems complete at this point, toward the very end of the gloss Bernard curiously mentioned an even more conservative and less nuanced opinion. It states that irregularity cannot be removed under any circumstances, including by joining religious orders—

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<sup>166</sup> Cf. X 5.23 Kuttner also points out that there is no formal concept of delict established in medieval canonical thinking. See Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX*, 22–23.

<sup>167</sup> JL 16603 (1<sup>st</sup>. ed. 10233).

<sup>168</sup> Potthast 3001.

<sup>169</sup> For definition of the ecclesiastical dignitary, see Thomas Shahan, “Ecclesiastical Dignitary,” in CE, vol. 4, 794.

<sup>170</sup> For translation of this canon see Schroeder, *Disciplinary Decrees of the General Councils*, 275–276. For definition of prelate, see Johann Peter Kirsch, “Prelate,” in CE, vol. 12, 386–387.

and can only be reduced for the preparation of the dispensation. In other words, dispensation *favore religionis* becomes the only option here. However, the fact that Bernard only presented it as an anonymous opinion seems to indicate that he does not support this less delicate claim—even though it agrees perfectly with Alexander III’s decision.

#### **4.6 Conclusion**

The *Glossa* on the topics of apostasy and rebaptism begins with clarifying in detail the legal implications of these deeds. In other words, the glosses point the reader not to their theological problems, but to their criminal aspects from which legal consequences follow. These consequences include punishments ranging from performing penance, incarceration, torture, and losing opportunities for promotion to the deprivation of rights to sue or to serve as a witness in court. Some of these punishments appear in the canons, which in this title are sections of papal decretals. However, these penalties often are embedded in the glosses, and some can only be discovered in the allegations. More importantly, for the actual application of these punishments under different circumstances, medieval lawyers and judges would have needed to consult the glosses.

Bernard was ready to present arguments and allegations challenging the decisions in the canons, and then provided, as a medieval scholastic intellectual, solutions to the contradictions. He does it particularly by demonstrating, as the gloss to “*favore religionis*” shows, the potential complexity of a case and of a key phrase under various practical circumstances or according to different interpretations. In this way, again, the possibilities and the nuances presented through the *Glossa* equip the canonical texts with wider—and at the same time more precise—applications for future cases, thus shaping the practice of medieval canon law.

Furthermore, to support his (counter) arguments, Bernard drew references from Romano-canonical sources that at first glance do not seem to fit the case. In other words, the *Glossa* does not dwell on texts that specifically concern the somewhat anachronistic issues of apostasy and rebaptism. Even though the title *De apostatis et reiterantibus baptisma* corresponds to titles in the Justinianic Code, *Ne sanctum baptisma iteretur* and *De apostatis* (Cod. 1.6 and 7), none of the legal allegations in this section of the *Glossa* come from these two titles.<sup>171</sup> Instead, Bernard stepped into the territories of Roman familial/inheritance law, canon law dealing with simony and clerical celibacy, and conciliar acts around the Iconoclastic controversy, among others, to glean legal materials or interpretations that can be applied to the case that he is working on. In the gloss on “misera vita,” for instance, legal implications of the *crimen laesae maiestatis* in Roman law are transferred to the canonical punishment of apostasy, while the incarceration of apostates is paralleled with the confinement of the adulterous wives of clerics. Similarly, Augustine’s argument as to why bigamous Christians cannot be ordained is taken over to illustrate the crime of rebaptism.

Significantly, during this process Bernard also warned his readers about possible misapplication of certain principles. As discussed in the gloss on “duabus viis,” he drew evidence from both canon and Roman law to argue that Biblical references, such as Ecclesiasticus 2:14, cannot be used in certain cases to charge holders of legal offices. It is difficult to be certain in this case, however, whether this opinion is purely academic or derives from Bernard’s own experience as a thirteenth-century jurist.

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<sup>171</sup> In contrast, some other thirteenth-century jurists, e.g., Tancred and Hostiensis, cited them in their apparatuses. See Vodola, *Excommunication in the Middle Ages*, 47.

Finally, the *Glossa* expects its audience to be familiar with the *full* array of the legal allegations employed. Most of the time, admittedly, the glossator cited the final opinions of the texts to which he refers in the gloss. But occasionally, as the allegation to X 3.34.7 (gloss on “retroire” to X 5.9.4) demonstrates, he specifically picked up in the middle of the allegation’s chain of logic, even when that contradicts the final, authoritative holding. Pope Innocent III, in this case, painstakingly explained why the papacy can legitimately release a bishop’s crusading vow, even though it could be problematic according to certain Biblical ideas. However, Bernard, to support his own argument, only pointed his readers to the middle of the papal text, where the pope was struggling with Biblical passages that challenge his own argument.

## Chapter Five: “It has been considered true”: *Maleficium, Sors, and their Practitioners in the Glossa to X 4.15 & 5.21*

### 5.1 Introduction

Some time in late twelfth or early thirteenth-century Paris, a man abandoned a woman who turned out to be a sorceress (*sorciaria*). As revenge, she uttered an incantation (*incantationem*) over a locked lock, and then threw the lock into a well and the key to the lock into another well. Thus, with the help of the Devil, she caused the man to become incapable of having sexual intercourse with his current wife, who had taken over the sorceress' place. In the end, after being detained, the sorceress confessed. The lock and the key were dragged out of the wells, and as soon as the lock was unlocked, the man became capable of having sex with his wife.<sup>1</sup> In a similar case, a monk named Odo<sup>2</sup> mentioned that his sister married a certain knight, and for thirteen years they were unable to have intercourse. This was because the knight, before this marriage, had been cursed and made impotent through the magic (*veneficio*) of a prostitute.<sup>3</sup>

These two stories come respectively from Thomas of Chobham's (d. c. 1230) *Summa Confessorum* and an anonymous set of glosses to Peter Lombard's (d. 1160) *Libri quattuor*

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<sup>1</sup> “Constat enim quod sepe meritis hominum exigentibus diabolus ligavit aliquem hominem in membris suis quod non poterat coire, sicut contigit quandoque Parisius quod quedam sorciaria impedivit virum qui eam rel/iquerat ne posset coire cum aliqua quam superduxerit. Fecerat enim incantationem super quamdam seram clausam et miserat illam seram in unum puteum et clavem in alium puteum, et factus est vir ille impotens coire. Postea vero cum coacta esset sorciaria cognoscere veritatem, extracta fuit sera de puteo uno et clavis de alio, et statim cum aperta esset sera factus est vir ille potens coire cum uxore sua.” Thomas of Chobham, *Thomae de Chobham summa confessorum*, ed. F. Broomfield (Leuven; Paris: Éditions Nauwelaerts; Béatrice Nauwelaerts, 1968), 184.

<sup>2</sup> Catherine Rider identified him as “[t]he mid-twelfth-century theologian Master Odo.” Catherine Rider, “Between Theology and Popular Practice: Medieval Canonists on Magic and Impotence,” in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe* (Burlington: Ashgate, 2005), 57.

<sup>3</sup> “[Q]uidam monachus m[agistrum] Odonem dicens, quod soror sua nupserat cuidam militi et per XIII annos iam fuerant, nec iste (?) eam cognoverat impediante veneficio cuiusdam memetricis, qua miles abutebatur, antequam convenirent.” Artur Landgraf, “Zwei Gelehrte aus der Umgebung des Petrus Lombardus,” *Divus Thomas* 11 (1933): 162.

*sententiarum*. Together they offer us a peek into the concern over magic, in particular the infliction of *maleficium*, i.e., sexual impotence caused by evil spells,<sup>4</sup> in pastoral and theological literature of the High Middle Ages. The same theme also appears in canon law. Gratian's *Decretum* includes a ninth-century text from Hincmar of Reims (d. 882) regarding impotence caused by magic and the subsequent legitimate separation of a married couple for this reason. This canon, *Si per sortiaris* (C. 33 q. 1 c. 4), was widely discussed by twelfth- and thirteenth-century canonists including Pope Innocent IV (1243–1254)<sup>5</sup> and, as this chapter will demonstrate, was invoked numerous times throughout the *Glossa*.<sup>6</sup>

These intellectual concerns did not lack echoes or even origins in their contemporary reality. Consider the famous case of the French King Philip II Augustus (1180–1223), who listed *maleficium* as one of the reasons that he could not consummate his marriage to Ingeborg (d. 1237), sister of the Danish King Canute VI (1182–1202), in the late twelfth century.<sup>7</sup> While the truth of Philip's rejection of Ingeborg remains a matter of debate, the concern over *maleficium* was already present in textual evidence from 1193, the year of Philip's troublesome marriage to Ingeborg.<sup>8</sup>

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<sup>4</sup> It should be noted that the term *maleficium* in medieval literature does not only refer to causing impotence. However, as this chapter demonstrates below, the *Glossa* employs this term only in such sense.

<sup>5</sup> See Rider, "Between Theology and Popular Practice: Medieval Canonists on Magic and Impotence," 53–57. Constance M. Rousseau, "Neither Bewitched nor Beguiled: Philip Augustus's Alleged Impotence and Innocent III's Response," *Speculum* 89 (2014): 416–419.

<sup>6</sup> It should be noted that high medieval pastoral theologians were also concerned about this canon. See, for instance, Peter Lombard, *Libri quattuor sententiarum* 4.34.3.

<sup>7</sup> "Si ergo rex ipse desiderat expediri, libenter testes, quos super consanguinitate, affinitate seu maleficio duxerit producendos." Othmar Hageneder, *Die Register Innocenz' III*, vol. 5 (Graz: H. Böhlhaus Nachf., 1993), 92. For a detailed discussion of this case, see Rousseau, "Neither Bewitched nor Beguiled."

<sup>8</sup> Léopold Delisle, ed., *Recueil des historiens des Gaules et de la France*, vol. 17 (Paris: Victor Palmé, 1878), 38. See also Rousseau, "Neither Bewitched nor Beguiled," 426.



The first half of this chapter will examine how the *Glossa* treats what lies behind these stories, i.e., *maleficium*. Selected ordinary glosses—four out of fifty-five in total—on X 4.15, “On people who are frigid, bewitched, and sexual impotence (*De frigidis et maleficiatis et impotentia coeundi*),” which includes seven canons, will be investigated in detail. A surprising fact, which has been ignored by scholars thus far, is that none of the canons actually mention *maleficium* and it is the *Glossa* that directly confronts it. Nonetheless, as the chapter will demonstrate and explain, the *Glossa*’s interest in *maleficium* per se and its practitioners, as well as punishments therefor, is quite limited.

Other forms of actions that today we would define as “magical” were also present in this era’s literary compositions. Emperor Frederick II’s (1220–1250) heavy reliance on Michael Scot (d. 1236), a scholar favored by Pope Gregory IX (1227–1241) who served as the emperor’s court astrologer, was apparently well-known by their contemporaries, as mentioned by Matthew Paris (d. 1259) and Salimbene de Adam (d. c. 1290) in their chronicles.<sup>9</sup> Both William of Auvergne (d. 1249), bishop of Paris, and Robert Grosseteste (d. 1253), bishop of Lincoln (whose definition of heresy we have seen in Chapter Two, section 2.2) had learnt astrology in detail before they vehemently condemned it as idolatry or controlled by the devil.<sup>10</sup>

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<sup>9</sup> See Michael David Bailey, *Magic and Superstition in Europe: A Concise History from Antiquity to the Present* (Lanham: Rowman & Littlefield Publishers, 2007), 96. See also Salimbene de Adam, *The Chronicle of Salimbene de Adam*, trans. Joseph Baird, Giuseppe Baglivi, and John Kane (Binghamton: Center for Medieval and Early Renaissance Studies, 1986), 355–356. The most recent critical edition of the Latin text of this chronicle is Salimbene de Adam, *Cronica*, ed. Giuseppe Scalia, CCCM, vols. 125 and 125a (Turnhout: Brepols, 1998). For Frederick II’s reliance on astrologers in daily lives, see also Richard Kieckhefer, *Magic in the Middle Ages*, 2nd ed. (New York: Cambridge University Press, 2014), 123.

<sup>10</sup> See Edward Peters, *The Magician, the Witch, and the Law* (Philadelphia: University of Pennsylvania Press, 1978), 85–86, 89–90. Notably, William of Auvergne in his theological work *De fide et legibus* also admitted that he had read “books of magicians and sorcerers (*libris magorum atque maleficorum*)” when he was young. For the English translation here see Anne Lawrence-Mathers, *Magic and Medieval Society* (New York: Routledge, 2014), 112. The Latin text here reads “[H]aec omnia in libris iudiciorum astronomiae, & in libris magorum atque maleficorum tempore adolescentiae nostrae nos meminimus inspexisse.” William of Auvergne, *Guilielmi Alverni episcopi Parisiensis... Opera omnia* (Venice: Ex Officina Damiani Zenari, 1591), 75.

Demonic magic was not uncommon in thirteenth-century texts.<sup>11</sup> In 1233, just one year before the promulgation of the *Decretales*, Pope Gregory IX sent copies of the letter *Vox in Rama* to secular and ecclesiastical authorities in Germany, together with the inquisitor Konrad von Marburg (d. 1233).<sup>12</sup> This well-known papal letter vividly describes and condemns an alleged demon-worshipping sect, whose practices, “among diverse kinds of heresies (*inter diversas heresum species*),” involved making a pact with an invoked devil in human form (possibly Lucifer) and other diabolical rituals such as kissing a toad or frog.<sup>13</sup>

The *Decretales* and its *Glossa*, however, do not seem to be concerned about diabolical forms of magic, or indeed, most forms of magic. *Vox in Rama* is not included in the *Decretales*, neither as a heresy-related canon nor a magic-related canon. The far-reaching *Canon episcopi* (C. 26, q. 5, c. 12 in the *Decretum*), which, though specifically stating that the belief in night flight was a delusion, in effect shaped the image of beast-riding witches flying at night to attend a sabbath in the Late Middle Ages, does not appear at all in the *Glossa*. The concern over clerics invoking demons, which was quite common from the twelfth century,<sup>14</sup> is only hinted at in X

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<sup>11</sup> Caesarius of Heisterbach famously penned a story in which a knight named Henry, who originally did not believe that demons existed, saw, communicated with, and was thoroughly shocked by a devil thanks to a necromancer named Philip. See Caesarius of Heisterbach, *The Dialogue on Miracles*, vol. 1, 315–317. For the Latin text, see Caesarius of Heisterbach, *Dialogus miraculorum*, vol. 1, 276–278. Ralph of Coggeshall documented a story from Gervais of Tilbury in which a woman, who was possibly a Cathar heretic, avoided execution by invoking evil spirits to lift her into the air from the burning stake. See Bailey, *Magic and Superstition in Europe*, 112. For a translation and critical analysis of this story, see Peters, *The Magician, the Witch, and the Law*, 35–39. For the Latin text of this story, see Ralph of Coggeshall, *Radulphi de Coggeshall Chronicon Anglicanum*, ed. Josephus Stevenson (London: Longman, , 1875), 122–125.

<sup>12</sup> Potthast 9229–9231.

<sup>13</sup> For the Latin texts of the copies of *Vox in Rama*, see Carolus Rodenberg, ed., *Epistolae saeculi XIII e regestis pontificum Romanorum selectae* (Berlin: Apud Weidmannos, 1883), 432–435. For a partial translation, see Alan Kors and Edward Peters, eds., *Witchcraft in Europe, 400–1700: A Documentary History*, 2nd ed. (Philadelphia: University of Pennsylvania Press, 2001), 114–116. This volume also compiles other important texts regarding the history of magic in the medieval intellectual world.

<sup>14</sup> See Peters, *The Magician, the Witch, and the Law*, 48–49.

5.21.2 (where Pope Alexander III (1159–1181) explained that an astrolabe-reading presbyter was not trying to invoke a demon but only to recover stolen church property),<sup>15</sup> and the *Glossa* simply ignores this point. Geomancy, hydromancy, aeromancy, pyromancy, necromancy—in other words, divinatory practices that were often discussed in high medieval literary works such as Hugh of St Victor’s (d. 1141) *Didascalicon*<sup>16</sup>—have no place in the *Glossa*.<sup>17</sup>

The second half of this chapter thus examines the three canons in X 5.21, *De sortilegis* and their ordinary glosses. Three out of the total nine ordinary glosses are analyzed in detail. I show that the *Glossa* pays much more attention to *sors*, i.e., lot-casting (possibly using the Scriptures), compared with *maleficium*; especially the employment of *sors*, in recovering stolen objects as well as in ecclesiastical elections. Toward the end of this chapter, I discuss the practitioners of *maleficium* and *sors* in terms of their relation to medieval religious marginality:

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<sup>15</sup> For a recent overview of the history, functions, and the cases of the application of medieval astrolabes, i.e., the key instrument for calculating the movement of celestial bodies and monastic timekeeping, etc., since its importation into the Latin West shortly after 1000, see John North, “Astronomy and Astrology,” in David C. Lindberg and Michael H. Shank, eds., *The Cambridge History of Science*, vol. 2: Medieval Science (New York: Cambridge University Press, 2013), 456–484. For a catalogue of extant medieval astrolabes, see Sara Schechner, “Astrolabes and Medieval Travel,” in Robert Odell Bork and Andrea Kann, eds., *The Art, Science, and Technology of Medieval Travel* (Aldershot; Burlington: Ashgate, 2008), 192–201. See also Jean-Patrice Boudet, *Entre science et nigromance : astrologie, divination et magie dans l’occident médiéval, XIIIe-XVe siècle* (Paris: Publications de la Sorbonne, 2006), 295–325. Note that none of these studies mentions that astrolabes were ever used for locating lost or stolen property. Richard Kieckhefer mentions in passing that “Astral images could help in ... regaining stolen property.” But he does not offer any reference for this observation. Kieckhefer, *Magic in the Middle Ages*, 132. Michael Bailey, discussing the usages of divination, observes that “The location of lost items could be discovered, or the identity of thieves could be determined in the case of stolen items.” But the usage of an astrolabe in such scenarios is not mentioned. Bailey, *Magic and Superstition in Europe*, 82–83.

<sup>16</sup> Lawrence-Mathers, *Magic and Medieval Society*, 32.

<sup>17</sup> With respect to the objectives of astral-magic rituals, almost no overlap exists between the *Decretales* with the *Glossa* and the wide-spread manual *Picatrix*. The latter is a mid-tenth century Arabic text that was first translated into Spanish in the mid-thirteenth century and into Latin before 1300. From improving or destroying harvests, increasing or harming business, healing mental or physical diseases, to fortifying or demolishing buildings, the objectives of the 2,323 rituals in the *Picatrix* undoubtedly reflect the common goals that people associated with magical means during the High Middle Ages. Yet they play no role in our canonical texts. For an English translation of this text, see Maslamah ibn Aḥmad Majrīṭī, *Picatrix: A Medieval Treatise on Astral Magic; based on the Latin Edition by David Pingree*, trans. Dan Attrell and David Porreca, *Magic in History* (University Park, Pennsylvania: The Pennsylvania State University Press, 2019).

were these people considered member of marginal religious groups by the *Decretales* or the *Glossa*?

Finally, a brief explanation of the use of terminology in this chapter is in order. I choose to keep the words *maleficium* and *sors* in their original form in the canons and the ordinary glosses, since neither “magic” nor “sorcery” can serve as perfect, generalizing words for our purpose here. Specifically, words used in X 4.15 and X 5.21 to describe the actions that we—and Isidore of Seville (d. 636) in the seventh century as well<sup>18</sup>—would understand to be “magical (*magicus*)” are different and do not overlap. *Maleficium* (i.e., sexual impotence caused by evil spells, as mentioned above) appears only in glosses on X 4.15 and *sors* (that is, lot-casting) appears only in the *Glossa* on X 5.21. The word *maleficium* in this chapter is thus not used as a synonym for “magic,” “sorcery,” “evil-doing,” or “witchcraft” in general. Unlike Isidore, the *Glossa* does not show any interest in invoking an overarching concept to generalize these two categories for discussion, nor does it imply any understanding or concern that their practitioners could overlap. The thirteenth-century Aristotelian notion that all kinds of magic (effects) can be traced back to a pact with the Devil (cause),<sup>19</sup> with its theological origin in the Late Antiquity (Augustine of Hippo, d. 430),<sup>20</sup> finds no echo in the ordinary glosses. More importantly, as this chapter will demonstrate below, religious and ecclesiastical concerns around the employment of *sors* occupy the *Glossa* to a much larger extent than those around the *maleficium* and its perpetrators.

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<sup>18</sup> See Isidore of Seville, *The Etymologies of Isidore of Seville*, trans. Stephen A. Barney, J. A. Beach, and Oliver Berghof (Cambridge; New York: Cambridge University Press, 2006), 181–183. For the Latin text, see W. M. Lindsay, ed., *Isidori Hispalensis Episcopi Etymologiarum sive Originum Libri XX*, vol. 1 (Oxford: Clarendon Press, 1911), VIII. ix. *De magis*.

<sup>19</sup> See Hamilton, *Religion in the Medieval West*, 150.

<sup>20</sup> See Peters, *The Magician, the Witch, and the Law*, 6; Lawrence-Mathers, *Magic and Medieval Society*, 75.

## 5.2 *Impedimentum* or *maleficium*: The *Glossa* as a better place to discuss magic

The title of X 4.15, *De frigidis et maleficiatis et impotentia coeundi*, may give the impression that the *Decretales* pays special attention to the connection between sexual frigidity and *maleficium*. The content of the canons centers on whether a marriage can be annulled or confirmed when one of the parties is sexually impotent.<sup>21</sup> Scholarly studies thus often contain over-simplified statements such as the “*Decretals of Gregory IX* clearly admitted that *maleficium* could nullify a marriage, could constitute a form of the impediment of impotence.”<sup>22</sup> But these studies ignore one significant problem: out of the seven canons of X 4.15, none, in fact, uses the word *maleficium* or any Latin terminology which denotes what people nowadays would associate with magic or evil spells. This, of course, is not to say that the canons completely disregard the potential role that could be played by *maleficium* in causing the sexual impotence. But the concern is well veiled. We may detect such an implication in the first canon of X 4.15, where a formula is provided to a wife who wants to divorce her husband due to sexual frigidity *naturae*:

### X 4.15.1

| Transcription  | Translation   |
|--|---|
| ... volo esse mater, volo filios procreare, et ideo maritum accepi, sed quia vir quem accepi, frigidae naturae est, et non potest illa facere, propter quae illum accepi.... | ... I want to be a mother, I want to procreate sons, and therefore I took a husband, but because the man, whom I took, is frigid by nature ( <i>frigidae naturae est</i> ), and cannot do the things on account of which I took him.... |

A similar implication can also be seen in the beginning of X 4.15.5, where Pope Celestine III (1191–1198) paraphrased an inquiry submitted to him:

### X 4.15.5

| Transcription | Translation |
|---------------|-------------|
|---------------|-------------|

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<sup>21</sup> This issue of sexual impotence and the validity of marriage, before the *Decretales*, has already been under debate in the works of the early decretists. See Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 290–292.

<sup>22</sup> Kenneth E. Boccafolo, *The Requirement of Perpetuity for the Impediment of Impotence* (Rome: Università Gregoriana editrice, 1975), 56.

|  |   |
|--|---|
| <p>Coelestinus III.</p> <p>Laudabilem et infra. Requististi, quantum tempus indulgendum sit naturaliter frigidis ad experientiam copulae nuptialis. Nos vero, in praesenti consultatione sentimus, ut, a tempore <u>celebrati</u> coniugii, si <u>frigiditas prius probari non possit</u>, cohabitent per triennium. ...</p> | <p>Celestine III.</p> <p>Praiseworthy, and below. You inquired how much time should be permitted to people who are frigid <i>by nature</i> (<i>naturaliter</i>) [emphasis added] for achieving nuptial coupling. Certainly in the present inquiry we think that if <u>frigidity cannot be proven earlier</u>, from the time that the marriage is <u>celebrated</u> (<i>celebrati coniugii</i>) they should cohabit for three years. ...</p> |
|--|---|

One may argue that such emphasis on the *natural* aspect of the frigidity indicates a concern for the unsaid, artificial impotence caused by magic. However, compared with *Si per sortiaris* (C. 33 q. 1 c. 4) in Gratian's *Decretum*, which deals with marriage and magic-caused sexual impotence in a straightforward manner, canons in the *Decretales* are rather silent on the issue of *maleficium*. Six out of seven canons from X 4.15 come from late twelfth- and early thirteenth-century popes. Yet while Raymond of Peñafort (d. 1275) followed Bernard of Pavia (d. 1213) in *Comp. I.* and gave X 4.15 the title *De frigidis et maleficiatis et impotentia coeundi*, he did not include Pope Clement III's (1187–1191) letter to Odo of Veroli, in which the pope declined to invalidate a marriage in which the husband accused his wife of causing him to be impotent through *maleficium*.<sup>23</sup>

This omission deserves careful consideration, and should not be interpreted as a rejection of authority. Admittedly, the canons in X 4.15 generally agree that the sexual impotence of one party is a valid ground for annulling a marriage. Strictly speaking, however, Clement III's decretal does *not* contradict them. What the pope particularly opposed was annulling the marriage because of impotence *caused by* one of the parties to the marriage. Furthermore, it does

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<sup>23</sup> *Comp. I.* 4.16.4, See Fr. QCA, 51.

not contradict Hincmar's stance in *Si per sortiarias* either. The latter approves separation only when the impotence—caused by sorceresses (*sortiarias*) or female evildoers/magicians (*maleficas*), rather than the wife (at least not pointed out)—cannot be healed through various ecclesiastical remedies. Therefore, even though Raymond stood by the decision of *Si per sortiarias* in his *Summa de poenitentia et matrimonio*,<sup>24</sup> we should not simply interpret the omission of Clement III's letter in the *Decretales* as a rejection of the pope's position.

A more probable explanation would be that Raymond, and possibly Pope Gregory IX (who commissioned the work) as well, did not feel comfortable settling a potentially controversial matter in the *Decretales*, an official textbook of canon law. Indeed, it was not only twelfth- and thirteenth-century canonists who debated the validity of *Si per sortiarias*;<sup>25</sup> even Gregory IX's successor, Pope Innocent IV, was unsure what to do about the issue of separating a married couple because of *maleficium*. Innocent demonstrated this hesitancy in his *Apparatus* on the *Decretales*.<sup>26</sup> In the first place, he thoroughly rejected the idea that *maleficium* could lead to the dissolution of a marriage in his gloss to X 4.15.5,<sup>27</sup> and in the gloss to X 4.15.7, he directly rejected *Si per sortiarias*.<sup>28</sup> However, in another gloss to the same canon X 4.15.7, he acknowledged that *maleficium*, when its effects were permanent, could lead to the annulment of a marriage.<sup>29</sup>

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<sup>24</sup> See Raymond of Peñafort, *Summa Sancti Raymundi de Peniafort Barcinonensis OP de poenitentia et matrimonio: cum glossis Ioannis de Friburgo* (Rome: Ioannis Tallini, 1603), 561.

<sup>25</sup> See Rider, "Between Theology and Popular Practice: Medieval Canonists on Magic and Impotence," 55–57.

<sup>26</sup> This work, though influential, notably did not supersede Bernard's *Glossa* after its appearance in c. 1245.

<sup>27</sup> "Nos dicimus quod propter maleficium numquam separator matrimonium."

<sup>28</sup> "[M]elius videtur quod propter maleficium nullum matrimonium separandum sit, et c. xxxiii. q. i. **Si per sortiarias** non tenet."

<sup>29</sup> "Hic convincitur, quod haec decretio loquitur in maleficiato, ubi distinguendum est, quod si maleficium est temporale, non dirimit matrimonium, si vero est perpetuum dirimit. xxxiii. q. i. **si per sortiarias**. et dicimus perpetuum, quod intra triennium per exorcismos, et orationes non cessat, ut hic. xxxiii. q. i. **si per sortiarias**. Alias

It is the *Glossa* that takes up the hint in X 4.15's heading and draws the issue of magic into discussion, starting from its comment on X 4.15.1. The first part of the canon mandates that, if a husband claims that he is naturally sexually frigid and his wife concurs, the couple may separate. However, the canon continues; if the husband marries another woman after a divorce, he will be adjudicated as having committed perjury, and the previous marriage will be restored.<sup>30</sup> While acknowledging the canon's decision, the *Glossa* invokes a counter argument, citing the aforementioned *Si per sortiarias*:

**X 4.15.1 glos. ord. s.v. reparare**

| Transcription   | Translation  |
|---|--|
| ... matrimonia priora debeant restaurari. <b>infra e. laudabilem.</b> <sup>31</sup> +et <b>infra de frig. et malef., fraternitatis.</b> <sup>32</sup> Item ar. contra, <b>xxxiii. q. i. si per sortiarias.</b> <sup>33</sup> sed ibi separantur propter maleficium, non propter frigiditatem. | ... the previous marriages should be restored, [see] <b>infra e. laudabilem.</b> +and [see] <b>infra de frig. et malef. fraternitatis.</b> + Furthermore, for a counterargument, [see] <b>xxxiii. q. i. si per sortiarias.</b> , but in that case they are separated because of <i>maleficium</i> , not because of sexual frigidity. |

Indeed, Hincmar in *Si per sortiarias* forbade couples who had separated due to sexual frigidity and were remarried to other people to return to their previous marriages. But as the *Glossa* mentions, in *Si per sortiarias* the sexual frigidity is caused by sorceresses (*sortiarias atque maleficas occulto*) with the Devil's help (*diabolo preparante*), not by nature.

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enim non videt esse perpetuum, cum maleficiator illud destructure posset.” Sinebaldus Fliscus (Pope Innocent IV), *Apparatus super decretalibus*, MS Munich BSB Clm 3892, fol. 164r.

<sup>30</sup> X 4.15.1: “Accepisti mulierem et, per aliquod tempus habuisti, per mensem aut per tres, aut per annum, unum nunc primum dixisti, te esse frigidae naturae ita, ut non potuisses coire cum illa, nec cum aliqua alia; si illa, quae uxor tua debuit esse, eadem affirmat, quae tu dicis, et probari per verum iudicium potest, ita esse ut dicitis, separari potestis. Ea tamen ratione, ut si tu post aliam acceperis, reus periurii diiudicaris, et iterum post peractam poenitentiam priora connubia reparare debebis.”

<sup>31</sup> X 4.15.5 [Fr. v.2 cols. 705-706].

<sup>32</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>33</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].



This distinction between *maleficium* and innate sexual frigidity is one of the central themes in the *Glossa* on X 4.15 concerning magic. X 4.15.5, as cited above, implicitly draws such a distinction by discussing people who are frigid *naturaliter* from birth. However, the *Glossa* directly points to the concept of *maleficium* although the canon itself does not. The contrast is apparent. Pope Celestine III seemed to carefully indicate *what kind of* sexual frigidity is involved in the case, in which the couple does not discover the frigidity immediately after the marriage and has to wait for three years. The *Glossa*, nonetheless, immediately understands it to be *maleficium*:

**X 4.15.5 glos. ord. s.v. celebrati and frigiditas** (copied as one gloss in MS F)

| Transcription   | Translation  |
|---|--|
| Quod hic dicitur de frigido, idem intelligo et de maleficiato, ut usque ad triennium expectet, maxime quia magis sperandum est quod impedimentum possit removeri, quod non processit a naturalibus. <u>L.</u> <sup>34</sup> | I understand in the same way what is said here concerning sexual frigidity and <i>maleficium</i> ( <i>maleficiato</i> ), that he should wait up to three years, especially because it ought more to be hoped that an impediment which does not derive from nature is able to be removed. <u>L.</u> |

Surprisingly, after identifying such frigidity as *maleficium*, the gloss does not assign punishment for the perpetrator. This curious disregard for the person behind the *maleficium* will be discussed later in this chapter. The ordinary glosses on two other canons in X 4.15 similarly also mention the concept of *maleficium* in a straightforward manner, although the canons do not.

<sup>34</sup> Although MS F, MS BAV Vat. lat. 11158, fol. 141v (another selected manuscript for the version of the *Glossa* produced between 1234–1243), and the 1582 *ER* assign this gloss to “L.” (MSS) “Laurentius” (1582 *ER*), it does not appear on MS Würzburg, Universitätsbibliothek M.p.th.f. 112, fol. 98r, a selected manuscript for Laurentius Hispanus’ *Apparatus* on *Comp. II* (X 4.15.5 = *Comp. II*. 4.9.3). Both MS BAV Vat. lat. 1365, fol. 539v and MS BAV Vat. lat. 1383, fol. 194v (representing versions of the *Glossa* produced between 1243-c. 1253) assign this gloss to “a.,” while Alanus Anglicus does not seem to have composed an *Apparatus* on *Comp. II*. MS BAV Borgh. 237, fol. 165r assigns it to “J.,” and MS Munich BSB Clm 26301, fol. 184r assigns it to “Ja.” The latter two manuscripts, representing versions of the *Glossa* after 1253 to the death of Bernard in 1266, appear correct: this gloss features in MS Lisboa, Biblioteca Nacional de Portugal, ALC. 381, fol. 110r, a manuscript I selected containing Jacobus Albanus’ *Apparatus* on the *QCA*. The mistake in the 1582 *ER*, therefore, is surprising, is surprising. It seems that the *Correctores Romani* here intentionally consulted the earliest version(s) of the *Glossa*’s manuscripts for their editing work, while ignoring later corrections. This issue deserves a more detailed exploration in a separate project.

X 4.15.6, a letter from Pope Innocent III (1198–1216) to the bishop of Auxerre, concerns a case in which a married woman, at first judged to be incapable of having sex because her vagina is too narrow, after divorce marries another man with whom she can have sex. Her ex-husband remarries too. The central concern of the letter is whether the second marriages should be annulled. In the middle of the canon, Innocent III made a distinction between a divine miracle (*divinum miraculum*) and a human work (*opus humanum*) as solutions for different kinds of frigidity.<sup>35</sup> The *Glossa* here, nevertheless, does not elaborate on this distinction. It immediately replaces what Innocent III called “impedimentum” with “maleficium,” and focuses on whether the *maleficium* is perpetual:<sup>36</sup>

**X 4.15.6 glos. ord. s.v. *divinum miraculum***<sup>37</sup>

| Transcription   | Translation  |
|---|--|
| <p>Ar. quod nullum maleficium est perpetuum, cum possit removeri praeter divinum miraculum, saltem per illum qui ipsum induxit, quia quicquid ligatur, dissolubile est. In <b>aut. de nup. § nuptias</b>.<sup>38</sup> Et secundum hoc non tenet illud capitulum <b>si per sortiarias. xxxiii. q. i.</b><sup>39</sup> ubi quidam dicunt. ....</p> <p>Vel potest dici quod maleficium est perpetuum, ex quo enim mulier cohabitavit viro per triennium, et dederunt operam copulae carnali, nec potuerunt commisceri, praesumitur perpetuum impedimentum, et</p> | <p>The argument is that no <i>maleficium</i> is permanent, when it could be removed through a divine miracle, at least by the one who induced it [i.e., <i>maleficium</i>], because whatever is bound is dissoluble. [See] in <b>aut. de nup. § nuptias</b>. And according to this idea, the canon <b>si per sortiarias. xxxiii. q. i.</b> does not hold, where someone say. ....</p> <p>Or it can be said that <i>maleficium</i> is permanent, since, namely, the woman lived together with the man for three years, and they tried to achieve carnal union, [but] they could not be sexually united, the perpetual impediment is presumed, they may be</p> |

<sup>35</sup> X 4.15.6 [Fr. v.2 cols. 706-707]: “[N]os tamen, perspicaciter attendentes, quod impedimentum illud non erat perpetuum, quod praeter divinum miraculum per opus humanum absque corporali periculo potuit removeri.”

<sup>36</sup> On medieval discussions around the issue the perpetuity of *maleficium*, see Boccafolo, *The Requirement of Perpetuity for the Impediment of Impotence*, 54–61.

<sup>37</sup> Starting from this point till the end of this title, the *lemmata* for the glosses are not copied in the MS F.

<sup>38</sup> Nov. 22.3.

<sup>39</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

|   |   |
|---|---|
| possunt separari et alteri nubere: ut <b>c. si per sortiarias.</b> <sup>40</sup> .... | separated and marry someone else: as [in] <b>c. si per sortiarias.</b> .... |
|---|---|

In effect, the gloss straightforwardly reveals for its readers an aspect of this legal case that Innocent III seemed to avoid mentioning: a situation in which a woman is incapable of having sex with her first husband that was caused by *maleficium*. Clearly, this gloss inspired Pope Innocent IV's comments on X 4.15.7 in his *Apparatus* on the *Decretales*. There the lawyer pope distinguished perpetual frigidity from temporary impediment by considering whether exorcism (*exorcismos*) or prayers could remove the *maleficium* (see above, n. 27). It is noteworthy that in his comment, the pope, under the *Glossa*'s influence, did not avoid identifying the case as an incident of *maleficium*, unlike his namesake predecessor in X 4.15.6.

The *Glossa*'s reasoning behind its determination of whether an impediment is caused by nature or by *maleficium* is simple: whether the sexually frigid person is impotent with one partner or with all partners. This reasoning appears in a gloss on X 4.15.7, where again, the *Glossa* raises the issue of *maleficium* where the canon does not. X 4.15.7, from Pope Honorius III (1216–1227), contains a similar story in which a husband has been sexually impotent with his

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<sup>40</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

wife for seven years, but claims that he used to have sexual experience with others. The *Glossa* immediately points out here that this is *maleficium* at work.

**X 4.15.7 glos. ord. s.v. cognoscendi alias**

| Transcription  | Translation  |
|--|--|
| Et ita allegebat iste maleficium quantum ad istam, et non quantum ad alias, et non frigiditatem. Quia si quis est frigidus quo ad +unam, quo ad+ omnes est frigidus, cum impedimentum a natura procedat, ar. <b>supra e. ex litteris.</b> <sup>41</sup> .... | And thus he alleged <i>maleficium</i> , and not sexual frigidity, against her, and not so against the others. Because when the impediment proceeds from nature, if someone is sexually frigid toward one, he is frigid toward all, [see] <b>supra e. ex litteris.</b> .... |

In sum, the kind of observation in scholarly studies mentioned at the beginning of this section (i.e., “*Decretals* of Gregory IX clearly admitted that *maleficium* could nullify a marriage”) is not inherently wrong in terms of the legal position, but such stance can only be clearly extracted from the *Decretales*—for medieval law students as well—with the critical aid of the *Glossa*. The *Glossa* does not shy away from stating that *maleficium* was a cause of marriage disputes, possibly because its author did not feel uncertain (compared with Church authorities such as Pope Innocent IV) about whether the circumstances described in the example could legitimately lead to divorce; after all, the *Glossa*’s mission is clarification.

**5.3 Sorcerer or Sorceress: Disregard of Perpetrator and Punishment**

Curiously, while the *Glossa* on X 4.15, as demonstrated above, is upfront about the issue of *maleficium* (unlike the canons), it does not pay much attention to either the practitioners of *maleficium* or its punishment. The glosses examined above—X 4.15.1 *glos. ord. s.v. reparare*, X 4.15.5 *glos. ord. s.v. frigiditas*, X 4.15.6 *glos. ord. s.v. divinum miraculum*, and X 4.15.7 *glos.*

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<sup>41</sup> X 4.15.3 [Fr. v.2 col. 705].

*ord. s.v. cognoscendi alias*—essentially constitute the entire content of the *Glossa* on X 4.15 which directly mentions *maleficium*,<sup>42</sup> yet none of them consider the punishment for such deeds.

This disregard of punishment is also apparent when the *Glossa* discusses the person who inflicts the *maleficium*. In X 4.15.6 *glos. ord. s.v. divinum miraculum*, the perpetrator, in a rather abstract way, is mentioned in passing as “he who induced it [i.e., the *maleficium*] (*illum qui ipsum induxit*)”<sup>43</sup> with no chastisement indicated against him. This is the only case in the *Glossa* on X 4.15 where an perpetrator appears.

Furthermore, the *Glossa* does not seem to associate the act of *maleficium* with a specific gender exclusively. In X 4.15.6 *glos. ord. s.v. divinum miraculum*, the perpetrator behind the *maleficium* is clearly understood to be male. Considering the fact that X 4.15.6, on which this gloss comments, deals with a case where a wife is sexually frigid *only* with her husband, we have reason to assume that the *Glossa* here suspects the husband to be the perpetrator. X 4.15.7, on the other hand, contains a somewhat opposite story to that in X 4.15.6, in that a husband claims that he is capable of having sex with other women, but not his wife. Nevertheless, the *Glossa*, while contemplating the possibility of *maleficium* in this case, as demonstrated above, does not similarly imply that the perpetrator is a woman or even the wife in question. Actually, the *Glossa* does not mention anything about the perpetrator in X 4.15.7 *glos. ord. s.v. cognoscendi alias*.

Furthermore, nothing was added, as the selected manuscripts demonstrate, between the

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<sup>42</sup> To complete list one only need to add the short X 4.15.5 *glos. ord. s.v. separentur*, which simply points to *Si per sortiarias*: “Propter naturalem frigiditatem; secus si propter maleficium, **xxxiii. q. i. si per sortiarias.**,” and X 4.15.7 *glos. ord. s.v. continuum triennium*, in which *maleficium* is mentioned passingly: “Idem tempus dico dandum maleficiato, et multo fortius, cum sit accidentale illud impedimentum.”

<sup>43</sup> “Ar. quod nullum maleficium est perpetuum, cum possit removeri praeter divinum miraculum, saltem per illum qui ipsum induxit... Quia potest esse aliquis maleficiatus cum una, et non cum alia. Et hoc intellige de maleficio quod praecessit matrimonium, nam post matrimonium contractum si superveniat impedimentum, non debent separari.”

emergence of the *Glossa* in the late 1230s and Bernard's death in 1266. In other words, through the second and the third quarters of the thirteenth century, Bernard—and his teaching environment in the law school in Bologna—did not appear to consider it as necessary to discuss the “evildoer.”

As the age of European witch-hunting was centuries away, it seems safe to conclude that the *Glossa* in the mid-thirteenth century did not understand *maleficium* as exclusively perpetrated by women. Indeed, by contrast, the perpetrators in the intellectual works contemporary with the *Glossa*, together with famous contemporary cases such as Philip II Augustus's troubled marriage and the *maleficium* case described in Pope Clement III's letter to Bishop Odo,<sup>44</sup> are all women. Yet, the image of a woman magician, or “sorceress,” does not appear in the *Glossa*.

It is, however, equally important to note that, although the only ordinary gloss on X 4.15 that mentions the perpetrator of *maleficium* associates such action with a man, one should not assume that the *Glossa* understands *maleficium* to be an exclusively male behavior. An examination of the allegations in the glosses investigated above demonstrates that the *Glossa* relies heavily on the canon *Si per sortiarias*: X 4.15.1 *glos. ord. s.v. reparare*, X 4.15.6 *glos. ord. s.v. divinum miraculum*, X 4.15.7 *glos. ord. s.v. cognoscendi alias* (X 4.15.7), together with X 4.15.5 *glos. ord. s.v. separentur* (see n. 42); all cite this influential canon in Gratian's *Decretum*. In fact, X 4.15.6 *glos. ord. s.v. divinum miraculum* refers to this canon three times. But the canon, in contrast to the *Glossa*, begins by pointing to sorceresses (*sortiarias atque maleficas*

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<sup>44</sup> To this list one can also add the sorceress story in the Benedictine monk Guibert de Nogent's *Monodies*, in which his mother at first suffered from his step grandmother's “wicked arts” that prevented his parents from consummating the marriage for seven years. In the end, it was also “a certain old woman” that lifted the *maleficium*. Notably, Guibert also mentioned that such cases were “frequently done” and were well-known among common people. For a translation of this text, see Lawrence-Mathers, *Magic and Medieval Society*, 122.

*occulto*) as the practitioners. Thus, we may safely conclude that the infliction of *maleficium*, to the *Glossa*, is not a gender-specific issue.

The investigation above has shown that although the *Glossa*, unlike the canons, does not avoid the topic of *maleficium*, it does not consider seriously the perpetrator nor the punishment. As a legal textbook, its focus on *maleficium* originates entirely in the marriage disputes that arise from it. In other words, the *Glossa* is only concerned about the differentiation between permanent and impermanent frigidity induced through *maleficium* and whether such conditions could lead to legitimate divorce. In contrast to the magic of *sors* or divination—as this chapter will demonstrate below—the *Glossa* also does not delve into the potentially problematic theological implications of *maleficium* (such as demonic/ idolatrous connotations, etc.) or other forms of magic. *Si per sortiarias* apparently associates *maleficium* with the cooperation of the Devil (*diabolo preparante*). But the *Glossa* contains no trace of interest in highlighting or even acknowledging this aspect. In sum, in terms of *maleficium* itself, no ordinary gloss indicates that Bernard was interested in *maleficium* itself as a serious legal subject.

This lack of interest in *maleficium* in the juridical-educational realm seems to converge with—or perhaps even have informed—a similar lack of interest by the contemporary papacy. In the late 1250s, for example, Pope Alexander IV (1254–1261) ordered inquisitors to avoid judging cases about magic as long as they did not concern heresy.<sup>45</sup> In conclusion, despite the biblical precept “You shall not permit a female sorcerer to live (*Maleficos non patieris vivere*)” in Exodus 22:18 (NRSV), traditions considering the concept of *maleficium* to be demon/idol-

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<sup>45</sup> See Peters, *The Magician, the Witch, and the Law*, 99–100. Kieckhefer, *Magic in the Middle Ages*, 191.

related as in canon 6 of the Council of Elvira (306)<sup>46</sup> or Isidore of Seville's *Etymologiae*,<sup>47</sup> and contemporary theologians' negative attitude toward it, with respect legal training and practice, the Church did not pay much attention to the perpetrator nor the infliction of *maleficium* at this point. The form of magic that caught the serious attention of the *Decretales* and its *Glossa* is lot-casting, or *sors*, which this chapter will discuss now.

#### 5.4 From “not evil by nature” to “enemies of Christ”

X 5.21, entitled *De sortilegis*, treats the employment of *sortilegia/sors*, consultation of an astrolabe, and the use of *sors* in episcopal elections. It contains three canons. The first canon comes from the eighth-century *Paenitentiale Theodori* and assigns a punishment to people who make use of divinatory means—*sors divinatoria* in Thomas Aquinas' categorization of *sors*, which will be discussed further below—to recover stolen items. The second canon, which is from a letter by Pope Alexander III to the Patriarch of Grado, similarly targets a presbyter who resorts to an astrolabe in order to search for a lost item belonging a church. The third canon, from Pope Honorius III to the cathedral chapter of Lucca, deals with the use of *sortes consultoria* in an episcopal election: three candidates for an episcopal see were chosen through lot-casting. As this summary demonstrates, unlike X 4.15, this title's canons do not avoid pointing out the forms of magic. The *Glossa* is also relatively more concerned, as this chapter will demonstrate below, about these behaviors as subjects of legal thinking and training.

First and foremost, compared with the treatment of *maleficium* in X 4.15, the *Glossa* on X 5.21 pays attention to the theological implications of *sors*, particularly the repetition of it.

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<sup>46</sup> See Herbert Thurston, “Witchcraft,” in CE, vol. 15, 674–677.

<sup>47</sup> See Isidore of Seville, *The Etymologies of Isidore of Seville*, 182. See also Lindsay, ed., *Isidori Hispalensis Episcopi Etymologiarum sive Originum Libri XX*, vol. 1, VIII. ix. 9-10 for the Latin text.



From the very beginning, as shown in X 5.21.1 *glos. ord. s.v. sorte* below, the concepts of idolatry and demons were invoked by the glossator to discuss the potential danger of employing *sors* repeatedly.

**X 5.21.1 *glos. ord. s.v. sorte***

| Transcription  | Translation   |
|--|---|
| <p>Sic electio per sortem non est facienda, et <b>infra e. c. ult.</b><sup>48</sup> Ar. contra. <b>xxvi. q. ii. sors.</b><sup>49</sup> et <b>c. hii. qui.</b><sup>50</sup> Licet sors in sui natura non sit mala, tamen, prohibetur, ne propter assiduitatem labantur in ydololatram, sicut est in eo iuramento. <b>xxii. q. i. considera.</b><sup>51</sup> et illud <b>c. hii.</b><sup>52</sup> qui loquitur de comparatiua permissione, ibi, potius permittuntur sortes, quam ad daemonia consulenda concurrant, et propter divinationes futuras sortes prohibentur, ut hic patet, et <b>xxvi. q. ii. illud.</b><sup>53</sup> et <b>q. v. c. sortes.</b><sup>54</sup> et <b>c. peruenit.</b><sup>55</sup> Quandoque tamen permittitur per sortem aliquid fieri, ut dicitur <b>infra e. c. ulti.</b><sup>56</sup></p> | <p>Thus, an election should not be performed through <i>sors</i>, and [see] <b>infra e. c. ult.</b> For a counterargument, [see] <b>xxvi. q. ii. sors.</b> and <b>c. hii. qui.</b> Although <i>sors</i> is not evil by nature, however, it should be prohibited, lest because of repetition they may slip into idolatry, just as it is in the case of oath. [See] <b>xxii. q. i. considera.</b> and the aforementioned <b>c. hii.</b>, which discusses comparative permission (<i>comparatiua permissione</i>), where it is better for <i>sortes</i> to be permitted than people going to demons for consultation because <i>sortes</i> are prohibited in terms of predicting the future, as it demonstrates here, and [in] <b>xxvi. q. ii. illud.</b>, <b>q. v. c. sortes.</b>, and <b>c. peruenit.</b> [Regarding] under what circumstance, however, is one permitted to be elected through sorcery, see <b>infra e. c. ulti.</b></p> |

An examination of the allegations demonstrates that the *Glossa* here seems to be relying, to a large extent, on an Augustinian—or in general Late-Antique—tradition preserved in

<sup>48</sup> X 5.21.3 [Fr. v.2 col. 823].

<sup>49</sup> C. 26 q. 2 c.1 [Fr. v.1 col. 1020].

<sup>50</sup> C. 26 q. 2 c. 3 [Fr. v.1 col. 1021].

<sup>51</sup> C. 22 q. 1 c. 8 [Fr. v.1 col. 863].

<sup>52</sup> C. 26 q. 2 c. 3 [Fr. v.1 col. 1021].

<sup>53</sup> C. 26 q. 2 c. 6 [Fr. v.1 col. 1021-1022].

<sup>54</sup> C. 26 q. 5 c. 7 [Fr. v.1 col. 1029].

<sup>55</sup> C. 26 q. 5. c. 8 [Fr. v.1 col. 1029].

<sup>56</sup> X 5.21.3 [Fr. v.2 col. 823].

Gratian's *Decretum*. Out of the nine allegations in this gloss, four come from Augustine (with C. 26 q. 2 c. 3 cited twice) and one from Jerome. But significantly, they do not follow the more influential, Augustinian condemnation of all forms of magic as products of the Devil's deception.<sup>57</sup> As mentioned at the beginning of this chapter, this Augustinian argument does not appear in the *Glossa*. Rather, the ideas that (1) *sors* is not by nature evil and is preferable compared with consulting the demons, but (2) it is better to avoid *sors* since it may lead to idolatry through repetition, are clearly laid out in the first two Augustinian texts.<sup>58</sup> This thread of less vitriolic Augustinian theological understanding of *sors* thus was carried, through Gratian's *Decretum*, into thirteenth-century legal education.

But earlier scholarship, without further delving into the allegations, did not recognize that the *Glossa* also inherits from the *Decretum* a much harsher, non-Augustinian message on *sors*, especially in terms of the applicable punishments. C. 26 q. 5 c. 7 and 8, respectively from Popes Leo IV (847–855) and Gregory I (590–604), condemn *sors* by forbidding its practice with the threat of anathema, commanding that it not be mentioned among Christians, and even calling the practitioners of *sors*—together with those who cast spells (*incantatores*)—enemies of Christ

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<sup>57</sup> Peters, *The Magician, the Witch, and the Law*, 6.

<sup>58</sup> C. 26 q. 2 c. 1 [Fr. v.1 cols. 1020]: “Sors non est aliquid mali, sed res in humana dubietate diuinam indicans uoluntatem.” C. 26 q. 2 c. 3 [Fr. v.1 col. 1021]: “Hii, qui de paginis euangelicis sortes legunt, etsi optandum est, ut id potius faciant, quam ad demonia consulenda concurrant, tamen ista michi displicet consuetudo, ad negocia secularia et ad uitae huius uanitatem diuina oracula uelle conuertere.”

(*Christi inimicos*).<sup>59</sup> It seems to be in the spirit of this tradition that, in the following gloss, the *Glossa* adds additional punishments to the forty-day penance assigned in X 5.21.1.<sup>60</sup>

**X 5.21.1 glos. ord. s.v. xl. dies**

| Transcription  | Translation   |
|--|---|
| Si laicus fuerit, communionem ecclesiae privetur; si vero clericus, officio et beneficio potest privari. <b>xxvi. q. v. non oportet.</b> <sup>61</sup> et <b>duobus c. sequentibus.</b> <sup>62</sup> Et ar. <b>infra c. proxi.</b> <sup>63</sup> contra ar. <b>infra e. c. ulti.</b> <sup>64</sup> ubi non puniuntur. | If he is a layman he should be excommunicated, if he is a cleric he should be deprived of his office and benefice. [See] <b>xxvi. q. v. non oportet.</b> and <b>the two following canons (<i>duobus c. sequentibus.</i>)</b> . And the argument [in] <b>infra c. proxi.</b> For a counterargument [see] <b>infra e. c. ulti.</b> , where they are not punished. |

This gloss above, in terms of the punishments assigned, distinguishes lay from clerical practitioners of *sors*—a particular distinction made in X 5.21 and especially its *Glossa*, to which we will return soon. For now, however, it should be noted that concerning the length of penance, the *Glossa* seems to hold a different—and *harsher*—opinion compared to that in X 5.21.1. This appears in a gloss to X 5.21.2. In this canon, as mentioned above, Pope Alexander III ordered the Patriarch of Grado to assign a penance of “one year and more (*annum et amplius*),” if the latter sees fit (*si tibi visum fuerit*), to a presbyter who enters a hidden place and uses an astrolabe in

<sup>59</sup> C. 26 q. 5 c. 7 [Fr. v.1 col. 1029]: “Sortes, quibus cuncta uos a uestris discriminatis prouinciis, (quas Patres dampnauerunt) nichil aliud quam diuinationes et maleficia esse discernimus. Quamobrem uolumus illas omnino dampnari, et ultra inter Christianos nolumus nominari, et ne exerceantur anathematis interdicto prohibemus.” C. 26 q. 5 c. 8 [Fr. v.1 col. 1029]: “Peruenit ad nos, quod quosdam incantatores atque sortilegos fueris insecutus, et omnino nobis sollicitudinem zelumque tuum gratum fuisse cognoscas. Studii enim tui sit sollicite querere, et, quoscumque huiusmodi Christi inimicos inueneris, districta ultione corrigere.”

<sup>60</sup> X 5.21.1 [Fr. v.2 col. 822]: “In tabulis, vel codicibus, aut aliis, sorte furta non sunt requirenda, nec diuinationes aliquas in aliquibus rebus quis observare praesumat. Qui autem contra fecerit, xl. dies peniteat.”

<sup>61</sup> C. 26 q. 5 c. 4 [Fr. v.1 col. 1028].

<sup>62</sup> Possibly denoting C. 26 q. 5 c. 5 and 6 [Fr. v.1 col. 1028] and [Fr. v.1 col. 1028].

<sup>63</sup> X 5.21.2 [Fr. v.2 cols. 822-823].

<sup>64</sup> X 5.21.3 [Fr. v.2 col. 823].

order to retrieve property stolen from a church.<sup>65</sup> X 5.21.2 *glos. ord. s.v. et amplius, sit tibi*, following this decretal, claims that the period of penance is arbitrary (*arbitrarium*), but in particular emphasizes that the penance should not be less than a year since the pope prescribed it, whose judgment is “higher than the episcopal arbitration (*supra est ad arbitrium episcopi*).”<sup>66</sup>

This inclination toward stricter punishment and the inclusion of non-Augustinian critiques of *sors* demonstrate the threat of *sors* in the eyes of the *Glossa*. Such concern does not exist in the ordinary glosses on X 4.15 against *maleficium*. In fact, no gloss, and certainly no canon under that title, ever condemns *maleficium*. However, in the context of prohibiting *sors*, one of the allegations invoked by X 5.21.1 *glos. ord. s.v. sorte*, transcribed and translated above, directly condemns *sors*, *divinationes*, and *maleficia*, prescribing anathema as the appropriate punishment (see above, n. 57).

## 5.5 Ecclesiastical Concern: Episcopal Election

Concern over the theological threat, or the danger of slipping into idolatry/demonic association, is but one side of the *Glossa* on X 5.21. The essential issue that the *Glossa* wrestles with throughout X 5.21 focuses on clerics, specifically (1) whether *sors* can be employed in an episcopal election, and (2) how to reconcile the contradictions among papal permission, traditional condemnations, and biblical precedents in terms of their treatment of *sors*.

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<sup>65</sup> X 5.21.2: “Ex tuarum tenore litterarum accepimus, quod V. presbyter cum quodam infami, ad privatum locum accessit, non ea intentione ut invocaret daemonium: sed ut inspectione astrolabii furtum cuiusdam ecclesiae posset recuperare. Verum licet hoc ex bono zelo, et simplicitate se fecisse proponat: id tamen gravissimum fuit, et non modicam inde maculam peccati contraxit: et infra. Mandamus, quatenus talem ei pro expiatione illius delicti penitentiam imponas, quod per annum et amplius, si tibi visum fuerit, eum ab altaris ministerio praecipias abstinere: et extunc liberum sit ei sacerdotis officium exercere.”

<sup>66</sup> X 5.21.2 *glos. ord. s.v. et amplius, sit tibi*: “Et ita tempus penitentiae arbitrarium est. **xxvi. q. vii. tempora plenitudinis**. Sed minorem penitentiam anno non posset, ex quo Papa annum sibi praesixit, sed supra est ad arbitrium episcopi.”

In the first place, in the canons themselves there is a distinction between laymen and clerics as practitioners of divination, with an emphasis on clergy. Except for the canon from the *Paenitentiale Theodori*, which does not specify the status of the *sortilegi*, the remaining two canons, X 5.21.2 and 3, both target clerics. One legislates against a presbyter using an astrolabe to find church property; the other condemns the use of *sors* to select candidates for episcopal elections.<sup>67</sup> This can also be detected from the allegations. In X 5.21.1 *glos. ord. s.v. xl. dies* translated above, for instance, four out of five allegations, all from the canonical tradition, particularly target people in clerical orders, prohibiting them under threat of excommunication, deposition, and/or monastic incarceration from (1) becoming magicians or enchanters; (2) consulting all kinds of magicians including *sortilegos*; and (3) employing divinatory practices such as astrolabe-consultation or *sortes sanctorum*.<sup>68</sup> Furthermore, the first allegation in X 5.21.2 *glos. ord. s.v. bono zelo*, referring to X 5.9.2 (see Chapter Four, section 4.5) points out another

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<sup>67</sup> Notably, the latter and the decretalistic discussions around it have been treated by Patrick Hersperger in Patrick Hersperger, *Kirche, Magie und "Aberglaube": Superstitio in der Kanonistik des 12. und 13. Jahrhunderts* (Cologne: Böhlau, 2010), 347–351; Patrick Hersperger, "Die Dekretale ‚Ecclesia vestra nuper‘ von Honorius III. in der Rezeption verschiedener werke der klassischen Kanonistik," in *Päpste, Pilger, Pönitentiarie: Festschrift für Ludwig Schmutge zum 65. Geburtstag* (Tübingen: Niemeyer, 2004), 31–48. Nevertheless, Hersperger generally does not delve into the allegations in the *Glossa* and the interconnections between the glosses, nor does he juxtapose this canon with the treatment of *maleficium* in the *Glossa*.

<sup>68</sup> C. 26 q. 5 c. 4 [Fr. v.1 col. 1028]: "Non oportet sacris offitiis deditos uel clericos magos aut incantatores existere, aut facere philacteria, que animarum suarum uincula conprobantur. Hos autem, qui talibus rebus utuntur, proici ab ecclesia iussimus." C. 26 q. 5 c. 5 [Fr. v.1 col. 1028]: "Si quis episcopus, aut presbiter, siue diaconus, uel quilibet de ordinibus clericorum aruspices, aut incantatores, aut ariolos, aut certe augures uel sortilegos, uel qui profitentur artem magicam, aut aliquos eorum similia exercentes consuluisse fuerit deprehensus, ab honore dignitatis suae suspensus monasterii curam excipiat, ibique penitentie perpetuae deditus scelus admissum sacrilegii soluat." C. 26 q. 5 c. 6 [Fr. v.1 col. 1028]: "Aliquanti clerici siue laici student auguries, et sub nomine fictae religionis per eas, quas sanctorum Patrum sortes uocant, diuinationis scientiam profitentur, aut quarumcumque scripturarum inspectione futura promittunt. Hoc quicumque clericus aut laicus detectus fuerit uel consulere uel docere, ab ecclesia habeatur extraneus." X 5.21.2: "Ex tuarum tenore litterarum accepimus, quod V. presbyter cum quodam infami, ad privatam locum accessit, non ea intentione ut invocaret daemonium: sed ut inspectione astrolabii furtum cuiusdam ecclesiae posset recuperare. Verum licet hoc ex bono zelo, et simplicitate se fecisse proponat: id tamen gravissimum fuit, et non modicum inde maculam peccati contraxit: et infra. Mandamus, quatenus talem ei pro expiatione illius delicti penitentiam imponas, quod per annum et amplius, si tibi visum fuerit, eum ab altaris ministerio praecipias abstinere: et extunc liberum sit ei sacerdotis officium exercere."

case where the clergy would face punishment for interacting with *sortilegarum*: taking the latter's advice to offer repetition of baptism to cure brothers suffering from illness.

In particular, the *Glossa* demonstrates a strong interest in the issue of ecclesiastical elections, to the extent of overshadowing its discussion of the religious dangers of repeatedly employing *sors*. This tendency is revealed through the fact that more than half of the overall content of the *Glossa* on X 5.21 is dedicated to this subject. Starting from the beginning of X 5.21.1 *glos. ord. s.v. sorte*, i.e., the very first gloss to X 5.21 (see above, which does not concern election), the glossator tried to draw the law students' attention to the question of election: "an election should not be performed through sorcery," and quickly pointed them to X 5.21.3. The longest gloss in the *Glossa*, X 5.21.3 *glos. ord. s.v. potestatem*—with a substantial addition appended after the first version, showing Bernard's lasting concern over this issue it during the thirteenth century—is devoted to discussing part of the electoral procedure described in the canon, with no hint of concern over *sors* or magic in general.

But X 5.21.3 presents a complicated challenge to the *Glossa*. In this decretal Pope Honorius III on the one hand condemns the use of *sors* in future elections, while, on the other hand, approves the employment of *sors* by the cathedral chapter of Lucca to choose candidates for their episcopal election. The *Glossa* is quick to note that this canon, with its mixed message, can contradict canonical traditions in different ways. Right after invoking it at the beginning of X 5.21.1 *glos. ord. s.v. sorte*, the glossator presented the two relatively mild Augustinian canons as counter evidence. Augustine in those texts claims that "*sors* is not something evil (*[s]ors non est aliquid mali*)" and that it is better (though not encouraged) to use it than to consult demons—two points repeated almost verbatim in the gloss' comment. At the end of this gloss, X 5.21.3 appears again, this time, however, as a source for the conditional permission to use *sors* in elections.

Then, in the following gloss, X 5.21.1 *glos. ord. s.v. xl. dies*, after listing punishments for lay and clerical practitioners of *sors* that are not contained in X 5.21.1, the *Glossa* again invokes X 5.21.3. This time it is employed as support for a counterargument that assigns no punishment to the clerical performers of *sors*. In the end, no effort is made in the *Glossa* on this canon to deal with the contradictions. Students of law learn from the glosses, and especially their allegations, both the mild, Augustinian theological understanding of *sors* and the harsh, non-Augustinian treatment of practitioners of *sors*. In terms of the use of *sors* in elections, especially episcopal elections, they are left with a no less complicated message than X 5.21.3 itself.

A clearer discussion on this issue, nevertheless, lies in the last ordinary glosses on X 5.21:

**X 5.21.3 *glos. ord. s.v. in electionibus***

| Transcription   | Translation  |
|---|--|
| <p>Per hoc quod dicit, in electionibus, videtur, quod in aliis usum sortis non reprobet. Ar. <b>xxv. di. qualis.</b><sup>69</sup> et <b>ff. de iudic. cum praetor.</b><sup>70</sup> <b>ff. de testi. ex eo.</b><sup>71</sup> et <b>xv. q. iii. de crimine.</b><sup>72</sup> Praeterea in multis casibus usum sortis admittimus. <b>ff. de iudic. sed cum ambo.</b><sup>73</sup> <b>ff. fa. herc. si quae sunt.</b><sup>74</sup> <b>C. contraria de l. si duobus. circa prin.</b><sup>75</sup></p> <p>Sed quare prohibetur usus talis in electionibus? Nonne Matthyias sorte electus</p> | <p>By this he says in “in electionibus,” it seems that he would not condemn the use of <i>sors</i> in other [situations]. [See] the argument [in] <b>xxv. di. qualis.</b>, <b>ff. de iudic. cum praetor.</b>, <b>ff. de testi. ex eo.</b>, and <b>xv. q. iii. de crimine.</b> Moreover, in many cases we allow the use of <i>sors</i>. [See] <b>ff. de iudic. sed cum ambo.</b>, <b>ff. fa. herc. si quae sunt.</b>, [and] <b>C. contraria de l. si duobus. circa prin.</b></p> <p>But why is such use prohibited in elections? Was not Matthias elected by <i>sors</i>? [See] <b>xxi.</b></p> |

<sup>69</sup> Dist. 25 c. 4 [Fr. v.1 col. 94].

<sup>70</sup> Dig. 5.1.12.

<sup>71</sup> Dig. 22.5.18.

<sup>72</sup> C. 15 q. 3 c. 1 [Fr. v.1 col. 751].

<sup>73</sup> Dig. 5.1.14.

<sup>74</sup> Dig. 10.2 (*Familiae erciscundae*).5.

<sup>75</sup> Cod. 6.43.3.

fuit? **xxi. dist. clericos. in prin.**<sup>76</sup> Et sors non est aliquid mali. **xxvi. q. ii. sors.**<sup>77</sup> Dicas quibus licet Mathias vel Ionas sorte fuissent electi, non tamen eorum exemplo eligendus est aliquis per sortem, ut **xxvi. q. ii. non statim.**<sup>78</sup> **non exemplo.**<sup>79</sup> quia illud factum fuit divina inspiratione. sic. **xiii. q. v. dixit.**<sup>80</sup>

Quod autem dicitur, sors non est aliquid mali, verum est considerata in se, sed ex causa prohibetur, ut dixi **supra e. c. i.**<sup>81</sup> Et praeterea hic non fuit servata forma concilii., **supra de elect. quia propter.**,<sup>82</sup> ut videtur.

Propter dissensiones vero et lites dirimendas sortes admittuntur<sup>83</sup> circa iudicia, ut dicunt praedictae leges, in quo casu potest intelligi, **c. illud. sors.**<sup>84</sup> Sed in electionibus licet ibi sit discordia, non licet per iura praedicta. +Ber.+

**dist.**<sup>85</sup> **cleros. in prin.** And [the use of] *sors* is not anything bad. [See] **xxvi. q. ii. sors.** You should say that although Matthias and Jonah had been elected by *sors*, nevertheless, one should not follow their example and be elected by *sors*, as [in] **xxvi. q. ii. non statim.** [and] **non exemplo.**: because that had been done by the divine inspiration, as [in] **xiii. q. v. dixit.**

What is said, [namely that] *sors* is not something wicked, is, considered in and of itself, true, but it is prohibited according to circumstances, as I said [in] **supra e. c. i.** And moreover, the procedure [prescribed] by the council (*forma concilii*) was not followed here, [see] **supra de elect. quia. propter.**, as it seems.

But the drawing of lots is permitted for settling quarrels and litigation in regard to lawsuits/trials/judgments, as the aforementioned laws say, in which circumstance **c. illud. sors.** can be understood. But in elections, although there would be disagreement, it is not allowed by the aforementioned laws. +Ber.+

<sup>76</sup> “31. dist” in the 1582 *ER*, which is likely a mistake. Dist. 21 c. 1 [Fr. v.1 cols. 67-69].

<sup>77</sup> C. 26 q. 2 c.1 [Fr. v.1 col. 1020].

<sup>78</sup> C. 26 q. 2 c. 2 [Fr. v.1 col. 1021].

<sup>79</sup> C. 26 q. 2 c. 4 [Fr. v.1 col. 1021].

<sup>80</sup> C. 14 q. 5 c. 12 [Fr. v.1 col. 741].

<sup>81</sup> X 5.21.1 [Fr. v.2 col. 822].

<sup>82</sup> X 1.6.42 [Fr. v.2 cols. 88-89].

<sup>83</sup> In the 1582 *ER* it is “sors admittitur.” In other words, *sors* is used in its singular form.

<sup>84</sup> C. 26 q. 2 c.1 [Fr. v.1 col. 1020]?

<sup>85</sup> “31. dist” in the 1582 *ER*.



The first four allegations, which follow the opening claim that the pope seems to allow *sors* in other situations, deserve special investigation: none of them deal with *sors* or anything relating to magic. They demonstrate an important, general feature of the *Glossa*'s judicial treatment of subjects, yet no scholars thus far seem to have noted this. A quick summary of these allegations is in order here. The first one comes from Pope Gregory I's *Dialogues* and argues that some sins, such as blasphemy against the Holy Spirit, cannot be forgiven without the "fire of purgatory (*purgationis ignis*)."<sup>86</sup> However, some small and unimportant sins (*paruis minimisque peccatis*)—such as immoderate laughter/ ridicule (*immoderatus risus*)—can and should be forgiven in this life.<sup>86</sup> Magic is not listed at all, in either category. The remaining three allegations all come from Roman law on legal procedure and do not hint at magic. Dig. 5.1.12 lists, on the one hand, ways in which a judge can be appointed, and, on the other hand, people who cannot become judges because of nature or customs (*quidam natura, quidam moribus*): people with biological disabilities, underage boys, and women as well as slaves.<sup>87</sup> Dig. 22.5.18 argues that women are entitled to be witnesses in court except for those who have been convicted of adultery.<sup>88</sup> C. 15 q. 3 c.1—or Cod. 9.1.12, as the canon in the *Decretum* comes from it—

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<sup>86</sup> Dist. 25 c. 4: "Qualis hinc quisque egreditur, talis in iudicio presentatur: sed tamen de quibusdam culpis esse ante iudicium purgationis ignis credendus est, pro eo, quod ueritas dicit: 'Quia si quis in spiritum sanctum blasphemiam dixerit, neque in hoc seculo remittetur ei, neque in futuro.' In qua sententia datur intelligi, quasdam culpas in hoc seculo, quasdam in futuro posse relaxari. Quod enim de uno negatur, consequens intellectus patet, quia de quibusdam conceditur. Sed tamen, ut predixi, hoc de paruis minimisque peccatis fieri posse credendum est, sicut est assiduus otiosus sermo, immoderatus risus, uel peccatum curae familiaris, (que uix sine culpa uel ab ipsis agitur, qui culpam qualiter declinare debeant sciunt,) que etiam post mortem grauant, si adhuc in uita positus minime fuerint relaxata."

<sup>87</sup> Dig. 5.1.12: "Non autem omnes iudices dari possunt ab his qui iudicis dandi ius habent: quidam enim lege impediuntur ne iudices sint, quidam natura, quidam moribus. Natura, ut surdus mutus: et perpetuo furiosus et impubes, quia iudicio carent. Lege impeditur, qui senatu motus est. Moribus feminae et serui, non quia non habent iudicium, sed quia receptum est, ut civilibus officiis non fungantur."

<sup>88</sup> Dig. 22.5.8: "Inviti testimonium dicere non coguntur senes valetudinarii vel milites vel qui cum magistratu rei publicae causa absunt vel quibus venire non licet."

orders that women cannot make accusations of public crimes except in cases where they or their relatives are the victims.<sup>89</sup>

Again, none of the allegations concern magic/*sors*. While the last three seem to relate to the acceptance or rejection of women's rights in court, it is difficult to establish a reasonable connection between that and permission to use *sors* in situations other than elections. I argue that the *Glossa* here is carefully selecting the arguments for *exceptions* in both canon and Roman law systems to deal with a potential question from its readers: why is *sors* prohibited in episcopal elections, but not in other situations? Toward the end of the gloss above, *sors* is plainly acknowledged as a valid method of settling quarrels in courts.<sup>90</sup> In other words, if *sors*, as X 5.21.1 *glos. ord. s.v. sorte* both claims and implies in allegations, likely can lead to idolatry, and is theologically problematic (to the extent of deserving excommunication and deposition, etc., as analyzed above), why is it allowed in non-election circumstances?

The *Glossa's* intention behind these first four allegations is to analogize the employment of *sors* to situations under the category of Romano-canonical legal exceptions. Those circumstances are juxtaposed with (1) the absolution of "small and unimportant sins," (2) the denial of certain groups the right to become judges, (3) the prohibition on adulterous women from testifying in court, and (4) the approval of a woman bringing a public crime lawsuit that involves herself or her family. The most significant aspect of this juxtaposition is that the *Glossa*

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<sup>89</sup> C. 15 q. 3 c. 1 (=Cod. 9.1.12): "De crimine, quod publicorum fuerit iudiciorum, mulieri accusare non permittitur, nisi certis ex causis, id est si suam suorumque iniuriam persequatur, secundum antiqui statuta tantum, de quibus specialiter eis concessum est non exacta subscriptione. Unde aditus preses prouinciae in primis examinabit, an tale sit crimen, cuius accusationem mulier subire non prohibetur."

<sup>90</sup> It is worth noting that the theologian and latter bishop of Paris, William of Auvergne, writing at the same time as Bernard was composing and revising his *Glossa*, claimed that humans can be led into the error of believing demons, since demons through illusion "seemed . . . to settle the disturbances of human affairs, such as quarrels and wars." Lawrence-Mathers, *Magic and Medieval Society*, 124.

essentially ignores the theological danger of casting lots. This differs substantially from some contemporary views, such as those of Thomas of Chobham, that *sors* is linked with demonic invocation and that the devil is behind all magic.<sup>91</sup> Note that this was decades before Thomas Aquinas distinguished the three categories of *sortes*, i.e., *sors divisoria* for distributing things in lawsuits, *sors consultoria* for deciding things (except for episcopal election), and *sors divinatoria* for finding stolen or hidden things or telling fortunes.<sup>92</sup> By contrast, rather than differentiating between various types of *sors*, the *Glossa* here rids *sors* of its religious context and evaluates it as an *exceptio*.

After providing in allegations from Roman law that further support the use of *sors* in civil lawsuits, the *Glossa* turns the question around and asks why it is forbidden to do so in elections. One of Jacobus' biblical counter-examples, i.e., the election of Matthias (Acts 1:26) (the other one concerns the sailors' lot-casting event in the Book of Jonah (Jonah 1:7)), appears also in the canonistic comments on this issue from Laurentius Hispanus, Raymond of Peñafort, Goffredus de Trano, and Hostiensis.<sup>93</sup> This biblical example indeed presents a major issue for them, as *sors* is employed without any condemnation. No canonist, unsurprisingly, challenges the legitimacy of Matthias' election, yet they disagree on whether it can serve as an example for church elections generally. Jacobus, whose comment became the base of X 5.21.3 *glos. ord. s.v. in*

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<sup>91</sup> See Edward Peters, *The Magician, the Witch, and the Law* (Philadelphia: University of Pennsylvania Press, 1978), 79; Edward Peters, "The Medieval Church and State on Superstition, Magic and Witchcraft" in Karen Louise Jolly, Catharina Raudvere, and Edward Peters, *Witchcraft and Magic in Europe*, vol. 3: The Middle Ages (London: Athlone Press, 2001), 212. This notion could be traced back to the late antique Church Fathers.

<sup>92</sup> Summa Theologiae II.2.95.8. For more on Thomas Aquinas' attitude toward *sors*, see his letter *De Sortibus*, composed about five years after Bernard's death. For a recent English translation of this text, see Thomas Aquinas, *De Sortibus: A Letter to a Friend about the Casting of Lots*, trans. Peter Cary (Eugene, Oregon: Cascade Books, 2021).

<sup>93</sup> Patrick Hersperger, "Die Dekretale ‚Ecclesia vestra nuper‘ von Honorius III. in der Rezeption verschiedener werke der klassischen Kanonistik," in *Päpste, Pilger, Pönitentiarie: Festschrift für Ludwig Schmutge zum 65. Geburtstag* (Tübingen: Niemeyer, 2004), 41–45.

*electionibus*, in the end forbids *sors* in elections for reasons—and relying on canonical references—essentially no different from those in X 5.21.1 *glos. ord. s.v. sortes*.

But a comparison between Jacobus' original gloss and the *Glossa* shows that it was Bernard who straightforwardly pointed out that *divine inspiration* is the basis for the validity and particularity of this biblical case, and, more significantly, that “*sors* is not something wrong, it has been considered true in itself, it is prohibited because of the derivation.” This does not substantially differ from the Augustinian view cited in X 5.21.1 *glos. ord. s.v. sortes*, yet with its mild tone contrasts strongly with the non-Augustinian, anti-*sors* stance displayed in some allegations contained in that gloss and X 5.21.1 *glos. ord. s.v. xl. dies*, analyzed above.

An explanation of this contrast might lie in the different contexts of the canons themselves. X 5.21.1 is a rather direct canon from an early medieval penitential that forbids using *sors* or other divinatory practices to recover missing things. X 5.21.3, on the other hand, contains a recent, straightforward papal denunciation of the use of *sors* in episcopal elections—“condemning the lasting use of *sors* in elections by prohibition (*sortis usum perpetua in electionibus prohibitione dampnantes*)”—together with, notwithstanding, a papal approval of one such instance. The glossator probably felt at ease choosing allegations against the employment of *sors* or magic in general and using these sources to support his assignment of more punishments for such transgressions in X 5.21.1. However, he was dealing with a different context, commenting on the complicated message from Pope Honorius III. To avoid directly disputing the papal permission (together with the biblical precedent), some limited defense of *sors* is in order. Even toward the very end of the gloss, when reiterating the prohibition against using *sors* in elections, the *Glossa* puts the emphasis on “aforementioned laws (*iura praedicta*)” rather than speaking in its own voice.

In sum, compared with the disregard for the religious implications of, and punishments for, *maleficium* and its male and female practitioners, the *Glossa* pays more attention to *sors* and other divinatory practices as well as the people who exercise them. In terms of *sors*, one must examine the allegations—and also take into consideration the contexts of the canons—to detect the *Glossa*'s careful treatment and complicated attitudes toward it. The mild, Augustinian view of *sors* as not inherently evil, but which nonetheless should be prohibited in case it leads to idolatry through repetition, indeed runs through the entire *Glossa* on X 5.21. Yet when dealing with people who use *sors* to find stolen property, the *Glossa* provides harsher punishments, and more importantly, it introduces to students reading the allegations in medieval law school classrooms a non-Augustinian, stricter canonical tradition that legitimatizes such punishments in practice. Laymen and clerics are differentiated in this treatment, and overall, our examination shows that the *Glossa* is more concerned about the use of *sors* or divinatory means in ecclesiastical settings. This is also in line with Pope Alexander III's condemnation in X 5.21.2 of the divinatory practice (astrolabe-reading) of a presbyter as a "very serious, and... non-moderate stain of sin (*gravissimum fuit, et non modicam inde maculam peccati*)."

With respect to the clergy's use of *sors*, the *Glossa*'s central concern is Church elections, and this permeates the entire *Glossa* on X 5.21. The very last gloss to X 5.21.3 is a good example to demonstrate how Bernard combined legal thinking and citations from his fellow canonists (Jacobus in this case) and his own concerns to produce a balanced gloss: one that directly contradicts neither the pope nor the Romano-canonical tradition. Religious concerns and legal conceptions are integrated. The election of Matthias in the Bible is legitimate because of divine inspiration; employment of *sors* outside Church elections seems to be allowed by the pope and in

Roman law tradition because there it is considered a legal *exceptio*; clergy are not permitted to resort to *sors* according to the pope and *iura praedicta* (*nota bene*: instead of the glossator); but *sors* itself—considering that the election in Lucca has been acknowledged by the pope—“has been considered true in itself.” Bernard walked a fine line here, as in other places throughout his commentary, which possibly is one of the reasons that his glosses became the *Glossa*.

## 5.6 Marginal Religious Groups?

Were the practitioners of *maleficium* considered marginal religious groups by the *Decretales* or the *Glossa*? Based on the analysis in this chapter, I conclude that they were treated neither from a religious perspective nor as a group in any sense. The attention paid to such persons by the *Glossa* is minimal: their gender is of no interest to Bernard, no religious implication of the work of *maleficium* is contemplated, and no punishment is ever mentioned. And certainly, there is no hint that practitioners of it are thought by Bernard to have any sort of community: they seem to be husbands or wives who only cast the spells on their own spouses. Considering that this situation is similar in the *Decretum* of Gratian, one may infer that *maleficium* and its practitioners—despite their popularity in some literary, theological, or pastoral works and their appearance in political-royal dramas at the time, as well as the fascination which they hold for some current scholars—only constitute a minor concern under the framework of marriage-divorce in high medieval Church law. One reason for this, as analyzed above, could be that even the popes during that period, such as Innocent IV, could not provide a clear and decisive solution for this issue.

The situation with the practitioners of *sors* or divinatory means is different and more complicated. Both the first gloss and the last gloss on X 5.21 show that Bernard was concerned about the potential religious threat that might stem from repeated lot-casting. The comments in

the *Glossa* may leave the impression (with their heavy reliance on a mild, Augustinian tradition) that, theologically speaking, the employment of *sors* itself is not essentially evil. But one must, as those medieval law school students surely did, carefully examine the allegations. Several allegations, when interrogated together, show that Bernard introduced to his readers a harsher tradition of interpreting the practice, and a harsher set of punishments for the practitioners, compared with the Augustinian view as well as the *Decretales'* canons.

Does the *Glossa*, then, perceive the practitioners of *sors* as a certain kind of group, rather than as individuals? On this issue, the *Glossa* remains in line with the canons of X 5.21. In terms of persons who wield *sors* or divinatory measures in order to retrieve stolen items, both the *Glossa* and X 5.21.1-2 see them as isolated cases. When it comes to elections in the Church, on the other hand, X 5.21.3 makes clear that the practice was employed by the entire cathedral chapter of Lucca. Nonetheless, neither the canon nor its *Glossa* seems to consider the chapter members as a group of magicians, but rather as a group of clerics who practiced together an unapproved, magical means on an ecclesiastical matter. In the canon itself, Pope Honorius III condemns such practice, yet accepts its result; the *Glossa* provides the canonical tradition that rejects such use in Church elections, yet de-emphasizes its theological threat of it. The central concern here is not religious danger, but the operation of ecclesiastical affairs. Unlike those demon-invoking, toad/frog-kissing people mentioned with disgust and condemnation in Pope Gregory IX's letter *Vox in Rama*, the lot-casting chapter members of the Lucca church do not, in the eyes of our canon law master, constitute a marginal religious group: they are not, as one of the allegations claims, "enemies of Christ."

## General Conclusion: Between Classroom and Court

This dissertation has investigated an influential and lengthy thirteenth-century legal commentary, i.e., Bernard of Parma's (d. 1266) *Glossa ordinaria*, on Pope Gregory IX's (1227–1241) *Decretales*, commonly known as the *Liber extra*. The latter, promulgated in 1234 and surviving in at least 675 complete medieval manuscripts, is the first universal and exclusive canon law collection in the Latin West, which remained in use since its emergence, through the Renaissance, and until the appearance of the 1917 Code of Canon Law. The *Glossa* is the standard—or “ordinary (*ordinaria*)”—commentary on this text, which surrounded the text of the *Decretales* in most of its extant manuscripts and was studied by virtually all medieval law school masters, as well as students, after the second quarter of the thirteenth century in order to train future lawyers, judges, and ecclesiastical or even secular authorities. When the Catholic Church issued the official version of the *Corpus Iuris Canonici* in 1582, i.e., the so-called *Editio Romana*, the *Glossa* was printed on the margins of the *Decretales*'s text, similar to its medieval placement.

Yet despite its popularity and centrality as a teaching tool in medieval classrooms, the *Glossa* has been little studied in modern times, and our understanding of this text is meager. Except for a chronology established by Stephan Kuttner and Beryl Smalley in 1945,<sup>1</sup> its stages of composition and textual revisions have never been examined, nor has the development of Bernard's substantial juridical thought in the glosses. No detailed work exists which makes use of the manuscript tradition to investigate the changes that Bernard made over time to his book, such as adding comments and allegations as well as citing newly composed legal works. These

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<sup>1</sup> Kuttner and Smalley, “The ‘Glossa Ordinaria,’” 97–105.



changes are impossible to trace in the early-modern print editions of the *Glossa*, which themselves transmit only the final stage of a 300-year-long process of additions to and alterations of the texts originally composed in the mid-thirteenth century by Bernard.

Beyond such textual issues, the *Glossa*'s value for the study of European legal history and medieval Christian society has never been probed in detail. Richard Helmholz' *The Spirit of Classical Canon Law* (1996) has little to say about the various *glossae ordinariae* in the medieval legal landscape, and, remarkably, even claims that "the [canon law] gloss never had the force and the power to engender new interpretations that the texts themselves [i.e., canons] did."<sup>2</sup> The present dissertation contests that assessment, and offers a wealth of information within Bernard's glosses not only about juridical thought, but also about thirteenth-century socio-religious situations. To that end, given the impossibility of dealing with the entirety of the Gregorian Decretals, a series of topics was selected treating Jews, Muslims, heretics, apostates (people who abandon the religious vocations), and practitioners of several forms of magic. That is to say, the dissertation treats groups which are viewed as a marginal by the dominant Latin Christian culture of the High Middle Ages.

Confronting these issues, this dissertation for the first time thoroughly studies selected (including the earliest extant) manuscripts of the *Glossa*, and investigates Bernard's juridical thought by examining in detail its comments and allegations on marginal religious communities in the *Decretales of Gregory IX*. In general terms, this research shows that the *Glossa* can serve as a source for the studies of (1) European legal history, (2) for the history of the medieval institutional Church, and (3) for the history of religious marginality in medieval society in general.

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<sup>2</sup> Helmholz, *The Spirit of Classical Canon Law*, 17.

First and foremost, the major task of this dissertation is discovering how and with what underlying jurisprudential principles the *Glossa* treats legal-religious issues. Bernard's text often dialectically balances juridical and theological concerns and carefully selects and integrates Romano-canonical sources from the plentiful reservoir at hand by the second quarter of the thirteenth century. Doing this necessitated understanding the importance of the legal glosses' "allegations." As the previous chapters have demonstrated, these allegations are by no means mere citations that the glossator employed to support his comments, as often has been supposed. Allegations sometimes do not even directly concern the legal topics at hand, but contain "hidden" arguments which the glossator was mounting against traditional papal or conciliar decisions found in the canons. Allegations also can reveal Romano-canonical principles through often unexpected legal analogies. For example, as shown in Chapter One, allegations in X 5.6.9 *glos. ord. s.v. invitos* advocate for employing force to prevent Jewish converts from betraying the Christian religion, while the canon per se is only laying out various protective measures for Jews living in Christendom.

These allegations, carefully chosen and strategically organized in the *Glossa*—and especially the arguments and jurisprudential principles behind them—constituted a substantial part of the legal education which would have heavily shaped medieval Church lawyers' legal thinking. The ordinary glosses in this way present new excavation sites for historians of the *ius commune* in which to detect traces of the "pénétration du droit romain dans le droit canonique classique."<sup>3</sup> As demonstrated in Chapter Two, for example, despite many texts on heresy in the Justinianic collections, the *Glossa* invokes Roman law texts on the treatment of slaves and

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<sup>3</sup> Pierre Legendre, *La pénétration du droit romain dans le droit canonique classique de Gratien à Innocent IV, 1140–1254* (Paris: Imp. Jouve, 1964).

adulterous women in its section on heretics. This is done due to similarities therein in terms of the forms of punishment, and, more importantly, the nature of the crimes. By unearthing such legal analogies and analyzing the fundamental logic behind them throughout selected ordinary glosses, this dissertation shows the importance of further investigation and research on the *Glossa*, beyond the titles studied here, and in general the importance of future investigation of the working mechanism of the medieval *ius commune*.

“A history of the *Glossa ordinaria* on the Gregorian Decretals remains to be written,” Stephan Kuttner noted in 1981.<sup>4</sup> This dissertation, contributing to this aspiration, also analyzes how the *Glossa* evolved during Bernard’s lifetime, presenting examples of the *Glossa*’s compositional history as a law school textbook which shows a process of development as the author refined his juridical thought.

If the first basic task of this dissertation was to study and understand Bernard’s *Glossa* on the *Decretales*, the process of doing so can be delineated under two additional headings. In the first place is what could be termed a methodological emphasis. That is to say, interrogating the *Glossa* to reveal the efforts made by canonists to reconcile contemporary papal rulings with, on the one hand, traditions preserved in Roman and canon law; and, on the other hand, practical issues which the glossator anticipated in the application of the law. For instance, Pope Gregory IX, in X 3.33.2, instructed that a Jewish boy be put under custody of his father, a Christian convert, against the will of the mother, who remained in Judaism. Chapter One shows that, by contrast, while laying out the Roman familial and property legal principles which support the papal decision, the *Glossa* invokes a *lex* from the *Digest* to suggest that should the father be morally suspect, the mother is able to call for an *exception* and retain her son with her.

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<sup>4</sup> Kuttner, “Notes,” 86.

Furthermore, this study also uncovers in the *Glossa* information about selected marginal groups' legal and social situations in the thirteenth-century Latin West. Such information often cannot be found from reading the canons in the *Decretales* or from other sources. Our examination of the *Glossa* reveals, for example, that Muslims were considered to be enemies so abominable that Bernard aggressively suggested that Christians who trade with them be punished by the death penalty, or, to be more precise, decapitation (Chapter One). Other examples can be added: clerics' non-Catholic relatives, though deprived of rights of inheritance, should still be given necessities of life "by reason of charity (*causa pietatis*) (Chapter Two)"; an acolyte who performs rebaptism can remove his irregularity by formally adopting the religious life, but he cannot rise to become a provost or dean in a cathedral chapter without proper dispensation (Chapter Four); not only sorceresses but also sorcerers could cast evil spells to inflict sexual impotence against others, yet despite the inherent "human interest" of the matter, it did not attract serious legal attention from the *Glossa* (Chapter Five). These positions do not appear in the canons of the *Decretales*. They only emerge in the *Ordinary Gloss* and its allegations, where they would be available readily for medieval law students and masters. The process by which they can be made available to modern investigators of the medieval society is the subject of this dissertation.

But a question remains for all scholars of the medieval learned law to explore: how exactly did the flourishing jurisprudence and legal educational system of the mid-thirteenth century shape the practice of Church law during the High and Late Middle Ages? Studies by Charles Donahue, Jr. and Richard Helmholz have shown that the influence of the former indeed

can be detected in ecclesiastical tribunals.<sup>5</sup> But such studies are only a start, and the questions raised are difficult. The *Glossa* was very widespread, available in both manuscripts from the 1230s onward and in early printings. But in what exact manner did this instructional text guide medieval canon law in practice, and particularly in terms of the treatment of marginal religious communities? The stories of inquisitors Bernard de Caux (d. 1252) and Jean de Saint-Pierre at the very beginning of the dissertation hint at directions which future scholarship could pursue. Furthermore, to step a bit outside the field of legal studies, did the *Glossa* participate in its contemporary political landscape, and if so, how? Moreover, to step outside the field of canon law, did the works of the Tosafists, i.e., Jewish authors of high medieval glosses and commentaries on the Talmud, in any aspect influence the *Glossa*, whose period of composition and revisions saw the burning of Talmud in Paris? Finally, looking at the very end of the thirteenth century, as late medieval (Romano-)canonical jurisprudence developed, in what ways did Bernard's *Glossa* influence Pope Boniface VIII's (1294–1303) *Liber sextus* (1298), and also Johannes Andreae's (d. 1348) *Glossa ordinaria* on Boniface's compilation? The quest for answers to these questions will constitute the missions of my future projects.

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<sup>5</sup> See Kenneth Pennington, "Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept," RIDC 5 (1994): 205, n. 1.

# Bibliography

## Primary Sources

### Selected Medieval Manuscripts<sup>1</sup>

*Decretales Gregorii IX*, earliest dated manuscript (1235), without the *Glossa*:  
MS Florence, BNC Palat. 157

*Decretales Gregorii IX* with Bernard of Parma's *Glossa ordinaria*:

- MS Florence, BML Plut.3 sin.9
- MS Munich, BSB Clm 26301
- MS Oxford, Bodleian Library Lat. theol. b. 4
- MS Vatican, BAV Vat. lat. 11158
- MS Vatican, BAV Vat. lat. 1365
- MS Vatican, BAV Vat. lat. 11154
- MS Vatican, BAV Vat. lat. 1383
- MS Vatican, BAV Borgh. 237

Works of Bernardus Parmensis (Bernard of Parma):

*Glossa ordinaria to the Decretales Gregorii IX*:

See above.

*Casus longi*:

- MS Bamberg, SB Msc. Can. 53
- MS Basel, Universitätsbibliothek C. III.3
- MS Chalon-sur-Saon, Bibl. Municipale 16
- MS La Seu d'Urgell, Archivo de la Catedral, Codex 2026
- MS Padova, Bibl. Universitaria 1476
- MS Paris, BnF lat. 16544
- MS Paris, BnF lat. 3960 B
- MS Reims, Bibl. Municipale, 719
- MS Vatican, BAV Borgh. 256
- MS Vatican, BAV Borgh. 269

*Notabilia*:

MS Bergamo, Bibl. Civica MS MA 137

*Summa super titulis Decretalium*:

- MS Vienna, ÖNB Cod. 2190
- MS La Seu d'Urgell, Archivo de la Catedral Codex 2030
- MS Monte Cassino, Bibl. Abbazia 136

*Consilium magistri Bernardi Doctoris Decretalium circa interpretationem Constitutionis Gregorii IX contra Blasphemos*:

MS Cesena, Bibliotheca Malatestiana S. II. 5. fols. 266vB-267vA

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<sup>1</sup> For the manuscripts of the *Decretales*, I only list here the ones with which I have investigated specific ordinary glosses for this dissertation. See Introduction, section 0.3.

Work of Alanus Anglicus:

*Apparatus on Comp. I.:*

MS Erlangen, Universitätsbibliothek 349 (this manuscript also contains works of other canonists, see below)

MS Karlsruhe, Badische Landesbibl. Aug. XL

MS Munich, BSB Clm 3879

MS Paris, BnF lat. 3932

Work of Albertus:

*Apparatus on Comp. II.:*

MS Erlangen, Universitätsbibliothek 349

MS Melk, Stiftsbibliothek, Cod. 289 (518, I 37)

Works of Azo Portius (Azo of Bologna):

*Apparatus ad Codicem Justinianum:*

MS Oxford, Bodleian Library, Canon.misc.416

*Additio ad Apparatum ad Codicem Justinianum:*

MS Graz, UB 45

*Apparatus ad Authenticum:*

MS Paris, BnF lat. 4521 B, vol. II

*Apparatus ad Digestum vetus:*

MS Munich BSB Clm 3887

*Apparatus ad Digestum novum:*

MS Vatican, BAV Pal. lat. 748

*Apparatus ad Institutiones:*

MS Paris, BnF lat. 4429

Work of Bartolomeo Cipolla:

*De cognitione librorum iuris canonici:*

MS Munich BSB Clm 14533

Works of Bernardus Compostellanus, Junior (Bernard of Compostella the Younger):

*Glossae in Drecretales Gregorii IX:*

MS Vienna, ÖNB Cod. 2181

*Summa in Decretales:*

MS Vienna, ÖNB Cod. 2076

Works of Bernardus Papiensis (Bernard of Pavia):

*Casus decretalium on Comp. I.:*

MS Berlin, Staatsbibl. lat. fol. 350

MS Melk, Stiftsbibliothek 190 (333 [F. 33])

Glosses on *Comp. I.:*

MS Admont, Stiftsbibliothek 55

*Summa titulorum decretalium:*

MS Berlin, Staatsbibl. lat. fol. 350

MS Munich, BSB Clm 16083

Work of Bartholomeus Brixiensis (Bartholomew of Brescia):  
*Revised Glossa ordinaria Johannis Teutonici in Decretum:*  
MS Munich, BSB Clm 14005

Works of Damasus Bohemus/Ungarus/Hungarus:  
*Apparatus on Comp. I. and Comp. II.:*  
MS Bamberg, Staatsbibl. Can. 19  
*Summa decretalium / Summa titulorum extravagantium:*  
MS Vatican, BAV Pal. lat. 656

Works of Goffredus Tranensis (Geoffrey of Trani):  
*Apparatus glossarum in Decretales Gregorii IX:*  
MS Vienna, ÖNB 2197  
MS Seo de Urgel, Biblioteca del Cabildo 2037  
MS Nürnberg, Stadtbibliothek Cent. IV. 99  
*Summa super titulis decretalium:*  
MS Florence, BML Plut. 3 sin.7

Works of Hostiensis (Henry of Susa):  
*Summa aurea:*  
MS Vatican, BAV Vat. lat. 2314  
*Lectura on the Decretales Gregorii IX:*  
MS Oxford, New College 205

Works of Guillelmus Naso/Vasco (William Naso):  
*Lectura in Decretales/Summa in Decretales Gregorii IX:*  
MS Vienna, ÖNB 2083  
Glosses on *Comp. I. and Comp. IV.:*  
MS Admont, Stiftsbibliothek 22

Works of Jacobus Albanus:  
*Apparatus glossarum in Comp. V.:*  
MS Lisboa, Biblioteca Nacional Alcobaca, 381  
*Additiones to Tancred's glosses on Comp. I.:*  
MS Admont, Stiftsbibliothek 22

Work of Johannes Galensis:  
*Apparatus on Comp. III.:*  
MS Zwettl, Stiftsbibliothek 30

Work of Johannes Hispanus de Compostela:  
*Summa super titulis decretalium:*  
MS Leipzig, Universitätsbibliothek 1009

Works of Johannes Teutonicus:



*Glossa ordinaria* on Gratian's *Decretum*:

MS Vatican, BAV Vat. lat. 1367

MS Vatican, BAV Pal. lat. 624

MS Munich, BSB Clm 14024

*Apparatus glossarum* on *Comp. III.*:

MS Vatican, BAV Chig. E. VII. 206

MS London, British Library Royal II.C.VII

*Apparatus glossarum* on *Comp. IV.*:

MS Vatican, BAV Ott. lat. 1099

MS Vatican, BAV Chig. E. VII. 206

MS Vatican, Vat. lat. 2509

*Apparatus glossarum* on Canons of the Fourth Lateran Council:

MS Bordeaux, Bibliothèque municipale, MS 400

MS Kassel, Landesbibliothek 2° Ms. iurid. 11

Works of Laurentius Hispanus:

Glosses on *Comp. I.*:

MS Leipzig, Universitätsbibliothek 968

*Apparatus* on *Comp. II.*:

MS Würzburg, Universitätsbibliothek M.p.th.f. 112

*Apparatus* on *Comp. III.*:

MS Admont, Stiftsbibliothek 55

Work of Marcoaldus:

Glosses on *Comp. IV.*:

MS Admont, Stiftsbibliothek 22

Work of Melendus Hispanus:

*Apparatus* on *Comp. I.*:

MS Leipzig, Universitätsbibliothek 983

Work of Nicolaus Schulz canonicus Wratislaviensis:

*Casus in quinque libros Decretalium (Decretales Gregorii IX)*:

MS Vienna, ÖNB Cod. 2214

Works of Paulus Ungarus:

*Notabilia* on *Comp. II.*:

MS Berlin, Staatsbibl. lat. fol. 249

*Notabilia* on *Comp. III.*:

MS Vatican, BAV Borgh. 261

MS Berlin, Staatsbibliothek lat. fol. 249

Work of Petrus Hispanus:

*Apparatus* on *Comp. I.*:

MS Admont, Stiftsbibliothek 55

Work of Petrus Sampson:  
*Lectura sive distinctiones super Decretales*:  
MS Vienna, ÖNB 2083

Works of Raymundus de Pennaforte (Raymond of Peñafort):

*Summa iuris canonici*:  
MS Vatican, BAV Borgh. 261

Glosses on *Comp. IV.*:  
MS Admont, Stiftsbibliothek 22

*Summa de poenitentia et matrimonio*:  
MS Vatican, BAV Ottob. lat. 5  
MS London, Lambeth Palace Library 428  
MS Klosterneuberg, Stiftsbibliothek 1040

*Summa de casibus*:  
MS Vatican, BAV Ottob. lat. 5  
MS Monte Cassino, Bibl. Abbazia 136  
MS London, Lambeth Palace Library 428

Works of Richardus Anglicus:

*Apparatus on Comp. I.*:  
MS Vatican, BAV Pal. lat. 696  
MS Munich, BSB Clm 3879

*Casus decretalium*:  
MS Munich, BSB Clm 16083, fol. 36–52v

Work of Sinebaldus Fliscus/Pope Innocent IV:

*Apparatus in quinque libros decretalium / Decretales Gregorii IX*:  
MS Munich, BSB Clm 3892  
MS Vienna, ÖNB 2100

Works of Tancredus Bononiensis (Tancred of Bologna):

*Glossae ordinariae on Comp. I.-III.*:  
MS Paris, BnF lat. 3932  
MS Vatican, BAV Vat. lat. 1377  
MS Vatican, BAV Vat. lat. 2509

Works of Vincentius Hispanus:

*Apparatus on Comp. I.*:  
MS Leipzig, Universitätsbibliothek 983

*Apparatus on Comp. II.*:  
MS Melk, Stiftsbibliothek Cod. 289 (518, I 37)  
MS Erlangen, Universitätsbibliothek 349

Glosses on *Constitutiones quarti Lateranensis Concilii*  
MS London, Lambeth Palace 139

*Apparatus on Comp. III.*:  
MS Paris, BN lat. 14611

MS Bamberg, Staatsbibl. Misc.Can. 20  
Selected *Casus on Comp III.*:  
MS Paris, BN lat. 3931  
MS Fulda, Landesbibl. D.10  
MS Leipzig, Universitätsbibliothek 983  
*Apparatus ad Decretales Gregorii IX.*:  
MS Paris, BN lat. 3967  
Madrid, BN 30  
*Casus on the Decretales Gregorii IX.*:  
MS Paris, BN lat. 3969  
MS Roma, Biblioteca Casanatense 1094  
*Apparatus in Decretales Honorii et Gregorii in libris IV-V Decretalium.*:  
MS BAV Vat. lat. 2546

Printed Editions and Translations of Legal (Canon/Customary/Roman law) Texts

*Corpus Iuris Canonici.*

*Corpus Iuris Canonici.* 3 vols. Rome: In aedibus Populi Romani, 1582.

*Decretales Gregorii noni Pontificis.* Lyons: Apud Hugonem à Porta, & Antonium Vincentium, 1553.

Friedberg, Aemilius, ed. *Corpus Iuris Canonici.* 2 vols. Leipzig: Bernhard Tauchnitz, 1879–1881.

*Quinque compilationes antiquae:*

Agustín, Antonio. *Antonii Augustini Archiepiscopi Tarraconensis Opera omnia.* Edited by Giuseppe Rocchi. Vol. 4. Lucca: Typis Josephi Rocchii, 1769.

Horoy, César Auguste, ed. *Honorii III Romani Pontificis Opera omnia quae exstant.* Medii aevi bibliotheca patristica, seu ejusdem temporis patrologia ab anno MCCXVI uque ad Concilii tridentini tempora 1–5. Vol. 1. Paris: Bibliothèque ecclésiastique, 1879.

Friedberg, Aemilius. ed. *Quinque compilationes antiquae.* Leipzig: Bernhard Tauchnitz, 1882.

*Corpus Iuris Civilis.*

*Corpus Iuris Civilis.* 6 vols. Lyons: Horace Cardon, 1604.

Birks, Peter, and Grant McLeod, eds. and trans. *Justinian's Institutes.* Ithaca: Cornell University Press, 1987.

Frier, Bruce W. et al., eds. and trans. *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text Based on a Translation by Justice Fred H. Blume*. 3 vols. Cambridge; New York: Cambridge University Press, 2016.

Miller, David J.D. and Peter Sarris, trans. *The Novels of Justinian: A Complete Annotated English Translation*. 2 vols. Cambridge; New York: Cambridge University Press, 2018.

Mommsen, Theodor et al., eds. *Corpus Iuris Civilis*. 3 vols. Berlin: Apud Weidmannos, 1872–1895.

Watson, Alan, ed. and trans. *The Digest of Justinian*. 2nd ed. 4 vols. Philadelphia: University of Pennsylvania Press, 2009.

#### *Codex Theodosianus:*

Mommsen, Theodor, and Paul Krüger, eds. *Codex Theodosianus: Theodosiani Libri XVI cum constitutionibus Sirmondinis*. Berlin: Apud Weidmannos, 1905.

Pharr, Clyde, trans. *The Theodosian Code and Novels, and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography*. Princeton: Princeton University Press, 1952.

#### *Fuero real:*

*Opúsculos legales del rey don Alfonso el Sabio, publicados y cotejados con varios códices antiguos por la Real Academia de la Historia*, vol. 2: *El fuero real, las leyes de los adelantados mayores, las nuevas y el Ordenamiento de las tafurerías; y por apéndice, las Leyes del estilo*. Madrid: Imprenta Real, 1836.

#### *Liber Augustalis:*

Huillard-Bréholles, Jean L. A. ed. *Historia Diplomatica Friderici II*. vol. 4 Part I. Paris: Henricus Plon, 1854.

Powell, James M., trans. *The Liber Augustalis: or, Constitutions of Melfi, promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*. Syracuse: Syracuse University Press, 1971.

Stürner, Wolfgang, ed. *Die Konstitutionen Friedrichs II. für das Königreich Sizilien*, MGH. *Constitutiones et acta publica imperatorum et regum*, Tomus. 2, Supplementum. Hanover: Hahnsche Buchhandlung, 1996.

*Sachsenspiegel:*

August Eckhardt, Karl, ed. *Sachsenspiegel: Landrecht*. Göttingen; Berlin; Frankfurt: Musterschmidt Verlag, 1955.

Dobozy, Maria, trans. *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century*. The Middle Ages Series. Philadelphia: University of Pennsylvania Press, 1999.

*Siete Partidas:*

*Las Siete Partidas. Texto antiguo*. Barcelona: Red Ediciones S.L., 2016. <https://www-digitaliapublishing-com.ezproxy.cul.columbia.edu/a/48659>.

Scott, Samuel Parsons, trans. *Las Siete Partidas, edited by Robert I. Burns*. 5 vols. The Middle Ages Series. Philadelphia: University of Pennsylvania Press, 2001.

Work of Albertus Gandinus:

Kantorowicz, Hermann, ed. *Albertus Gandinus und das Strafrecht der Scholastik*. Vol. 2. Berlin; Leipzig: J. Guttentag, 1926.

Works of Bernardus Parmensis (Bernard of Parma):

*Glossa ordinaria* on the *Decretales*:

see above under *Corpus Iuris Canonici*.

*Casus longi*:

*Casus longi super quinque libros decretalium*. Paris: Per P. Cesaris et J. Stoll, 1475.

Work of Goffredus Tranensis (Geoffrey of Trani):

*Summa: Summa Goffredi de Trano super titulis decretalium*. Lyon: Morin, 1519.

Work of Gratianus (Gratian):

*Tractatus de Penitentia*: Larson, Atria, A. ed. and trans. *Gratian's Tractatus de Penitentia: A New Latin Edition with English Translation*. Washington, D.C.: The Catholic University of America Press, 2016.

Works of Hostiensis:

*In Primum [-Sextum] Decretalium Librum Commentaria*. 4 vols. Venice: Apud Iuntas, 1581.

Works of Johannes Teutonicus:

*Apparatus on Comp. III.:*

*Johannis Teutonici Apparatus glossarum in Compilationem tertiam*, ed. Kenneth Pennington (MIC A: 3). Vatican City: Biblioteca Apostolica Vaticana, 1981.

*Apparatus on Comp. IV.:*

Agustin, Antonio. *Antonii Augustini Archiepiscopi Tarraconensis Opera omnia*, vol. 4, ed. Giuseppe Rocchi. Lucca: Typis Josephi Rocchii, 1769.

Work of Laurentius Hispanus:

*Apparatus on Comp. III.:*

McManus, Brendan. "The Ecclesiology of Laurentius Hispanus and his contribution to the Romanization of canon law jurisprudence, with an Edition of Laurentius's 'Apparatus glossarum in Compilationem tertiam'," PhD diss., Syracuse University, 1991.

Work of Raymundus de Pennaforte (Raymond of Peñafort):

*Summa Sancti Raymundi de Peniafort Barcinonensis OP de poenitentia et matrimonio: cum glossis Ioannis de Friburgo*. Rome: Ioannis Tallini, 1603.

Ochoa, Xaverio, and Aloisio Diez, eds. *Opera*. 3 vols. Rome: Commentarium pro religiosis, 1975–1978.<sup>2</sup>

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<sup>2</sup> This work contains *Summa de iure canonico*, *Summa de poenitentia*, and *Summa de matrimonio*.

Work of Vincentius Hispanus:

Glosses on *Constitutiones quarti Lateranensis Concilii*:

*Constitutiones Concilii quarti: Lateranensis una cum Commentariis glossatorum*, ed. Antonio García y García (MIC A–2). Vatican City: Biblioteca Apostolica Vaticana, 1981.

Prefaces to Canonical Collections:

Somerville, Robert, and Bruce Clark Brasington, eds. and trans. *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1317*. Second edition, Studies in Medieval and Early Modern Canon Law 18. Washington, D.C.: The Catholic University of America Press, 2020 (1<sup>st</sup> edition 1998).

#### Papal Registers (Calendars/Indices)

Jaffé, Philipp, ed. *Regesta pontificum romanorum: ab condita ecclesia ad annum post Christum natum MCXCVIII* (F. Kaltenbrunner (JK: an. ?–590); P. Ewald (JE: an. 590–882); S. Loewenfeld (JL: an. 882–1198), 2 vols. 2<sup>nd</sup> ed. Leipzig: Veit, 1885–1888.

Pothast, Augustus, ed. *Regesta pontificum Romanorum inde ab a. post Christum natum MCXCVIII ad a. MCCCIV*. 2 vols. Berlin: Prostat in aedibus Rudolphi de Decker, 1874–1875.

#### Papal Registers (Documents)

Gregory I:

Norberg, Dag, ed. *S. Gregorii Magni Registrum epistularum Libri VIII-XIV, Appendix*. CCSL 140 A. Turnhout: Brepols, 1982.

*The Letters of Gregory the Great*. Translated by John R.C. Martyn. 3 vols. Toronto: Pontifical Institute of Mediaeval Studies, 2004.

Gregory VII:

Caspar, Erich, ed. *Das Register Gregors VII*. 2 vols. Berlin: Weidmannsche Buchhandlung, 1920–1923.

Emerton, Ephraim, trans. *The Correspondence of Pope Gregory VII: Selected Letters from the Registrum*. New York: Columbia University Press, 1990 (Originally published 1932).

Innocent III:

Cheney, C. R., and W. H. Semple, eds. *Selected Letters of Pope Innocent III Concerning England (1198–1216)*. Medieval Texts. London; New York: T. Nelson, 1953.

Hageneder, Othmar and Anton Haidacher, eds. *Die Register Innocenz' III*. 11 vols. Graz-Cologne: H. Böhlau Nachf., 1964-.

Honorius III:

Bottino, Hieronymus, and César Auguste Horoy, eds. *Honorii III Romani Pontificis Opera omnia quae exstant*. Medii aevi bibliotheca patristica, seu ejusdem temporis patrologia ab anno MCCXVI uque ad Concilii tridentini tempora 1–5, 5 vols. Paris: Imprimerie de la Bibliothèque ecclésiastique, 1879–1882.

Gregory IX:

Auvray, Lucien, ed. *Les Registres de Grégoire IX*. 4 vols. Paris: Bibliothèque des Écoles française d'Athènes et de Rome, 1890–1955.

#### Conciliar Canons/Acts

García y García, A. et al., eds. *The General Councils of Latin Christendom From Constantinople IV to Pavia-Siena (869–1424)*. COGD II/1. Turnhout: Brepols, 2013.

Hefele, Carl Joseph, ed. *Histoire des conciles d'après les documents originaux. Nouvelle traduction française corrigée et augmentée par H. Leclercq*. 11 vols. Hildesheim; New York: Georg Olms Verlag, 1973.

Hefele, Karl Joseph von, ed. *Conciliengeschichte*. 9 vols. Freiburg im Breisgau: Herder, 1855.

Mansi, Johannes Domenicus, ed. *Sacrorum conciliorum nova et amplissima collectio*, 53 vols. Florence: Expensis Antonii Zatta Veneti, 1758–1798.

Price, Richard, trans. *The Acts of the Second Council of Nicaea (787)*. 2 vols. Translated Texts for Historians LUP. Oxford; New York: Oxford University Press, 2018.

Schroeder, O.P., Rev. H. J., trans. *Disciplinary Decrees of the General Councils: Text, Translation, and Commentary*. London: B. Herder Book, 1937.



Tanner, Norman P., ed. *Decrees of the Ecumenical Councils*. London; Washington, DC: Sheed & Ward; Georgetown University Press, 1990.

### Penitentials

McNeill, John T., and Helena M. Gamer, trans. *Medieval Handbooks of Penance: A Translation of the Principal Libri Poenitentiales and Selections From Related Documents*. New York: Columbia University Press, 1938.

Van Rhijn, Carine, ed. *Paenitentiale Pseudo-Theodori*. CCSL 156 B. Turnhout: Brepols, 2009.

### Patristic-Medieval Literature

Augustine of Hippo. *De bono coniugali; De sancta uirginitate*. Translated by P.G. Walsh. New York: Oxford University Press, 2001.

———. *Letters (131-164)*. Translated by Sister Wilfrid Parsons. Fathers of the Church 20. Baltimore: Catholic University of America Press, 2008.

———. *Sancti Aurelii Augustini Hipponensis episcopi Opera omnia post Lovaniensium theologorum*. Edited by Jacques-Paul Migne. PL 33. Paris: Apud Garnier fratres, 1865.

———. *Sancti Aurelii Augustini. Sermones in Matthaëum II*. Edited by Luc De Coninck and Bertrand Coppeters 'T Wallant. CCSL 41 Ab. Turnhout: Brepols, 2019.

———. *Augustine's Commentary on Galatians: Introduction, Text, Translation, and Notes*. Translated by Eric Plumer. Oxford: Oxford University Press, 2003.

Caesarius of Heisterbach. *Dialogus miraculorum: Textum ad quatuor codicum manusccriptorum editionisque principis fidem accurate recognovit Josephus Strange*. 2 vols. Cologne, Bonn, and Brussels: J.M. Heberle, 1851.

———. *The Dialogue on Miracles*. Translated by H. von E. Scott and C. C. Swinton Bland. 2 vols. Broadway Medieval Library. London: G. Routledge & Sons, 1929.

Guibert de Nogent. *Guibert de Nogent : Histoire de sa vie (1053–1124)*. Edited by Georges Bourgin. Paris: A. Picard et fils, 1907.

Isidore of Seville. *Isidori Hispalensis Episcopi Etymologiarum sive Originum Libri XX*. Edited by W. M. Lindsay. 2 vols. Oxford: Clarendon Press, 1911.

———. *The Etymologies of Isidore of Seville*. Translated by Stephen A. Barney, J. A. Beach, and Oliver Berghof. Cambridge; New York: Cambridge University Press, 2006.

Jerome. *Commentarii in epistulam Pauli apostoli ad Galatas*. Edited by G. Raspanti. CCSL 77A. Turnhout: Brepols, 2006.

———. *Commentary on Galatians*. Translated by Andrew Cain. Fathers of the Church 121. Washington, D.C.: Catholic University of America Press, 2010.

La Bigne, Marguerin de, ed. *Maxima bibliotheca veterum patrum et antiquorum scriptorum ecclesiasticorum*. Vol. 25. Lyons: Apud Anissonios, 1677.

Luard, Henry Richards, ed. *Flores historiarum*. 3 vols. London: H. M. Stat. Off, 1890.

Matthew Paris. *Matthæi Parisiensis, monachi Sancti Albani, Chronica majora*. Edited by Henry Richards Luard. 7 vols. London: Longman, 1872.

Petrus Lombardus, *Textus sententiarum cum conclusionibus magistri Henrici Gorichem et concordantiis Biblie ac Canonum*. Basel: Kessler, 1502.

———. *The Sentences*. Translated by Giulio Silano. 4 vols. Toronto: Pontifical Institute of Mediaeval Studies, 2007-2010.

Ralph of Coggeshall. *Radulphi de Coggeshall Chronicon Anglicanum*. Edited by Josephus Stevenson. London: Longman, 1875.

Salimbene de Adam. *Cronica*. Edited by Giuseppe Scalia. Corpus Christianorum. Continuatio Mediaevalis 125 and 125a. Turnhout: Brepols, 1998.

———. *The Chronicle of Salimbene de Adam*. Translated by Joseph Baird, Giuseppe Baglivi, and John Kane. Binghamton, NY: Medieval & Renaissance Texts & Studies, 1986.

Thomas Aquinas. *Corpus Thomisticum*. Pamplona, Spain: Ad Universitatis Studiorum Navarrensis, 2000. <http://www.corpusthomisticum.org/>.

———. *De Sortibus: A Letter to a Friend about the Casting of Lots*. Translated by Peter Cary. Eugene, Oregon: Cascade Books, 2021.

Thomas of Chobham. *Thomae de Chobham summa confessorum*. Edited by F. Broomfield. Louvain; Paris: Éditions Nauwelaerts; Béatrice Nauwelaerts, 1968.

William of Auvergne, *Guilielmi Alverni episcopi Parisiensis... Opera omnia*. Venice: Ex Officina Damiani Zenari, 1591.

#### Documents on Medieval Religious Marginality

Arnold, John H., and Peter Biller, eds. *Heresy and Inquisition in France, 1200–1300*. Manchester: Manchester University Press, 2017.

- Billier, Peter, C. Bruschi, and S. Sneddon., eds. *Inquisitors and Heretics in Thirteenth-Century Languedoc: Edition and Translation of Toulouse Inquisition Depositions, 1273–1282*. Studies in the History of Christian Traditions, 1573-5664; v. 147. Leiden; Boston: Brill, 2011.
- Clercq, Charles de. *La législation religieuse franque de Clovis à Charlemagne : étude sur les actes de conciles et les capitulaires, les statuts diocésains et les règles monastiques (507-814)*. Paris: Recueil Sirey, 1936.
- . *La législation religieuse franque : étude sur les actes de conciles et les capitulaires, les statuts diocésains et les règles monastiques; de Louis le Pieux à la fin du IXe siècle (814-900)*. Anvers: Centre de recherches historiques, 1958.
- Douais, Célestin, ed. *Documents pour servir à l'histoire de l'Inquisition dans le Languedoc : publiés pour la Société de l'histoire de France*. Société de l'histoire de France, n. 299, 300. Paris: Renouard, H. Laurens, 1900.
- Duvernoy, Jean, ed. "Le Registre DDD de l'inquisition de Carcassonne 1325–1327 : Manuscrit Doat 28 de La Bibliothèque Nationale de Paris," <http://jean.duvernoy.free.fr/text/pdf/DDD.pdf>.
- . "Liste des textes inédits," <http://jean.duvernoy.free.fr/text/listetexte.htm>.
- Grayzel, Solomon, ed. *The Church and the Jews in the XIII<sup>th</sup> Century: A Study of Their Relations during the Years 1198–1254, based on the Papal Letters and the Conciliar Decrees of the Period*. New York: Hermon Press, 1966.
- . *The Church and the Jews in the XIII<sup>th</sup> Century*, ed. Stow Kenneth, vol. 2: 1254–1314. 2 vols. Detroit: Wayne State University Press, 1989.
- Hansen, Joseph, ed. *Quellen und Untersuchungen zur Geschichte des Hexenwahns und der Hexenverfolgung im Mittelalter*. Bonn: C. Georgi, 1901.
- Institoris, Heinrich. *Malleus maleficarum*. Speyer: Peter Drach der Mittlere, 1486.
- Kors, Alan, and Edward Peters, eds. *Witchcraft in Europe, 400–1700: A Documentary History*. 2nd ed. Philadelphia: University of Pennsylvania Press, 2001.
- Léglu, Catherine, and Claire Taylor, eds. *The Cathars and Albigensian Crusade: A Sourcebook*. Abingdon, Oxon: Routledge, 2014.
- Logan, F. Donald. *Runaway Religious in Medieval England, c. 1240–1540*. Cambridge Studies in Medieval Life and Thought, 4th ser., 32. Cambridge; New York: Cambridge University Press, 1996 (appendices).
- Majrīfī, Maslamah ibn Aḥmad. *Picatrix: A Medieval Treatise on Astral Magic; based on the Latin Edition by David Pingree*. Translated by Dan Attrell and David Porreca. Magic in History. University Park, Pennsylvania: The Pennsylvania State University Press, 2019.

Marcus, Jacob Rader, and Marc Saperstein, eds. *The Jew in the Christian Europe: A Source Book: 315–1791*. Pittsburgh: University of Pittsburgh Press, 2015.

Parmeggiani, Riccardo. *I consilia procedurali per l'Inquisizione medievale (1235–1330)*. Bologna: Bononia University Press, 2011.

Peters, Edward., ed. *Heresy and Authority in Medieval Europe*. Philadelphia: University of Pennsylvania Press, 1980.

Rampton, Martha, ed. *European Magic and Witchcraft: A Reader*. North York: University of Toronto Press, 2018.

Selge, Kurt-Victor, ed. *Texte zur Inquisition*. Gütersloh: Mohn, 1967.

Simonsohn, Shlomo, ed. *The Apostolic See and the Jews, Documents: 492–1404*. Studies and Texts/Pontifical Institute of Mediaeval Studies 94. Toronto: Pontifical Institute of Mediaeval Studies, 1988.

Wakefield, Walter L. *Heresy, Crusade, and Inquisition in Southern France, 1100–1250*. Berkeley: University of California Press, 1974 (appendices).

### Other Primary Sources

Huillard-Bréholles, Jean L. A. ed. *Historia Diplomatica Friderici Secundi*. 6 vols. Paris: Henricus Plon, 1852–1861.

*Medieval Trade in the Mediterranean World: Illustrative Documents*. Translated with introductions and notes by Robert S. Lopez and Irving W. Raymond; with a foreword and bibliography by Olivia Remie Constable. New York: Columbia University Press, 2001.

## **Secondary Sources**

### Dictionaries and Encyclopedias

Auty, Robert, et al., eds. *Lexikon des Mittelalters*. 10 vols. Zürich: Artemis-Verlag, 1977.

Berger, Adolf. *Encyclopedic Dictionary of Roman Law*. Transactions of the American Philosophical Society, New Series. Vol. 43, Part 2. Philadelphia: American Philosophical Society, 1953.

Birocchi, Italo et al., eds. *Dizionario biografico dei giuristi Italiani (XII-XX Secolo)*. Bologna: Società Editrice il Mulino, 2013.

Bryson, William Hamilton. *Dictionary of Sigla and Abbreviations to and in Law Books before 1607*. Charlottesville: University Press of Virginia, 1975.

Domingo, Rafael, ed. *Juristas universales*. 4 vols. Madrid: Marcial Pons, 2004.

Ghisalberti, Alberto Maria, ed. *Dizionario biografico degli Italiani*. Rome: Istituto della Enciclopedia italiana, 1960.

Herbermann, Charles G. et al., eds. *The Catholic Encyclopedia: An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*. 15 vols. New York: Robert Appleton Company, 1907.

Klauser, Theodor et al., eds. *Reallexikon für Antike und Christentum: Sachwörterbuch zur Auseinandersetzung des Christentums mit der antiken Welt*. 28 vols. Stuttgart: Hiersemann, 1950-.

Naz, R., ed. *Dictionnaire de droit canonique*. 7 vols. Paris: Librairie Letouzey, 1935–1965.

*The New Catholic Encyclopedia*. Second edition. 15 vols. Detroit: Gale; Washington, D.C.: Catholic University of America, 2003 (1<sup>st</sup> edition 1967).

Guerín, Javier Otaduy, Antonio Viana, and Joaquín Sedano, eds. *Diccionario general de derecho canónico*. Cizur Menor, Navarra: Aranzadi, 2012.

Strayer, Joseph R., ed. *Dictionary of the Middle Ages*. 13 vols. New York: Scribner, 1982.

Vacant, A. et al., eds. *Dictionnaire de théologie catholique, contenant l'exposé des doctrines de la théologie catholique, leurs preuves et leur histoire*. 16 vols. Paris: Letouzey et Ané, 1903–1972.

#### Articles, Edited Books, Monographs, and Others

Affò, Ireneo. *Memorie degli scrittori e letterati parmigiani*. 6 vols. Parma: Stamperia Reale, 1789–1833.

Arnold, John H. “AHR Reappraisal: Persecution and Power in Medieval Europe: The Formation of a Persecuting Society, by R. I. Moore.” *The American Historical Review* 123 (2018): 165–174.

———. *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc*. Philadelphia: University of Pennsylvania Press, 2001.

Ashtor, Eliyahu. *Levant Trade in the Later Middle Ages*. Princeton: Princeton University Press, 1983.

Avondo, Edoardo Ruffini. “Le origini del conclave papale.” *Atti della Reale accademia delle scienze di Torino* 62 (1927): 409–431.

- Bailey, Michael David. *Magic and Superstition in Europe: A Concise History from Antiquity to the Present*. Lanham: Rowman & Littlefield Publishers, 2007.
- Barber, Malcolm. *The Cathars: Dualist Heretics in Languedoc in the High Middle Ages*. Second edition. The Medieval World. New York; London: Routledge, Taylor & Francis Group, 2013.
- Barbezat, Michael. "The Fires of Hell and the Burning of Heretics in the Accounts of the Executions at Orleans in 1022." *Journal of Medieval History* 40 (2014): 399–420.
- Bartlett, Robert. *Trial by Fire and Water: The Medieval Judicial Ordeal*. Oxford; New York: Clarendon Press; Oxford University Press, 1986.
- Basdevant-Gaudemet, Brigitte. "Les sources de droit romain en matière de procédure dans le décret de Gratien." *Revue de droit canonique* 27 (1977): 193–203.
- Beckum, Linda Ray. "The Fourth Lateran Council of 1215: Church Reform, Exclusivity, and the Jews." PhD diss., University of Kentucky, 2005.
- Bellomo, Manlio. *L'Europa del diritto comune*. 5th ed. Rome: Cigno Galilei Edizioni di Arte e Scienza, 1991.
- Benson, Robert. *The Bishop-Elect: A Study in Medieval Ecclesiastical Office*. Princeton: Princeton University Press, 1968.
- Benson, Robert, and Giles Constable, eds. *Renaissance and Renewal in the Twelfth Century*. Cambridge: Harvard University Press, 1982.
- Bertram, Martin. "Bologna, 12. März 1252: Einbruch Bei Bernardus Parmensis." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 102 (2016): 166–199.
- . "Dekorierte Handschriften der Dekretalen Gregors IX. (Liber Extra) aus der Sicht der Text- und Handschriftenforschung." *Marburger Jahrbuch für Kunstwissenschaft* 35 (2008): 31–65.
- . *Kanonisten und ihre Texte: (1234 bis Mitte 14. Jh.): 18 Aufsätze und 14 Exkurse*. Leiden: Brill, 2013.
- . "Some Additions to the Repertorium der Kanonistik." *Bulletin of Medieval Canon Law* 4 (1974): 9–16.
- Biller, Peter, and Anne Hudson, eds. *Heresy and Literacy, 1000–1530*. Cambridge; New York: Cambridge University Press, 1994.
- Birkmeyer, Regine. *Ehetrennung und monastische Konversion im Hochmittelalter*. Berlin: Akademie Verlag, 1998.
- Bishop, Jordan. "Aquinas on Torture." *New Blackfriars* 87 (2006): 229–237.

- Bivolarov, Vasil. *Inquisitoren-Handbücher: Papsturkunden und juristische Gutachten aus dem 13. Jahrhundert mit Edition des Consilium von Guido Fulcodii*. Wiesbaden: Harrassowitz Verlag, 2014.
- Blumenkranz, Bernhard. *Juifs et chrétiens dans le monde occidental, 430–1096*. Collection de la Revue des études juives. Paris; Dudley, MA: Peeters, 2006.
- Blumenthal, Uta-Renate. “A Gloss of Hostiensis to X 5.6.17 (*Ad Liberandam*).” *Bulletin of Medieval Canon Law* 30 (2013): 89–122.
- Blumenthal, Uta-Renate, Kenneth Pennington, and Atria A. Larson, eds. *Proceedings of the Twelfth International Congress of Medieval Canon Law: Washington, D.C. 1-7 August 2004*. Vatican City: Biblioteca Apostolica Vaticana, 2008.
- Boccafola, Kenneth E. *The Requirement of Perpetuity for the Impediment of Impotence*. Rome: Università Gregoriana Editrice, 1975.
- Bork, Robert Odell, and Andrea Kann, eds. *The Art, Science, and Technology of Medieval Travel*. Aldershot; Burlington: Ashgate, 2008.
- Boudet, Jean-Patrice. *Entre science et nigromance : astrologie, divination et magie dans l'Occident médiéval, XIIIe-XVe siècle*. Paris: Publications de la Sorbonne, 2006.
- Brundage, James A. “Intermarriage Between Christians and Jews in Medieval Canon Law.” *Jewish History* 3 (1988): 25–40.
- . *Law, Sex, and Christian Society in Medieval Europe*. Chicago: University of Chicago Press, 1987.
- . *Medieval Canon Law*. London: Longman, 1995.
- . *The Profession and Practice of Medieval Canon Law*. Burlington: Ashgate, 2004.
- . “Universities and the ‘*ius commune*.’” *Rivista Internazionale di Diritto Comune* 11 (2000): 237–253.
- Buc, Philippe, Martha Keil, John Victor Tolan, Bernhard Blumenkranz, and Institut für Mittelalterforschung (Österreichische Akademie der Wissenschaften), eds. *Jews and Christians in Medieval Europe: The Historiographical Legacy of Bernhard Blumenkranz. Religion and Law in Medieval Christian and Muslim Societies* 7. Turnhout: Brepols, 2016.
- Cahu, Frédérique. *Un témoin de la production du livre universitaire dans la France du XIIIe siècle : la Collection des Décrétales de Grégoire IX*. Turnhout: Brepols, 2013.
- Cameron, Euan. *Enchanted Europe: Superstition, Reason, and Religion 1250–1750*. New York: Oxford University Press, 2010.

- Chadwick, H. "EGO BERENGARIUS (For Luise Abramowski)." *The Journal of Theological Studies* 40 (1989): 414–445.
- Chénon, Émile. "L'hérésie à La Charité-sur-Loire et les débuts de l'inquisition monastique dans la France du Nord au XIIIe siècle." *Nouvelle revue historique de droit français et étranger* 41 (1917): 299–345.
- Chodorow, Stanley. *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum*. Berkeley: University of California Press, 1972.
- Clark, Mark J. "The Biblical Gloss, the Search for Peter Lombard's Glossed Bible, and the School of Paris." *Mediaeval Studies* 76 (2014): 57–113.
- Cohen, Jeremy. *The Friars and the Jews: The Evolution of Medieval Anti-Judaism*. Ithaca: Cornell University Press, 1982.
- Cohen, Mark R. *Under Crescent and Cross: The Jews in the Middle Ages*. 2nd ed. Princeton: Princeton University Press, 2008.
- Cohn, Norman. *Europe's Inner Demons: The Demonization of Christians in Medieval Christendom*. London: Pimlico, 1993.
- Coing, Helmut. *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte: Mittelalter (1100–1500)*. Munich: Beck, 1973.
- Condorelli, Orazio et al., eds. *Der Einfluss der Kanonistik auf die europäische Rechtskultur*. 5 vols. Cologne: Böhlau, 2009.
- Constable, Olivia Remie. *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900–1500*. Cambridge Studies in Medieval Life and Thought, 4th Series 24. Cambridge; New York: Cambridge University Press, 1994.
- Damsteegt, P. Gerard. "Decoding Ancient Waldensian Names: New Discoveries." *Andrews University Seminary Studies* 54 (2016): 237–258.
- Dannenberg, Lars-Arne. *Das Recht der Religiosen in der Kanonistik des 12. und 13. Jahrhunderts*. Berlin: Lit, 2008.
- Delisle, Léopold, ed. *Recueil des historiens des Gaules et de la France*. Vol. 17. Paris: Victor Palmé, 1878.
- Donahue, Charles, Jr. *Why the History of Canon Law is Not Written*. London: Selden Society, 1986.
- Dropsie College for Hebrew and Cognate Learning, Meir Ben-Horin, and Abraham A. Neuman, eds. *Studies and Essays in Honor of Abraham A. Neuman, President, Dropsie College for Hebrew and Cognate Learning, Philadelphia*. Leiden: E.J. Brill for the Dropsie College, Philadelphia, 1962.



- Duggan, Anne J. "Clerical Exemption in Canon Law from Gratian to the Decretals." *Medieval Worlds* 6 (2017): 78–100.
- Eichbauer, Melodie H. "Rethinking Causae 23–26 as the Causae hereticorum." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 101 (2015): 86–149.
- Elliott, Dyan. "Violence against the Dead: The Negative Translation and *damnatio memoriae* in the Middle Ages." *Speculum* 92 (2017): 1020–1055.
- Elman, Yaakov, Ephraim Bezalel Halivni, and Zvi Arie Steinfeld, eds. *Neṭi 'ot le-David: sefer ha-yovel le-David ha-Livni*. Jerusalem: Orhot, 2004.
- Esmein, Adhémar. *A History of Continental Criminal Procedure: With Special Reference to France*. Translated by John Simpson. Boston: Little, Brown, 1913.
- Fidora, Alexander. "The Latin Talmud and the Extension of Papal Jurisdiction over Jews." *Medieval Worlds* 11 (2020): 152–164.
- Fiori, Antonia. *Il giuramento di innocenza nel processo canonico medievale: storia e disciplina della "purgatio canonica."* Frankfurt am Main: V. Klostermann, 2013.
- . "Quasi denunciante fama: note sull'introduzione del processo tra rito accusatorio e inquisitorio." In *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, Vol. 3: Strafrecht und Strafprozessrecht. Cologne: Böhlau, 2012.
- Frassetto, Michael. "The Heresy at Orleans in 1022 in the Writing of Contemporary Churchmen." *Nottingham Medieval Studies* 49 (2005): 1–17.
- Freidenreich, David M. *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law*. Berkeley: University of California Press, 2011.
- . "Muslims in Western Canon Law, 1000–1500." In *Christian-Muslim Relations: A Bibliographical History*, 3 (1050–1200): 41–68. Leiden; Boston: Brill, 2011.
- Fryde, Natalie, Pierre Monnet, and Otto Gerhard Oexle. *Die Gegenwart des Feudalismus*. Göttingen: Vandenhoeck & Ruprecht, 2002.
- Gaudemet, Jean. "Das Römische Recht in Gratians Dekret." *Österreichisches Archiv für Kirchenrecht* 12 (1961): 177–191.
- . *Droit canonique et droit romain : a propos de l'erreur sur la personne en matière de mariage (C. XXIX, qu. 1)*. Vol. 9. Bologna: Institutum Iuridum Universitatis Studiorum Bononiensis, 1966.
- Gaudemet, Jean-Philippe. "Le droit romain dans la pratique et chez les docteurs aux XIe et XIIe siècles." *Cahiers de civilisation médiévale* 8 (1965): 365–380.

- Gilchrist, John. *Canon Law in the Age of Reform, 11th–12th Centuries*. Aldershot: Variorum, 1993.
- . “The Perception of Jews in the Canon Law in the Period of the First Two Crusades.” *Jewish History* 3 (1988): 9–24.
- Given, James Buchanan. *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc*. Ithaca: Cornell University Press, 1997.
- Goldberg, Jessica. “The Legal Persona of the Child in *Gratian’s Decretum*.” *Bulletin of Medieval Canon Law* 24 (2000): 10–53.
- Goodich, Michael. *Other Middle Ages: Witnesses at the Margins of Medieval Society*. Philadelphia: University of Pennsylvania Press, 1998.
- Gordley, James. *The Jurists: A Critical History*. Oxford: Oxford University Press, 2013.
- Gosselin, Jean Edme Auguste. *The Power of the Pope During the Middle Ages*. 2 vols. London: C. Dolman, 1853.
- Grayzel, Solomon. “Jews and the Ecumenical Councils.” *The Jewish Quarterly Review* 57 (1967): 287–311.
- Hageneder, Othmar. *Il sole e la luna: Papato, impero e regni nella teoria e nella prassi dei secoli XII e XIII*. Milan: Vita e Pensiero, 2000.
- Hahn, Christoph Ulrich. *Geschichte der Ketzer im Mittelalter, besonders im 11., 12. und 13. Jahrhundert*. 3 vols. Stuttgart: J. F. Steinkopf, 1845.
- Hain, Ludwig. *Repertorium Bibliographicum*. Stuttgart: J.G. Cotta, 1826.
- Hamilton, Bernard. *Religion in the Medieval West*. 2nd ed. London: Hodder Education, 2003.
- Hartmann, Wilfried, and Kenneth Pennington, eds. *The History of Courts and Procedure in Medieval Canon Law*. History of Medieval Canon Law. Washington, D.C.: The Catholic University of America Press, 2016.
- , eds. *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*. History of Medieval Canon Law. Washington, D.C.: Catholic University of America Press, 2008.
- Haskins, Charles H. “Robert Le Bougre and the Beginnings of the Inquisition in Northern France.” *The American Historical Review* 7 (1902): 437–457.
- Heitmeyer, Heinrich. *Sakramentenspendung bei Häretikern und Simonisten nach Huguccio*. Rome: Verlagsbuchhandlung der Päpstlichen Gregorianischen Universität, 1964.
- Helmholz, R. H. “Crime, Compurgation and the Courts of the Medieval Church.” *Law and History Review* 1 (1983): 1–26.

- . “The Early History of the Grand Jury and the Canon Law.” *The University of Chicago Law Review* 50 (1983): 613.
- . *The Spirit of Classical Canon Law*. Athens: University of Georgia Press, 2010.
- . “The Law of Slavery and the European *Ius Commune*.” In *The Legal Understanding of Slavery: from the Historical to the Contemporary*, edited by Jean Allain, 17-39. Oxford: Oxford University Press, 2012.
- Herde, Peter. *Audientia litterarum contradictarum: Untersuchungen über die päpstlichen Justizbriefe und die päpstliche Delegationsgerichtsbarkeit vom 13. bis zum Beginn des 16. Jahrhunderts*. Tübingen: M. Niemeyer, 1970.
- . “Christians and Saracens at the Time of the Crusades: Some Comments of Contemporary Medieval Canonists.” *Studia Gratiana* 12 (1967): 359–376.
- Hersperger, Patrick. “Die Dekretale ‚Ecclesia Vestra Nuper‘ von Honorius III. in der Rezeption verschiedener Werke der klassischen Kanonistik.” In *Päpste, Pilger, Pönitentiarie: Festschrift für Ludwig Schmugge zum 65. Geburtstag*, 31–48. Tübingen: Niemeyer, 2004.
- . *Kirche, Magie und “Aberglaube”: Superstitio in der Kanonistik des 12. und 13. Jahrhunderts*. Cologne: Böhlau, 2010.
- Hopkins, John H. *The History of the Confessional*. New York: Harper, 1850.
- Islam et chrétiens du Midi : XIIIe-XIVe siècle*. Cahiers de Fanjeaux 18. Toulouse: E. Privat, 1983.
- Johrendt, Jochen, and Harald Müller, eds. *Rom und die Regionen: Studien zur Homogenisierung der lateinischen Kirche im Hochmittelalter*. Berlin; Boston: De Gruyter, 2012.
- Jolly, Karen Louise, Catharina Raudvere, and Edward Peters. *Witchcraft and Magic in Europe*. Vol. 3: The Middle Ages. London: Athlone Press, 2001.
- Ḳedar, B. Z. *The Franks in the Levant, 11th to 14th Centuries*. Collected Studies 423. Aldershot; Brookfield: Variorum, 1993.
- Kelly, Henry Ansgar. *Inquisitions and Other Trial Procedures in the Medieval West*. Burlington: Ashgate, 2001.
- . “Inquisition and the Prosecution of Heresy: Misconceptions and Abuses.” *Church History* 58 (1989): 439–451.
- . “Judicial Torture in Canon Law and Church Tribunals: From Gratian to Galileo.” *The Catholic Historical Review* 101 (2015): 754–793.
- Kéry, Lotte. *Gottesfurcht und irdische Strafe: der Beitrag des mittelalterlichen Kirchenrechts zur Entstehung des öffentlichen Strafrechts*. Cologne: Böhlau, 2006.

- Kieckhefer, Richard. *Magic in the Middle Ages*. 2nd ed. New York: Cambridge University Press, 2014.
- Kleinschrod, Gallus Aloys Kaspar. *Systematische Entwicklung der Grundbegriffe und Grundwahrheiten des peinlichen Rechts nach der Natur der Sache und der positiven Gesetzgebung*. 3 vols. Erlagen: Johann Jacob Palm, 1799.
- Klepper, Deena Copeland. "Disentangling Heretics, Jews, and Muslims: Imagining Infidels in Late Medieval Pastoral Manuals." In *Late Medieval Heresy: New Perspectives. Studies in Honor of Robert E. Lerner*, 137–156. Heresy and Inquisition in the Middle Ages 5. York: York Medieval Press, 2018.
- Kuttner, Stephan. "Antonio Agustín's Edition of the *Compilationes antiquae*." *Bulletin of Medieval Canon Law* 7 (1977): 1–14.
- . "Die Konstitutionen des ersten allgemeinen Konziles von Lyon." *Studia et documenta historiae et iuris* 6 (1940): 70–131.
- , ed. *Index titulorum decretalium ex collectionibus tam privatis quam publicis conscriptus*. Ius Romanum Medii Aevi. Subsidia 2. Milan: Giuffrè, 1977.
- . *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX: systematisch auf Grund der handschriftlichen Quellen dargestellt*. Vatican City: Biblioteca Apostolica Vaticana, 1935.
- . "Notes on the *Glossa Ordinaria* of Bernard of Parma." *Bulletin of Medieval Canon Law* 11 (1981): 86–93.
- . *Repertorium der Kanonistik (1140–1234)*. Vatican City: Biblioteca Apostolica Vaticana, 1972.
- Kuttner, Stephan, and Kenneth Pennington, eds. *Proceedings of the Sixth International Congress of Medieval Canon Law: Berkeley, California, 28 July-2 August 1980*. Vatican City: Biblioteca Apostolica Vaticana, 1985.
- Kuttner, Stephan and Beryl Smalley. "The 'Glossa Ordinaria' to the Gregorian Decretals." *The English Historical Review* 60 (1945): 97–105.
- Landau, Peter, and R. H. Helmholz, eds. *Grundlagen des Rechts: Festschrift für Peter Landau zum 65. Geburtstag*. Rechts- und staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n. F., Bd. 91. Paderborn: F. Schöningh, 2000.
- Landgraf, Artur. "Zwei Gelehrte aus der Umgebung des Petrus Lombardus." *Divus Thomas* 11 (1933): 157–182.
- Lange, Hermann. *Römisches Recht im Mittelalter*. 2 vols. Munich: C.H. Beck, 1997.

- Lansing, Carol, and Edward D. English, eds. *A Companion to the Medieval World*. Chichester, UK; Malden, MA: Wiley-Blackwell, 2009.
- Laurin, František. *Introductio in Corpus juris canonici*. Freiburg im Breisgau: Sumptibus Herder, 1889.
- Lawrence-Mathers, Anne. *Magic and Medieval Society*. New York: Routledge, 2014.
- Le Bras, Gabriel. “L’Église médiévale au service du droit romain.” *Revue historique de droit français et étranger* 44 (1966): 193–209.
- . “Pour une nouvelle édition de la glose ordinaire des Décrétales de Grégoire IX.” *Revue historique de droit français et étranger* 44 (1966): 240–241.
- Le Bras, Gabriel, Charles Lefebvre, and Jacqueline Rambaud. *L’Age classique, 1140–1378 : Sources et théorie du droit*. Paris: Sirey, 1965.
- Le Goff, Jacques, ed. *L’uomo medievale*. Rome: Editori Laterza, 1988.
- Lea, Henry Charles. *A History of the Inquisition of the Middle Ages*. 3 vols. London: Sampson Low, 1888.
- . *Superstition and Force: Essays on the Wager of Law, the Wager of Battle, the Ordeal, Torture*. Philadelphia: Lea Brothers, 1892.
- Legendre, Pierre. *La pénétration du droit romain dans le droit canonique classique de Gratien à Innocent IV, 1140–1254*. Paris: Imp. Jouve, 1964.
- Lenherr, Titus. *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa ordinaria des Johannes Teutonicus*. St. Ottilien: EOS Verlag, 1987.
- Les marginaux et les exclus dans l’histoire*. Paris: Union générale d’éditions, 1979.
- Lindberg, David C., and Michael H. Shank, eds. *The Cambridge History of Science*. Vol. 2: Medieval Science. New York: Cambridge University Press, 2013.
- Logan, F. Donald. *Runaway Religious in Medieval England, c. 1240–1540*. Cambridge Studies in Medieval Life and Thought, 4th ser., 32. Cambridge; New York: Cambridge University Press, 1996.
- Lourdaux, W., and D. Verhelst, eds. *The Concept of Heresy in the Middle Ages (11th–13th C.): Proceedings of the International Conference Louvain, May 13–16, 1973*. Leuven: University Press, 1976.
- Maassen, Friedrich. *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters*. Gratz: Leuschner & Lubensky, 1870.

- Maceratini, Ruggero. “Innocenzo III, il Concilio Lateranense IV e lo status giuridico dell’eretico nella glossa ordinaria al Decreto di Graziano ed in quella di accursio al Codice di Giustiniano.” *Vergentis. Revista de Investigación de la Cátedra Internacional conjunta Inocencio III* 3 (2016): 19–58.
- . *La glossa ordinaria al Decreto di Graziano e la glossa di accursio al Codice di Giustiniano: una ricerca sullo status giuridico degli eretici*. Trento: Università degli Studi di Trento, 2003.
- Maitland, Samuel Roffey. *Facts and Documents: Illustrative of the History, Doctrine, and Rites, of the Ancient Albigenses & Waldenses*. London: C.J.G. and F. Rivington, 1832.
- Makowski, Elizabeth M. *Apostate Nuns in the Later Middle Ages*. Studies in the History of Medieval Religion. Woodbridge: The Boydell Press, 2019.
- Malvasia, Carlo Cesare. *Le pitture di Bologna*. Bologna: Giacomo Monti, 1686.
- Manrique, Tomás. *Censura in glossas et additiones juris canonici omnibus exemplaribus hactenus excusis respondens*. Cologne: Apud M. Cholinum, 1572.
- Marvin, Laurence Wade. *The Occitan War: A Military and Political History of the Albigensian Crusade, 1209–1218*. Cambridge; New York: Cambridge University Press, 2008.
- Masini, Antonio. *Bologna perlustrata*. Bologna: Carlo Zenero, 1650.
- Mathisen, Ralph. “The ‘Second Council of Arles’ and the Spirit of Compilation and Codification in Late Roman Gaul.” *Journal of Early Christian Studies* 5 (1997): 511–554.
- Meyer, Christoph H. F. “Nichtchristen in der Geschichte des kanonischen Rechts: Beobachtungen zu Entwicklung und Problemen der Forschung.” *Rechtsgeschichte-Legal History* 26 (2018): 139–160.
- . *Non-Christians in the Normative Culture of the Catholic Church between Antiquity and the Modern Era: A Select Bibliography*. Max Planck Institute for European Legal History Research Paper Series, No. 2020-15: subsidia et instrumenta. Frankfurt am Main: Max-Planck-Institut für Rechtsgeschichte und Rechtslehre, 2020.  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3206610](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3206610).
- Moore, John C., and Brenda Bolton, eds. *Pope Innocent III and His World*. Aldershot; Brookfield; Singapore; Sydney: Ashgate, 1999.
- Moore, Robert Ian. *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250*. 2nd ed. Oxford: B. Blackwell, 2007.
- Mordini, Maura. “Aspetti della disciplina del feudo ecclesiastico nei secoli XII e XIII. Parte II. Graziano e l’apparato ordinario al Decretum.” *Studi Senesi* CXXIII/1 (2011): 52–157.

- Munier, Charles. "Droit canonique et droit romain d'après Gratien et les Décrétistes." In *Etudes d'histoire du droit canonique dédiés à Gabriel Le Bras*, 273–281. Paris: Sirey, 1965.
- Naismith, Rory, ed. *Money and Coinage in the Middle Ages*. Leiden; Boston: Brill, 2018.
- Nirenberg, David. *Communities of Violence: Persecution of Minorities in the Middle Ages*. Princeton: Princeton University Press, 1996.
- O'Callaghan, Joseph F. *Reconquest and Crusade in Medieval Spain*. Philadelphia: University of Pennsylvania Press, 2003.
- Oldenbourg, Zoé. *Massacre at Montségur: A History of the Albigensian Crusade*. New York: Minerva Press, 1961.
- Pakter, Walter. "De his qui foris sunt: The Teachings of the Medieval Canon and Civil Lawyers Concerning the Jews." PhD diss., The Johns Hopkins University, 1974.
- . *Medieval Canon Law and the Jews*. Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung 68. Ebelsbach: R. Gremer, 1988.
- Panciroli, Guido. *De claris legum interpretibus libri quatuor*. Venice: Marcum Antonium Brogiollum, 1637.
- Pennington, Kenneth. "Decretal Letters of Pope Innocent III Touching on Church and State." <http://legalhistorysources.com/ChurchHistory220/Lecture%20Four/InnocentIIIChurchState.html>.
- . "Ecclesiastical Liberty on the Eve of the Reformation." *Bulletin of Medieval Canon Law* 33 (2016): 185–208.
- . "Johannes Andreae's Additiones to the Decretals of Gregory IX." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte; Kanonistische Abteilung* 74 (1988): 328-347.
- . "Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept." *Rivista Internazionale di Diritto Comune* 5 (1994): 197-209.
- . "Panormitanus's Lectura on the Decretals of Gregory IX." In *Fälschungen im Mittelalter: Internationaler Kongress der Monumenta Germaniae Historica, München, 16.–19. September 1986*, 2:363-373. Hanover: Hahnsche Buchhandlung, 1988.
- . *Popes, Canonists and Texts, 1150–1550*. Collected Studies Series 412; Aldershot: Variorum, 1993.
- . "'Pro Peccatis Patrum Puniri': A Moral and Legal Problem of the Inquisition." *Church History* 47 (1978): 137-154.
- . "The Law's Violence against Medieval and Early Modern Jews." *Rivista Internazionale di Diritto Comune* 23 (2012): 30-31.

- . “Torture and Fear: Enemies of Justice.” *Rivista Internazionale di Diritto Comune* 19 (2008): 203–242.
- Peters, Edward. *Inquisition*. Berkeley: University of California Press, 1989.
- . *The Magician, the Witch, and the Law*. Philadelphia: University of Pennsylvania Press, 1978.
- Piergiovanni, Vito. “La lesa maestà nella canonistica fino ad Ugucione.” *Materiali per una storia della cultura giuridica* 2 (1972): 53–88.
- . *Norme, scienza e pratica giuridica tra Genova e l’Occidente medievale e moderno*. Vol. 2. Genova: Società Ligure di Storia Patria, 2012.
- Pihlajamäki, Heikki, Markus Dirk Dubber, and Mark Godfrey, eds. *The Oxford Handbook of European Legal History*. Oxford Handbooks. Oxford: Oxford University Press, 2018.
- Polívka, Miloslav, and Michal Svatos, eds. *Historia docet : sborník prací k počtě šedesátých narozenin Prof. PhDr. Ivana Hlaváčka, CSc.* Praha: Historický ústav Československé akademie věd, 1992.
- Powell, James M. “Frederick II and the Church: A Revisionist View.” *The Catholic Historical Review* 48 (1963): 487–497.
- Prudlo, Donald, ed. *A Companion to Heresy Inquisitions*. Leiden; Boston: Brill, 2019.
- Rabikauskas, Paulius. “‘Auditor litterarum contradictarum’ et commissions de juges délégués sous le pontificat d’Honorius III.” *Bibliothèque de l’École des Chartes* 132 (1974): 213–244.
- . “Die Arbeitsweise der päpstlichen Kanzlei (Ende 12. - Anfang 13. Jahrhundert).” *Archiv für Diplomatik. Schriftgeschichte, Siegel- und Wappenkunde* 41 (1995): 263–271.
- Ragg, Sascha. *Ketzer und Recht: die weltliche Ketzergesetzgebung des Hochmittelalters unter dem Einfluss des römischen und kanonischen Rechts*. Hanover: Hahnsche Buchhandlung, 2006.
- Reid, Charles J. *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law*. Grand Rapids, MI: Eerdmans, 2004.
- Rennie, Kriston. “The Council of Poitiers (1078) and Some Legal Considerations.” *Bulletin of Medieval Canon Law* 27 (2008): 1–20.
- Rennie, Kriston R., and Jason Taliadoros. “Why Study Medieval Canon Law?” *History Compass* 12 (2014): 133–149.



- Reno, Edward Andrew. "The Authoritative Text: Raymond of Penyafort's Editing of the 'Decretals of Gregory IX' (1234)." PhD diss., Columbia University in the City of New York, 2011.
- Reynolds, Roger E., Kathleen G. Cushing, and Richard Gyug, eds. *Ritual, Text, and Law: Studies in Medieval Canon Law and Liturgy Presented to Roger E. Reynolds*. Aldershot; Burlington: Ashgate, 2004.
- Rider, Catherine. "Between Theology and Popular Practice: Medieval Canonists on Magic and Impotence." In *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*. Burlington: Ashgate, 2005.
- . *Magic and Impotence in the Middle Ages*. New York: Oxford University Press, 2006.
- Riesner, Albert Joseph. "Apostates and Fugitives from Religious Institutes: An Historical Conspectus and Commentary." The Catholic University of America. Canon Law Studies 168. PhD diss., The Catholic University of America, 1942.
- Rist, Rebecca. *Popes and Jews, 1095–1291*. Oxford: Oxford University Press, 2016.
- Rodenberg, Carolus, ed. *Epistolae saeculi XIII e regeſtis pontificum Romanorum selectae*. Berlin: Apud Weidmannos, 1883.
- Rose, Emily. *The Murder of William of Norwich: The Origins of the Blood Libel in Medieval Europe*. New York: Oxford University Press, 2015.
- Rousseau, Constance M. "Neither Bewitched nor Beguiled: Philip Augustus's Alleged Impotence and Innocent III's Response." *Speculum* 89 (2014): 410–436.
- Roversi, Giancarlo. *Iscrizioni medievali bolognesi*. Bologna: Istituto per la Storia di Bologna, 1982.
- Rust, Leandro. "Bulas Inquisitoriais: Ad Extirpanda (1252)." *Revista Diálogos Mediterrânicos*, 2014.
- Rust, Leandro Duarte. "Bulas Inquisitoriais: Ad Abolendam (1184) e Vergentis in Senium (1199)." *Revista de História* 166 (2012): 129–162.
- Sabapathy, John. *Officers and Accountability in Medieval England 1170–1300*. Oxford: Oxford University Press, 2014.
- Sackville, Lucy J. *Heresy and Heretics in the Thirteenth Century: The Textual Representations*. Rochester, NY: Boydell & Brewer, 2011.
- Sarti, Mauro, and Mauro Fattorini. *De claris archigymnasii bononiensis professoribus a saeculo XI usque ad saeculum XIV*. 2 vols. Bologna: Ex Typographia Laelii a Vulpe Instituti Scientiarum Impressoris, 1769.

- Sayers, Jane E. *Papal Judges Delegate in the Province of Canterbury, 1198–1254: A Study in Ecclesiastical Jurisdiction and Administration*. London: Oxford University Press, 1971.
- Scharnagl, Anton. *Das feierliche Gelübde als Ehehindernis: in seiner geschichtlichen Entwicklung*. St. Louis, MO: Herder, 1908.
- Schmitt, Jean-Claude. “L’histoire des marginaux.” In *La nouvelle histoire*. Paris: Retz, 1978.
- Schulte, Johann Friedrich von, *Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart*. 3 vols. Stuttgart: F. Enke, 1875–1880 (reprinted Graz 1956).
- Shulevitz, Deborah. “Historiography of Heresy: The Debate Over ‘Catharism’ in Medieval Languedoc.” *History Compass* 17 (2019).
- Silverstein, Adam J., Guy G. Stroumsa, and Moshe Blidstein, eds. *The Oxford Handbook of the Abrahamic Religions*. Oxford Handbooks. Oxford; New York: Oxford University Press, 2015.
- Sisson, Keith, and Atria A. Larson, eds. *A Companion to the Medieval Papacy: Growth of An Ideology and Institution*. Brill’s Companions to the Christian Tradition 70. Leiden; Boston: Brill, 2016.
- Skemer, Don C. “*Armis Gunfe*: Remembering Egyptian Days.” *Traditio* 65 (2010): 75–106.
- Smith, Sebastian B. *Elements of Ecclesiastical Law*. 3 vols. New York: Benziger Brothers, 1889.
- Smith, Thomas W., ed. *Authority and Power in the Medieval Church, c. 1000 - c. 1500*. Europa Sacra 24. Turnhout, Belgium: Brepols Publishers, 2020.
- Soifer Irish, Maya. *Jews and Christians in Medieval Castile: Tradition, Coexistence, and Change*. Washington, D.C: The Catholic University of America Press, 2016.
- Somerville, Robert. *Pope Alexander III and the Council of Tours (1163): A Study of Ecclesiastical Politics and Institutions in the Twelfth Century*. Berkeley: University of California Press, 1977.
- . *Pope Urban II, the Collectio Britannica, and the Council of Melfi (1089)*. Oxford: Clarendon Press, 1996.
- . *Pope Urban II’s Council of Piacenza: March 1-7, 1095*. New York: Oxford University Press, 2011.
- . “The Councils of Gregory VII.” *Studi Gregoriani* 13 (1989).
- Somerville, Robert, and Bruce Clark Brasington, eds. and trans. *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1317*. Second edition. Studies in Medieval

- and Early Modern Canon Law 18. Washington, D.C.: The Catholic University of America Press, 2020 (1<sup>st</sup> edition 1998).
- Mary E. Sommar, *The Correctores Romani: Gratian's Decretum and the Counter-Reformation Humanists*. Pluralisierung & Autorität 19. Berlin: Lit; London: Global, 2009.
- Sosnowski, Andrzej. *L'impedimento matrimoniale del voto perpetuo di castità (CAN. 1088 CIC): Evoluzione storica e legislazione vigente*. Rome: Pontificia università gregoriana, 2007.
- Stantchev, Stefan K. “‘Apply to Muslims What Was Said of the Jews:’ Popes and Canonists Between a Taxonomy of Otherness and ‘Infidelitas.’” *Law and History Review* 32 (2014): 65–96.
- Stickler, Alphonso M., and Rosalio Castillo Lara, eds. *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler*. Studia et textus historiae iuris canonici 7. Rome: LAS, 1992.
- Stürner, Wolfgang, ed. *Die Konstitutionen Friedrichs II. für das Königreich Sizilien*. Monumenta Germaniae Historica. Constitutiones et acta publica imperatorum et regum, Tomus. 2, Supplementum. Hanover: Hahnsche Buchhandlung, 1996.
- Sullivan, William L. *Letters to His Holiness, Pope Pius X*. Chicago: The Open Court Publishing Company, 1910.
- Tardif, Adolphe, and Le P. François Balme. “Document pour l’histoire du *Processus per inquisitionem* et de l’*Inquisitio heretice pravitatis*.” *Nouvelle revue historique de droit français et étranger* 7 (1883): 669–678.
- Tartakoff, Paola. *Between Christian and Jew: Conversion and Inquisition in the Medieval Crown of Aragon, 1250–1391*. Philadelphia: University of Pennsylvania Press, 2012.
- . *Conversion, Circumcision, and Ritual Murder in Medieval Europe*. The Middle Ages Series. Philadelphia: University of Pennsylvania Press, 2020.
- “The Genesis of Inquisition Procedures and the Truth-Claims of Inquisition Records: The Inquisition Registers of Languedoc, 1235–1244,” <https://www.york.ac.uk/res/doat/>.
- Theiner, Augustin. *Disquisitiones criticae in praecipuas canonum et decretalium collectiones*. Rome: Collegio Urbano, 1836.
- Thorndike, Herbert. *The Theological Works of Herbert Thorndike*. 6 vols. J. H. Parker, 1844.
- Thorndike, Lynn. “Some Medieval Conceptions of Magic.” *The Monist* 25 (1915): 107–139.
- Tolan, John. *Saracens: Islam in the Medieval European Imagination*. New York: Columbia University Press, 2002.

- Torras, Sergi. “Ramon de Penyafort i el procediment inquisitorial contra els heretges.” *Revista de dret històric Català* 13 (2014): 143–176.
- Twersky, Isadore, ed. *Studies in Medieval Jewish History and Literature*. Cambridge: Harvard University Press, 1979.
- Utterback, Kristine, Merrall Price, and Kristine Utterback. *Jews in Medieval Christendom: Slay Them Not*. Leiden: Brill, 2013.
- Vacandard, Elphège. *L’Inquisition : étude historique et critique sur le pouvoir coercitif de l’église*. Paris: Bloud, 1907.
- Vetulani, Adam. “Gratian et le droit romain.” *Revue historique de droit français et étranger* 24 (1946): 11–48.
- Vodola, Elisabeth. *Excommunication in the Middle Ages*. Berkeley: University of California Press, 1986.
- Wakefield, Walter L. *Heresy, Crusade, and Inquisition in Southern France, 1100–1250*. Berkeley: University of California Press, 1974.
- Wakefield, Walter L., and Austin P. Evans, eds. *Heresies of the High Middle Ages*. New York: Columbia University Press, 1991 (1<sup>st</sup> printed 1969).
- Watt, John A. “Jews and Christians in the Gregorian Decretals.” *Studies in Church History* 29 (1992): 93–105.
- Weigand, Rudolf. *Die Glossen zum Dekret Gratians: Studien zu den frühen Glossen und Glossenkompositionen*. Rome: Libreria Ateneo Salesiano, 1991.
- . *Glossatoren des Dekrets Gratians*. Goldbach: Keip Verlag, 1997.
- Winroth, Anders. “Les deux Gratien et le droit romain.” *Revue de droit canonique* 48 (1998): 285–299.
- Wiśniewski, Robert. *Christian Divination in Late Antiquity*. Social Worlds of Late Antiquity and the Early Middle Ages. Amsterdam: Amsterdam University Press, 2020.
- Zacour, Norman P. *Jews and Saracens in the Consilia of Oldradus de Ponte*. Toronto: Pontifical Institute of Mediaeval Studies, 1990.
- Franciso Ziletti, ed. *Tractatus universi iuris*. 18 tomes (25 vols). Venice: Franciscus Zilettus, 1584–1586.

## Appendix A<sup>1</sup>

### List of Selected Canons on Religious Marginality in the *Decretales*

| Canon   | Title  | Inscription  |
|---------|--|--|
| 3.33.01 | De conversione infidelium                          | Coelestinus III.   |
| 3.33.02 | De conversione infidelium                          | Gregorius IX. Argentinensi Episcopo.                             |
| 4.15.01 | De frigidis et maleficiatis, et impotentia coeundi | Ex Brocardico libr. XIX.   |
| 4.15.02 | De frigidis et maleficiatis, et impotentia coeundi | Alexander III. Ambianensi Episcopo.                              |
| 4.15.03 | De frigidis et maleficiatis, et impotentia coeundi | Idem.  |
| 4.15.04 | De frigidis et maleficiatis, et impotentia coeundi | Lucius III.  |
| 4.15.05 | De frigidis et maleficiatis, et impotentia coeundi | Coelestinus III.   |
| 4.15.06 | De frigidis et maleficiatis, et impotentia coeundi | Innocentius III. Altissiodorensi Episcopo.                       |
| 4.15.07 | De frigidis et maleficiatis, et impotentia coeundi | Honorius III.  |
| 5.06.01 | De Iudaeis, Sarracenis et eorum servis             | Ex concilio Matensi.   |
| 5.06.02 | De Iudaeis, Sarracenis et eorum servis             | Gregorius Episcopo Lucensi.                                      |
| 5.06.03 | De Iudaeis, Sarracenis et eorum servis             | Idem Genuensi Episcopo.  |
| 5.06.04 | De Iudaeis, Sarracenis et eorum servis             | Alexander III.   |
| 5.06.05 | De Iudaeis, Sarracenis et eorum servis             | Idem ex concilio Lateranensi.                                    |
| 5.06.06 | De Iudaeis, Sarracenis et eorum servis             | Idem in eodem.   |
| 5.06.07 | De Iudaeis, Sarracenis et eorum servis             | Idem.  |
| 5.06.08 | De Iudaeis, Sarracenis et eorum servis             | Idem.  |
| 5.06.09 | De Iudaeis, Sarracenis et eorum servis             | Clemens III.   |
| 5.06.10 | De Iudaeis, Sarracenis et eorum servis             | Idem.  |
| 5.06.11 | De Iudaeis, Sarracenis et eorum servis             | Idem.  |
| 5.06.12 | De Iudaeis, Sarracenis et eorum servis             | Idem.  |
| 5.06.13 | De Iudaeis, Sarracenis et eorum servis             | Innocentius III. Archiepiscopo Senonensi et Episcopo Parisiensi. |
| 5.06.14 | De Iudaeis, Sarracenis et eorum servis             | Idem.  |
| 5.06.15 | De Iudaeis, Sarracenis et eorum servis             | Idem in concilio generali.                                       |
| 5.06.16 | De Iudaeis, Sarracenis et eorum servis             | Idem in eodem.   |
| 5.06.17 | De Iudaeis, Sarracenis et eorum servis             | Idem in eodem.   |

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<sup>1</sup> For the process of this selection, see Chapter 0 (Introduction), sections 0.1 (Behind Two Inquisitors: *Glossa Ordinaria*, *Decretales*, and Religious Marginality) and 0.7 (Method of Textual Analysis).

|         |  |  |
|---------|--|--|
| 5.06.18 | De Iudaeis, Sarracenis et eorum servis | Gregorius IX. Astoricensi et Lucensi Episcopis.  |
| 5.06.19 | De Iudaeis, Sarracenis et eorum servis | Idem.  |
| 5.07.01 | De haeticis                            | Stephanus Papa omnibus Episcopis.  |
| 5.07.02 | De haeticis                            | Leo Papa.  |
| 5.07.03 | De haeticis                            | Augustinus de fide catholica.  |
| 5.07.04 | De haeticis                            | Gregorius Anastasio Antiocheno.  |
| 5.07.05 | De haeticis                            | Ex concilio Africano.  |
| 5.07.06 | De haeticis                            | Ex eodem.  |
| 5.07.07 | De haeticis                            | Alexander III. Remensi Archiepiscopo.  |
| 5.07.08 | De haeticis                            | Ex concilio Lateranensi.   |
| 5.07.09 | De haeticis                            | Lucius III.  |
| 5.07.10 | De haeticis                            | Innocentius III.   |
| 5.07.11 | De haeticis                            | Idem.  |
| 5.07.12 | De haeticis                            | Idem universis Christi fidelibus, tam in urbe Metensi quam in eius dioecesi constitutis. |
| 5.07.13 | De haeticis                            | Idem in concilio generali.   |
| 5.07.14 | De haeticis                            | Gregorius IX. Archiepiscopo Mediolanensi.  |
| 5.07.15 | De haeticis                            | Idem.  |
| 5.07.16 | De haeticis                            | Idem.  |
| 5.09.01 | De apostatis et reiterantibus baptisma | Alexander III.   |
| 5.09.02 | De apostatis et reiterantibus baptisma | Idem Abbati S. Genovefae.  |
| 5.09.03 | De apostatis et reiterantibus baptisma | Innocentius III.   |
| 5.09.04 | De apostatis et reiterantibus baptisma | Idem in concilio generali.   |
| 5.09.05 | De apostatis et reiterantibus baptisma | Honorius III. Archiepiscopo Turonensi.   |
| 5.09.06 | De apostatis et reiterantibus baptisma | Idem Archiepiscopo Lugdunensi.   |
| 5.21.01 | De sortilegiis                         | Ex poenitentiali Theodori.   |
| 5.21.02 | De sortilegiis                         | Alexander III. Grandensi Patriarchae.  |
| 5.21.03 | De sortilegiis                         | Honorius III. Capitulo Lucanensi.  |

## Appendix B

Transcription of Selected Canons in the *Decretales* on Religious Marginality and their Ordinary Glosses based on selected manuscripts reflecting redactions made by Bernard between 1239 and 1266 (see Bibliography—Selected Medieval Manuscripts) and the 1582 *ER*, with all legal allegations identified and provided in the footnotes

Editorial Rules:

1. The format of *glos. ord. s.v.* is simplified as *gl.* in this appendix.
2. Base text used for the transcriptions is MS F, i.e., MS Florence, BML Plut.3 sin.9. Significant variants between this text and selected manuscripts as well as the 1582 *ER* are marked in texts or footnotes.
3. *Italics* in transcriptions: in MS F, but not in later manuscripts and/or the 1582 *ER*.
4. +Texts in pointed brackets+: not in MS F, but in later manuscripts and/or the 1582 *ER*.
5. [Texts in square brackets] are editorial notes
6. Modern style citations of legal allegations are provided in the footnotes.
7. Line breaks in the transcriptions are editorial.
8. Canonists' *sigla*, when appear in the selected texts, are marked with wave underlines.<sup>1</sup>
9. Legal allegations in the transcriptions throughout this dissertation are highlighted with bold font.

### X 3.33 *De conversione infidelium*

#### X 3.33.1 - Canon

Coelestinus III.

Laudabilem, et infra. Interrogasti de Sarracenis, qui, dum in captivitate essent, quarundam Christianarum viros earum insidiis et machinationibus occiderunt, utrum, quia postea per ipsas ad fidem Christianam conversi sunt, eas de iure possint accipere in uxores, vel, si duxerint, coniugium teneat eorundem. Hic Triburiensis concilii regula contenti sumus, asserentis, quod, si in mortem ipsorum malitiose fuerint machinatae, licet earum studio ad fidem accesserint, tamen nec eis adhaerere debent, nec sunt, si adhaeserint etiam, tolerandi. Cum tale dampnum tali lucro ecclesia compensare non velit. Ad haec Sarraceni quidam in bello sunt Christianos interfecisse notati, et Christiani similiter Sarracenos, postea vero Sarraceni, ad fidem conversi, uxores eorum quos in belli certamine occiderunt, sibi matrimonialiter copularunt, et id ipsum Christiani de Sarracenis mulieribus conversis ad fidem fecisse noscuntur: quae, postquam de priorum virorum morte compererint veritatem, divortium instanter exposcunt. In his igitur respondemus, quod, cum tales non procuraverint virorum interitum defunctorum, matrimonium inter huiusmodi personas licite potest cum talibus contrahi, et taliter copulati, divortium nequeunt postulare.

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<sup>1</sup> For their identification, see William Hamilton Bryson, *Dictionary of Sigla and Abbreviations to and in Law Books before 1607* (Charlottesville: University Press of Virginia, 1975).

**X 3.33.1—Glossa (4 gls.)**

*gl. Triburiensis*

Quod habes **xxxi. q. i. si quis vivente.**,<sup>2</sup> quia ea non possunt habere, si in morte ipsorum aliquid machinatae fuerunt, ut hic dicit. Idem est si fidem dederunt: ut **e. causa** et **e. q. relatum.**<sup>3</sup> et **infra de eo qui duxit. in matrimonium. c. i.**<sup>4</sup> Vel si de facto contraxit: ut **eadem. causa super. hoc.**<sup>5</sup> et **c. cum haberet.**<sup>6</sup> Ita tamen quod post fidem datam cognovit eandem uxorem, uxore sua vivente, alias sola fides data non impedit matrimonium **+infra eod. qui dux. in matrimonium+** **quam polluit +per adult.+ c. ulti.**<sup>7</sup>

*gl. tale dampnum*

Sic **xiiii. d. quod ait.**<sup>8</sup> et **xxxiii. q. v. si dicat.**<sup>9</sup> si **i. q. i. non est putanda.**<sup>10</sup> et **infra de usuris. super eo vero.**<sup>11</sup> et **xxii. q. ii. ne quis arbitretur.**<sup>12</sup>

*gl. et Christiani similiter*

Pugnantes pro patria et fide, ob quam pater in filium, et filius, in patrem surgere debet. **ff. de relig. et sump. fu. minime.**<sup>13</sup> et matritus et in uxorem **xxviii. q. i. uxor. in fi.**<sup>14</sup> et **xxiii. q. ult. legi siromostrem.**<sup>15</sup>

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<sup>2</sup> C. 31 q. 1 c. 5 [Fr. v.1 col. 1109].

<sup>3</sup> This allegation has yet to be identified.

<sup>4</sup> X 4.7.1 [Fr. v.2 col. 687].

<sup>5</sup> X 4.7.3 [Fr. v.2 col. 688].

<sup>6</sup> X 4.7.5 [Fr. v.2 cols. 688-689].

<sup>7</sup> X 3.33.2 [Fr. v.2 cols. 588-589]?

<sup>8</sup> Dist. 14.1 [Fr. v.1 col. 33].

<sup>9</sup> C. 33 q. 5 c. 1 [Fr. v.1 col. 1250].

<sup>10</sup> C. 1 q. 1 c. 27 [Fr. v.1 cols. 369-370].

<sup>11</sup> X 5.19.4 [Fr. v.2 col. 812].

<sup>12</sup> C. 22 q. 2 c. 14 [Fr. v.1 col. 871].

<sup>13</sup> Dig. 11.7.35.

<sup>14</sup> C. 28 q. 1 c. 4 [Fr. v.1 col. 1080].

<sup>15</sup> C. 23 q. 8 c. 13 [Fr. v.1 col. 956].



*gl. non procuraverint*

Ex eo quod hic dicit, et **xxx. q. i. si quis vivente.**<sup>16</sup> et **infra de eo qui duxit. in matri. c. ult.**<sup>17</sup> ad hoc ut matrimonium impediatur, duo exiguntur, scilicet affectus cum opere subsecuto: et est simile **ff. de conductur. et demon. l. ii. in fi.**<sup>18</sup> Hic enim tunc puniuntur cum ex corde<sup>19</sup> ad hoc procedunt. **xv. q. vi. c. i. in fi.**,<sup>20</sup> *quoniam tunc punitur opus sine affectu quo ad legem promotionis.*<sup>21</sup> **xv. q. i. si quis non iratus.**<sup>22</sup> quandoque affectus sine opere: ut **i. q. i. qui studet.**<sup>23</sup> et **supra de bigamis. nuper.**<sup>24</sup> ibi. Tamen intervenit opus non cum affectu. Quid ergo si ratum habuerunt eos interfectos<sup>25</sup> esse? Idem videtur: quia in maleficiis rati habitio retrotrahitur, et mandato operatur. **ff. de vi et vi ar. l. i.**<sup>26</sup> sed et si cum quis. Contra credo. arg. **infra de sponsa. cum apud.**<sup>27</sup> cum edictum de matrimonio contrahendo prohibitorium sit, ut ibi. +Ber.+

### X 3.33.2—Canon

Gregorius IX Argentinensi episcopo.

Ex litteris tuis recepimus<sup>28</sup> quod quidam de iudaicae cecitatis errore ad xpistum uerum lumen aductus, uxore sua in iudaismo relicta, in iudicio postulavit instanter, ut eorum filius quadriennis assignaretur eidem, ad fidem catholicam, quam ipse susceperat, perducendus. Ad quod illa respondit, quod cum puer adhuc infans existat, propter quod magis materno indiget solatio quam paterno, sibique ante partum honerosus, dolorosus in partu ac<sup>29</sup> post partum fuisse laboriosus<sup>30</sup> noscatur, ac ex hoc legitima coniunctio maris atque femine magis matrimonium, quam

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<sup>16</sup> C. 31 q. 1 c. 5 [Fr. v.1 col. 1109].

<sup>17</sup> X 4.7.8 [Fr. v.2 col. 690].

<sup>18</sup> Dig. 35.2.96?

<sup>19</sup> “*concorditer*” in the 1582 *ER*.

<sup>20</sup> C. 15 q. 6 c. 1 [Fr. v.1 cols. 754-755].

<sup>21</sup> This line does not exist in the 1582 *ER*.

<sup>22</sup> C. 15 q. 1 c. 13 [Fr. v.1 col. 749].

<sup>23</sup> C. 1 q. 1 c. 11 [Fr. v.1 col. 360].

<sup>24</sup> X 1.21.4 [Fr. v.2 col. 147].

<sup>25</sup> “*interfectum*” in MS F.

<sup>26</sup> Dig. 43.16.1?

<sup>27</sup> X 4.1.23 [Fr. v.2 col. 669-670].

<sup>28</sup> “*accepimus*” in the 1582 *ER*.

<sup>29</sup> “*ac*” missing in the 1582 *ER*.

<sup>30</sup> This word was copied as “*laboeiosus*” in MS F.

patrimonium nuncupetur, dictus puer debet apud eam<sup>31</sup> conuenientius remanere, et infra. Cum autem filius in patris potestate consistat, cuius sequitur familiam, et non matris, et apud illas in etate tali quis non debeat remanere personas<sup>32</sup> de quibus possit esse suspicio, quod saluti uel uite insidentur illius, et pueri post triennium apud patrem non suspectum ali debeant et morari, materque pueri, si eum remanere contigerit<sup>33</sup> apud ipsam<sup>34</sup>, posset illum aducere ad infidelitatis errorem, in fauorem maxime xristiane fidei<sup>35</sup> respondemus, patri eundem<sup>36</sup> puerum assignandum.

### X 3.33.2—*Glossa* (6/7 gls.)

*gl. ad fidem catholicam (= gl. perducendus in the ER)*

Justa fuit causa petitionis et honesta, et ita sumitur hic. ar. quod causa petitionis semper est inserenda ipsa<sup>37</sup> petitione. Alias repellitur. **supra de libelli. ob. c. ii. et iii.**<sup>38</sup> ubi de hoc. Sed nota quod pater potest petere filium in potestate sua constitutum per interdictum de liberis exhibendum<sup>39</sup> contra matrem et contra quemlibet detinentem. Mater tamen habet quandocumque<sup>40</sup> exceptionem contra maritum, puta si est minor triennio cum apud eam tunc debeat educari, uel etiam si iudicatum esset in contrarium **ff. de liberis. exhi. l. i.**<sup>41</sup> Et in alio casu etiam<sup>42</sup> habet exceptionem ob nequitiam patris ut sine diminutione patrie potestatis apud eam filius moretur. **ff. de eo. deinde. § etiamsi maxime.**<sup>43</sup> Circa hoc distingue aut filius a nullo detinetur aut ab aliquo +si ab aliquo, et tunc<sup>44</sup> uolens aut inuitus. Primo casu petere possum per officium iudicis. **ff. de exhi. liberis. l. iii. § hoc autem.**<sup>45</sup> Si ab alio uolens detinentur, potest peti rei uindicatio,<sup>46</sup>

<sup>31</sup> “apud eam debet” in the 1582 *ER*.

<sup>32</sup> “et in aetate tali quis non debet apud eas remanere persona” in the 1582 *ER*.

<sup>33</sup> “contingeret” in the 1582 *ER*.

<sup>34</sup> “eam” in the 1582 *ER*.

<sup>35</sup> “fidei Christianae” in the 1582 *ER*.

<sup>36</sup> This word was copied as “eorumdem” in MS F.

<sup>37</sup> “semper inserenda est in ipsa petitione” in the 1582 *ER*.

<sup>38</sup> X 2.3.2 and 3 [Fr. v.2 col. 256].

<sup>39</sup> “exhibendis” in the 1582 *ER*.

<sup>40</sup> “q(ua)nque” in the 1582 *ER*.

<sup>41</sup> Dig. 43.30.1.

<sup>42</sup> “etiam” missing in the 1582 *ER*.

<sup>43</sup> Dig. 43.30.3.5?

<sup>44</sup> This section appears in MS BSB Clm 26301 (fol. 156r), representing the post-1263 redaction(s) of the *Glossa*, together with the 1582 *ER*.

<sup>45</sup> Dig. 43.30.3.

<sup>46</sup> “uendicat” in the 1582 *ER*.

adiecta causa de iure quiritum cognitione praetorea<sup>47</sup> **ff. de rei. ven. l. i. § i.**<sup>48</sup> quod ius proprie romanorum est. **Inst. de patria. po. § i.**<sup>49</sup> In tertio casu locum habet interdictum de liberis exhibendis, vt **ff. de liberis. exhi. l. i. Resposa.**<sup>50</sup> et **ff. de rei. ven. l. i. § i.**<sup>51</sup> +Et nota quod filius conditionem patris vel matris conuersi ad fidem sequi debet. **xxviii. q. i. Iudaei.**<sup>52</sup> Et in hoc casu filius infans non doli capax sequitur meliorem conditionem. Alias si doli capax esset, non deberet baptizari nisi sponte. **xxiii. q. v. ad fidem.**<sup>53</sup> **xliv. dist. de Iudaeis.**<sup>54</sup> Quandoque tamen sequitur deteriolem conditionem, scilicet matris, si serua sit **xxxii. q. iv. c. vlt.**<sup>55</sup> Be.+<sup>56</sup>

+*gl. paterno*

**supra de praesumptio. illud.**<sup>57+</sup>

*gl. legitima*<sup>58</sup> *conuictio*

Matrimonium dicitur legitima<sup>59</sup> conuinctio maris et femine indiuiduam uite consue[tudinem]<sup>60</sup> retinens. **xxvii. q. ii. § i.**<sup>61</sup> et **Inst. de patria. po. in prin.**<sup>62</sup> Hec est ratio quae consueuit assignari a doctoribus quare potius dicatur, matrimonium illa conuinctio. +B.+

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<sup>47</sup> “praetoria” in the 1582 *ER*.

<sup>48</sup> Dig. 6.1.1.

<sup>49</sup> Inst. 1.9.1.

<sup>50</sup> Dig. 43.30.1.

<sup>51</sup> Dig. 6.1.1.

<sup>52</sup> C. 28 q. 1 c. 10 [Fr. v.1 col. 1087].

<sup>53</sup> C. 23 q. 5 c. 33 [Fr. v.1 col. 939-940].

<sup>54</sup> Dist. 45.5 [Fr. v.1 cols. 161-162].

<sup>55</sup> C. 32 q. 4 c. 15 [Fr. v.1 col. 1131].

<sup>56</sup> This section between ‘+’, lacking in MS F, appears in selected manuscripts representing redactions after 1243—i.e., BAV Vat. lat. 1365, fol. 516r, BAV Vat. lat. 1383, fol. 158v, and Munich BSB Clm 26301, fol. 156r—together with the 1582 *ER*.

<sup>57</sup> X 2.23.11 [Fr. v.2 col. 355].

<sup>58</sup> “legittima” in MS F.

<sup>59</sup> “legittima” in MS F.

<sup>60</sup> This word was copied as “consue” in MS F.

<sup>61</sup> C. 27 q. 2 c. 1 [Fr. v.1 col. 1063]?

<sup>62</sup> Inst. 1.9.1.

*gl. in patris potestate* (= *gl. potestate* in the 1582 *ER*)

Pater enim dicitur habere filium in potestate et non mater. **Inst. de patria potestate.**<sup>63</sup> et **C. de adoptionibus mulierem.**<sup>64</sup> unde filius familiam patris<sup>65</sup> sequitur et non matris. **ff. de legi. agnatorum tute. § i.**<sup>66</sup> unde ista uerba fuerunt sumpta. Et expone familiam, id est agnationem, licet alias hoc nomen familie +multas habeat significationes. **ff. de verb. sig. pronuntiatio. §. familiae.**<sup>67+</sup> et facit ad hoc. **Inst. de pa. po. in si. et eo.**<sup>68</sup> **de uerba sig. l. ult.**<sup>69</sup> Non enim denominatur filius a cognatione matris sed patris ar. **ff. ad muni. l. i.**<sup>70</sup>

*gl. saluti uel uite* (= *gl. insidientur* in the 1582 *ER*)

Nota quod mortuo patre pupillus educari non debet apud illas personas que ipsius pudicitie possunt insidiari. **ff. ubi pupillus edu. uel. morari debeat. l. ulti.**<sup>71</sup> Praetor enim decernere debet ut sine illa<sup>72</sup> suspitione alatur partus et contra uoluntatem patris **ff. e. l. i.**<sup>73</sup> et extimabit<sup>74</sup> ex affectu singularum quis magis a suspitionem et spem successionis sit prior. **C. e. l. ii.**<sup>75</sup> Verumtamen educatio pupilli nulli magis committenda est quam matri nisi uitricum ei inducat. **C. e. l. i.**<sup>76</sup> Si uero uivo<sup>77</sup> patre questio est apud quem educetur<sup>78</sup> filius facto diuortio. Olim

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<sup>63</sup> Inst. 1.9.

<sup>64</sup> Cod. 8.47.5. Cod. 8.48.5 in the vulgate (medieval) edition of the *Codex*, since Cod. 8.10.14 used to be a separate title.

<sup>65</sup> “patris familiam” in the 1582 *ER*.

<sup>66</sup> “Institu. de legitima agnato. tutela. §. i.” in the 1582 *ER*; Dig. 26.4.1.

<sup>67</sup> Dig. 50.16.195.

<sup>68</sup> “Cod.” in the 1582 *ER* and other manuscripts. Inst. 1.9.3.

<sup>69</sup> Dig. 50.16.246?

<sup>70</sup> Dig. 50.1.1.

<sup>71</sup> Dig. 27.2.6.

<sup>72</sup> “ulla” in the 1582 *ER*.

<sup>73</sup> Dig. 27.2.1.

<sup>74</sup> “aestimabit” in the 1582 *ER*.

<sup>75</sup> Cod. 5.29.2.

<sup>76</sup> Cod. 5.29.1.

<sup>77</sup> This word was copied as “uno” in MS F.

<sup>78</sup> “educeretur” in the 1582 *ER*.

estimat<sup>79</sup> pretor an<sup>80</sup> apud patrem an apud<sup>81</sup> matrem alatur. **C. de diuor. facto. l. una.**<sup>82</sup> Hodie distinguitur ut si pater causam diuortii praestitit, ali debeat apud matrem. Si uero mater prestetit causam diuortii ali debet apud patrem. **C. e. authen. si pater.**<sup>83</sup> Ergo hic debet ali apud patrem quia mater praestat +causam diuortii. **infra de diuor. gaudemus.**<sup>85</sup> et **c. quanto.**<sup>86+</sup> tunc diuortium,<sup>87</sup> quae non sequitur maritum conuersum ad fidem, +quem sequi debet. **xiii. q. ii. vnaquaeque.**<sup>88+</sup> et quia insidiaretur uite ipsius ut hic dicitur et per iura praedicta.

*gl. post triennium*

Filius minor triennio apud +matrem debet alius maior triennio, apud+ patrem. **C. de patria. po. nec filium.**<sup>89</sup> ar. **C. de infanti. expo. l. ii.**<sup>90</sup> et **infra eo. c. uno.**<sup>91</sup>

*gl. ad infidelitatis errorem*

Hac de causa etiam si esset minor triennio et<sup>92</sup> pater uellet eum perducere ad fidem, cum sit in eius potestate patri debuit assignari in fauorem fidei xristiane, cum alias si esset maior et proclamaret<sup>93</sup> se uellet<sup>94</sup> fieri xristianum, debeat de manibus illorum eripi. ar. **infra de iudaeis. sicut iudaei.**<sup>95</sup>

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<sup>79</sup> “aestimabat” in the 1582 *ER*.

<sup>80</sup> “quando... quando...” in the 1582 *ER*.

<sup>81</sup> There is a “l”—which is likely the left stroke of a “p”—between “apud” and “alatur” in MS F.

<sup>82</sup> “unica” in the 1582 *ER*; Cod. 5.24.1.

<sup>83</sup> “Authem” in the 1582 *ER*.

<sup>84</sup> Nov. 117.7.

<sup>85</sup> X 4.19.8 [Fr. v.2 cols. 723-724].

<sup>86</sup> X 4.19.7 [Fr. v.2 cols. 722-723].

<sup>87</sup> “tunc diuortium” is missing in the 1582 *ER*.

<sup>88</sup> C. 13 q. 2 c. 3 [Fr. v.1 col. 721].

<sup>89</sup> Cod. 8.46.9.

<sup>90</sup> Cod. 8.51.2.

<sup>91</sup> “unico” in the 1582 *ER*; X 5.11.1.

<sup>92</sup> Here it is ‘[E]t’ in all selected manuscripts while ‘vel’ in the 1582 *ER*.

<sup>93</sup> “proclamet” in the 1582 *ER*.

<sup>94</sup> “velle” in the 1582 *ER*.

<sup>95</sup> X 5.6.9 [Fr. v.2 col. 774].

## X 4.15 *De frigidis et maleficiatis +, et impotentia coeundi.*<sup>+</sup>

### X 4.15.1—Canon

In Brocardico libr. XX<sup>96</sup>

Accepisti mulierem et, per aliquod tempus habuisti, per mensem aut per tres, aut per annum, unum nunc primum dixisti, te esse frigidae naturae ita, ut non potuisses coire cum illa, nec cum aliqua alia; si illa, quae uxor tua debuit esse, eadem affirmat, quae tu dicis, et probari per verum iudicium potest, ita esse ut dicitis, separari potestis. Ea tamen ratione, ut si tu post aliam acceperis, reus periurii diiudicaris, et iterum post peractam poenitentiam priora connubia reparare debebis. Illa autem, si prior post annum aut dimidium ad episcopum aut eius missum proclamaverit, dicens, quod non cognovisses eam, tu autem contrarium affirmas, tibi credendum est eo, quod caput es mulieris, quia, si proclamare voluit, cur tamdiu tacuit? Cito enim et in parvo tempore scire potuit, si secum coire potuisses. Si autem statim in ipsa novitate, post mensem aut duos, ad episcopum aut eius missum proclamaverit, dicens: volo esse mater, volo filios procreare, et ideo maritum accepi, sed quia vir quem accepi, frigidae naturae est, et non potest illa facere, propter quae illum accepi: si probari potest per rectum iudicium, separari potestis, et illa, si vult, nubat in Domino.

### X 4.15.1—*Glossa* (8 gls.)

*gl. iudicium*

Scilicet, quod uterque iuret vii. manu propinquorum. **xxxiii. q. i. c. ii.**<sup>97</sup>

*gl. diiudicaris*

Nota contrarii operis evidentiam mendacium convinci, **supra de praesump. litteras.**<sup>98</sup> et ar. **supra de maio. et obed. legebatur.**<sup>99</sup> et **xxii. q. v. cavete.**<sup>100</sup>

*gl. reparare*

Nota quod sententia contra matrimonium lata non transit in rem iudicatam, cum appareat ex postfacto ecclesiam fuisse deceptam; sic. **supra de re iudi. lator.**<sup>101</sup> +et **supra de re iudic.,+**

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<sup>96</sup> “XIX” in the 1582 *ER*.

<sup>97</sup> C. 33 q. 1 c. 2 [Fr. v.1 col. 1149].

<sup>98</sup> X 2.23.14 [Fr. v.2 col. 357].

<sup>99</sup> X 1.33.3 [Fr. v.2 col. 196].

<sup>100</sup> C. 22 q. 5 c. 20 [Fr. v.1 col. 888].

<sup>101</sup> X 2.27.7 [Fr. v.2 col. 394].

**consanguinei.**<sup>102</sup>; et **infra e. fraternitatis.**<sup>103</sup> Quare priora matrimonia restaurantur, etiam muliere contradicente, si fraudis conscia fuerit. **ff. de adulteriis si uxor. § iudex.**<sup>104</sup> et **§ ult.**<sup>105</sup> ut dixit ala. Si vero conscia fraudis non fuerit, poterit eum repellere, si voluerit, praetextu adulterii, ar. **xxxii. q. ii. de benedicto.**<sup>106</sup> et **q. vi. nihil.**<sup>107</sup> Sed non credo quod hoc *non* obstet, quin matrimonia priora debeant restaurari. **infra e. laudabilem.**<sup>108</sup> +et **infra de frig. et malef., fraternitatis.**<sup>109</sup> Item ar. contra. **xxxiii. q. i. si per sortiarias.**<sup>110</sup> sed ibi separantur propter maleficium, non propter frigiditatem.

*gl. missum*<sup>111</sup>

Sic **supra de regularibus. c. ii.**<sup>112</sup> Et expone missum, id est, vicarium, qui fungitur vice episcopi, **supra de instit. c. iii.**<sup>113</sup>

*gl. affirmas*

Quod eam cognovisti.

*gl. caput*

**supra de despon. impu. continebatur.**<sup>114</sup> **xxxiii. q. i. si quis acceperit.**<sup>115</sup> Et hoc intellige, nisi ipsa velit probare se virginem per aspectum corporis, **supra de probat. proposuisti.**<sup>116</sup> et **causam matrimonii.**<sup>117</sup>

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<sup>102</sup> X 2.27.11 [Fr. v.2 cols. 395-396].

<sup>103</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>104</sup> Dig. 48.5.14 (13).5.

<sup>105</sup> Dig. 48.5.14 (13).10.

<sup>106</sup> 32.q.1 in the 1582 *ER*, which is corret. C. 32 q. 2 c. 5 [Fr. v.1 col. 1116].

<sup>107</sup> C. 32 q. 6 c. 1 [Fr. v.1 col. 1139].

<sup>108</sup> X 4.15.5 [Fr. v.2 cols. 705-706].

<sup>109</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>110</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>111</sup> No key words in MS F for the glosses in this section starting from this gloss. Check F.

<sup>112</sup> X 3.31.2 [Fr. v.2 col. 569].

<sup>113</sup> X 3.7.3 [Fr. v.2 cols. 457-458].

<sup>114</sup> X 4.2.6 [Fr. v.2 cols. 674-675].

<sup>115</sup> 32. q. 1 in the 1582 *ER*, which is likely a mistake. C. 33 q. 1 c. 3 [Fr. v.1 col. 1150].

<sup>116</sup> X 2.19.4 [Fr. v.2 col. 307].

<sup>117</sup> X 2.19.14 [Fr. v.2 cols. 314-315].

*gl. tacuit*

Ergo videtur quod post annum et dimidium reclamare non poterit. Sed contra videtur **C. de repudiis in causis**,<sup>118</sup> ubi dicitur quod usque ad duos annos poterit reclamare, immo usque ad triennium. In **aut. de nupti. § per occasionem**.<sup>119</sup> et **infra c. laudabilem**.<sup>120</sup> Quod dicitur in istis duabus ultimis concordantia tenendum est, et non tenet quod hic dicitur de anno et dimidio. Et est ar. ad praescriptionem, si quis taceat usque ad completam praescriptionem, quia gesta taciturnitate confirmavit. **C. de his qui a non dominis manumissi. l. plt.**<sup>121</sup>

*gl. probari*

Hoc ideo dicit quia +non est standum+ eorum confessioni contra matrimonium: et si uterque confiteatur, non videtur credendum, ne in fraudem hoc diceretur. **supra de eo qui cog. consan. vx. sue. super eo**.<sup>122</sup> nisi quod asserunt, probaverint vii. manu propinquorum. **xxxiii. q. i. c. ii.**<sup>123</sup> Sed pro matrimonio bene creditur eis, **supra de cland. mio. c. ii.**<sup>124</sup> Et quod dicitur, non creditur eis contra matrimonium, verum est quantum ad hoc, ut contrahendi facultatem acquirant. Sed si vellent in continentia manere, creditur eis, **xxxiii. q. v. quod deo pari.**<sup>125</sup>

#### **X 4.15.2—Canon**

Alexander III. Ambianensi Episcopo.

Quod sedem. Et infra. Sicut puer, qui non potest reddere debitum, non est aptus coniugio: sic qui impotentes sunt minime apti ad contrahenda matrimonia reputantur.

#### **X 4.15.2—Glossa (2 gls.)**

*gl. non est aptus*

**supra de desponsat. impu. a nobis.**<sup>126</sup> et ar. **c. puberes.**,<sup>127</sup> ubi de hoc.

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<sup>118</sup> Cod. 5.17.10.

<sup>119</sup> Nov. 22.6.

<sup>120</sup> X 4.15.5 [Fr. v.2 cols. 705-706].

<sup>121</sup> Cod. 7.10.6.

<sup>122</sup> X 4.13.5 [Fr. v.2 cols. 697-698].

<sup>123</sup> C. 33 q. 1 c. 2 [Fr. v.1 col. 1149].

<sup>124</sup> X 4.3.3 [Fr. v.2 cols. 679-680].

<sup>125</sup> C. 33 q. 5 c. 4 [Fr. v.1 cols. 1251-1252].

<sup>126</sup> X 4.2.8 [Fr. v.2 cols. 675-676].

<sup>127</sup> X 4.2.3 [Fr. v.2 col. 673].



*gl. impotentes*

Hac ratione videtur, quod senes qui natum defecerunt, contrahere non possunt. Sed contrarium est verum **C. de nup., sancimus.**<sup>128</sup> **xxvii. q. i. nuptiarum.**<sup>129</sup> Quia in senibus dicitur +esse+ legis obsequium, +et humanitatis solatium+ ut ibi, et **xxxi. q. i. aperiantur quod si dormierit.**<sup>130</sup> Sed hic non loquitur de tali impotentia, sed de eo qui sectus est, et qui perpetuo impotens est. Sed senes aliquando aliquo beneficio moventur.

### **X 4.15.3 - Canon**

Idem.

Ex literis tuis accepimus, quod quidam xvi. annorum quandam annorum xiii. duxit uxorem, qui cum debitum reddere non posset, mulier tam gravem infirmitatem contraxit, ut omnino viro sit facta inutilis, et instrumentum eius impeditum ita, quod vir eius commisceri non potest.

Respondemus igitur, quod, si vitium illud mulier a natura contraxit, nec ope medicorum poterit adiuvari, viro aliam accipiendi liberam tribuas facultatem.

### **X 4.15.3—Glossa (3 gls.)**

*gl. contraxit*

Id est, contraxisse apparuit, vel in veritate contraxit, ex eo quod contra naturam vim forsitan intulit, quia arta fuit: unde nullo modo sibi potuit commisceri, unde magis inhabilis reddita fuit, et sic non fuit matrimonium, **infra c. fraternitatis.**<sup>131</sup> Si enim non loqueretur de impedimento praecedente matrimonium, stare non posset quod dicitur in fi. **xxxii. q. i. dixit.**<sup>132</sup> et **q. v. si uxorem.**<sup>133</sup> et **supra de coniug. leprosum. c. i. et ii.**<sup>134</sup>

*gl. a natura*

Quia erat arta, ut dixi.

*gl. medicorum*

**infra e. fraternitatis.**<sup>135</sup> Et ita non fuit matrimonium. Et intellige quod dicit, non poterit adiuvari ope medicorum sine periculo corporali; alias non deberent separari: immo modicam violentiam

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<sup>128</sup> Cod. 5.4.24.

<sup>129</sup> C. 27 q. 1 c. 41 [Fr. v.1 cols. 1060-1061].

<sup>130</sup> C. 31 q. 1 c. 11 (*Aperiant, queso*) [Fr. v.1 col. 1112]?

<sup>131</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>132</sup> C. 32 q. 1 c. 2 [Fr. v.1 col. 1116].

<sup>133</sup> C. 32 q. 5 c. 18 [Fr. v.1 col. 1137].

<sup>134</sup> X 4.8.1 [Fr. v.2 cols. 690-691].

<sup>135</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

debet sustinere, ut ar. **e. fraternitatis**.<sup>136</sup> Et si talis fuit, non habuit propositum reddendi +matrimonii+ debitum exacta, vel exigendi, et sic nullum matrimonium, **xxxii. q. ii. solet**.<sup>137</sup> et **c. aliquando**.<sup>138</sup> et **supra de condit. ap. c. ult.**<sup>139</sup> Et secundum leges esset in causa redhibitionis, **ff. de edil. edicto. quaeritur § mulierem**.<sup>140</sup> ar. contra, **infra c. proxi**.<sup>141</sup>

#### X 4.15.4 - Canon

Lucius III.

Consultationi tuae, qua nos consuluisti, utrum feminae clausae, impotentes commisceri maribus, matrimonium possint contrahere, et si contraxerint, debeat rescindi. Taliter respondemus, quod, licet incredibile videatur, quod aliquis cum talibus contrahat matrimonium: Romana tamen ecclesia consuevit in consimilibus iudicare, ut quas tanquam uxores habere non possunt, habeant ut sorores.<sup>142</sup>

#### X 4.15.4—Glossa (2 gls.)

*gl. incredibile*

Quia conditionem corporis sui sciens, non contraheret de levi. +Ala.+

*gl. iudicare*

Ergo et nos sic iudicamus. **supra de re iudicata in causis**.<sup>143</sup> +**C. de legi. et constit. prin. l. vlt.**<sup>144</sup>+ quod verum est, ubi ipsa sic praecipit iudicandum. ar. **ii. q. iii. nolite**.<sup>145</sup> Alias *bene* +non+ permittit qualiter fieri. **ii. di. quis nesciat**.<sup>146</sup> Sed hic non praecepit eius consuetudinem

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<sup>136</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>137</sup> C. 32 q. 2 c. 6 [Fr. v.1 col. 1121].

<sup>138</sup> C. 32 q. 2 c. 7 [Fr. v.1 cols. 1121-1122].

<sup>139</sup> X 4.5.7 [Fr. v.2 col. 684].

<sup>140</sup> Dig. 21.1.14.7.

<sup>141</sup> X 4.15.4 [Fr. v.2 col. 705].

<sup>142</sup> Cf. X 4.15.5 [Fr. v.2 cols. 705-706].

<sup>143</sup> X 2.27.19 [Fr. v.2 col. 403].

<sup>144</sup> Cod. 1.14.12.

<sup>145</sup> This allegation has yet to be identified.

<sup>146</sup> Dist. 9 c. 8 [Fr. v.1 cols. 17-18]?

esse servandam, sed potius consilium est. Tamen intelligere qui hic dicitur et secundum illam decretalem. **infra e. fraternitatis.**,<sup>147</sup> ut dixi **supra c. proxi.**<sup>148</sup>

#### X 4.15.5—Canon

Coelestinus III.

Laudabilem et infra. Requisisti, quantum tempus indulgendum sit naturaliter frigidis ad experientiam copulae nuptialis. Nos vero, in praesenti consultatione sentimus, ut, a tempore celebrati coniugii, si frigiditas prius probari non possit, cohabitent per triennium. Quo elapso, si nec tunc cohabitare voluerint, et iuxta decretum Gregorii, mulier per iustum iudicium de viro probare potuerit, quod cum ea coire non possit, accipiat alium; si autem ille aliam acceperit, separentur. Quod si ambo consentiant simul esse, vir eam, etsi non ut uxorem, saltem habeat in sororem.<sup>149</sup> Si autem, quod nunquam se invicem cognoverint, ambo fatentur, +cum+ vii. manu propinquorum vel vicinorum bonae famaе, si propinqui defuerint, tactis sacrosanctis evangeliiis uterque iureiurando dicat, quod nunquam per carnis copulam una caro effecti fuissent: et tunc videtur, quod mulier valeat ad secundas nuptias convolare. Verum si ille aliam duxerit, tunc hii qui iuraverant, rei periurii teneantur, et peracta penitentia cogantur ad connubia priora redire.

#### X 4.15.5—Glossa (11 gls.)

*gl(s). celebrati and frigiditas* (copied as one gloss in MS F)

celebrati

Et a tempore cohabitationis, nec sufficit cohabitare, nisi dent operam carnali operi, **xxxiii. q. i. requisisti.**<sup>150</sup>

frigiditas

Quod hic dicitur de frigido, idem intelligo et de maleficiato, ut usque ad triennium expectet, maxime quia magis sperandum est quod impedimentum possit removeri, quod non processit a naturalibus. L.

*gl. prius probari*

Ar. quod si prius possit probari impedimentum, non expectabunt per triennium, **infra e. c. proxi.**<sup>151</sup> Si vero manifeste non constet, tunc cohabitent simul per triennium continuum, in quo

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<sup>147</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>148</sup> X 4.15.3 [Fr. v.2 col. 705].

<sup>149</sup> Cf X 4.15.4 [Fr. v.2 col. 705].

<sup>150</sup> C. 33 q. 1 c. 2 [Fr. v.1 col. 1149].

<sup>151</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

debent dare operam carnali operi, ut hic, et **infra e. c. ult.**<sup>152</sup> Et in **aut. de nupti. § per occasionem.**<sup>153</sup>

*gl. Gregorii*

**xxxiii. q. i. quod autem.**<sup>154</sup>

*gl. iustum iudicium*

Id est, per testes, vel per aspectum corporis, ar. **supra de probat. proposuisti.**<sup>155</sup> et **infra e. c. ult.**<sup>156</sup>

*gl. separentur*

Propter naturalem frigiditatem; secus si propter maleficium, **xxxiii. q. i. si per sortiarias.**<sup>157</sup>

*gl. quod si ambo*

Vel solummodo mulier. Ille enim qui scienter contraxit, non videtur quod possit contradicere, ar. **supra de eo qui duxi. in matrimonium. c. i.**<sup>158</sup> **ff. de l. commissoria. l. ii.**<sup>159</sup> Vel dicas et verius quod necesse est ut ambo consentiant, sufficit quod ita scriptum est, etsi perquam durum est, **ff. qui et a quibus. lib. prospexit.**<sup>160</sup> et **vi. q. iii. scriptum.**<sup>161</sup> Quia cum nullum sit matrimonium, non tenetur +alter+ alteri.

*gl. vii manu*

Sic **infra e. c. ult.**<sup>162</sup> et **xxxiii. q. i. requisisti.**<sup>163</sup>

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<sup>152</sup> X 4.15.7 [Fr. v.2 cols. 707-708].

<sup>153</sup> Nov. 22.6.

<sup>154</sup> C. 33 q. 1 c. 1 [Fr. v.1 col. 1149].

<sup>155</sup> X 2.19.4 [Fr. v.2 col. 307].

<sup>156</sup> X 4.15.7 [Fr. v.2 cols. 707-708].

<sup>157</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>158</sup> X 4.7.1 [Fr. v.2 col. 687].

<sup>159</sup> Dig. 18.3.2.

<sup>160</sup> Dig. 40.9.12.

<sup>161</sup> C. 6 q. 3 c. 1 [Fr. v.1 col. 562].

<sup>162</sup> X 4.15.7 [Fr. v.2 cols. 707-708].

<sup>163</sup> C. 33 q. 3 c. 2 [Fr. v.1 col. 1149].

*gl. uterque*

Uterque vir et mulier iurare debet, quod bona fide dederunt operam carnali copulae per triennium, nec una caro effici potuerunt. Propinqui iurabunt quod credunt eos iurasse verum, ar. **infra de purgatio. canonica. quoties.**<sup>164</sup>

*gl. hii qui*

Scilicet, vir et uxor. Et non alii compurgatores, si bona fide iuraverunt.

*gl. redire*

Cum propter frigiditatem separantur: secus si propter maleficium, **xxxiii. q. i. si per sortiarias.**<sup>165</sup>

#### **X 4.15.6—Canon**

Innocentius III. Altissiodorensi Episcopo.

Fraternitatis tuae literas recepimus, continentes, quod O. mulier cuidam viro matrimonialiter nupsit, cum quo per multos annos morata, non potuit carnaliter ab ipso cognosci. Licet autem per archipresbyterum tuum super hoc fuisses edoctus, tu tamen, volens habere certitudinem plenior, quasdam matronas suae parochiae providas et honestas ad tuam praesentiam evocasti, districte illis iniungens sub periculo animarum, ut mulierem ipsam prudenter inspicerent, et perquirent diligenter, utrum ydonea esset ad viriles amplexus; quae tandem in fide sua tibi asseruere constanter, quod eadem nunquam poterat esse mater aut coniux, tanquam cui naturale deerat instrumentum. Unde ipsam inter et virum divortium celebrasti, mulierem inducens, ut ad religionem aliquam se transferret perpetuam continentiam servatura, et viro licentiam tribuisti, ut uxorem duceret, quia pater fieri cupiebat. Contigit autem postea, quod mulier invenit qui seras huiusmodi reseravit, et abiiciens continentiam, quam promisit, V.<sup>166</sup> lateri praesentium supernupsit. Quamvis igitur semiplene nobis expresseris, quomodo dicta mulier se promiserit continentiam servaturam, utrum videlicet simplici verbo, an voto sollempni, utrumve ad religionem transierit, ut promisit, an contra promissionem in domo remanserit, et qualiter seras illas fecerit reserari, utrum videlicet artificio medici, an concubitu an viri, seu alio modo quolibet modo: nos tamen, perspicaciter attendentes, quod impedimentum illud non erat perpetuum, quod praeter divinum miraculum per opus humanum absque corporali periculo potuit removeri, sententiam divortii per errorem, licet probabilem, novimus esse prolatam, cum pateat ex postfacto, quod ipsa cognoscibilis erat illi, cuius cuius simili commiscetur, et ideo inter ipsam et primum dicimus verum matrimonium exstitisse: quare inter eam et praefatum V.<sup>167</sup> matrimonium non esse censemus, eosque praecipimus ab invicem separari. Et si praedicta mulier ad religionem transivit, +sicut asserit promisisse,+ primus vir, qui non cognovit eandem, cum ea remaneat, cum qua postmodum ecclesiae auctoritate contraxit; alioquin, ea dimissa, debet ad illam redire, cum

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<sup>164</sup> X 5.34.5 [Fr. v.2 cols. 870-871].

<sup>165</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>166</sup> “G.” in the 1582 *ER*.

<sup>167</sup> “G.” in the 1582 *ER*.

qua primo contraxit nisi se voto mulier illa constrinxerit ad continentiam observandam, ut intelligatur per hoc cum praefato V<sup>168</sup>. fornicata fuisse, vel nisi se fornicario modo alii vero miscuerit, ut primus vir praetextu fornicationis, eius velit consortium declinare. Nam si tantum simplici verbo promisit se continentiam servaturam, et postea in conspectu ecclesiae nupsit memorato V<sup>169</sup>., quamdiu articulus iste dubitabilis erat, praesumi non debet, quod fornicaretur cum illo, sed amodo non debet cum illo aliquatenus remanere. Per haec autem noveris quaestionem illam esse solutam, qua quaeritur, utrum ea, quae adeo arta est, ut nulli possit carnaliter commisceri. Nisi per incisionem aut sibi alio modo violentia inferatur, non solummodo levis, sed forte tam gravis, ut ex ea mortis periculum timeatur, ad matrimonium contrahendum debeat ydonea perhiberi. Similiter illa, quae viro, cui nupserat, adeo arta est, ut nunquam ab eo valeat deflorari, si ab eo per iudicium ecclesiae separata, nubat alteri, cui arta non sit, et per frequentem usum secundi reddatur etiam apta primo, utrum debeat ad eum redire cum quo prius foedus inierat coniugale. De talibus autem non est facile iudicandum, cum finale iudicium pendeat ex futuro.

#### X 4.15.6—Glossa (22/23 gls.)

##### *gl. matronas*

Talibus credendum est, si honestae sint et peritae in arte illa, **ff. de ventre. in possessionem mittendo. l. i.**<sup>170</sup> et **supra de probat. proposuisti.**<sup>171</sup> et **c. causam.**<sup>172</sup> et **infra e. c. proxi.**<sup>173</sup> Oculus enim +obstetricum+ in talibus saepe fallitur, **xxvii. q. i. nec aliqua.**<sup>174</sup> Et in hoc casu non requiritur iuramentum propinquorum, sicut et in frigiditate, ut **supra c. proxi.**<sup>175</sup>

##### *gl. districte*

Per iuramentum. Hic non est remittendum iuramentum istis testibus, ne aliquid in fraudem matrimonii dicerent. ar. **supra de eo qui cog. consan. super eo.**<sup>176</sup> et **infra c. proxi.**<sup>177</sup>

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<sup>168</sup> “G.” in the 1582 *ER*.

<sup>169</sup> “G.” in the 1582 *ER*.

<sup>170</sup> Dig. 37.9.1.

<sup>171</sup> X 2.19.4 [Fr. v.2 col. 307].

<sup>172</sup> X 2.19.14 [Fr. v.2 cols. 314-315].

<sup>173</sup> X 4.15.7 [Fr. v.2 cols. 706-707].

<sup>174</sup> C. 27 q. 1 c. 4 [Fr. v.1 cols. 1048-1049].

<sup>175</sup> X 4.15.5 [Fr. v.2 col. 705-706].

<sup>176</sup> X 4.13.5 [Fr. v.2 cols. 697-698].

<sup>177</sup> X 4.15.7 [Fr. v.2 cols. 706-707].

*gl. poterat esse*

Sed qualiter hic potuit probari, cum sit negativa? Sic potuit probari, dicendo, quod haec mulier caret membro apto ad copulam carnalem. Qualiter negativa probatur *dictum est, supra de elect. bonae.*<sup>178</sup> +Bernar.+

*gl. deerat*

Nota quod non dicitur esse, quod inutile est. **supra de transl. inter corporalia.**<sup>179</sup> et **ff. quod cuiuscumque. universitatis. l. i. § et quidem.**<sup>180</sup> Nec dicitur habere actionem, qui habet inutilem, **ff. de dolo. nam is.**<sup>181</sup> et **supra de restit. spol. olim vobis.**<sup>182</sup> ar. **supra de solutionibus. c. plt.**<sup>183</sup>

*gl. invenit*

Non dicit quoniam medicum vel alium.

*gl. divinum miraculum*

Ar. quod nullum maleficium est perpetuum, cum possit removeri praeter divinum miraculum, saltem per illum qui ipsum induxit, quia quicquid ligatur, dissolubile est. In **aut. de nup. § nuptias.**<sup>184</sup> Et secundum hoc non tenet illud capitulum si per sortiarias. **xxxiii. q. i.**<sup>185</sup> ubi quidam dicunt. Potest dici quod aliud est cum allegatur impotentia ex parte mulieris, ut hic; et aliud ubi ex parte viri allegatur maleficium, ut in **c. si per sortiarias.**<sup>186</sup> +et **infra cap. proxi.**<sup>187</sup>+ Et hic allegata fuit causa falsa, ut postea apparuit. Unde postea debet restitui viro, ar. **supra de re iudi. lator**<sup>188</sup> **consanguinei.**<sup>189</sup> et ad hanc causam refertur haec ratio, attendentes quod impedimentum, etc. Vel potest dici quod maleficium est perpetuum, ex quo enim mulier cohabitavit viro per triennium, et dederunt operam copulae carnali, nec potuerunt commisceri, praesumitur perpetuum impedimentum, et possunt separari et alteri nubere: ut **c. si per**

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<sup>178</sup> X 1.6.23 [Fr. v.2 cols. 66-68].

<sup>179</sup> X 1.7.2 [Fr. v.2 cols. 97-98].

<sup>180</sup> Dig. 3.4.1.2: "Et quidem non esse actorem vel syndicum tunc quoque intellegimus, cum is absit aut valetudine impedietur aut inhabilis sit ad agendum."

<sup>181</sup> Dig. 4.3.6.

<sup>182</sup> X 2.13.16 [Fr. v.2 cols. 289-290].

<sup>183</sup> X 3.23.4 [Fr. v.2 col. 532].

<sup>184</sup> Nov. 22.3.

<sup>185</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>186</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>187</sup> X 4.15.7 [Fr. v.2 cols. 707-708].

<sup>188</sup> X 2.27.7 [Fr. v.2 col. 394].

<sup>189</sup> X 2.27.11 [Fr. v.2 cols. 395-396].

**sortiarias.**<sup>190</sup> Quia potest esse aliquis maleficiatus cum una, et non cum alia. Et hoc intellige de maleficio quod praecessit matrimonium, nam post matrimonium contractum si superveniat impedimentum, non debent separari, **xxxii. q. vii. hii qui san.**<sup>191</sup> et **q. v. si uxorem.**<sup>192</sup> +Si vero post separationem eam cognosceret, matrimonium debet redintegrari, ut hic patet, quia impedimentum non erat perpetuum.+

*gl. corporali periculo*

Ubi vero grave periculum timeretur, non est matrimonium, sed ubi levi periculo potest removeri, debet illud pati, **infra e. c. § per hoc,**<sup>193</sup> a contrario sensu.

*gl. per errorem*

Per quem excusatur iudex, **infra de sent. exco. sacro.**<sup>194</sup> Et intellige quod error iste intervenit in aspectu corporis, in quo matronae deceptae fuerunt, quia manus et oculus obstetricum saepe fallitur, **supra de probat. causam.**<sup>195</sup> et **xxvii. q. i. nec aliqua.**<sup>196</sup> Et sic patet quod sententia per errorem lata, a qua non est appellatum, retractatur, si error probabilis postea detegatur, **infra de purgatur. vulgari. significantibus.**<sup>197</sup> et **ff. de condict. sine causa. l. ii.**<sup>198</sup> Item habes hic quod sententia per errorem lata contra matrimonium non transit in rem iudicatam, quo minus potest revocari quandocumque apparuerit ecclesiam deceptam fuisse, ut hic patet; et **supra de re iudi. lator consanguinei.**<sup>199</sup> +et **supra de re iudi. lator.**<sup>200</sup> et **cap. consanguinei.**<sup>201</sup> et **infra eod. cap. proxi.**<sup>202</sup> et **supra eod. cap. i.**<sup>203</sup> et **cap. proxi.**<sup>204</sup>+

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<sup>190</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>191</sup> C. 32 q. 7 c. 25 [Fr. v.1 cols. 1146-1147].

<sup>192</sup> C. 32 q. 5 c. 18 [Fr. v.1 col. 1137].

<sup>193</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>194</sup> X 5.39.48 [Fr. v.2 cols. 909-910].

<sup>195</sup> X 2.19.14 [Fr. v.2 cols. 314-315].

<sup>196</sup> C. 27 q. 1 c. 4 [Fr. v.1 cols. 1048-1049].

<sup>197</sup> X 5.35.2 [Fr. v.2 col. 878].

<sup>198</sup> Dig. 12.7.2.

<sup>199</sup> X 2.27.11 [Fr. v.2 cols. 395-396].

<sup>200</sup> X 2.27.7 [Fr. v.2 col. 394].

<sup>201</sup> X 2.27.11 [Fr. v.2 cols. 395-396].

<sup>202</sup> X 4.15.7 [Fr. v.2 cols. 707-708].

<sup>203</sup> X 4.15.1 [Fr. v.2 cols. 704-705].

<sup>204</sup> X 4.15.5 [Fr. v.2 cols. 705-706].



*gl. erat illi*

Primo viro a quo fuit separata.

*gl. simili*

Sic **xxxiii. q. i. requisisti.**<sup>205</sup> Et innuitur hic quod in fi. huius capituli quod si prior vir non possit eam cognoscere sine gravi periculo, quod non sit reddenda primo viro, licet ex postfacto per consuetudinem secundi viri reddita sit apta primo viro. Quod bene potest concedi, quia non fuit matrimonium inter eos, ut dixerunt. Vincen. et Io. et T.

*gl. remaneat*

Quod si ingressa fuit et professa, statim solutum fuit matrimonium, si quod fuit inter eos. **supra de conversione. coniugatorum. ex publico.**<sup>206</sup> Secus si ingressa fuit causa probationis, quia si ista tunc ad secundum rediret, compellitur redire ad priorem virum.

*gl. alioquin*

Id est, si non transivit cum effectu.

*gl. se voto*

Sollemptni, scilicet, et tunc debet compelli votum servare, et per hoc intelligitur fornicata esse cum secundo, cum ipsa contrahere non potuit post votum sollemptne.

*gl. fornicario modo*

Quia si legitime cum altero contraxisset, illud ei obici non posset, nec praeterea talis fornicationis posset repelli a viro, ar. **infra de divortiis. gaudemus.**<sup>207</sup> Immo videtur, quod fornicationem obicere non posset ei, ar. nullam enim iniuriam fecit nec intendebat facere viro, quia fornicata fuit tamquam soluta, **xv. q. i. illud.**<sup>208</sup> **ff. locati. +et conduct.+ si ignorans quis.**<sup>209</sup> Nam adulterium non comittitur sine dolo, **xxxiii. q. ii. in lectum.**<sup>210</sup> **ff. de adulteriis. l. plt.**<sup>211</sup> Item si aliqui sunt separati per sententiam ecclesiae, et postea alter eorum fornicetur, minorem iniuriam committit et minus peccat, **xxxii. q. vii. quemadmodum.**<sup>212</sup> Praeterea per primam fornicationem non fuit apta primo viro, +sed+ forte nec per multas alias, ergo illam solam potest<sup>213</sup> opponere cum reddita fuit apta viro primo, quae postea secuta est: quia tunc primum laeditur ius

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<sup>205</sup> C. 33 q. 3 c. 2 [Fr. v.1 col. 1149].

<sup>206</sup> X 3.32.7 [Fr. v.2 cols. 580-581].

<sup>207</sup> X 4.19.8 [Fr. v.2 cols. 723-724].

<sup>208</sup> C. 15 q.1 c. 746 [Fr. v.1 col. 746].

<sup>209</sup> Dig. 19.2.50.

<sup>210</sup> C. 34 q. 2 c. 6 [Fr. v.1 col. 1259].

<sup>211</sup> Dig. 48.5.44 (43).

<sup>212</sup> C. 32 q. 7 c. 10 [Fr. v.1 col. 1142].

<sup>213</sup> An “ei” follows the word “potest” in MS F.

matrimonii, ar. **supra de dona. apostolicae.**<sup>214</sup> Potest dici quod sicut ex futuro eventu apparet retro fuisse matrimonium, ut dicitur in fi., sic ex futuro evento retro fuisse factam iniuriam priori viro. **ff. de captivis. et postli. re. in bello § i.**<sup>215</sup> et **ff. ad mac. l. i. § i.**<sup>216</sup> Sed quid si post primum coitum cum secundo, prior repetit eam? Dico quod est ei restituenda. Et si non intervenerit eam aptam, est restituenda secundo. Et sic etiam post secundum vel tertium secundi, et sic in infinitum, ut dixit *Io. T.* dixit usque ad tertiam vicem tantum, et non ultra debet restitui primo. Immo remanere debet cum secundo, quoniam tantum due sententiae post primam sunt ferendae, quia tertio appellare non licet, **ii. q. vi. si quis in quacumque.**<sup>217</sup> et **supra de ap. sua nobis.**<sup>218</sup> +*Ber.*+

*gl. praesumi*

Simile xxxiiii. **q. ii. cum per bellicam.**<sup>219</sup> et **infra de divortiis. gaudemus.**<sup>220</sup>

*gl. ammodo*

Scilicet, veritate revelata, quod fuerat uxor primi.

*gl. solutam*

Arg. a contrario sensu sumpto, **supra e. c. i.**<sup>221</sup> absque corporali periculo, etc. Et est ar. validum a contrario. **supra de his que fiunt a praelato. sine consensu capituli. cum apostolica. in fi.**<sup>222</sup> et **supra de regularibus. cum virum.**<sup>223</sup>

*gl. idonea prohiberi*

Et certe non.

*gl. similiter*

Resume: per hoc noveris quaestionem illam esse solutam, qua quaeritur, utrum illa que viro cui, etc.

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<sup>214</sup> X 3.24.9 [Fr. v.2 cols. 536-537].

<sup>215</sup> Dig. 49.15.12.1.

<sup>216</sup> Dig. 14.6.1.1?

<sup>217</sup> C. 2 q. 6 dict. post c. 39 [Fr. v.1 col. 481] citing Cod. 7.70.1?

<sup>218</sup> X 2.28.65 [Fr. v.2 cols. 440-441].

<sup>219</sup> C. 34 q. 1 & 2 c. 1 [Fr. v.1 cols. 1256-1257].

<sup>220</sup> X 4.19.8 [Fr. v.2 cols. 723-724].

<sup>221</sup> X 4.15.1 [Fr. v.2 cols. 704-705].

<sup>222</sup> X 3.10.7 [Fr. v.2 cols. 504-505].

<sup>223</sup> X 3.31.12 [Fr. v.2 cols. 572-573].

*gl. debeat*

Quasi dicat, non debet. Hoc tamen intellige secundum distinctionem praemissam, an sit grave periculum si reddatur apta vel non. Vincen.

+*gl. de talibus* (not in MS F)

Simile **supra de in integ. restit. cum venissent.**<sup>224+</sup>

*gl. non est facile*

Quia nescitur an sit apta primo viro. Et hoc ab aliquo +iure+ perpendi non potest, sed potius per experientiam facti; simile. +**supra de donationibus. Apostolicae,**<sup>225</sup> cum suis concordantiis.

*gl. ex futuro*

Sic **ff. de rebus. dubiis. quaedam sunt.**<sup>226</sup> et **ff. si certum. pe. proinde.**<sup>227</sup> et **ff. qui potiores in pignore. ha. potior.**<sup>228</sup> **ff. ad Maced. l. i. § i.**<sup>229</sup> Nec intellige quod matrimonium retrahatur, sed hoc ideo dicit, quia in dubio est an sit matrimonium cum primo. Cum incipiat esse apta sibi, sed tunc primo declaratur fuisse matrimonium; simile **ff. si servitus vind. sicut § sed quaeritur.**<sup>230</sup> et **ff. de acquirendo rerum. do. adeo. § cum quis, in fi.**<sup>231</sup> et **xxxiii. q. i. requisisti.**<sup>232</sup> +**ff. qui testam. fac. pot. heredes palam § primo.**<sup>233</sup> Bernar.+

#### **X 4.15.7—Canon**

Honorius III.

Litterae vestrae nobis exhibitae continebant, quod, cum causa matrimonii, quae inter M. mulierem et A. eius virum vertitur: vobis fuisset ab Innocentio Papa praedecessore nostro commissa, dicta mulier proposuit, quod cum viii annis elapsis dicto A. fuisset matrimonialiter copulata, et diu cohabitasset eidem, adhuc integra permanebat, eo quod praedictus vir eius non habebat potentiam coeundi: quare petebat divortium celebrari. Praedictus vero A. fatebatur, quod illam

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<sup>224</sup> X 1.41.2 [Fr. v.2 cols. 223-224].

<sup>225</sup> X 3.24.9 [Fr. v.2 cols. 536-537].

<sup>226</sup> Dig. 34.5.15.

<sup>227</sup> Dig. 12.1.8.

<sup>228</sup> Dig. 20.4.11.

<sup>229</sup> Dig. 14.6.1.1.

<sup>230</sup> Dig. 8.5.8.3.

<sup>231</sup> Dig. 41.1.7.7.

<sup>232</sup> C. 33 q. 3 c. 2 [Fr. v.1 col. 1149].

<sup>233</sup> Dig. 28.1.21.pr./1?

nunquam cognoverat, tamen se habere potentiam cognoscendi alias asserebat. Vos vero, ne id confiterentur in fraudem, a matronis bonae opinionis, fide dignis, ac expertis in opere nuptiali, dictam fecistis inspicere mulierem: quae perhibuerunt testimonium, ipsam adhuc virginem permanere. Postea<sup>234</sup> per presbyterum, de cuius parochia vir exstitit, fecistis inquiri, utrum ipse aliquam cognovisset: nec per inquisitionem ipsam vobis constare potuit, aliquam esse carnaliter cognitam ab eodem. Muliere autem requirente divortium, et dicente, quod mater esse volebat, et filios procreare, proponente vero viro, quod paratus erat stare consilio ecclesiae, iniunxistis eisdem, ut agerent penitentiam de commissis, et sic forte placeret Deo, qui matrimonii fuit institutor et auctor, ut opus matrimonii consummarent; qui post plures terminos, ad vestram reversi praesentiam, consona voce dixerunt, quod non poterant carnaliter commisceri. Quocirca mandamus, quatenus, si est ita, et constiterit vobis, praefatos virum et mulierem infra praedictos viii annos per continuum triennium insimul habitasse: ipsis cum vii propinquorum manu iuramento firmantibus, se commisceri carnaliter nequivisse, proferatis divortii sententiam inter eos.

#### X 4.15.7—*Glossa* (8 gls.)

##### *gl. adhuc integra*

Et intellige quod haec fuit viripotens, quae virum pati poterat. Licet esset virgo, dicitur viripotens, **ff. de ver. sig. mulieris. in principio.**<sup>235</sup>

##### *gl. cognoscendi alias*

Et ita allegebatur iste maleficio quantum ad istam, et non quantum ad alias, et non frigiditatem. Quia si quis est frigidus quo ad +unam, quo ad+ omnes est frigidus, cum impedimentum a natura procedat, ar. **supra e. ex litteris.**<sup>236</sup> Secus in maleficiato, ut dictum est **supra c. proximo.,**<sup>237</sup> unde postquam constiterit de maleficio, post triennium debent separari, et ad alia vota transire. **xxxiii. q. i. si per sortiarias.**<sup>238</sup> Secus in frigido, ut **supra e. c. i. et c. laudabilem.**<sup>239</sup> et **xxxiii. q. i. requisisti.**<sup>240</sup>

##### *gl. in fraudem*

Confessioni coniugum contra matrimonium non est credendum, propter collusionem quam multifacerent, **supra de eo qui cognovit. consan. super eo.**<sup>241</sup>

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<sup>234</sup> “Postmodum” in the 1582 *ER*.

<sup>235</sup> Dig. 50.16.13.pr/1.?

<sup>236</sup> X 4.15.3 [Fr. v.2 col. 705].

<sup>237</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>238</sup> C. 33 q. 1 c. 4 [Fr. v.1 col. 1150].

<sup>239</sup> X 4.15.1 and 5 [Fr. v.2 cols. 704-705] and [Fr. v.2 cols. 705-706].

<sup>240</sup> C. 33 q. 3 c. 2 [Fr. v.1 col. 1149].

<sup>241</sup> X 4.13.5 [Fr. v.2 cols. 697-698].

*gl. fide dignis*

**supra c. proxi.**<sup>242</sup> ubi de hoc.

*gl. de commissis*

Quia infirmitas corporalis non numquam provenit ex peccato. Et sic causa cessante forte cessabit effectus. **infra de poenit. et remiss. cum infirmitas.**<sup>243</sup>

*gl. institutor*

Sic **xxvi. di. deinde opponitur.**<sup>244</sup> et ar. **supra c. propter de infidelibus.**<sup>245</sup> et **xxxii. q. ii. § his ita.**<sup>246</sup> Et quidam dicunt quod hiis verbis fuit institutum +matrimonium+. Hoc nunc os ex ossibus meis. etc. Sed illa verba prolata sunt ab Adam. Vt **supra de bigamis. debitum.**<sup>247</sup> unde videtur verius quod per illa verba: crescite et multiplicamini, ab ipso Domino prolata.

*gl. continuum triennium*

Qui enim separantur propter frigiditatem naturalem, per continuum triennium debent simul cohabitare, et dare operam carnali operi, **supra e. laudabilem.**<sup>248</sup> et in **aut. de nupti. § per occasionem.**<sup>249</sup> Idem tempus dico dandum maleficiato, et multo fortius, cum sit accidentale illud impedimentum.

*gl. vii propinquorum manu*

Sed quare requiruntur propinquorum sacramenta, cum sufficere debeat iuramentum viri et mulieris, cum iuramento illarum, quae illam virginem asseverant, ut **supra de probat., proposuisti.**<sup>250</sup> et **causam matrimonii.**<sup>251</sup> Vel etiam iuramenta propinquorum sufficiunt, cum uterque id confitetur. **xxxiii. q. i. requisisti.**<sup>252</sup> Sed hic uterque hoc confitebatur, quia oculus saepe fallitur et manus **xxvii. q. i. nec aliqua.**<sup>253</sup> ideo iuramenta propinquorum requiruntur. Omnis enim cautela, quae adhiberi potest in talibus, est adhibenda propter periculum animae. Et

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<sup>242</sup> X 4.15.6 [Fr. v.2 cols. 706-707].

<sup>243</sup> X 5.38.13 [Fr. v.2 col. 888].

<sup>244</sup> 32. dist. in the 1582 *ER*, which is likely a mistake. Dist. 26 c. 3 [Fr. v.1 cols. 96-97].

<sup>245</sup> X 4.14.4 [Fr. v.2 col. 702]?

<sup>246</sup> C. 32 q. 2 dict. ante c. 3 [Fr. v.1 col. 1120].

<sup>247</sup> X 1.21.5 [Fr. v.2 cols. 147-148].

<sup>248</sup> X 4.15.1 and 5 [Fr. v.2 cols. 704-705] and [Fr. v.2 cols. 705-706].

<sup>249</sup> Nov. 22.6.

<sup>250</sup> X 2.19.4 [Fr. v.2 col. 307].

<sup>251</sup> X 2.19.14 [Fr. v.2 cols. 314-315].

<sup>252</sup> C. 33 q. 3 c. 2 [Fr. v.1 col. 1149].

<sup>253</sup> C. 27 q. 1 c. 4 [Fr. v.1 cols. 1048-1049].

ideo circa maiora cautius est agendum. ar. **viii. q. ii.**<sup>254</sup> **c. ult.**<sup>255</sup> et **xlii. di. quiescamus.**<sup>256</sup> et **ff. ad carbo. l. i. § ii.**<sup>257</sup> et **lxi. di. miramur.**<sup>258</sup> Tamen si alterum omitteretur, nihilominus valeret ut **c. requisisti.**<sup>259</sup> et **c. proposuisti.**<sup>260</sup> et **c. causam matrimonii.**<sup>261</sup>

## **X 5.6 De iudaeis, sarracenis, et eorum servis**

### **X 5.6.1—Canon**<sup>262</sup>

Ex concilio Matensi

Praesenti concilio sancimus, ut nullum Christianum mancipium Iudaeo serviat, sed dati XII. solidis pro quolibet bono mancipio, ipsum quicumque Christianorum, seu ad ingenuitatem seu ad servitium, licentiam habeat redimendi. Et si Christianus fieri desiderat, et non permittitur, idem fiat, quia nefas est quem Christus redemit blasphemum Christi in servitutis vinculis detinere.

### **X 5.6.1—Glossa (5 gls.)**

*gl. serviat*

Nec cum Iudaeis Christiani morentur. **xxxiii. q. i. Iudaei.**<sup>263</sup> et **c. sepe.**<sup>264</sup> et **c. nullus.**<sup>265</sup> Sed in agro, ubi cum Iudaeo non moratur, bene potest servire. **infra c. proxi.**<sup>266</sup>

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<sup>254</sup> 7. q. 2. in the 1582 *ER*.

<sup>255</sup> C. 8 q. 2 c. 2 [Fr. v.1 col. 598] or C. 7 q. 2 c. 2 [Fr. v.1 col. 589]

<sup>256</sup> Dist. 42 c. 2 [Fr. v.1 col. 152].

<sup>257</sup> Dig. 37.10.1.2.

<sup>258</sup> Dist. 61 c. 5 [Fr. v.1 cols. 228-229].

<sup>259</sup> C. 33 q. 3 c. 2 [Fr. v.1 col. 1149].

<sup>260</sup> X 2.19.4 [Fr. v.2 col. 307].

<sup>261</sup> X 2.19.14 [Fr. v.2 cols. 314-315].

<sup>262</sup> Council of Mâcon in 581, c. 16 [Fr. v.2 col. 771].

<sup>263</sup> 28. q. 1 in the 1582 *ER*, which is correct. C. 28 q. 1 c. 10 [Fr. v.1 col. 1087].

<sup>264</sup> C. 28 q. 1 c. 12 [Fr. v.1 col. 1087].

<sup>265</sup> C. 28 q. 1 c. 13 [Fr. v.1 col. 1087].

<sup>266</sup> X 5.6.2? [Fr. v.2 cols. 771-772].

*gl. datis*

Sic **infra e. c. ult.**,<sup>267</sup> ubi de hoc. Et intellige hoc c. secundum illud de mancipio empto mercimonii: alias nullo pretio dato eripitur in libertate, vel si venalis *actio* **infra**<sup>268</sup> tres menses non fuerit expositus, ut ibi. +Ber.+

*gl. ad servitium*

Non tamen erit servus illius, +sed+ restituet ei +pretium+<sup>269</sup> et erit omnino liberatus. ar. **Instit. de noxa. act. §. dominus.**<sup>270</sup> Vel si non potest habere statim praetium, serviat ei tantum quod servitium compensetur cum pretio, et postea eat liber quo vult. **C. de capti. et postli. l. ult.**<sup>271</sup> **xxxvi. q. i. de raptoribus.**<sup>272</sup> Quid si plures emptores in simul currant? Locus erit gratificationi. **supra de iure patro. cum autem.**<sup>273</sup> et **ff. ad silla. si quis in gravi. §. si cum omnes.**<sup>274</sup> Quid si nullus emptor appareat? Nihilominus erit liber, et hostiatum<sup>275</sup> quaerat pretium. **ff. de manu. l. iii. §. si quis autem.**<sup>276</sup> aut pro pecunia operas praestet, ut dicitur in l. praedicta. **C. de capt. l. ult.**,<sup>277</sup> scilicet v. annis., ut ibi dicitur.

*gl. idem fiat*

Prout dictum est. et **infra e. c. ult.**<sup>278</sup>

*gl. blasphemum*

Id est, Iudaeum blasphemantem Christum. **infra e. cum sit.**<sup>279</sup>

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<sup>267</sup> X 5.6.9. Note that it is “proxi.” in the 1582 *ER* (meaning X 5.6.2), which is likely a mistake.

<sup>268</sup> Wording different from the 1582 *ER*, and the 1582 *ER* does not have “actio”—whether it is only in MS F awaits examination.

<sup>269</sup> While ‘sed’ and ‘pretium’ are not in MS F, as demonstrated here, they appear in MS Vat. lat. 11158 (155v) and other selected—i.e., later—versions of the *Glossa*.

<sup>270</sup> Inst. 4.8.3.

<sup>271</sup> Cod. 8.50.20.

<sup>272</sup> C. 36 q. 1 c. 3 [Fr. v.1 col. 1289].

<sup>273</sup> X 3.38.24 [Fr. v.2 col. 617].

<sup>274</sup> Dig. 29.5 (De senatus consulto Silaniano et Claudiano).3.4.

<sup>275</sup> “ostiatim” in the 1582 *ER*.

<sup>276</sup> Dig. 40.1.4.10.

<sup>277</sup> Cod. 8.50.20.

<sup>278</sup> X 5.6.19 [Fr. v.2 col. 778]?

<sup>279</sup> X 5.6.16 [Fr. v.2 col. 777].

## X 5.6.2—Canon<sup>280</sup>

Gregorius Episcopo Lucensi.

Multorum ad nos et infra. Nulli Iudaeo liceat Christianum mancipium in suo dominio retinere: sed, si qui apud eos inveniuntur, libertas eis servetur. Hii vero, qui in possesseionibus eorum sunt, licet legum districtione sint liberi, tamen, quia colendis terris eorum diutius adhaeserunt, ut pote conditione loci debentes, ad colenda rura remaneant, consuetas persiones praedictis viris praebentes. Cuncta etiam, quae de colonis vel originariis iura praecipiant, peragant, et nihil eis extra hoc honeris indicatur. Quodsi quisquam Iudaeorum de his vel ad alium transferre locum, vel ad aliud obsequium retinere voluerit: ipse sibi imputet, qui ius colonarium, et dominii ius sibi iuris severitate dampnavit.

## X 5.6.2—Glossa (10 gls.)

*gl. libertas*

**liiii. d. mancipia.**<sup>281</sup>

*gl. sint liberi*

Nota, originarios sive ascriptitios liberos esse. **C. de agricolis et cen. l. diffinimus.** +**lib. xi.**<sup>+282</sup> Ergo non repelluntur +a legitimis+ actibus. ar. **ff. de testi. l. i.**<sup>283</sup> **C. de postu. l. ult.**<sup>284</sup> quod verum est, tamen ad ordines non admittuntur, nisi de licentia dominorum. **liiii. di. si quis obligatus.**<sup>285</sup> **admittunt.**<sup>286</sup> ar. contra. **supra e. si servus.**<sup>287</sup> sed ibi nihilominus tenetur servire domino. +Ala.+

*gl. diutius adhaeserunt*

Ar. quod ex tempore servitus acquiritur, et servitia consueta praestari debent. **xix. q. ii. servitium.**<sup>288</sup> **ff. de aqua plu. ar. l. i. §. sicut.**<sup>289</sup> **ff. si servitus. ven. si quis diuturno.**<sup>290</sup> et C.

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<sup>280</sup> [Fr. v.2 cols. 771-772].

<sup>281</sup> 44 dist. in the 1582 *ER*, which is wrong. Dist. 54.13 [Fr. v.1 col. 211].

<sup>282</sup> Cod. 11.48.13 (“Definimus”).

<sup>283</sup> Dig. 22.5.1. There are three titles that begin with “De testi.” in the *Digest*. This one seems to be more relevant.

<sup>284</sup> Cod. 2.6.8.

<sup>285</sup> Dist. 54.7 [Fr. v.1 col. 208].

<sup>286</sup> Dist. 54.21 [Fr. v.1 col. 213].

<sup>287</sup> “dist. ea. si servus.” in the 1582 *ER*. Dist. 54.19.

<sup>288</sup> 18. q. 2. in the 1582 *ER*, which is correct. C. 18 q. 2 c. 31 [Fr. v.1 col. 838].

<sup>289</sup> Dig. 39.3.1.21.

<sup>290</sup> Dig. 8.5.10.pr..



**de servit. l. i. et ii.**<sup>291</sup> ar. contra. **i. q. i. nullus episcopus.**<sup>292</sup> de hoc dictum est. **supra de consuet. c. ult.**<sup>293</sup> **supra de censi. pervenit.**<sup>294</sup> Et ita habes hic, quod ex tempore aliquis efficitur originarius, scilicet xxx. an. **C. de agri. et cen. litibus.**<sup>295</sup> **cum satis lib. xi.**<sup>296</sup> ar. contra. **C. de praescript. quae pro libertate. l. ult.**<sup>297</sup>

*gl. debentes*

Id est, obligati, et astricti ad colenda rura. +Ber.+

*gl. de his*

Scilicet, originariis vel colonis.

*gl. retinere*

Forte in domo ad serviendum sibi quod esse non debet, ut dicit **in prin. c.**<sup>298</sup> et **supra e. c. i.**<sup>299</sup> et **infra e. Iudaei.**<sup>300</sup>

*gl. sive ipse sibi*

Scilicet, Iudaeus, qui transtulit colonum ad alium locum, vel alium servitium, imputet sibi, quia hoc ipso amisit ius vis colonarium, quod habebat in colono, et colonus liber erit ab illo iure, si et in colono liberi hominis: ut si dominus velit vendere fundum, et transferre colonum ad alium locum: non potest eo invito. **C. de agri. et cen. si quis praedium. +lib. xi.**<sup>301</sup> Vel si velit dividere aliquam agnationem colonorum vel affinitatem transferendo eos ad aliam colonariam, redintegrandi sunt. **C. communi utriusque iu. possessionem.**<sup>302</sup> **C. et de agri. et censi. diffinimus. +lib xi.**<sup>303</sup> et sic Iudaeus sibi imputet.

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<sup>291</sup> Cod. 3.34.1 and 2.

<sup>292</sup> C. 1 q. 1 c. 100 [Fr. v.1 col. 398] or c. 124 [Fr. v.1 col. 405]; the latter seems to be the correct one.

<sup>293</sup> X 1.4.11 [Fr. v.2 col. 41].

<sup>294</sup> X 3.39.5 [Fr. v.2 col.].

<sup>295</sup> Cod. 11.48.20?

<sup>296</sup> Cod. 11.48.23.

<sup>297</sup> Cod. 7.22 (De longi temporis praescriptione, quae pro libertate et non adversus libertatem opponitur).3.

<sup>298</sup> X 5.6.2 [Fr. v.2 cols. 771-772]?

<sup>299</sup> X 5.6.1 [Fr. v.2 col. 771].

<sup>300</sup> X 5.6.3 or 5 [Fr. v.2 col. 772] or [Fr. v.2 col. 773]?

<sup>301</sup> Cod. 11.48.2.

<sup>302</sup> Cod. 3.38 (Communia utriusque iudicii tam familiae erciscundae quam communi dividundo).11.

<sup>303</sup> Cod. 11.48.13.

*gl. qui dampnavit*

Id est, abstulit et sibi ius colonarium ipso facto. Vel expone, dampnavit, id est, fecit id, quod dampnatur et aufertur ei colonarium; vel ipse colonus sibi imputet, qui non vult agere contra Iudaeum, qui transtulit ipsum, sed primum verius quantum ad alteram partem disiunctae, ut si vellet retinere colonum Christianum secum in domo, id non est permittendum, immo excommunicandi sunt **infra e. Iudaei. i.**<sup>304</sup> Responso. et **c. ad hoc.**<sup>305</sup> ubi redditur causa quare. +Ber.+

*gl. ius domini*

Scilicet, quod haburit in gleba, quo ab ea recedere non poterat dominus enim personae non fuit, quia *lib.* homo est: ut **supra e. c.**<sup>306</sup>

*gl. severitate*

Et ar. quod iuris severitas sive rigor servandus est, sed hoc est in odio illorum Iudaeorum. +Ber.+

### X 5.6.3—Canon

Idem ianensi episcopo.

Iudaei de civitate, et infra. Sicut legalis diffinitio Iudaeos novas non patitur erigere synagogas: ita eos sine inquietudine veteres habere permittit.

### X 5.6.3—Glossa (2 gls.)

*gl. legalis diffinitio*

**C. de Iudaeis. l. ult.**<sup>307</sup> +Ber.+

*gl. habere permittit*

Etsi corruerint, de nouo possunt illas rehedificare in pristinum statum, non tamen ut ampliores faciant. **infra e. consulvit.**<sup>308</sup> ar. **ff. de novi. nunt. l. i. §. post novum.**<sup>309</sup> et **§. si quis hedificium.**<sup>310</sup> +Ber.+

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<sup>304</sup> “Iudaei. 2.” in the 1582 *ER*. X 5.6.3 [Fr. v.2 col. 772].

<sup>305</sup> X 5.6.2 [Fr. v.2 cols. 771-772].

<sup>306</sup> X 5.6.2 [Fr. v.2 cols. 771-772].

<sup>307</sup> Cod. 1.9.18.

<sup>308</sup> X 5.6.7 [Fr. v.2 col. 773].

<sup>309</sup> “Opus nouum” in the 1582 *ER*, which is correct. Thus Dig. 39.1.1.11.

<sup>310</sup> Dig. 39.1.1.13.

#### X 5.6.4—Canon

Alexander III.

Quia super his, et infra. Generaliter interdicas, ut Iudaei hostia vel fenestras in die Parasceue aperta non habeant, sed clausa teneant tota die.

#### X 5.6.4—Glossa (1 gl.)

*gl. aperta non habeant*

Consueverunt enim tunc deridere Christianos in contumeliam creatoris. **infra e. nonnullis.**<sup>311</sup>  
Cum enim fidem nostram contempnant, nec ritus suos eis permittimus. **C. de Iudae. Iudaeos.**<sup>312</sup>  
unde in publicum exire non debent. **infra e. in nonnullis.**<sup>313</sup> +Ber.+

#### X 5.6.5—Canon

Idem ex concilio Lateranensi.

+Iudaei sive Sarraceni neque sub alendorum puerorum suorum obtentu, nec pro servitio vel alia qualibet causa Christiana mancipia in domibus suis permittantur habere. Excommunicentur autem qui cum eis praesumpserint habitare. Si qui praeterea Deo inspirante ad fidem se converterint Christianam, a possessionibus uis nullatenus excludantur, quum melioris conditionis ad fidem conversos esse oporteat, quam, antequam fidem susceperint, habebantur. Si autem secus fuerit factum, principibus seu potestatibus eorundem locorum iniungimus sub poena excommunicationis, ut portionem hereditatis suae et bonorum suorum ex integro eis faciant exhiberi.<sup>+314</sup>

#### X 5.6.5—Glossa (6 gls.)

*gl. Sarraceni*<sup>315</sup>

Et ita cum Sarracenis morari non licet, sicut nec cum Iudaeo: nisi aliquis spiritualis vellet ire, ut eos predicaret: quod licet, **infra e. quam sit.**<sup>316</sup> et sic intellige. **xi. q. iii. ad mensam.**<sup>317</sup>

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<sup>311</sup> X 5.6.19 [Fr. v.2 col. 778]?

<sup>312</sup> Cod. 1.9.11.

<sup>313</sup> X 5.6.15 [Fr. v.2 cols. 776-777].

<sup>314</sup> This canon was not copied in MS F, which, however, included the *Glossa ordinaria* to this canon.

<sup>315</sup> “Iudaei sive Sarraceni” in the 1582 ER.

<sup>316</sup> X 5.6.10 [Fr. v.2 cols. 774-775].

<sup>317</sup> C. 11 q. 3 c. 24 [Fr. v.1 cols. 650-651].

*gl. servitio*  
**supra e. c. i. et ii.**<sup>318</sup>

*gl. permittantur*

Sed quid ad nos de his qui foris sunt: ut **ii. q. i. multi.**<sup>319</sup> **xlv. di. qui sincera.**?<sup>320</sup> Solutio: de hiis qui foris sunt non iudicat ecclesia, ut penam spiritualem intelligat. In casibus tamen iudicat de eis: qui repellit Iudaeos a communione +Christianorum+.<sup>321</sup> **xxviii. q. i. sepe.**<sup>322</sup> nec ab eis corrumpantur, ut ibi et **infra e. ad hoc.**<sup>323</sup> et hic. repellitur enim a legitimis actibus. **ii. q. vii. alieni.**<sup>324</sup> et ab officiis publicis. **liiii. di. nulla officia.**<sup>325</sup> et **infra e. cum sit.**<sup>326</sup> et **c. plt.,**<sup>327</sup> et ne possint emere Christiana mancipia. **infra e. c. ult.**<sup>328</sup> et **liiii. di. fraternitatem.**<sup>329</sup> Item non permittit eos facere novas synagogas. **infra e. consulvit.**<sup>330</sup> Item quod in diebus lamentationum non exeant in publicum. **supra e. c. proxi.**<sup>331</sup> et **infra e. in nonnullis.**<sup>332</sup> Item quod solvant decimas de terris +quas colunt. **supra de deci. de terris.**<sup>333+334</sup> et ne Christiana mancipia circumcidant. **liiii. di. nulla.**<sup>335</sup> ne ex testamento Christiani aliquid capiant, et ille Christianus est

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<sup>318</sup> X 5.6.1 and 2 [Fr. v.2 col. 771] and [Fr. v.2 cols. 771-772].

<sup>319</sup> C. 2 q. 1 c. 18 [Fr. v.1 cols. 446-447].

<sup>320</sup> Dist. 45.3 [Fr. v.1 cols. 160-161].

<sup>321</sup> Here 'Christianorum' is not in MS F and MS BAV Vat. lat. 11158, both of which represent the pre-1243 redaction(s) of the *Glossa* according to Kuttner and Smalley. It appears on MS BAV Vat. lat. 1365, fol. 553r, which represents the redaction produced between 1243 and 1245, as well as selected manuscripts representing later redactions and the 1582 *ER*.

<sup>322</sup> C. 28 q. 1 c. 12 [Fr. v.1 col. 1087].

<sup>323</sup> X 5.6.8 [Fr. v.2 col. 773-774].

<sup>324</sup> C. 2 q. 7 c. 23 (*Alieni erroris socium*) [Fr. v.1 col. 488].

<sup>325</sup> Dist. 54.14 [Fr. v.1 col. 211].

<sup>326</sup> X 5.6.16 [Fr. v.2 col. 777].

<sup>327</sup> X 5.6.18 [Fr. v.2 col. 778].

<sup>328</sup> X 5.6.19 [Fr. v.2 col. 778].

<sup>329</sup> Dist. 54.15 [Fr. v.1 cols. 211-212].

<sup>330</sup> X 5.6.7 [Fr. v.2 col. 773].

<sup>331</sup> X 5.6.4 [Fr. v.2 col. 772].

<sup>332</sup> X 5.6.15 [Fr. v.2 cols. 776-777].

<sup>333</sup> X 3.30.16 [Fr. v.2 col. 561].

<sup>334</sup> This addition appears in MS BAV Vat. lat. 11158, but not in MS F. It is therefore unclear whether it was simply omitted by the scribe of the latter, or means that the latter reflects an even earlier redaction of the *Glossa*.

<sup>335</sup> Dist. 54.14 [Fr. v.1 col. 211].

excommunicandus etiam post mortem. **xxiii. q. ii. sane profertur.**<sup>336</sup> excedentes verberibus subiciuntur. **infra de raptoribus. in archiepiscopatu.**<sup>337</sup> Hic ergo ecclesia excommunicat tantum illos Christianos, qui eis habitare praesumunt. quandoque tamen indirecte excommunicat eos, qui excommunicat Christianos, ne aliquod commercium eis habeant. **infra de usu. post miserabilem.**<sup>338</sup> et **infra e. etsi. in fi.**<sup>339</sup> et **c. postulasti.**<sup>340</sup> +R.+

*gl. a possessionibus*

Nisi fuerint compte de usuris: quas tenentur vendere, et restituere pecuniam. **infra de usuris. cum tu.**<sup>341</sup>

*gl. excommunicationis*

Ar. quod iudex secularis compelli potest ad iustitiam servandam. **xxiii. q. v. administratores.**<sup>342</sup> Et hoc videtur facere ratione fidei, quod intromittit se de haereditate, alias non debet. **supra qui filis. sint le. causam.**<sup>343</sup> Sed idem intelligo in quocunque casu, ubi iudex secularis negligens est facere iustitiam, quod ecclesia se intromittere debet, et compellere ipsum. **xxiii. q. v. administratores.**<sup>344</sup> et **q. ii. dominus.**<sup>345</sup> +et **infra de maledi. c. ii.**<sup>346</sup> Ber.+

*gl. ex integro*

Praeter servos, qui eos praevenerint in fide. **C. de epis. et c. deo nobis. §. hiis ita.**<sup>347</sup> +Ala.+

## X 5.6.6—Canon

Idem in eodem.

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<sup>336</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987]. 2. q. 2. in the 1582 *ER*, which is a mistake.

<sup>337</sup> X 5.17.4 [Fr. v.2 col. 809].

<sup>338</sup> X 5.19.12 [Fr. v.2 cols. 814-815].

<sup>339</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>340</sup> X 5.6.14 [Fr. v.2 col. 776].

<sup>341</sup> X 5.19.5 [Fr. v.2 cols. 812-813].

<sup>342</sup> C. 23 q. 5 c. 26 [Fr. v.1 col. 938].

<sup>343</sup> X 4.17.7 [Fr. v.2 col. 712].

<sup>344</sup> C. 23 q. 5 c. 26 [Fr. v.1 col. 938].

<sup>345</sup> C. 23 q. 2 c. 2 [Fr. v.1 cols. 894-895].

<sup>346</sup> X 5.26.2 [Fr. v.2 cols. 826-827].

<sup>347</sup> Cod. 1.3.54.8.

Ita quorundam animos occupavit saeva cupiditas, ut qui glorientur nomine Christiano Sarracenis arma, ferrum et ligamina tam defferant galearum, et pares aut etiam superiores in malitia fiant illis, dum ad impugnandos Christianos arma eis et necessaria subministrant. Sunt etiam, qui pro cupiditate sua in galeis et piraticis Sarracenorum navibus regimen et curam gubernationis exerceant. Tales igitur, ab ecclesiastica canonice praecisos, et excommunicationi subiectos, rerum suarum per principes catholicos et consules civitatum privatione mulctari, et capientium fieri servos, censemus. Praecipimus etiam, ut per ecclesias matritimarum urbium crebra et sollempnis excommunicatio proferatur.

#### X 5.6.6—*Glossa* (7 gls.)

*gl. qui glorientur*

Simile **xix. q. ii. perniciosam.**<sup>348</sup> **lxxxvi. di. tanta.**<sup>349</sup>

*gl. ferrum*

Ut **infra e. ad liberandam.**<sup>350</sup> ubi de hoc totum habes, quod hic dicitur haec ad hostes transferri non debent. **C. quae res expor. non debeant. l. ii.**<sup>351</sup> et illi sunt decapitandi., ut hic, et **C. de commerciis. mercatores.**<sup>352</sup> **ff. de pub. et vec. cotem.**<sup>353</sup> Si enim non habent ferrum, nec arma: nam causatum perimit, causa perempta, suum. Et appellatione armorum intelliguntur fustes et lapides. **ff. de ver. sig. armorum appellatio.**<sup>354</sup> +Lau.+

*gl. subministrant*

Ar. clericum pro homicida haberi, qui pugnantibus arma ministrat, dummodo fiant homicidia. ar. **l. di. si quis viduam.**<sup>355</sup> **xxiii. q. ult. c. ult.**<sup>356</sup> et **infra de homicid. sicut dignum. §. illi etiam. et §. hii qui.**<sup>357</sup>

*gl. subiectos*

Sic ipso iure sunt excommunicati. **infra e. quod olim.**<sup>358</sup>

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<sup>348</sup> “18. q. 2” in the 1582 *ER*, which is correct. C. 18 q. 2 c. 25 [Fr. v.1 836].

<sup>349</sup> Dist. 86.24 [Fr. v.1 col. 303].

<sup>350</sup> X 5.6.17 [Fr. v.2 cols. 777-778].

<sup>351</sup> Cod. 4.41.2.

<sup>352</sup> Cod. 4.63.4.

<sup>353</sup> “vecti. cotem ferro” in the 1582 *ER*. Dig. 39.4.11.pr..

<sup>354</sup> Dig. 50.16.41.

<sup>355</sup> Dist. 50.8 [Fr. v.1 cols. 179-180].

<sup>356</sup> C. 24 q. 3 c. 40 [Fr. v.1 col. 1006].

<sup>357</sup> X 5.12.6 [Fr. v.2 col. 795].

<sup>358</sup> X 5.6.12 [Fr. v.2 col. 775].

*gl. privatione*

Hoc potuit facere Papa contra laicos, ratione commissi criminis. +Ber.+

*gl. servos*

Nota servitutem de iure naturali inductam. **xxxv. di. sexto die.**<sup>359</sup> Item *sunt* de iure gentium. +**dist. i. ius gentium.**<sup>360</sup>+ Item de iure canonico. **xv. q. ult. cum multae.**<sup>361</sup> et hic. et **infra e. ad liberandam.**<sup>362</sup> +Vin.+

*gl. crebra et sollempnis*

Et tamen isti ipso iure sunt excommunicati, et sic excommunicatus potest iterum excommunicari. **iii. q. iii. Engiltrudam.**<sup>363</sup> et ar. **xi. q. iii. excellentissimus.**<sup>364</sup> **xii. q. ii. de viro.**<sup>365</sup> et **lxxxvii. d. eos qui.**<sup>366</sup> et qui in sordibus est, sordescat adhuc. **xlvii. quantumlibet. in fi.**<sup>367</sup> Ar. contra. **ii. q. i. multi.**<sup>368</sup> quia de hiis qui foris sunt, nihil ad nos. et **xxiii. q. i. c. i. ii. et iii.**<sup>369</sup> +et **iiii.**<sup>370</sup>+ et **supra de iudic. cum non ab homine.**<sup>371</sup> Item qui est extra ecclesiam, non potest esse magis extra +ecclesiam+. **xi. q. iii. omnis Christianus.**<sup>372</sup> Item ar. contra. **ff. de verb. sig. qui bis idem.**<sup>373</sup> M. dixit, quod excommunicatus amplius excommunicari non potest, sed +denuntiari potest+ excommunicatus, et sic intelligit omnia iura ubi videtur saepius aliquis excommunicari. Et ita hic intelligit. Sed tu dicas quod excommunicatus iterum potest excommunicari. Et sunt duo effectus excommunicationis, ut dicunt quidam. Primus effectus est eiciendi extra ecclesiam. Secundus est detinendi extra. Sicut qui est ligatus uno vinculo, potest adhuc alio vinculo ligari,

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<sup>359</sup> Dist. 35.8 [Fr. v.1 cols. 132-133].

<sup>360</sup> Dist. 1.9 [Fr. v.1 col. 3].

<sup>361</sup> C. 15 q. 8 c. 3 [Fr. v.1 cols. 759-760].

<sup>362</sup> X 5.6.17 [Fr. v.2 cols. 777-778].

<sup>363</sup> C. 3 q. 4 c. 12 [Fr. v.1 col. 514].

<sup>364</sup> C. 11 q. 3 c. 102 [Fr. v.1 col. 672].

<sup>365</sup> C. 12 q. 2 c. 17 [Fr. v.1 cols. 691-692].

<sup>366</sup> Dist. 87.6 [Fr. v.1 col. 305].

<sup>367</sup> Here it is likely a scribal mistake. It should be *xlvii. dist.* Dist. 47.9 [Fr. v.1 col. 3].

<sup>368</sup> C. 2 q. 1 c. 18 [Fr. v.1 cols. 446-447].

<sup>369</sup> C. 24 q. 1 c. 1, 2, and 3. [Fr. v.1 cols. 966-967].

<sup>370</sup> C. 24 q. 1 c. 4 [Fr. v.1 col. 967].

<sup>371</sup> X 2.1.10 [Fr. v.2 col. 242].

<sup>372</sup> C. 11 q. 3 c. 32 [Fr. v.1 col. 653].

<sup>373</sup> It is likely a scribal mistake here. It should be Dig. 45.1 (De verborum obligationibus, instead of 50.16, De verborum significatione).18.

non est dubium quod qui est excommunicatus adhuc possit excommunicari: sicut qui est in uno peccato, potest aliud committere. Et sic plus punitur, et sic pluries potest excommunicari, et magis ex hoc punietur, et secunda excommunicatio tunc primo incipit habere suum effectum, cum absolvitur a prima, et tamen prima absolutio non habuit suum effectum propter secundam excommunicationem, et ita finaliter non prodest prima absolutio, nisi cum absolutus fuerit a secunda. De hoc dixi. **supra de of. or. ex parte.**<sup>374</sup> +et **infra de sent. excom. cum pro causa.**<sup>375</sup> Ber.+

### X 5.6.7—Canon

Idem.

Consuluit nos, et infra. Iudaeos de novo construere synagogas, ubi non habuerunt, pati non debes. Verum, si antiquae corruerint, vel ruinam minantur, ut eas reaedificent, potest equanimiter tolerari, non autem, ut eas exaltent, aut ampliores aut pretiosiores faciant, quam antea fuisse noscuntur; quod utique pro magno debent habere, quod in veteribus synagogis et in suis observantiis tolerantur.

### X 5.6.7—Glossa (3 gls.)

*gl. antiqua*

Constantinus imperator contulit libertatem ecclesiis: et Iudaeos servituti subiecit. Et postea vero Iulianus imperator et apostata dedit licentiam Iudaeis novas construere synagogas, ut legitur in cronicis. T.

*gl. reaedificent*

Sic **supra e. Iudei.**,<sup>376</sup> **C. de Iudae. l. ult.**,<sup>377</sup> quia aliud est tueri quod positum est, et aliud novum facere. **ff. de usu fruc. usu fructuarius +novum.**<sup>378</sup>

*gl. exaltent*

Non enim licet cuilibet possessori transformare possessionem, puta usufructuario. **ff. de usu fruc. aequissimum. §. sed et colono.**<sup>379</sup> +B.+

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<sup>374</sup> X 1.28 (De officio vicarii).6 (Ex parte tua) [Fr. v.2 col. 157]?

<sup>375</sup> X 5.39.27 [Fr. v.2 cols. 898-899].

<sup>376</sup> X 5.6.3 [Fr. v.2 col. 772].

<sup>377</sup> Cod. 1.9.18.

<sup>378</sup> Dig. 7.1.44. Among the selected texts of the *Glossa*, MS F is the only one that does not contain this addition.

<sup>379</sup> Dig. 7.1.13.7.



## X 5.6.8—Canon

Idem.

Ad haec omnibus Christianis, qui sunt in iuris dictione vestra, penitus interdicatis, et, si necesse fuerit, districtione ecclesiastica compellatis ne Iudaeorum servitio se assidue exponant pro aliqua mercede; quod etiam obstetricibus et nutricibus eorum prohibere curetis, ne infantes Iudaeorum in eorundem domibus nutrire praesumant, quoniam Iudaeorum mores et nostri in nullo concordant, et ipsi de facili ob continuam conversationem et assiduam familiaritatem, ad suam superstitionem et perfidiam simplicium animos inclinarent.

## X 5.6.8—Glossa (4 gls.)

*gl. servitio se*

Sic **supra e. c. i. et ii. et Iudei.**<sup>380</sup> Et est arg. ex eo quod dicit, assidue, quod interpolatim possunt servire: quod intellige secundum tenorem illius c. **supra e. multorum. §. i.**,<sup>381</sup> sed in domibus nullo modo, prout infra sequitur. et propter dictis concordantiis., et **xxviii. q. i. Iudeorum.**<sup>382</sup> **sepe.**,<sup>383</sup> **infra e. etsi Iudaeos.**<sup>384</sup>

*gl. in domibus*

Et ita videtur quod extra domum Iudaeorum possint. Eandem prohibitio. etc. **infra e. etsi.**<sup>385</sup>

*gl. concordant*

**xxiii. q. ix. dispar.**<sup>386</sup> et +in+ habitu etiam differre debent a Christianis, ut possint melius evitari. **infra e. in nonnullis.**<sup>387</sup>

*gl. simplicium*

Qui innocens credit omni verbo. **xxii. q. iii. innocens.**<sup>388</sup> Simile. **xxviii. q. i. c. saepe.**<sup>389</sup>

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<sup>380</sup> X 5.6.1, 2, 3 or 5 [Fr. v.2 cols. 771-773].

<sup>381</sup> X 5.6.2 [Fr. v.2 cols. 771-772].

<sup>382</sup> C. 28 q. 1 c. 11 [Fr. v.1 col. 1087].

<sup>383</sup> C. 28 q. 1 c. 12 [Fr. v.1 col. 1087].

<sup>384</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>385</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>386</sup> A mistake in MS F. It should be C. 23 q. 8 c. 11 [Fr. v.1 col. 955].

<sup>387</sup> X 5.6.15 [Fr. v.2 cols. 776-777].

<sup>388</sup> C. 22 q. 4 c. 23 [Fr. v.1 col. 881].

<sup>389</sup> C. 28 q. 1 c. 12 [Fr. v.1 col. 1087].

## X 5.6.9 - Canon

Clemens III.

Sicut Iudaei, et infra, ut nullus invitos vel nolentes Iudaeos ad baptismum venire compellat. Si quis autem ad Christianos causa fidei confugerit, postquam voluntas eius fuerit patefacta, Christianus absque calumpnia efficiatur. Quippe Christi fidem habere non creditur, qui ad Christianorum baptismum non spontaneus, sed invitus cogitur pervenire. Nullus etiam Christianus eorum quemlibet sine iudicio terrenae potestatis vel occidere, vel vulnerare, vel suas pecunias auferre praesumat, aut bonas, quas hactenus habuerunt, consuetudines immutare, praesertim in festivitatum suarum celebratione quisquam fustibus vel lapidibus eos nullatenus perturbet. Neque aliquis ab eis coacta servitia exigat, nisi, quae ipsi tempore praeterito facere consueverunt. Ad hoc malorum hominum pravitati et avaritiae obviantes, decernimus, ut nemo coemeterium Iudaeorum mutilare aut invadere audeat, sive obtentu pecuniae corpora humata effodere. Si quis autem huiusmodi tenore decreti cognito quod absit, contraire praesumpserit, honoris et officii sui periculum patiat, aut excommunicationis sententia plectatur, nisi praesumptionem suam digna satisfactione correxerit.

### X 5.6.9—*Glossa* (8 gls.)

*gl. invites*

Hoc ideo dicit, quia nullus ad fidem cogendus est. **xxiii. q. v. ad fidem.**<sup>390</sup> et **xl. di. de Iudaeis.**<sup>391</sup> Quia si simpliciter absolute compellantur, non recipere characterem: sed si conditionaliter compellantur, bene recipiunt, et consulendi sunt, ut fidem sic susceptam observent, ut **supra de bap. maiores.**<sup>392</sup> + **§ item quaeritur.**<sup>+393</sup> et **xl. di. de Iudaeis.**<sup>394</sup> et **ff. de ritu nuptiarum. si patre.**<sup>395</sup> et **C. de. e. t. nullus.**<sup>396</sup> + Ber.+

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<sup>390</sup> C. 23 q. 5 c. 33 [Fr. v.1 cols. 939-940].

<sup>391</sup> Dist. 45.5 [Fr. v.1 cols. 161-162].

<sup>392</sup> X 3.42.3 [Fr. v.2 cols. 644-646].

<sup>393</sup> This addition appears in 1582 *ER* only.

<sup>394</sup> Dist. 45.5 [Fr. v.1 cols. 161-162].

<sup>395</sup> Dig. 23.2.22.

<sup>396</sup> “C. eo. tit. nullus” in the 1582 *ER*. Possibly Cod. 1.9 (De iudaeis et caelicolis).14.

*gl. Christi fidem habere*

Probatio eius quod nullus compelli debeat ad fidem: quia fides ex necessitate esse non debet. **xlvi. di. quid autem.**<sup>397</sup> **qui sincera.**<sup>398</sup> et **xxiii. q. v. ad fidem.**<sup>399</sup>

*gl. sine iudicio terrene*

Nulli enim permissum est occidere, vel penam infligere, nisi cui ex officio permittitur. **xxiii. q. v. qui malos.**<sup>400</sup> **miles.**<sup>401</sup> **cum ministrat.**<sup>402</sup> Et pena non est inferendi, nisi per iudicem. **xxxiii. q. ii. § in hoc.**<sup>403</sup> +Ber.+

*gl. bonas*

Secus si malas, ne deludant Christianis praecedentibus signo lamentationis, et ne prorumpant in contumeliam creatoris., infra e. in nullis.,<sup>404</sup> et ne annuatim simulatam speciem crucis exurant. C. e. Iudaeos.<sup>405</sup> Sed suas festivitates more solito celebrant. **xlvi. di. qui sincera.**<sup>406</sup> ut hic dicitur. C. e. tit. nemo.<sup>407</sup> +A.+

*gl. coemeterium*

Ar. contra. **ff. de sepul. vio. sepulcra.**<sup>408</sup> Solutio: sepulcra hostium religiosa non sunt, ut ibi dicitur: nec illud infringens incidit in edictum. Iudaei vero non imputantur hostes. **xxiii. q. viii. dispar.**<sup>409</sup> licet sint hostes fidei nostrae. **infra e. etsi Iudaeos.**<sup>410</sup>

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<sup>397</sup> Dist. 45.1 [Fr. v.1 col. 160].

<sup>398</sup> Dist. 45.3 [Fr. v.1 cols. 160-161].

<sup>399</sup> C. 23 q. 5 c. 33 [Fr. v.1 cols. 939-940].

<sup>400</sup> C. 23 q. 5 c. 29 [Fr. v.1 col. 939].

<sup>401</sup> C. 23 q. 5 c. 13 [Fr. v.1 col. 935].

<sup>402</sup> C. 23 q. 5 c. 14 (Cum minister) [Fr. v.1 col. 935]?

<sup>403</sup> C. 33 q. 2 dict. post c. 4 [Fr. v.1 cols. 1151-1152].

<sup>404</sup> X 5.6.15 [Fr. v.2 cols. 776-777].

<sup>405</sup> Cod. 1.9.11.

<sup>406</sup> Dist. 45.3 [Fr. v.1 cols. 160-161].

<sup>407</sup> Cod. 1.9.9.

<sup>408</sup> Dig. 47.12.4.

<sup>409</sup> C. 23 q. 8 c. 11 [Fr. v.1 col. 955].

<sup>410</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

*gl. pecuniae*

Que in sepulcris ponenda non est. ar. **ff. de relig. et si quis impediatur. §. funeris causa.**<sup>411</sup> et **xiii. q. iii. non extimemus.**<sup>412</sup> circa medium. +Tan.+

*gl. effodere*

Quod qui fecerit, sepulchri violati tenetur. **ff. de sepul. vi. l. iii. §. si quis.**<sup>413</sup> et secundum quosdam haec actio infamat. **ff. de sepul. vio. l. i.**<sup>414</sup> Alii dicunt, quod non infamat, cum sit actio in factum, et in l. illa improprie ponitur actio. +Ala.+

*gl. aut excommunicationis*

Et ita videtur in optione iudicis quod istorum pena imponat, si non satisfecerit, et si iste *non*<sup>415</sup> vult satisfacere, non punitur. si. **xxxv. di. episcopus aut presbyter.**<sup>416</sup> **xlvi. di. c. i.**<sup>417</sup> et **xcii. di. c. ult.**<sup>418</sup> Et ita est ar. pro quolibet peccato non debet sententiam episcopus in aliquem fulminare, vel excommunicare vel deponere. +Ber.+

## X 5.6.10—Canon

Idem.

Quamvis sit laudabile, et infra. Tuis, frater episcopo, petitionibus annuentes, tibi tuisque sociis, cum ad praedicandam Christi fidem paganis exhibitis, apostolica auctoritate concedimus, ut vobis his cybis cum modestia et gratiarum actione, servata temporum qualitate iuxta canonicas sanctiones, uti liceat, qui vobis ab ipsis infidelibus apponuntur. Insuper indulgemus, ut quicumque religiosi seu clerici, idonei ad annunciandum gentibus evangelicam veritatem, requisita et habita praelatorum suorum licentia, tibi voluerint adherere, id absque contradictione qualibet, liberam exsequendi habeant auctoritate apostolica facultatem.

## X 5.6.10—Glossa (4 gls.)

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<sup>411</sup> Dig. 11.7.14.3.

<sup>412</sup> “13. q. 2” in the 1582 *ER*, which is correct. C. 13 q. 2 c. 19 [Fr. v.1 col. 727].

<sup>413</sup> Dig. 47.12.3.3.

<sup>414</sup> Dig. 47.12.1.

<sup>415</sup> The “non” here is likely a scribal mistake in MS F.

<sup>416</sup> Dist. 35.1 [Fr. v.1 col. 131].

<sup>417</sup> “47. distinct. 1” in the 1582 *ER*. Dist. 48.1 or Dist. 47.1?

<sup>418</sup> Dist. 92.9 [Fr. v.1 col. 319].

*gl. temporum qualitate*

Ut abstineant hiis diebus temporibus, quibus a carnibus est abstinendum secundum canones: **iii. di. denique.**<sup>419</sup> et **de con. di. iii. de usu carniū.**<sup>420</sup> et **c. sabbato.**<sup>421</sup> de quibus canonibus sit hic mentio.

*gl. ut liceat*

Aliter enim non possent illos taceri, et sic licet eis loqui, et comedere cum eis exemplo Domini, **xxiii. di. infideles.**<sup>422</sup> **xi. q. iii. ad mensam.**<sup>423</sup> dummodo in aliis non coinquentur. Ar. contra. **xxviii. q. i. nullus.**<sup>424</sup> et **c. omnes.**<sup>425</sup> Solutio: contraria intelliguntur de Iudaeis, qui discernunt cibos, hoc, et **c. ad mensam.**<sup>426</sup> et **c. infideles.**<sup>427</sup> de Paganis intelligitur. Sed quare potius vitamus convivium Iudaeorum, quam Paganorum? Ratio est illa, quia illi scilicet Iudaei discernunt cibos nostros, non debemus cibis eorum uti, ne videamur inferiores illis: ut dicit **praedictum +c.+ omnes.**<sup>428</sup> Pagani vero non discernunt cibos: sed hodie et isti et illi discernunt: unde non debemus comedere apud eos, nec ipsi apud nos, licet hoc non contineatur in verbis edicti hic patet, et **c. ad mensam.**<sup>429</sup> Sed quantum ad sententiam eos invitare<sup>430</sup> debemus. ar. **ff. de pet. haere. Item veniunt. §. ait senatus.**<sup>431</sup> Sed quare potius vitamus convivium quam colloquium? Ideo loquimur eis ut eos possimus lucrari, quod alias facere non possemus, **c. infideles.**<sup>432</sup>

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<sup>419</sup> Dist. 4.6 [Fr. v.1 cols. 6-7].

<sup>420</sup> *De cons.* D. 3 c. 11 [Fr. v.1 col. 1355].

<sup>421</sup> *De cons.* D. 3 c. 13 [Fr. v.1 cols. 1355-1356].

<sup>422</sup> “23. q. 4. infideles” in the 1582 *ER*. C. 23 q. 4 c. 17 [Fr. v.1 col. 905].

<sup>423</sup> C. 11 q. 3 c. 24 [Fr. v.1 cols. 650-651].

<sup>424</sup> C. 28 q. 1 c. 13 [Fr. v.1 col. 1087].

<sup>425</sup> C. 28 q. 1 c. 14 [Fr. v.1 cols. 1087-1088].

<sup>426</sup> C. 11 q. 3 c. 24 [Fr. v.1 cols. 650-651].

<sup>427</sup> “23. q. 4. infideles” in the 1582 *ER*. C. 23 q. 4 c. 17 [Fr. v.1 col. 905].

<sup>428</sup> C. 28 q. 1 c. 14 [Fr. v.1 cols. 1087-1088].

<sup>429</sup> C. 11 q. 3 c. 24 [Fr. v.1 cols. 650-651].

<sup>430</sup> In the 1582 *ER* it is “vitare.”

<sup>431</sup> Dig. 5.3 (De hereditatis petitione).20.7.

<sup>432</sup> “23. q. 4. infideles” in the 1582 *ER*. C. 23 q. 4 c. 17 [Fr. v.1 col. 905].

*gl. apponuntur*

Quaecunq; ergo apponuntur, uti possunt, nisi dictum fuerit quod sit ydolis ymmolatum: ut **i. q. iii. §. ult.**<sup>433</sup> et **xxvi. q. ii. si de area.**<sup>434</sup> Tunc enim sanctius est mori fame, quam ydolotris vesci. **xxxii. q. iii. sicut sanctius.**<sup>435</sup> +Ber.+

*gl. requisita*

Quia nullus potest praedicare nisi ex officio sibi commisso, vel nisi habeat auctoritatem a suo praelato. **infra de heretic. ex iniuncto.**<sup>436</sup> et **c. excommunicamus. §. quia vero.**<sup>437</sup> nec sufficit petere licentiam, nisi sit obtenta, ut hic patet. **s. de con. d. v. non oportet.**<sup>438</sup> **xi. q. iii. quid ergo.**<sup>439</sup> **xix. q. ii. due.**<sup>440</sup> Ar. contra. **supra de regula. licet.**<sup>441</sup> et **supra de arbi. cum olim.**<sup>442</sup>

## X 5.6.11 - Canon

Idem.

Significavit nobis tua fraternitas, utrum aliqui civium tuorum in Alexandriam valeant proficisci prorecuperandis concivibus suis, qui illic in captivitate tenentur. Hoc arbitramur licite posse fieri, dummodo nichil mercibus suis vel alio modo secum illuc deferant, unde possit Sarracenis, excepto receptionis articulo, aliquod commodum aut subsidium provenire, quod etiam coram te prius iuramento firmabunt. Illi vero qui post treugam in transmarinis partibus factam cum commercio Alexandriam adiverint, si detulerint merces prohibitas causa lucrandi, excommunicationis vinculum non evadunt, sicut nec illi, qui, in personis propriis non euntes, merces eis per nuncios destinarunt. Ad ultimum illos, qui iuraverunt, se amplius in terram Sarracenorum cum mercibus non ituros, nisi pax esset inter Christianos et ipsos, et post treugam factam venerunt illuc, conditio illa de pace aut treuga habenda ab excommunicationis vinculo non absolvit.

## X 5.6.11—Glossa (6 gls.)

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<sup>433</sup> C. 1 q. 4 c. 13 [Fr. v.1 col. 423].

<sup>434</sup> C. 26 q. 2 c. 10 [Fr. v.1 cols. 1023-1024].

<sup>435</sup> C. 32 q. 4 c. 8 [Fr. v.1 col. 1129].

<sup>436</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>437</sup> X 5.7.13/15 [Fr. v.2 cols. 787-789/789]?

<sup>438</sup> *De cons.* D. 5 c. 36 [Fr. v.1 col. 1422].

<sup>439</sup> C. 11 q. 3 c. 99 [Fr. v.1 col. 671].

<sup>440</sup> C. 19 q. 2 c. 2 [Fr. v.1 cols. 839-840].

<sup>441</sup> X 3.31.18 [Fr. v.2 cols. 575-576].

<sup>442</sup> X 1.43.7 [Fr. v.2 cols. 234-235].

*gl. aliquod commodum*

Secundum quod dicitur **supra e. ita quorundam.**,<sup>443</sup> ubi de hoc, ut **infra e. ad liberandam.**<sup>444</sup> Nichil ergo in mercibus portandum est, nisi illud unde possint redimere captivos, ut hic dicit. Sed quid si non possunt redimere captivos nisi portent eis arma vel ferrum, nunquid hoc facere possunt sine pena excommunicationis? Ar. quod sic, ex eo quod dicit, excepto redemptionis articulo: sed non credo, nisi primo requiratur auctoritas papae, ne aliquid fraudis de fiat. +Ber.+

*gl. iuramento*

Sed +nonne+ sufficit poena excommunicationis? Potest dici, quod hoc exigitur a suspecto. ar. **xxix. di.**<sup>445</sup> **neque de Siracus.**<sup>446</sup> et **x. q. ult.**<sup>447</sup> Quoniam eorum ruinae debent occurrere Praelati, **xciii. di. diaconi.**<sup>448</sup> et **xxii. q. v. hoc videtur.**,<sup>449</sup> ad maiorem cautelam exigitur iuramentum etiam a quocunque. +Lau.+

*gl. excommunicationis*

De qua habes **supra e. ita quorundam hoc.**<sup>450</sup> et ideo, quia licet treugua sit facta, non tamen pax perpetua: ut **infra §. proxi.**,<sup>451</sup> unde prohibitio non intelligitur propterea relaxata de mercibus prohibitis. Ber.

*gl. per nuntios*

Sic **infra c. proxi.**,<sup>452</sup> qui per alium facit, per se facere videtur: ut hic, et **infra de sen. exco. mulieres.**,<sup>453</sup> **xlvi. di. sicut non suo.**,<sup>454</sup> **ff. de administratur. tu. ita tamen. §. gessisse.**<sup>455</sup> +Ber.+

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<sup>443</sup> X 5.6.6 [Fr. v.2 col. 773].

<sup>444</sup> X 5.6.17 [Fr. v.2 cols. 777-778].

<sup>445</sup> “28. distin.” in the 1582 *ER*.

<sup>446</sup> “28. distin.” in the 1582 *ER*, which is correct. Dist. 28.13 [Fr. v.1 col. 104].

<sup>447</sup> This allegation has yet to be identified.

<sup>448</sup> Dist. 93.6 [Fr. v.1 cols. 321-322].

<sup>449</sup> C. 22 q. 5 c. 8 [Fr. v.1 cols. 884-885].

<sup>450</sup> X 5.6.6 [Fr. v.2 col. 773].

<sup>451</sup> This allegation has yet to be identified.

<sup>452</sup> X 5.6.12 [Fr. v.2 col. 775].

<sup>453</sup> X 5.39.6 [Fr. v.2 col. 891].

<sup>454</sup> Dist. 46.10 [Fr. v.1 col. 169].

<sup>455</sup> Dig. 26.7.5 (pr. Ita autem depositioni).1.

*gl. post treugam*

Treuga est securitas personis et rebus ad tempus concessa. **supra de treuga. c. i.**<sup>456</sup> Et qui facit treugam non facit pacem, nec desistit a guerra, nisi ad tempus: qui distulit, non in totum destitit. et **ii. q. iii. §. notandum.**<sup>457</sup> et **ff. de iudic. destitisse.**<sup>458</sup>

*gl. non absolvit*

Nec etiam a periurio: quia licet<sup>459</sup> treuga sit facta, non tamen pax, et ita non extitit conditio,<sup>460</sup> unde incidit in symoniam sententiam<sup>461</sup> et in periurium, et sic treuga non est pax.

## X 5.6.12—Canon

Idem.

Quod olim praeceptum fuit, et infra. Sane, licet hoc fuerit in concilio Lateranensi districte prohibitum, nos tamen omnes illos excommunicationi supponimus, qui amplius cum Sarracenis mercimonium habuerint, vel per se vel per alios navibus, seu quocunque alio ingenio, +eis+ aliqua rerum subsidia seu consilia, quamdiu inter nos et illos guerra duraverit, duxerint impendenda. Vestrae igitur discretioni mandamus, quatenus nec per vos, nec per vestras naves, nec alio quocunque modo aut ingenio, transmittatis subsidia eis mercimonia, consilia vel alia, ne, si aliqui in sua malitia indurati secus agere praesumpserint. Non solum ipso iure incidant in excommunicationem illam, sed etiam iram Dei viventis incurrant.

## X 5.6.12—Glossa (4 gls.)

*gl. Lateranen*

**supra e. quorundam.**<sup>462</sup> +Ber.+

*gl. supponimus*

Et iam suppositi erant per Alexan. in concilio Lateranensis ita quorundam. et sic causa latae sententiae, ut patet in fi. Et ita videtur, quod qui contra faciunt, duplici excommunicatione sunt ligati. Sed quis absolvet tales? Potest dici quod episcopi ipsorum, quia ex quo Papa hoc sibi non

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<sup>456</sup> X 1.34.1 [Fr. v.2 col. 203].

<sup>457</sup> C. 2 q. 3 dict. post c. 8 [Fr. v.1 cols. 453-454].

<sup>458</sup> Dig. 5.1.10.

<sup>459</sup> In MS F after “licet” a “non” is copied, which is likely a scribal mistake.

<sup>460</sup> “conditio” in the 1582 *ER*.

<sup>461</sup> “symoniam” in MS F.

<sup>462</sup> X 5.6.6 [Fr. v.2 col. 773].



retinuit, aliis indulsisse videtur. **infra de sen. exco. nuper.**,<sup>463</sup> quia sibi reservasset, si hoc non intendebat. **supra de prebendis grave. in fi.**<sup>464</sup> et **infra de crimine. fal. dura. in fi.**<sup>465</sup> +Ber.+

*gl. subsidia*

**supra eadem ita.**<sup>466</sup> et **infra e. ad liberandam.**<sup>467</sup> **C. qui res expor. non pos. per totum.**<sup>468</sup> et **C. quae res ven. non possunt. per totum.**<sup>469</sup>

*gl. iram Dei*

Ratum habentis, quod ab ecclesia iuste factum est. et **xxiii. q. i. quodcumque.**<sup>470</sup>

### **X 5.6.13—Canon**

Innocentius III. Archiepiscopo Senonensi et Episcopo Parisiensi.

Etsi Iudaeos, quos propria culpa submitit perpetuae servituti pietas Christiana receptet, et sustineat cohabitationem illorum, ingrati tamen nobis esse non debent, ut reddant Christianis pro gratia contumeliam et de familiaritate contemptum, qui, tanquam misericorditer in nostram familiaritate admissi, nobis illam retributionem impendunt, quam, iuxta vulgare proverbium, mus in pera, serpens in gremio, et ignis in sinu suis consueverunt hospitibus exhibere. Accepimus autem, quod Iudaei faciunt Christianas suorum filiorum nutrices, et, quod non tantum dicere, sed etiam nefandum est cogitare, cum in die Resurrectionis dominicae illas recipere corpus et sanguinem domini nostri<sup>471</sup> contingit, per triduum, antequam eos lactent, Iac effundere faciunt in latrinam. Alia in super contra fidem catholicam detestabilia et inaudita committunt, propter quae fidelibus est verendum, ne divinam indignationem incurrant, cum eos perpetrare patiuntur indigne quae fidei nostrae confusionem inducunt. Et infra. Inhibemus ergo districte, ne de cetero nutrices vel servientes habeant Christianos, ne fili liberarum filiis famulentur ancillae, sed tanquam servi a Domino reprobati, in cuius mortem nequiter coniurarunt, se saltem per effectum operis recognoscant servos illorum, quos Christi mors liberos, et illos servos effecit. Et infra. Si vero nutrices et servientes non dimiserint Christianos, sub excommunicationis pena inhibeat districte omnibus Christianis, ne cum eis commercium aliquod audeant exercere.

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<sup>463</sup> X 5.39.29 [Fr. v.2 cols. 900-901].

<sup>464</sup> X 3.5.29 [Fr. v.2 col. 478].

<sup>465</sup> X 5.20.4 [Fr. v.2 cols. 817-818].

<sup>466</sup> X 5.6.6 [Fr. v.2 col. 773]?

<sup>467</sup> X 5.6.17 [Fr. v.2 cols. 777-778].

<sup>468</sup> Cod. 4.41 (Quae res exportari non debeant)?

<sup>469</sup> Cod. 4.40 (Quae res venire non possunt et qui vendere vel emere vetantur).

<sup>470</sup> C. 24 q. 1 c. 6 (Quodcumque ligaueris super terram) [Fr. v.1 col. 968].

<sup>471</sup> “Iesu Christi” in the 1582 *ER*.

**X 5.6.13—Glossa (11 gls.)**

*gl. ingrati*

Si enim Iudaei isti ingrati sunt, privari debent gratia sibi concessa. **supra de do c. ulti.**<sup>472</sup> et **xii. q. ii. octava discussio.**<sup>473</sup> et **C. de revoc., donat. l. ult.**<sup>474</sup> +Bernardus.+

*gl. pro gratia*

**supra de fideius. pervenit.**<sup>475</sup> et **supra de renunt. sane.**<sup>476</sup> +Ber.+

*gl. de familiaritate*

Nimia enim familiaritas parit contemptum: **ff. de of. procon. observande.,**<sup>477</sup> et **ff. de of. proconsul. nec quamquam. §. circa.,**<sup>478</sup> et **lxxxvi. di. quando.**<sup>479</sup>

*gl. mus in pera*

Ut **xiii. di. § i. ubi. f.**<sup>480</sup>

*gl. nutrices*

Quod esse non debet. **supra e. Iudaei.,**<sup>481</sup> et **C. ad hoc.**<sup>482</sup> +Ber.+

*gl. effundere*

Credebant forte corpus Christi descendere in stomachum et incorporari, quod est falsum. **de con. d. ii. tribus gradibus non iste panis.**<sup>483</sup> Cibus enim animae est. **di. e. credere.**<sup>484</sup> +Lau.+

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<sup>472</sup> X 2.14.10 [Fr. v.2 col. 297].

<sup>473</sup> C. 2 q. 2 c. 62 [Fr. v.1 col. 707].

<sup>474</sup> Cod. 8.55.10.

<sup>475</sup> X 3.22.2 [Fr. v.2 col. 530].

<sup>476</sup> X 1.9.7 [Fr. v.2 col. 106].

<sup>477</sup> Dig. 1.16.4.pr. (Observare autem proconsulem oportet) or Dig. 1.16.9.4 (Observare itaque eum oportet).

<sup>478</sup> Dig. 1.16.9.2.

<sup>479</sup> Dist. 86.4 [Fr. v.1 col. 298].

<sup>480</sup> “13. q. 1” in the 1582 *ER*. C. 13 q. 1 c. 1 [Fr. v.1 cols. 717-718]?

<sup>481</sup> X 5.6.3 or 5 [Fr. v.2 col. 772] or [Fr. v.2 col. 773]?

<sup>482</sup> “c. ad hoc” in the 1582 *ER*.

<sup>483</sup> *De cons.* D. 2 c. 23 [Fr. v.1 col. 1321].

<sup>484</sup> *De cons.* D. 2 c. 59 [Fr. v.1 cols. 1336-1337].

*gl. patiuntur*

Ar. quod qui potest prohibere et non prohibet, sibi imputatur. **lxxxvi. di. c. iii.**,<sup>485</sup> et **infra de reg. iur. c. plt.**,<sup>486</sup> et **infra tit. prox.**, +**c. ii.**<sup>487</sup> et **xxiii.**+ **q. viii.**<sup>488</sup> **preterea.**<sup>489</sup> et ar. **infra de sent. exco. quantae praesumptionis.**<sup>490</sup>

*gl. filii liberae*

Id est, ecclesia. Sed non ecclesia heres filius ancillae cum filio liberae.<sup>491</sup> **xxxii. q. iii. dicat aliquis.**<sup>492</sup> +Ber.+

*gl. ancilla*

Id est, Agar: quae significat synagogam.

*gl. liberos*

Id est, Sarra: quae significat ecclesiam. De Agar ancilla Sarrae descenderunt isti qui debent esse servi illorum qui descenderunt a Sarra: in quibus ecclesia fundata est. +Ber.+

*gl. sub excommunicationis poena*

Immo excommunicari possunt, si communicent eis postea. **infra de usuris. post miserabilem.**<sup>493</sup> et **infra c. prox.**<sup>494</sup> et sic indirecte iudicat ecclesia de Iudaeis, et de hoc dixi. **supra e. ita.**<sup>495</sup> +et **c. Iudaei 2.**<sup>496</sup> Ber.+

## X 5.6.14 - Canon

Idem.

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<sup>485</sup> Dist. 86.3 [Fr. v.1 col. 298].

<sup>486</sup> X 5.41.11 [Fr. v.2 cols. 928].

<sup>487</sup> X 5.7.2 [Fr. v.2 col. 778]?

<sup>488</sup> “q. 9” in the 1582 *ER*, which is likely a mistake.

<sup>489</sup> C. 23 q. 8 c. 12 [Fr. v.1 cols. 955-956]?

<sup>490</sup> X 5.39.47 [Fr. v.2 col. 909].

<sup>491</sup> “Non enim erit haeres filius ancillae cum filio liberae.” in the 1582 *ER*.

<sup>492</sup> “22. q. 4” in the 1582 *ER*, which is wrong. C. 32 q. 4 c. 9 [Fr. v.1 cols. 1129-1130].

<sup>493</sup> X 5.19.12 [Fr. v.2 cols. 814-815].

<sup>494</sup> X 5.6.14 [Fr. v.2 col. 776].

<sup>495</sup> X 5.6.6 [Fr. v.2 col. 773].

<sup>496</sup> X 5.6.5 [Fr. v.2 col. 773].

Postulasti, qualiter contra Iudaeum procedere debeas, qui manus iniecit in quendam clericum violentas. Ad quod breviter respondemus, quod, si dictus Iudaeus tuae iurisdictionis existit, ipsum pena pecuniaria punias, vel alia, secundum quod convenit, temporali, faciens laeso satisfactionem congruam exhiberi; alioquin eius dominum moneas et inducas, ut passo iniuriam et ecclesiae ab eo satisfieri faciat competenter. Quod si dominus eius neglexerit adimplere, tu Christianis per censuram ecclesiasticam interdicas, ne cum ipso Iudaeo, antequam satisfaciat, praesumant commercia exercere.

### X 5.6.14—*Glossa* (3 gls.)

#### *gl. pena pecuniaria*

Ad arbitrium iudicis. **supra de regla. de causis.**<sup>497</sup> Quia spirituali +poena+ ipsum punire non potest, cum sit extra ecclesiam: quia nichil ad nos de hiis qui foris sunt. **ii. q. i. multi.**<sup>498</sup> quando ecclesia possit punire Iudaeos, dictum est **supra e. ita.**<sup>499</sup> +et melius **infra c. Iudaei.**<sup>500</sup> Ber.+

#### *gl. laeso satisfaciat*

Hoc est regulare, ut semper ante absolutionem satisfaciat laeso. **Infra de senten. exco. porro.**<sup>501</sup> **parochianos.**<sup>502</sup> **conquestus.**<sup>503</sup> et in pluribus aliis capitulis.<sup>504</sup> Et ecclesia satisfacere debet, cui facta sunt iniuria id est in personam vel eius ministri, ut **iiii. q. ii. nulli. in fi.**<sup>505</sup> et **q. vii. accusatio.**<sup>506</sup> +Ber.+

#### *gl. Christianis*

Et ita indirecte excommunicantur Iudaeis. Et de hoc dictum est. **supra e. ita quorundam.**<sup>507</sup>

### X 5.6.15 - Canon

Idem in concilio generali.

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<sup>497</sup> This allegation has yet to be identified.

<sup>498</sup> C. 2 q. 1 c. 18 [Fr. v.1 cols. 446-447].

<sup>499</sup> X 5.6.6 [Fr. v.2 col. 773].

<sup>500</sup> This allegation has yet to be identified.

<sup>501</sup> X 5.39.7 [Fr. v.2 col. 891].

<sup>502</sup> X 5.39.9 [Fr. v.2 cols. 891-892].

<sup>503</sup> This allegation has yet to be identified.

<sup>504</sup> It is “capilis” in MS F. “cap.” in the 1582 *ER*.

<sup>505</sup> “3. q. 1” in the 1582 *ER*, it should be correct. C. 3 q. 1 c. 5 [Fr. v.1 col. 506].

<sup>506</sup> This allegation has yet to be identified.

<sup>507</sup> X 5.6.6 [Fr. v.2 col. 773].

In nonnullis provinciis a Christianis Iudaeos seu Sarracenos habitus distinguit diversitas. Sed in quibusdam sic quaedam inolevit confusio, ut nulla differentia discernantur. Unde contingit interdum, quod per errorem Christiani Iudaeorum seu Sarracenorum, et Iudaei seu Sarraceni Christianorum mulieribus commiscentur. Ne igitur tam dampnatae commixtionis excessus per velamen erroris huiusmodi ulterioris excusationis possint habere diffugium: statuimus, ut tales utriusque sexus in omni Christianorum provincia et omni tempore qualitate habitus publice ab aliis populis distinguantur. In diebus autem lamentationis et dominicae Passionis in publicum minime prodeant, eo, quod nonnulli ex ipsis talibus diebus, sicut accepimus, et ordinatius non erubescunt incedere, ac Christianis, qui sacratissimae memoriam passionis exhibentes lamentationis signa praetendunt, illudere non formidant. Illud autem districtissime inhibemus, ne in contumeliam Creatoris procedere praesumant. Et quoniam illius dissimulare non debemus opprobrium, qui probra nostra delevit: praecipimus praesumptores huiusmodi per principes saeculares condignae animadversionis adiectione compesci, ne crucifixum pro nobis aliquatenus blasphemare praesumant.

#### X 5.6.15—Glossa (7 gls.)

##### *gl. distinguit*

Sic per habitum debent distingui novitii a professis *prohibitum*. Et **supra de testibus regula. c. plt.**,<sup>508</sup> et meretrix a matrona., **infra de senten. exco. in audientia.**,<sup>509</sup> et **ff. de iniuriis., item apud. §. si quis virgines.**,<sup>510</sup> et masculi a feminis per crines et vestes, **xxx. di. si qua mulier.**<sup>511</sup> Sic et liber distinguitur a servo per pileum. **C. de lati. liber. l. i.**<sup>512</sup> et **§. qui prosilient.**<sup>513</sup> +Io.+

##### *gl. dampnatae commixtionis*

Quia nec matrimonium inter Iudaeum et Christianam esse potest. **xxviii. di. c. i.**<sup>514</sup> **caue.**<sup>515</sup> +Ber.+

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<sup>508</sup> X 2.20.55 [Fr. v.2 col. 340]?

<sup>509</sup> X 5.39.25 [Fr. v.2 cols. 897-898].

<sup>510</sup> Dig. 47.10.15.15.

<sup>511</sup> Dist. 30.3 [Fr. v.1 col. 108].

<sup>512</sup> Cod. 7.6.

<sup>513</sup> This allegation has yet to be identified.

<sup>514</sup> “18. q. 1” in the 1582 *ER*. Dist. 28.1 [Fr. v.1 col. 100]/Dist. 18.1 [Fr. v.1 col. 53]?

<sup>515</sup> C. 28 q. 1 c. 15 [Fr. v.1 col. 1088]?

*gl. erroris*

Ergo si ignoranter commisceatur Christianus Iudaeae: dummodo non +sit+ crassa sive affectata ignorantia, excusatur in eo quod Iuda. ar. **xxxiii. q. ii. in lectum.**<sup>516</sup> et **infra de cleric. ex co. apostolicae in publicum.**<sup>517</sup>

*gl. non prodeant*  
**supra e. quia.**<sup>518</sup>

*gl. illudere*

Et sic reddunt nobis pro gratia contumeliam et contemptunt: ut **supra e. etsi.**<sup>519</sup>

*gl. animadversionis*

Scilicet, pena pecuniaria, vel alia temporalia, prout visum fuerit iudici. **supra c. proxi.**<sup>520</sup> +Ber.+

*gl. blasphemare*

**Supra eo. cap. i.**<sup>521</sup> et **infra cap. proxi.**<sup>522</sup> +Bernar.+

## **X 5.6.16 - Canon**

Idem in eodem.

Cum sit nimis absurdum, ut blasphemus Christi in Christianos vim potestatis exerceat, quod super hoc Toletanum concilium provide statuit, nos propter transgressorum audaciam in hoc generali concilio innovamus, prohibentes, ne Iudaei publicis officiis praeferantur, quoniam sub tali praetextu Christianis plurimum sunt infesti. Si quis autem eis tale officium commiserit, per provinciale concilium, quod singulis annis praecipimus celebrari, monitione praemissa districtione, qua convenit, compescatur. Officiali vero huiusmodi tamdiu Christianorum communitio in commerciis et aliis denegetur, donec in usus pauperum Christianorum secundum providentiam dioecesani episcopi convertatur quicquid fuerit a Christianis adeptus occasione officii sic suscepti, et officium cum pudore dimittat, quod irreverenter assumpsit. Hoc idem extendimus ad paganos.

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<sup>516</sup> C. 34 q. 2 c. 6 [Fr. v.1 col. 1259].

<sup>517</sup> X 5.27.9 [Fr. v.2 col. 832].

<sup>518</sup> X 5.6.4 [Fr. v.2 col. 772].

<sup>519</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>520</sup> X 5.6.15 [Fr. v.2 cols. 776-777].

<sup>521</sup> X 5.6.1 [Fr. v.2 col. 771].

<sup>522</sup> X 5.6.16 [Fr. v.2 col. 777].

## X 5.6.16—*Glossa* (4 gls.)

*gl. blasphemus Christi*

Id est iudeus blasphemans Christum. **supra e. c. i.**<sup>523</sup>

*gl. Toletanum concilium*

**liiii. di. nulla.**<sup>524</sup> et **infra e. ex speciali.**<sup>525</sup>

*gl. provinciale concilium*

**supra de accusat. cum olim.**<sup>526</sup>

*gl. usus pauperum*

Sic ergo pauperibus restituitur, quod iniuste extortum est: ut **supra de immuni. ecclesiarum. quia.**<sup>527</sup> Si vero officium licitum est, tunc si vellet, posset dare pauperibus +quod+<sup>528</sup> iniuste extortum est. **xiii. q. v. non sane.**<sup>529</sup> Sed contra videtur, quod restituendum sit illis, a quibus est extortum, et non pauperibus. **infra de homicid. sicut dignum. §. eos.**<sup>530</sup> **de usuris. cum tu.**<sup>531</sup> **eam te.**<sup>532</sup> et **supra de decimis. tua.**<sup>533</sup> **xix. di. quoniam.**<sup>534</sup> Hoc ideo fit in hoc casu: quia nescitur a quibus extortum sit. Maior pena imponitur in sequenti cap., illis, qui merces prohibitas portant ad Sarracenos. +Io.+

## X 5.6.17 - Canon

Idem in eodem.

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<sup>523</sup> X 5.6.1 [Fr. v.2 col. 771].

<sup>524</sup> Dist. 54.14 [Fr. v.1 col. 211].

<sup>525</sup> X 5.6.18 [Fr. v.2 col. 778].

<sup>526</sup> X 5.1.25 (Sicut olim) [Fr. v.2 col. 747]?

<sup>527</sup> X 3.49.8 [Fr. v.2 cols. 656-657].

<sup>528</sup> This pronoun only appears in the 1582 *ER*.

<sup>529</sup> C. 14 q. 5 c. 15 [Fr. v.1 col. 742].

<sup>530</sup> X 5.12.6.§.5 [Fr. v.2 col. 795].

<sup>531</sup> X 5.19.5 [Fr. v.2 cols. 812-813].

<sup>532</sup> This allegation has yet to be identified.

<sup>533</sup> X 3.30.25/26 [Fr. v.2 col. 564]/[Fr. v.2 cols. 564-565].

<sup>534</sup> “18. distin” in the 1582 *ER*, which seems to be correct. Dist. 18.7 [Fr. v.1 cols. 55-56].

Ad liberandam terram sanctam et infra. Excommunicamus praeterea et anathematizamus illos falsos et impios Christianos, qui contra ipsum Christum et populum Christianum Sarracenis arma, ferrum et ligamina deferunt galearum; eos etiam, qui galeas eis vendunt vel naves, quique in piraticis Sarracenorum navibus curam gubernationis exercent, vel machinis aut quibuslibet aliis aliquod eis impendunt consilium vel auxilium in dispendium terrae sanctae; ipsosque rerum suarum privazione mulctari, et capientium servos fore censemus, praecipientes, ut per omnes urbes maritimas diebus dominicis et festivis huiusmodi sententia publice innovetur. Et talibus gremium non aperiatur ecclesiae, nisi totum, quod ex commercio tam dampnato perceperint, et tantundem de suo in subsidium terrae sanctae transmiserint, ut aequo iudicio in quo deliquerint puniantur. Quodsi forte solvendo non fuerint, si alias<sup>535</sup> reatus talium castigetur, quod in penitentia ipsorum aliis interdicatorum audacia similia praesumendi.

### X 5.6.17—*Glossa* (6 gls.)

*gl. excommunicamus*

Sicut **supra e. ita.**<sup>536</sup> et **c. quod olim.**<sup>537</sup>

*gl. privazione*

Hoc totum habes **supra e. ita.**<sup>538</sup>

*gl. totum ex commercio*

Totum ergo lucrum, quod ad eos pervenit ex hoc commercio, debent dare in subsidium terrae Sanctae, in cuius detrimentum hoc fecerunt. Et est simile crimen usurarum: in quo quicquid sorti accedit, usura est, unde totum debet restitui, **infra de usuris. consuluit.**<sup>539</sup> et **xiiii. q. iii. putavi/putant.**<sup>540</sup> et **c. sequentibus.**<sup>541</sup> Immo videtur quod maius, quia isti videntur fidem Christianam impugnare, unde plus puniuntur, quia tantundem pro pena dare coguntur in subsidium terre Sanctae: et nemo dubitat gravius esse commissum, quod est gravius indicandum. **xxiii. q. i. non afferamus.**<sup>542</sup> et in **aut. ut fra. filis. coll. ix. in fi.**<sup>543</sup> ubi dicit. In delicto enim aequali proximas eis imminere penas iustum putamus.

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<sup>535</sup> “sic alias” in the gloss.

<sup>536</sup> X 5.6.6 [Fr. v.2 col. 773].

<sup>537</sup> X 5.6.12 [Fr. v.2 col. 775].

<sup>538</sup> X 5.6.6 [Fr. v.2 col. 773].

<sup>539</sup> X 5.19.10 [Fr. v.2 col. 814].

<sup>540</sup> C. 14 q. 3 c. 2 [Fr. v.1 col. 735]?

<sup>541</sup> C. 14 q. 3 c. 3 [Fr. v.1 col. 735]?

<sup>542</sup> C. 24 q. 1 c. 21 [Fr. v.1 cols. 973-974].

<sup>543</sup> Nov. 127.



*gl. in quo deliquerint*

Sic **supra de im. ec. c. ult.**<sup>544</sup> et **supra de iure patro. pastoralis.**<sup>545</sup> et **supra de tempor. or. litteras.**<sup>546</sup> et **supra de iudic. nullus.**<sup>547</sup> Simile **xii. q. ii. de viro.**<sup>548</sup> et **xvii. q. iii. frater et coepiscopus.**<sup>549</sup>

*gl. sic alias*

Quia poterunt subicere verberibus loco poenae. **xiii. q. ii. si res.**<sup>550</sup> et **xii. q. ii. fraternitas.**<sup>551</sup> et **v. q. vi. quia iuxta.**<sup>552</sup>

*gl. aliis interdicatur*

Sic ergo poena unius est metus alterius: ut **ii. q. vii. quapropter.**<sup>553</sup> **supra de of. ord. irrefragabili.**<sup>554</sup> et **supra de transl. c. i. in fi.**<sup>555</sup> **supra de statu regula. ea quae.**<sup>556</sup> **supra de calump. c. ii.**<sup>557</sup> **ff. de pennis. capi. §. famosos.**<sup>558</sup> **ff. de posi. bona fides. i.**<sup>559</sup> Responso. in fi.

## X 5.6.18—Canon

Gregorius IX. Astoricensi et Lucensi Episcopis.

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<sup>544</sup> X 3.49.10 [Fr. v.2 col. 657].

<sup>545</sup> X 3.38.29 [Fr. v.2 col. 621].

<sup>546</sup> X 1.11.13 [Fr. v.2 cols. 121-122].

<sup>547</sup> X 2.24 (De iureiurando).5 [Fr. v.2 col. 360]?

<sup>548</sup> C. 12 q. 2 c. 17 [Fr. v.1 cols. 691-692].

<sup>549</sup> C. 17 q. 4 c. 10 [Fr. v.1 col. 817].

<sup>550</sup> “14. q. 6” in the 1582 *ER*, which is correct. C. 14 q. 6 c. 1 [Fr. v.1 cols. 742-743].

<sup>551</sup> C. 2 q. 2 c. 11 [Fr. v.1 cols. 689-690].

<sup>552</sup> C. 5 q. 6 c. 3 [Fr. v.1 col. 551].

<sup>553</sup> C. 2 q. 7 c. 47 [Fr. v.1 cols. 499-500].

<sup>554</sup> X 1.31.13 [Fr. v.2 col. 191].

<sup>555</sup> X 1.7.1 [Fr. v.2 cols. 96-97].

<sup>556</sup> X 3.35.8 [Fr. v.2 cols. 601-602].

<sup>557</sup> X 5.2.2.

<sup>558</sup> Dig.48.19.28.15.

<sup>559</sup> Dig. 50.17.57?

Ex speciali quem erga illustrem regem Portugalliae gerimus caritatis affectum, et infra. Mandamus, quatenus regem ipsum sollicitè inducatis, ne in officiis publicis Iudaeos Christianis praeficiat, sicut in generali concilio continetur, et, si forte redditus suos Iudaeis vendiderit vel paganis, Christianum tunc deputet de gravaminibus inferendis clericis et ecclesiis non suspectum, per quem Iudaei sive Sarraceni sine Christianorum iniuria iura regalia consequantur.

**X 5.6.18—Glossa (2 gls.)**

*gl. generali concilio*  
**supra e. cum sit.**<sup>560</sup> et **liiii. d. nulla.**<sup>561</sup>

*gl. non suspectum*  
Qui fideliter et sine fraude suum officium exequatur, nec per hoc fraus fiat Christianis clericis et ecclesiis: qualis fuit Ioseph: de quo habes **xxii. q. ii. quod autem.**<sup>562</sup> qui fuit dispensator Pharaonis. +Ber.+

**X 5.6.19—Canon**

Idem.

Nulli Iudaeo baptizatum vel baptizari volentem emere liceat vel in suo servitio retinere. Quodsi quem, nondum ad fidem conversum, causa mercimonii emerit, et postmodum factus sit vel fieri desideret Christianus, datis pro eo XII. solidis ab illius servitio protinus subtrahatur. Si autem infra iii menses ipsum venalem non exposuerit, vel ad sibi serviendum emerit eundem, nec ipse vendere, nec alius audeat comparare, sed nullo dato pretio perducatur ad praemia libertatis.

**X 5.6.19—Glossa (4 gls.)**

*gl. servitio*  
**supra e. c. i. et ii. et c. iudi.**<sup>563</sup> Immo quamcito voluntas ipsius fuerit patefacta, quod velit fieri Christianus, in libertatem modis omnibus vendicetur, **liiii. di. fraternitatem.**<sup>564</sup> nisi sit emptus causa mercimonii: ut ibi dicitur, et hic inferius. +Ber.+

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<sup>560</sup> X 5.6.16 [Fr. v.2 col. 777].

<sup>561</sup> Dist. 54.14 [Fr. v.1 col. 211].

<sup>562</sup> This allegation has yet to be identified.

<sup>563</sup> X 5.6.1, 2, 3 or 5 (Iudaei)?

<sup>564</sup> Dist. 54.15 [Fr. v.1 cols. 211-212].

*gl. causa mercimonii*

In quo casu non fraudabitur ex toto Iudaeus sive Paganus, dummodo infra tres menses illum venalem exponat, ut **c. fraternitatem.**<sup>565</sup> +Ber.+

*gl. XII solidis*

Sed de qua moneta dabuntur? Respondeo, illa, quae est in usu in loco illo. ar. **ff. de leg. iii. nummis.**<sup>566</sup> **ff. de leg. i. si servus plurium. §. si numerus.**<sup>567</sup> Quid si non sit qui solvat illos xii. solidos? De hoc dictum est **supra e. c. i.**<sup>568</sup>

*gl. si autem infra tres*

Eo ipso quod non exposuit ipsum infra tres menses venalem, praesumitur quod non mercimonii emerit, sed ad serviendum sibi, unde nullo pretio dato perducetur ad premium libertatis, nec admitteretur probatio in contrarium, cum hic sit praesumptio iuris, ex qua ius statuitur: ut **liiii. di. fraternitatem.**<sup>569</sup> quod c. intellige per illud. Et istud est quasi glosa +et+ expositio illius, si praesumptio est,<sup>570</sup> **supra de sponsa. is qui.**<sup>571</sup> ubi habes praesumptionem iuris. *ius statuitur.* Et si alius eum comparet, talis emptio non valeret, et nihilominus erit liber nullo pretio dato, si scienter emit illum; si ignoranter, agat ad pretium sive ad interesse contra Iudaeum, qui ipsum decepit. **ff. de contrahenda. empt. liberi hominis. ar.**<sup>572</sup> Nota quod favor fidei privat aliquem servo suo, ut hic patet. Item privat aliquem filio suo. **supra de conversione. in fi. c. ult.**<sup>573</sup> Item privat aliquem uxore sua. **supra de divor. gaudemus.**<sup>574</sup> et **xxviii. q. i. si infidelis.**<sup>575</sup> +Ber.+

## **X 5.7 De haereticis**

### **X 5.7.1—Canon**

Stephanus Papa omnibus Episcopis.

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<sup>565</sup> Dist. 54.15 [Fr. v.1 cols. 211-212].

<sup>566</sup> Dig. 32.75.

<sup>567</sup> Dig. 30.50.3.

<sup>568</sup> X 5.6.1 [Fr. v.2 col. 771].

<sup>569</sup> Dist. 54.15 [Fr. v.1 cols. 211-212].

<sup>570</sup> “similis praesumptio” in MS F.

<sup>571</sup> X 4.1.30 [Fr. v.2 col. 672].

<sup>572</sup> Dig. 18.1.70.

<sup>573</sup> X 3.32.2 [Fr. v.2 col. 579]/X 3.33.2 [Fr. v.2 col. 588-589]?

<sup>574</sup> X 4.19.8 [Fr. v.2 cols. 723-724].

<sup>575</sup> C. 28 q. 1 c. 7 [Fr. v.1 col. 1081].

Dubius in fide infidelis est; nec eis omnino credendum est, qui fidem veritatis ignorant.

### X 5.7.1—*Glossa* (3 gls.)

*gl. dubius*

De fide enim nullus debet dubitare, sed firmiter credere articulos fidei. **supra de. summati. c. i. in prin.**<sup>576</sup> Aliter salvus esse non poterit, ut in Psal. Quicumque vult. et **xxiii. di.**<sup>577</sup> **quando episcopus.**<sup>578</sup> et **xxiii. q. i. aperte.**<sup>579</sup> Nullus enim titubare debet in fide, ut ibi dicitur. +Ber.+

*gl. in fide*

Id est in tenui articulo, **C. de haeret. l. ult.**<sup>580</sup> **in fi.**<sup>581</sup> +Sic ex levi offensa revocatur libertus in servitutem. **C. de liber. et eorum lib. si manumissus**<sup>582</sup>+ et hoc quo ad articulos fidei, qui continentur in symbolo: Credo in Deum, quibus per fidem solam adhibenda est credulitas, quia fides est de re +non+ invisā. **de pen. dist. iiii. in domo.**<sup>583</sup> **C. de sum. Tri. l. ult.**<sup>584</sup> Non per signa, sed per fidem veritas est colenda. **de con. d. iiii. venit sacerdos.**<sup>585</sup> +Lau.+

*gl. credendum est*

Ergo dubius in fide, testis esse non potest. **xxiii. q. iiii. ipsa pietas.**<sup>586</sup>

### X 5.7.2—Canon

Leo Papa.

Qui alios, cum potest, ab errore non revocat, se ipsum errare demonstrat.

### X 5.7.2—*Glossa* (1 gl.)

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<sup>576</sup> X 1.1.1 [Fr. v.2 cols. 5-6].

<sup>577</sup> “24. dist” in the 1582 *ER*.

<sup>578</sup> Dist. 24 c. 5 [Fr. v.1 cols. 88-89].

<sup>579</sup> C. 24 q. 1 c. 36 [Fr. v.1 col. 980-981].

<sup>580</sup> “1. 2” in the 1582 *ER*, which is correct.

<sup>581</sup> Cod. 1.5.2.1.

<sup>582</sup> Cod. 6.7.2.

<sup>583</sup> *De pen.* D. 4 c. 11 [Fr. v.1 cols. 1233-1234].

<sup>584</sup> Cod. 1.1.39?

<sup>585</sup> *De cons.* D. 4 c. 71 [Fr. v.1 col. 1385].

<sup>586</sup> C. 23 q. 4 c. 24 [Fr. v.1 col. 909].

*gl. non revocat*

Cum potest. **ff. ad leg. Aquil. scientiam**,<sup>587</sup> et **lxxxiii. di. error**,<sup>588</sup> et ar. **supra t. proxi. etsi**<sup>589</sup> et **ii. q. vii. negligere**.<sup>590</sup> Sed nunquid istud pertinet ad omnes? Respondo: de crimine iam commisso soli praelati tenentur corripere. **xxiii. q. iii. duo ista**<sup>591</sup> et **c. ita plane**.<sup>592</sup> A peccato autem committendo quilibet tenetur alium occulte corripere. **infra e. cum ex iniuncto**<sup>593</sup> et ar. **xxiii. q. iii. ipsa pietas**<sup>594</sup> et **xxii. q. v. hoc videtur**<sup>595</sup> et **xciii. di. diaconi**.<sup>596</sup> et **supra de cog. spirituali. tua**<sup>597</sup> et **ii. q. vii. quapropter**.<sup>598</sup> Sed duo intelliguntur in denuntiatione. +Tanc.+

### X 5.7.3—Canon

Augustinus de fide catholica.

Firmissime teneas et nullatenus dubites, omnem haereticum vel schismaticum, cum diabolo et angelis eius aeterni ignis incendio participandum, nisi ante finem vitae catholicae fuerit incorporatus et redintegratus ecclesiae *et post pauca*.<sup>600</sup> Omni homini, qui ecclesiae catholicae non tenet unitatem, neque baptismus, neque elemosina quantumlibet copiosa, neque mors pro nomine Christi suscepta proficere poterit ad salutem.

### X 5.7.3—Glossa (2 gls.)

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<sup>587</sup> Dig. 9.2.45.

<sup>588</sup> Dist. 83 c. 3 [Fr. v.1 cols. 293-294].

<sup>589</sup> X 5.6.13 [Fr. v.2 cols. 775-776].

<sup>590</sup> C. 2 q. 7 c. 55 [Fr. v.1 col. 501].

<sup>591</sup> “23. q. 4” in the 1582 *ER*.

<sup>592</sup> C. 23 q. 4 c. 35 [Fr. v.1 cols. 915-916].

<sup>593</sup> C. 23 q. 4 c. 6 [Fr. v.1 col. 900].

<sup>594</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>595</sup> C. 23 q. 4 c. 24 [Fr. v.1 col. 909-910].

<sup>596</sup> C. 22 q. 5 c. 8 [Fr. v.1 cols. 884-885].

<sup>597</sup> Dist. 93 c. 23 [Fr. v.1 cols. 326-327].

<sup>598</sup> X 4.11.7 [Fr. v.2 cols. 695-696].

<sup>599</sup> C. 2 q. 7 c. 47 [Fr. v.1 cols. 499-500].

<sup>600</sup> “et post pauca” in MS F only. It is likely a mistake.

*gl. omnem haereticum*

Haereticus multis modis dicitur: ille dicitur haereticus, qui pervertit sacramenta Ecclesiae, ut symoniacus. **i. q. i. eos qui per pecuniam.**<sup>601</sup> et **vi. q. i. +cap. nos sequentes. + §. sed licet.**<sup>602</sup> Item qui scindit se ab unitate Ecclesiae. **vii. q. i.**<sup>603</sup> **denique.**<sup>604</sup> Item omnis excommunicatus. **iiii. q. i. quod autem hii.**<sup>605</sup> Item qui errat in expositione sacrae scripturae. **xxiii. q. iii.**<sup>606</sup> **haeresis.**<sup>607</sup> Et item qui confingit novam sectam, vel confictam sequitur. **xxiii. q. iii.**<sup>608</sup> **haereticus.**<sup>609</sup> Item qui aliter sentit de articulis fidei, quam Romana Ecclesia, **xxiii. q. i. hec est fides.**<sup>610</sup> et **c. quoniam.**<sup>611</sup> vel qui male sentiunt de sacramentis Ecclesiae. **infra e. ad abolendam. in prin.**<sup>612</sup> +Tanc.+

*gl. neque mors*

Unde Apostolus: et si tradidero corpus meum, ita ut ardeat, caritatem autem non habeam, nichil michi prodest. **de peni. d. iii. circa fi. c. si quis.**<sup>613</sup> et **de con. di. iii. solet.**<sup>614</sup> et **i. q. i. vide quantum bonum.**<sup>615</sup> +Ber.+

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<sup>601</sup> C. 1 q. 1 c. 21 [Fr. v.1 cols. 364-366].

<sup>602</sup> C. 6 q. 1 dict. post c. 19 [Fr. v.1 cols. 559].

<sup>603</sup> “ii” in MS F, which is likely a scribal mistake.

<sup>604</sup> C. 7 q. 1 c. 9 [Fr. v.1 cols. 569-570].

<sup>605</sup> C. 4 q. 1 c. 2 [Fr. v.1 col. 537].

<sup>606</sup> “q. i” in MS F, which is likely a scribal mistake—or that the manuscript of the *Decretum* consulted by the MS F edition is different. For the same mistake happens in the following allegation here.

<sup>607</sup> C. 24 q. 3 c. 27 [Fr. v.1 cols. 997-998].

<sup>608</sup> “q. i” in MS F. See footnote for the former allegation here.

<sup>609</sup> C. 24 q. 3 c. 28 [Fr. v.1 col. 998] Here Gratian was giving a definition for a “heretic.”

<sup>610</sup> C. 24 q. 1 c. 14 [Fr. v.1 col. 970].

<sup>611</sup> C. 24 q. 1 c. 25 [Fr. v.1 cols. 975-976].

<sup>612</sup> X 5.7.9 [Fr. v. 2 cols. 780-782].

<sup>613</sup> *De pen.* D. 3 c. 49 [Fr. v.1 col. 1228].

<sup>614</sup> *De cons.* D. 4 c. 31 [Fr. v.1 col. 1371].

<sup>615</sup> C. 1 q. 1 c. 65 [Fr. v.1 col. 381].

*gl. ad salutem*

Eternam. Valent tamen ad bona temporalia promittenda. ar. **xxii. q. ii. si quelibet.**,<sup>616</sup> et ad mitius supplicium de poeniten. **c. i. et iii. ad fi. §. post etiam.**<sup>617</sup> +Ber.+

#### X 5.7.4—Canon

Gregorius Anastasio Antiocheno.

Fraternitatis tuae,<sup>618</sup> et infra. Cum Coelestinus<sup>619</sup> atque Pelagius in Ephesina synodo sint dampnati, quomodo poterunt illa capitula recipi, quorum dampnantur auctores?

#### X 5.7.4—Glossa (1 gl.)

*gl. Celestinus atque Pelagius*

Isti duo dampnati erant in synodo Ephesina de haeresi: dubitabat Patriarcha Antiochenus, an scripta ipsorum essent recipienda. Et dicitur quod non, quia ex quo actor condemnatus est et scripta illius admitti non debent, +ut **iii. q. iii. nullus.**<sup>620</sup> et+<sup>621</sup> **xvi di. canones**<sup>622</sup> quamvis aliqua utilia sint ibi. ar. **supra de test. licet.**<sup>623</sup> Ar. tamen quod ratione bonae sententiae recipi possent. **i. q. i. Dominus declaravit**<sup>624</sup> et **xxxvii. di.**<sup>625</sup> **si quid veri.**<sup>626</sup> et sicut notitia legis abrogatae necessaria est. **d. vii. Moyses.**<sup>627</sup> et Papa etiam argumentatur ex lege Theodosia abrogata. **supra de iudic. novit.**<sup>628</sup> Sed verum est quod scripta istorum non valent, etiam si alias bona sint, nec

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<sup>616</sup> C. 22 q. 2 c. 20 [Fr. v.1 col. 873].

<sup>617</sup> It is unclear what the allegations are according to MS F here. In the 1582 *ER*: “**de poeni. distin. 4. ad finem. §. post etiam.**”. MS BSB Clm 26301 here points to *distinctio* 3, but the dictum “post etiam” can be found in neither of these two cases.

<sup>618</sup> “tue” in MS F.

<sup>619</sup> “Celestinus” in MS F.

<sup>620</sup> C. 3 q. 4 c. 6 [Fr. v.1 col. 513].

<sup>621</sup> Appears in the edition represented by MS BAV Vat. lat. 1383, fol. 215r and later editions.

<sup>622</sup> Dist. 16 c. 1 [Fr. v.1 col. 41].

<sup>623</sup> This title includes three canons that begin with “licet”: X 2.20.23 [Fr. v.2 cols. 322-323], X 2.20.47 [Fr. v.2 col. 337], and X 2.20.49 [Fr. v.2 col. 338]. X 2.20.47 is more plausible.

<sup>624</sup> C.1 q. 1 c. 87 [Fr. v.1 cols. 389-390].

<sup>625</sup> Both MS F and MS Munich, BSB Clm 26301 here render “xxxviii.”

<sup>626</sup> Dist. 37 c. 13 [Fr. v.1 col. 139].

<sup>627</sup> Dist. 7 c. 1 [Fr. v.1 col. 12].

<sup>628</sup> X 2.1.13 [Fr. v.2 cols. 242-244].

sunt recipienda. **infra e. excommunicamus. §. credentes.**<sup>629</sup> ar. ad hoc. **xvi. di.**<sup>630</sup> **bene quidem.**<sup>631</sup> Tamen ratione bonę sententię scripta Origenis approbata fuerunt, **xvi. q. vii. et hec diximus.**<sup>632</sup> qui dampnandus +fuit post<sup>633</sup> mortem. **xxiii. q. ii. sane profertur.**<sup>634</sup> +et si approbarentur,+<sup>635</sup> valerent: alias non. ar. **supra de sum. Tri. c. ii. in fi.**<sup>636</sup> Item ar. quod destructo principali, destruitur accessorium, sic in **c. praedicto**<sup>637</sup> et hoc diximus. +Ber.+

### X 5.7.5—Canon

Ex concilio Africano.

Si quis episcopus heredes instituerit extraneos a consanguinitate sua, vel haereticos, etiam consanguineos, aut paganos pertulerit, saltem post mortem ei anathema, atque eius nomen inter Dei sacerdotes nullo modo recitetur.

### X 5.7.5—Glossa (3 gls.)

*gl. si quis episcopus*

Sic ordina istam litteram: si quis episcopus instituerit haereticos haeredes extraneos a consanguinitate sua, vel etiam instituerit consanguineos haereticos aut Paganos pertulerit: +saltem+ post mortem, etc., et sic repete illam dictionem, haereticos. Et ita nullus debet instituere haereticum, sive sit consanguineus, sive non: ut hic patet. et **infra c. prox.**<sup>638</sup> Instituat ergo episcopus ecclesiam, et ex quo non habet consanguineos, catholicos. **xii. q. ii. episcopus**

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<sup>629</sup> X 5.7.13 [Fr. v.2 cols. 787-789 §. 5].

<sup>630</sup> “96. dist” in the 1582 *ER*. MS Munich, BSB Clm 26301: “**xxvii. di.**”; MS F: “**xvi. di.**”.

<sup>631</sup> Dist. 96 c. 1 [Fr. v.1 cols. 335-338].

<sup>632</sup> C. 16 q. 7 c. 9 [Fr. v.1 cols. 802-803].

<sup>633</sup> Appears in the edition represented by MS BAV Vat. lat. 1365, fol. 554v and later editions.

<sup>634</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987].

<sup>635</sup> Appears in the edition represented by MS BAV Vat. lat. 1365, fol. 554v and later editions.

<sup>636</sup> X 1.1.2 [Fr. v.2 cols. 6-7].

<sup>637</sup> X 5.7.3 or X 1.1.2?

<sup>638</sup> X 5.7.6 [Fr. v.2 col. 779].



**qui filios.**<sup>639</sup> et **c. e. cognovimus.**<sup>640</sup> et in **aut. ut cum de ap. cog. §. omnes.**<sup>641</sup> et **§. si quis.**<sup>642</sup> Quia isti haeretici iam non dicuntur filii vel consanguinei, unde dicitur in lege: Si fraternus tuus, et amicus tuus, et uxor tua depravare voluerint veritatem, sit manus tua super illos, **xxiii. q. viii. legi.**<sup>643</sup> et uxor est expellenda. +**28. q. 1. vxor. in fin.**<sup>644</sup> Hoc intellige nisi poenituerint isti consanguinei:+ Delicti enim veniam penitentibus non negamus. **C. e. Manichaeos.**<sup>645</sup> +Ber.+

*gl. paganos*

Et ita idem iuris est de Paganis quod de haeticis. Et idem est de omnibus, qui catholici non sunt. **infra c. prox.**<sup>646</sup> +B.+

*gl. post mortem*

Sic **xxiiii. q. ii. sane profertur**<sup>647</sup> et ar. **C. e. l. Manichaeos.**<sup>648</sup> Ar. contra, quia crimina morte extinguuntur. **xxiii. dist.**<sup>649</sup> **quorundam.**<sup>650</sup> et **xxiiii. q.**<sup>651</sup> **ii. c. i.**<sup>652</sup> et crimen cum pena sit extinctus. **C. si reus vel actor. mor. l. ii.**<sup>653</sup> Hoc enim speciale est in crimine haeresis, in detestationem criminis, ut post mortem possit accusari et excommunicari, et ne ecclesia<sup>654</sup> oret pro eo, quia non +fuit+ accusatus in vita. +Ber.+

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<sup>639</sup> C. 12 q. 2 c. 34 [Fr. v.1 cols. 698-699].

<sup>640</sup> C. 12. q. 2 c. 29 [Fr. v.1 col. 697].

<sup>641</sup> “dicimus” in the 1582 *ER*. But such allegation can be found neither according to MS F nor the 1582 *ER*. In Borgh. 237 “causas” is copied in the position of “omnes,” which might point to Nov. 115.3.

<sup>642</sup> Nov. 115.3.1, 12, or 14. In MS BSB Clm 26301: “**aut. ut de ap. cog. §. omnes. a et . §. causas. §. si quis.**” In the 1582 *ER*: “**siquis.coll.8.**”

<sup>643</sup> C. 23 q. 8 c. 13 [Fr. v.1 col. 956].

<sup>644</sup> C. 28 q. 1 c. 4 [Fr. v.1 col. 1080].

<sup>645</sup> Cod. 1.5.4.

<sup>646</sup> X 5.7.6 [Fr. v.2 col. 779].

<sup>647</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987].

<sup>648</sup> Cod. 1.5.4.

<sup>649</sup> “23. dist” in the 1582 *ER* and other selected manuscripts. “xxiiii” in MS F, which is likely a scribal mistake.

<sup>650</sup> Dist. 23 c. 14 [Fr. v.1 col. 84].

<sup>651</sup> “23. q.” in the 1582 *ER*. But it is “xxiiii” in the selected manuscripts. It is likely a mistake in the 1582 *ER*.

<sup>652</sup> C. 24 q. 2 c. 1 [Fr. v.1 col. 984].

<sup>653</sup> Cod. 9.6.2. 1582 *ER*: “C. si reus vel accu. mor. fue. l. 2.”

<sup>654</sup> “ecclesie” in MS F.

## X 5.7.6 - Canon

Ex eodem.

In eos, qui catholici non sunt, etiamsi consanguinei fuerint, episcopi vel presbyteri nihil conferant. Denique hoc, quod de episcopis et presbyteris dictum est, debet de reliquis clericis exaudiri.

### X 5.7.6—*Glossa* (3 gls.)

*gl. etiamsi consan*

Dic +ut+ **supra c. proxi.**<sup>655</sup>

*gl. nihil conferant*

Non distinguitur in morte vel in vita, ergo nec nos distinguamus: quia nichil capere possunt ex testamento. **infra e. excommunicamus. §. credentes.**<sup>656</sup> Causa pietatis forte posset ei dari<sup>657</sup> ne pereat fame. **lxxxvi. d.**<sup>658</sup> **pasce fame.**<sup>659</sup> Quia adhuc posset converti ad fidem: quia de nemine desperandum est. **de pen. d. vii. nemo**<sup>660</sup> et **xxxii. q. ii.**<sup>661</sup> **ancillam.**<sup>662</sup> et ar. etiam ad hoc **xlii. di. quiescamus**<sup>663</sup> et **xi. q. iii. quoniam multos.**<sup>664</sup> +Ber.+

*gl. de reliquis*

In hoc omnes pares sunt. ar. **xvi. q. i. praedicator. in prin.**<sup>665</sup> et **xxiii. q. ii. sane profertur.**<sup>666</sup> +Ber.+

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<sup>655</sup> X 5.7.5.

<sup>656</sup> X 5.7.13 [Fr. v.2 col.788 §. 5].

<sup>657</sup> “dare” in MS F.

<sup>658</sup> “lxxxvi. di.” in MS F, which is likely a mistake.

<sup>659</sup> Dist. 86 c. 21 [Fr. v.1 col. 302].

<sup>660</sup> *De pen. D. 7 c. 1* [Fr. v.1 col. 1244].

<sup>661</sup> “xxii. q. ii” in MS F, which is likely a mistake. “xxiii. q.ii.” in MS BAV Borgh. 237; “xxxii. q. ii” in MS Munich BSB Clm 26301.

<sup>662</sup> C. 32 q. 2 c. 11 [Fr. v.1 col. 1123].

<sup>663</sup> Dist. 42 c. 2 [Fr. v.1 col. 152].

<sup>664</sup> C. 11 q. 3 c. 103 [Fr. v.1 cols. 672-673].

<sup>665</sup> C. 16 q. 1 c. 64 [Fr. v.1 cols. 782-783].

<sup>666</sup> C. 24 q. 2 c. 6 [Fr. v.1 cols. 986-987].

### X 5.7.7—Canon

Alexander III. Remensi Archiepiscopo.

Cum Christus perfectus Deus et perfectus sit homo, mandamus, quatenus, sub anathemate interdicas, ne quis de cetero audeat dicere, Christum non esse aliquid secundum quod homo, quia, sicut Christus verus est Deus, ita verus est homo, ex anima rationali et humana carne subsistens.

### X 5.7.7—Glossa (1 gl.)

*gl. sub anathemate*

Quicumque ergo contrarium dicit, est excommunicatus, quia hoc dicere haereticum est, et haeretici omnes sunt excommunicati., **infra e. ad abolendam excommunicamus.**<sup>667</sup> et **c. excommunicamus.**<sup>668</sup> et quod Christus verus sit homo ex humane carne +subsistens+, habes **supra de summa. Trini. c. i.**<sup>669</sup> et est articulus fidei nostrae: de quo habetur in praedicta constitutione, et de aliis, quos scire quilibet Christianus tenetur per fidem., et ar. ad hoc **de con. d. iii. ante xx.**<sup>670</sup> et **c. baptizandos.**<sup>671</sup> et **c. i.**<sup>672</sup> Ad illos articulos de quibus traditur in illa constitutione, firmiter credimus, omnes indistincte tenentur, tam clerici quam laici ad hoc. Sed clerici magis, qui legem perscrutabiliter scire tenentur, **xxxviii. di. +omnes psallentes.**<sup>673</sup> **24. dist.+ quando episcopus.**<sup>674</sup> Quilibet ergo tenetur credere secundum quod catholica tenet Ecclesia, et sufficit in talibus articulis, dummodo nichil in contrarium sentiat. **infra e. ad abolendam.**<sup>675</sup> +Ber.+

### X 5.7.8—Canon

Ex concilio Laternanensi.

Sicut ait beatus Leo, et infra. Quia in partibus Tholosanis, haereticorum, quos alii Catharos, alii Patarenos, et alii aliis nominibus vocant, invaluit dampnanda perversitas, eos, et defensores et

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<sup>667</sup> X 5.7.9 [Fr. v.2 cols. 780-782].

<sup>668</sup> X 5.7.13 [Fr. v.2 cols. 787-789], however, it should be noted that X 5.7.15 begins with same initial.

<sup>669</sup> X 1.1.1 [Fr. v.2 cols. 5-6].

<sup>670</sup> *De cons.* D. 4 c. 19 or 20 or dict. post c. 20? [Fr. v.1 col. 1367].

<sup>671</sup> *De cons.* D. 4 c. 58 [Fr. v.1 col. 1383].

<sup>672</sup> *De cons.* D. 4 c. 1 [Fr. v.1 col. 1361].

<sup>673</sup> Dist. 38 c. 6 [Fr. v.1 col. 142].

<sup>674</sup> Dist. 24 c. 5 [Fr. v.1 cols. 88-89].

<sup>675</sup> X 5.7.9 [Fr. v.1 cols. 780-782].

receptatores eorum anathemati decernimus subiacere, et sub anathemate prohibemus, ne quis eos in domo vel interra<sup>676</sup> sua tenere vel fovere, aut negotiationem cum eis exercere praesumat. Si autem in hoc peccato decesserit, neque sub privilegiorum nostrorum quibuscunque indultorum **obtentu**,<sup>677</sup> neque sub alia quacunque occasione oblatio pro eo fiat, aut inter Christianos accipiat sepulturam.

#### **X 5.7.8—Glossa (4 gls.)**

*gl. Leo*

**xxiii.**<sup>678</sup> **q. v. res omnes.**<sup>679</sup>

*gl. defensores*

**infra e. excommunicamus. §. credentes.**<sup>680</sup> et **lxxix. di. si quis Para. ar.**<sup>681</sup>

*gl. obtentu*

Sic ergo ratione delicti perditur privilegium, et **infra c. proxi. in fi.**,<sup>682</sup> quia privilegium non extenditur ad delictum casum, nec tenetur aliquem in malo. **infra de senten. exco. nulli.**,<sup>683</sup> et omni privilegio cessante mali puniendi sunt. **C. ubi de crimi. agi oportet.**<sup>684</sup> **aut. qua in provincia.**<sup>685</sup> +Ber.+

*gl. oblatio*

Quia constat eum decessisse in mortali +peccato+. **xxiii. q. v. placuit.**<sup>686</sup> et est simile **infra de usuris. quia in omnibus.**<sup>687</sup>

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<sup>676</sup> “terra” in MS F.

<sup>677</sup> “obtemptu” in MS F.

<sup>678</sup> “xiii.” in MS F, which is likely a mistake.

<sup>679</sup> C. 23 q. 5 c. 21 [Fr. v.1 col. 937].

<sup>680</sup> X 5.7.13 [Fr. v.2 col.788 §. 5].

<sup>681</sup> Dist. 79 c. 9 [Fr. v.1 cols. 278-279].

<sup>682</sup> X 5.7.9 [Fr. v.1 cols. 780-782].

<sup>683</sup> X 5.39.8 [Fr. v.1 col. 891].

<sup>684</sup> Cod. 3.15. It should be Cod. 3.15.1—unless the Codex Justinianus used by Bernard in the thirteenth century only contains one lex in this title.

<sup>685</sup> It is probably Nov. 69.1, which contains the phrase “in qua provincia.”

<sup>686</sup> C. 23 q. 5 c. 12 [Fr. v.1 col. 935].

<sup>687</sup> X 5.19.3 [Fr. v.2 col. 812].

## X 5.7.9—Canon

Lucius III.

Ad abolendam, et infra. Universos, qui de sacramento corporis et sanguinis Domini nostri Iesu Christi, vel baptisate, seu peccatorum confessione, vel de matrimonio vel reliquis ecclesiasticis sacramentis aliter sentire aut docere non metuunt, quam sacrosancta Romana ecclesia +praedicat et observat<sup>688</sup>, et generaliter, quoscunque eadem Romana ecclesia vel+ *ut* singuli episcopi per dioeceses suas cum consilio clericorum, vel clerici ipsi sede vacante cum consilio, si oportuerit, episcoporum vicinorum haereticos iudicaverint, vinculo perpetui anathematis innodamus. Et infra. Praesenti nihilominus ordinatione sancimus, ut, quicumque fuerint manifeste in haeresi deprehensi, si clericus est vel cuiuslibet religionis obumbratione fucatus, totius ecclesiastici ordinis praerogativa nudetur, sic omni officio et beneficio spoliatus ecclesiastico, saecularis relinquatur arbitrio potestatis, animadversione debita puniendus, nisi continuo post deprehensionem erroris ad fidei catholicae unitatem sponte recurrere, et errorem suum ad arbitrium episcopi regionis publice consenserit abiurare, et satisfactionem congruam exhibere. Laicus autem, nisi, prout dictum est, abiurata haeresi et satisfactione exhibita confestim ad fidem confugerit orthodoxam, saecularis iudicis arbitrio relinquatur, debitam recepturus pro qualitate facinoris ultionem. Et infra. +Qui vero inventi fuerint sola suspicione notabiles, nisi ad arbitrium episcopi iuxta considerationem suspicionis qualitatemque personae propriam innocentiam congrua purgatione monstraverint, simili sententiae subiacebunt.+ Illos quoque, qui post abiurationem erroris, vel, postquam se, ut diximus, proprii antistitis examinatione purgaverint, deprehensi fuerint in abiuratam haeresim recidisse, saeculari iudicio sine ulla penitus audientia decernimus relinquendos. Et infra. Statuimus insuper, ut comites, barones, rectores et consules civitatum et aliorum locorum, iuxta monitionem episcoporum, praestito corporaliter iuramento promittant, quod fideliter et efficaciter, cum ab eis fuerint requisiti, etiam contra haereticos et eorum complices adiuvabunt bona fide iuxta officium et posse suum. Si vero id observare noluerint, honore, quem obtinent, spolientur et ad alios nullatenus assumantur, eis nihilominus excommunicatione ligandis, et terris ipsorum interdicto ecclesiae supponendis. Civitas autem, quae his institutis duxerit resistendum, vel contra commonitionem episcopi punire neglexerit resistentes, aliarum careat commercio civitatum, et episcopali se noverit dignitate privandam. Et infra. Si qui vero fuerint, qui a lege diocesane iurisdictionis exempti, soli subiaceant sedis apostolicae potestati, nichilominus in hiis, quae sunt contra haereticos instituta, episcoporum subeant iudicium, et eis in hac parte, tanquam a sede apostolica delegatis, non obstantibus libertatis suae privilegiis, obsequantur.

## X 5.7.9—Glossa (14 gls.)

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<sup>688</sup> It is likely a scribal mistake for omitting this phrase, as the *Glossa ordinaria* of this manuscript does include a gloss on it.

*gl. praedicat et observat*

Si. **xxiii. q. iii. heresis.**<sup>689</sup> Hoc ergo quod Romana ecclesia servat, et mandat aliis observari, generaliter est observandum. **xi. di. quis nesciat quicumque.**<sup>690</sup> Ergo male sentit de sacramentis ecclesiae, haereticus est habendus: ut hic patet.

*gl. clerici ipsi sede vacante*

Habes hic ar. quod vacante ecclesia, iurisdictio remanet penes capitulum. ar. **lxv. di. c. ult.**<sup>691</sup> **xxiii. di. in nomine Domini.**<sup>692</sup> **vii. q. i. pontifices.**<sup>693</sup> De hac materia plene dictum est **supra de maio. et ob. his quae.**<sup>694</sup> et **c. cum olim.**<sup>695</sup>

*gl. deprehensi*

Facti evidentia, puta quia publice praedicant haeresim. ar. **ff. de ritu. nupt. palam. §. ult.**<sup>696</sup> vel legitima probatione, puta per testes: vel ex sua confessione. +Ala.+

*gl. praerogativa*

Ar. quod clericus depositus non habet privilegium clericale: et hoc concedit. Ala. Ar. **liiii. di. ex antiquis in fi.**,<sup>697</sup> quod non est verum, quia tenetur vivere regulariter,<sup>698</sup> +quamvis sit depositus:+ unde si hoc faciat, adhuc gaudet privilegio clericali. **lxxxi. d. dictum.**<sup>699</sup> Et hoc dixit H. Si vero incorrigibilis esset, tunc non solum perderet privilegium clericale, verum etiam seculari curiae traderetur. **supra de iudic. cum non ab homine.**<sup>700</sup> Sed in casu isto perdit omne privilegium ubi<sup>701</sup> revertatur, ut sequitur.

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<sup>689</sup> C. 24 q. 3 c. 27 [Fr. v.1 cols. 997-998].

<sup>690</sup> Dist. 11 c. 11 [Fr. v.1 col. 26].

<sup>691</sup> Dist. 65 c. 9 [Fr. v.1 col. 252].

<sup>692</sup> Dist. 23 c. 1 [Fr. v.1 cols. 77-79].

<sup>693</sup> C. 7 q. 1 c. 4 [Fr. v.1 col. 567].

<sup>694</sup> X 1.33.11 [Fr. v.2 col. 201].

<sup>695</sup> X 1.33.14 [Fr. v.2 cols. 201-202].

<sup>696</sup> Dig. 23.2.43.13.

<sup>697</sup> Dist. 54 c. 9 [Fr. v.1 col. 209].

<sup>698</sup> “clericaliter” in the 1582 *ER*.

<sup>699</sup> Dist. 81 c. 8 [Fr. v.1 col. 283].

<sup>700</sup> X 2.1.10 [Fr. v.2 col. 242].

<sup>701</sup> “nisi” in the 1582 *ER*.

*gl. relinquatur*

In tribus enim casibus relinquatur aliquis curiae seculari statim post depositionem. In crimine haeresis, ut hic, et **infra e. excommunicamus.**<sup>702</sup> Item in crimine falsi. +**infra de cri. fal.+ ad falsariorum.**<sup>703</sup> Et in alio, cum propter calumniam vel contumeliam, quam contulit episcopo suo aliquis depositus est. **xi. q. i. si quis sacerdotum.**<sup>704</sup> Alias autem licet clericus sit depositus, non traditur statim curiae +seculari+, immo adhuc tenetur vivere clericaliter, et ecclesia ipsam tenebitur, et gaudet privilegio clericali, ut dictum est in proxima notula. Si vero sit incorrigibilis, postea traditur, secundum quod dicitur **supra de iudic. cum non ab homine.**<sup>705</sup> Qualiter debeat tradi, dicitur **infra de verb. si. novimus.,**<sup>706</sup> qualiter puniri debeant haeretici, dicitur **infra e. excommunicamus.**<sup>707</sup>

*gl. sponte recurrere*

Sed videtur quod etiam compelli debeat servare fidem. **xlv. di. de Iudaeis.**<sup>708</sup> Postquam est condemnatus haereticus, non compellitur: sed si vult sponte reddere, debet recipi abiurato currere.<sup>709</sup> **xxiii. q. iii. dicit Apostolus.**<sup>710</sup> et in perpetuum carcerem ad agendam paenitentiam intrudi. **infra e. c. penul.**<sup>711</sup> +Ber.+

*gl. arbitrium episcopi*

Ar. contra. **i. q. vii. si quis episcopus.**<sup>712</sup> Illud enim obtinuit, ut in concilio tantum reciperetur, sed hodie sufficit quod hic dicit. +Tan.+

*gl. laicus*

Laici enim per ecclesiam condemnandi sunt de haeresi, sed iudex saecularis illum punire debet, nec trahitur<sup>713</sup> laicus curiae seculari, sed clericus solummodo. **infra de verb. sig. novimus.**<sup>714</sup>

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<sup>702</sup> X 5.7.13 [Fr. v.2 cols. 787-789, note that canon 15 of this title also begins with excommunicamus.].

<sup>703</sup> X 5.20.7 [Fr. v.2 cols. 820-821].

<sup>704</sup> C. 11 q. 1 c. 18 [Fr. v.1 col. 631].

<sup>705</sup> X 2.1.10 [Fr. v.2 col. 242].

<sup>706</sup> X 5.40.27 [Fr. v.2 col. 924].

<sup>707</sup> X 5.7.13 [note that canon 15 of this title also begins with excommunicamus.].

<sup>708</sup> Dist. 45 c. 5 [Fr. v.1 cols. 161-162].

<sup>709</sup> “errore” in the 1582 *ER*.

<sup>710</sup> C. 24 q. 3 c. 29 [Fr. v.1 col. 998].

<sup>711</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>712</sup> C. 1 q. 7 c. 22 [Fr. v.1 cols. 435-436].

<sup>713</sup> In editions later than F, including the 1582 *ER*, the verb here is “traditur” (thus “handed over”).

<sup>714</sup> X 5.40.27 [Fr. v.2 col. 924].

Quia laicus semper est de foro seculari, sed in casu isto +sententia debet ferri per ecclesiam:+<sup>715</sup> executio solummodo fit per saecularem iudicem. Qualiter tales puniri debeant, dicitur infra e. excommunicamus.<sup>716</sup> +Ber.+

*gl. audientia*

Si. **xxiii. d. in nomine Domini.**<sup>717</sup> Sed si volunt redire, nonne debent audiri et recipi: quia ecclesia non claudit gremium volentibus redire ad ipsam? **C. de summa. Tri. inter claras. circa fi.**<sup>718</sup> Et delicti enim veniam penitentibus non negamus, dicit Imperator. **C. e. t. Manichaeos.**<sup>719</sup> et **de pen. d. iii. adhuc instant.**<sup>720</sup> Bene credo<sup>721</sup> quod debet recipi, quia Dominis non vult mortem peccatoris, +etc. **xxvi. q. vi. agnovimus.**<sup>722</sup>+ sed ut convertatur et *vivat*<sup>723</sup> et in perpetuum carcerem detrudatur. **infra e. c. penult.**<sup>724</sup> Sed audientia denegatur quo ad bona, vel si alias vellet se defendere. +<Tamen littera ista contradicit Tanc.>,<sup>725</sup> hodie servandum est prout traditur. **infra eod. c. penult. §. si qui.**<sup>726</sup> Ber.<sup>727+728</sup>

*gl. praestito iuramento*

Hoc idem dicitur **infra e. excommunicamus. §. moneantur.**<sup>729</sup> +Ber.+

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<sup>715</sup> This part was only added since the edition represented by MS Munich, BSB, Clm 26301, fol. 201v.

<sup>716</sup> X 5.7.13 [Fr. v.2 cols. 787-789; note that canon 15 of this title also begins with excommunicamus.].

<sup>717</sup> Dist. 23 c. 1 [Fr. v.1 cols. 77-79].

<sup>718</sup> Cod. 1.1.8.35.

<sup>719</sup> Cod. 1.5.4.6.

<sup>720</sup> *De pen.* D. 3 c. 32 [Fr. v.1 cols. 1219-1221].

<sup>721</sup> “Videtur” in the 1582 *ER*.

<sup>722</sup> C. 26 q. 6 c. 13 [Fr. v.1 col. 1040].

<sup>723</sup> This word only appears in MS F. Cf. Ezekiel 18:23, which is quoted in C. 26 q. 6 c. 13.

<sup>724</sup> “ult.” in MS F, which is likely a mistake. X 5.7.15 [Fr. v.2 col. 789].

<sup>725</sup> Texts within “<>” have been added since the post-1243 edition represented in MS BAV, Vat. lat. 1365, fol. 554v.

<sup>726</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>727</sup> In MS BAV, Vat. lat. 1383 (fol. 215v) and MS BAV, Borgh. 237 (184v), it is “t.” here, instead of “Ber.” MS Munich, BSB, Clm 26301 does not copy any siglum here.

<sup>728</sup> This part exists in post-1245 editions after (including) the one represented by MS BAV, Vat. lat. 1383.

<sup>729</sup> X 5.7.13 §. 3 [Fr. v.2 col. 788].



*gl. honore*

Quia hoc ipso contra ecclesiam esse videtur: unde dignitate debent privari. **xxiii. q. i. qui contra pacem.**<sup>730</sup> et si. **xxxii. q. v. praeceptum.**<sup>731</sup> +Ber.+

*gl. ligandis*

Sic. **infra e. excommunicamus. §. moneantur.**<sup>732</sup>

*gl. episcopali*

Propter delictum suum. si. **xxv. q.**<sup>733</sup> **ii. ita nos.**<sup>734</sup>

*gl. delegatis*

Auctoritate generali huius decretalis. si. **supra de of. or. irrefragabili. §. ceterum.**<sup>735</sup> et sic ratione delicti perdunt privilegium: quia privilegium non dat causam delinquendi. **C. de privil. scholarii. l. ii. lib. xii.**<sup>736</sup> Nec permittas nocentes aliquibus privilegiis uti: ut in **aut. de man. prin. §. quod si delinquentes.**<sup>737</sup> et **supra prox. c. sic.**<sup>738</sup> et remissio peccati non dat licentiam delinquendi. **i. q. vii. exigunt.**<sup>739</sup> Consuevit hoc allegari,<sup>740</sup> quod ratione delicti perditur privilegium: quod non est verum, quia si aliqui exempti sunt et delinquant, non perdunt privilegium propter hoc, sed puniri debent. Nec proprie dicuntur recidere in iurisdictionem episcoporum: quia non cognoscunt episcopi iure ordinario, sed auctoritate sibi delegata: ut hic patet, et **supra de of. or. irrefragabili.**<sup>741</sup> Et perinde est ac si +ipse+ Papa cognosceret, vel specialiter aliis delegaret: per abusum enim vel per negligentiam perditur privilegium. **infra de**

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<sup>730</sup> C. 24 q. 1 c. 32 [Fr. v.1 col. 978].

<sup>731</sup> C. 32 q. 5 c. 21 [Fr. v.1 col. 1138].

<sup>732</sup> X 5.7.13 §. 3 [Fr. v.2 col. 788].

<sup>733</sup> “35. q.” in the 1582 *ER*, which is likely a mistake.

<sup>734</sup> C. 25 q. 2 c. 25 [Fr. v.1 col. 1018-1019].

<sup>735</sup> X 1.31.13 §. 1 [Fr. v.2 col. 191].

<sup>736</sup> Cod. 12.29.2.

<sup>737</sup> Nov. 17.4.1.

<sup>738</sup> X 5.6.9 [Fr. v.2 col. 774].

<sup>739</sup> C.1 q. 7 c. 18 [Fr. v.1 cols. 434-435].

<sup>740</sup> “allegare” in MS F.

<sup>741</sup> X 1.31.13 [Fr. v.2 col. 191].

**privil. accedentibus.**<sup>742</sup> et **c. si de terra.**<sup>743</sup> et **xi. q. iii. privilegium.**<sup>744</sup> De hoc dicitur **infra de privileg. tuarum.**<sup>745</sup> +Bernar.+

### X 5.7.10—Canon

Innocentius III.

Vergentis in senium saeculi corruptelam, et infra. In terris vero, temporali nostrae iurisdictioni subiectis, bona haereticorum statuimus publicari, et in aliis eadem fieri praecipimus per potestates et principes saeculares, quos ad id exsequendum, si forte negligentes exstiterint, per censuram ecclesiasticam appellatione remota compelli volumus et mandamus. Nec ad eos bona eorum ulterius revertantur, nisi eis, ad cor revertentibus et abnegantibus haereticorum consortium, misereri aliquis voluerit, ut temporalis saltem pena corripiat quem spiritualis non corrigit disciplina. Cum enim secundum legitimas sanctiones, reis laesae maiestatis punitis capite, bona confiscantur eorum, filiis suis vita solummodo ex misericordia conservata: quanto magis, qui aberrantes in fide Domini Dei filium Iesum Christum offendunt, a capite nostro, qui est Christus, ecclesiastica debent distractione puniri, et bonis temporalibus spoliari, cum longe sit gravius aeternam quam temporalem laedere maiestatem? Nec huiusmodi severitatis censuram orthodoxorum exheredatio filiorum quasi cuiusdam miserationis praetextu debet ullatenus impedire, cum in multis casibus etiam secundum divinum iudicium filii pro patribus temporaliter puniantur, et iuxta canonicas sanctiones quandoque feratur ultio non solum in auctores scelerum, sed etiam in progeniem dampnatorum.

### X 5.7.10—Glossa (6 gls.)

*gl. praecipimus*

Quod facere potest Papa ratione peccati, **supra de iudic. novit.**,<sup>746</sup> et potest eos dignitate privare: ut **supra c. proxi. §. statuimus.**,<sup>747</sup> et propter alias iniquitates potest etiam Papa eos removere. **xv. q. vi. alius.**,<sup>748</sup> et imperium ipse transtulit de loco ad locum: propterea quia +non+ defendebant ecclesiam. **supra de elect. venerabilem.**<sup>749</sup> ut ibi notatur. Et iudex secularis potest

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<sup>742</sup> X 5.31.12 [Fr. v.2 cols. 840-841].

<sup>743</sup> X 5.33.6 [Fr. v.2 col. 851].

<sup>744</sup> C. 11 q. 3 c. 63 [Fr. v.1 col. 660].

<sup>745</sup> Here both MS F and the 1582 *ER* render “ex tuarum”—which is a mistake. X 5.33.11 [Fr. v.2 cols. 852-853].

<sup>746</sup> X 2.1.13 [Fr. v.2 cols. 242-244].

<sup>747</sup> X 5.7.9 §. Statuimus insuper [Fr. v.2 col. 779].

<sup>748</sup> C. 15 q. 6 c. 3 [Fr. v.1 col. 756].

<sup>749</sup> X 1.6.34 [Fr. v.2 cols. 79-82].

excommunicari, si negligat facere iustitiam. **xxiii. q. v. amministratoros.**<sup>750</sup> et hic expresse dicitur. **supra c. proxi. §. penult.**<sup>751</sup> +et **infra de maledic. cap. ii.**<sup>752+</sup>

*gl. misereri*

De sola ergo misericordia restituuntur bona, ut hic dicit, et etiam episcopatus: ut +**xxiii. q. iii. ipsa pietas. ver. item si iniquunt. in fin.**<sup>753</sup> et **q. vii+ xxiii.**<sup>754</sup> **q. vii. quod autem.**<sup>755</sup> et **i. q. vii. convenientibus.**<sup>756</sup>

*gl. disciplina*

**Supra de elect. cum in cunctis.**<sup>757</sup> **lxxxii. d. plurimos. in fi.**<sup>758</sup> et **C. de emendat. propin. l. una.**<sup>759</sup> et ar. **l. di. ut constitueretur.**<sup>760</sup> +**Ber.**+ Bona eorum confiscentur, ut dicit hic, habes. **vi. q. i. §. verum.,**<sup>761</sup> ut +**c.+ si quis cum militibus.**<sup>762</sup> et **C. ad l. Iul. quisquis.**<sup>763</sup>

*gl. longe sit gravior*

**xvii.**<sup>764</sup> **q. iii. sicut qui ecclesiam.**<sup>765</sup> et **xxiii. q. v. si apud.,**<sup>766</sup> et quod in religionem divinam committitur, in omnium fertur iniuriam: et publicum crimen committitur, et **C. e. t. Manicheos.**<sup>767</sup> unde gravior est.

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<sup>750</sup> C. 23 q. 5 c. 26 [Fr v.1 col. 938].

<sup>751</sup> X 5.7.9 [Fr. v.2 col. 779].

<sup>752</sup> X 5.26.2 [Fr. v.2 cols. 826-827].

<sup>753</sup> C. 23 q. 4 c. 24 [Fr. v.1 cols. 909-910].

<sup>754</sup> “xxiiii” in MS F, which is likely a scribal mistake.

<sup>755</sup> C. 23 q. 7 c. 3 [Fr. v.1 cols. 951-952].

<sup>756</sup> C. 1 q. 7 c. 4 [Fr. v.1 cols. 428-429].

<sup>757</sup> X 1.6.7 [Fr. v.2 cols. 51-52].

<sup>758</sup> Dist. 82 c. 3 [Fr. v.1 col. 291].

<sup>759</sup> Cod. 9.15.1.

<sup>760</sup> Dist. 50 c. 25 [Fr. v.1 col. 187].

<sup>761</sup> C. 6 q. 1 dict. ante. c. 22 [Fr. v.1 cols. 559-560].

<sup>762</sup> C. 6 q. 1 c. 22 [Fr. v.1 col. 560].

<sup>763</sup> Cod. 9.8.5.

<sup>764</sup> “vii.” in MS F, which is likely a mistake.

<sup>765</sup> C. 17 q. 4 c. 12 [Fr. v.1 cols. 818].

<sup>766</sup> C. 23 q. 5 c. 24 [Fr. v.1 cols. 937-938].

<sup>767</sup> Cod. 1.5.4.

*gl. exhaereditio*

Hic expresse habes, quod bona haereticorum confiscantur: sive habeant filios, sive non, nec catholicis filiis haereticorum aliquid est relinquendum, ut hic dicitur. Sed contra dicit lex. **C. e. Manichaeos.**<sup>768</sup> et **I. cognovimus.**<sup>769</sup> et **aut. idem de Nestorianis.**<sup>770</sup> ubi dicitur, quod filii catholici propter hoc haereditate paterna non privantur. Statur enim hodie huic decret. in odium criminis, sicut in crimine laesae maiestatis, ubi filii puniuntur quo ad bona, ut hic dicit, et **vi. q. i. §. verum**<sup>771</sup> et **+cap.+ si quis cum militibus.**<sup>772</sup> multo fortius in isto crimine, ut hic dicitur. Et hoc est expressum in constitutione Frederici, hac decret,<sup>773</sup> quae olim erat in **v compilatione +eodem tit.**<sup>774</sup> et in alio casu filii etiam pro delicto parentum puniuntur temporaliter et usque ad quartam generationem, quam habes. **infra de poenis. in quibusdam.**<sup>775</sup> +et in hac opinione fuerunt Ioan. et Lau.+

*gl. canonicas*

**xv. q. viii. cum multae.**<sup>776</sup> et **i. q. iii. §. item peccato Israelitarum.**<sup>777</sup> et **supra de fil. presbyterorum.**<sup>778</sup> per totum.

## X 5.7.11—Canon

Idem.

Si adversus nos terra consurgeret. Et infra. Quia plus timeri solet quod specialiter iniungitur, quam quod generaliter imperatur: vobis advocatis et scriniariis firmiter inhibemus, ne haereticis, credentibus, fautoribus et defensoribus eorundem, in aliquo praestetis consilium vel favorem, ut eis in causis vel in factis, vel aliquibus litigantibus sub eorum examine vestrum patrocinium praebatis, et pro ipsis publica instrumenta vel scripta facere nullatenus attentetis. Quod si contra praesumpseritis, ab officio vestro suspensos perpetuae vos decernimus infamiae subiacere.

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<sup>768</sup> Cod. 1.5.4.

<sup>769</sup> Cod. 1.5.19.

<sup>770</sup> This allegation could not be found. Maybe Nov. 131.14, where heretics' property is instructed to be confiscated.

<sup>771</sup> C. 6 q. 1 dict. ante. c. 22 [Fr. v.1 col. 559-560].

<sup>772</sup> C. 6 q. 1 c. 22 [Fr. v.1 col. 560].

<sup>773</sup> "edictali." in the 1582 *ER*.

<sup>774</sup> *Comp. V. 5.4.*

<sup>775</sup> X 5.37.12 [Fr. v.2 cols. 883-884].

<sup>776</sup> C. 15 q. 8 c. 3 [Fr. v.1 cols. 759-760].

<sup>777</sup> C. 1 q. 4. dict. post c. 11 §. 3 [Fr. v.1 col. 421].

<sup>778</sup> X 1.17 [Fr. v.2 cols. 135-141].

### X 5.7.11—*Glossa* (4 gls.)

*gl. quod specialiter*

Hoc sumptum est ex illo canone **xxiii. d. quamquam.**<sup>779</sup> cum enim quae notabiliter fiunt, nisi specialiter notentur, videntur neglecta. **ff. de iniur. item apud Labeonem. §. ait praetor.**<sup>780</sup> ar. **supra de confir. uti. bonae.**<sup>781</sup> et **supra de dolo. c. ii.**<sup>782</sup>

*gl. scriniariis*

Id est, tabellionibus, sic **xxv. q. ii. +c. dicenti. §. + universa.**<sup>783</sup>

*gl. auxilium [consilium]*

Cum sint excommunicati. **infra e. excommunicamus §. credentes.**<sup>784</sup> et **supra e. sicut.**<sup>785</sup> Sed videtur saltem si conveniantur, quod non sit auxilium denegandum, aut etiam iusta sententia. **supra de except. cum inter.**<sup>786</sup> et **in pluribus. c. ibidem.**<sup>787</sup> Hic potest habere locum infra annum postquam vero constiterit eos esse tales, anno elapso inter haereticos computantur: nisi infra annum se correxerint. **infra e. excommunicamus. §. credentes.**<sup>788</sup> Et sic haeretici puniantur, **infra e. cap. punult.**<sup>789</sup> unde +non+ admittuntur ad aliquam defensionem, cum bona ipsorum debeant confiscari, sicut aliorum haereticorum. Immo licite eis auferuntur sua. +ut **viii.**

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<sup>779</sup> Dist. 23 c. 6 [Fr. v.1 col. 81].

<sup>780</sup> Dig. 47.10.15.2.

<sup>781</sup> X 2.30.3 [Fr. v.2 col. 444].

<sup>782</sup> X 2.14.2 [Fr. v.2 cols. 291-292].

<sup>783</sup> C. 25 q. 2 dict. post c. 16 §. 8 [Fr. v.1 col. 1016].

<sup>784</sup> X 5.7.13 [Fr. v.2 col.788 §. 5].

<sup>785</sup> X 5.7.8 [Fr. v.2 cols. 779-780].

<sup>786</sup> X 2.25.5 [Fr. v.2 col. 376].

<sup>787</sup> X 2.25.5 [Fr. v.2 col. 376].

<sup>788</sup> X 5.7.13 [Fr. v.2 col.788 §. 5].

<sup>789</sup> X 5.7.15 [Fr. v.2 col. 789].

**distin. quo iure.**<sup>790</sup> + **xxiii. q. v. non vos.**<sup>791</sup> et **q. vii. cap. i.**<sup>792</sup> + **ii. et iii.**<sup>793</sup>+. Melius tamen est si auctoritate iudicis hoc fiat. **xxiii. q. iii. sex sunt.**<sup>794</sup> et **C. de pig. l. iii.**<sup>795</sup> + **b.**<sup>796</sup>

*gl. infamiae*

Et ita Papa potest infamiam irrogare, quo ad forum civile: quia tollere eam potest. ar. **supra qui filii sint le. per venerabilem.**<sup>797</sup> ar. contra. **ii.**<sup>798</sup> **q. iii. §. hinc colligitur.**<sup>799</sup> + **Ber.**+

## X 5.7.12—Canon

Universis Christi fidelibus, tam in urbe Metensi quam in eius dioecesi constitutis.

Cum ex iniuncto. Et infra. Licet autem desiderium intelligendi divinas scripturas, et secundum eas studium adhortandi, reprehendendum non sit, sed potius commendandum, in eo tamen apparent quidam laici merito arguendi, quod occulta conventicula celebrant, officium praedicationis Christi sibi usurpant, sacerdotum simplicitatem eludunt, et eorum consortium aspernantur, qui talibus non inhaerent. Deus enim lux vera, quae omnem hominem venientem in hunc mundum illuminat, in tantum odit opera tenebrarum, ut Apostolos suos in mundum universum praedicaturos evangelium omni creaturae missurus, eis praeceperit aperte dicens: “Quod dico vobis in tenebris, dicite in luce, et, quod in aure auditis, praedicate super tecta.” Etiam sicut enim multa sunt membra corporis, omnia vero non eundem actum habent, ita sunt ordines in ecclesia, sed non omnes idem habent officium, quia secundum Apostolum: “alios dedit apostolos, alios prophetas, alios autem doctores, etc.” Cum igitur doctorum ordo sit quasi praecipuus in ecclesia, non debet sibi quisquam indifferenter praedicationis officium usurpare. Nam secundum Apostolum: “quomodo praedicabunt, nisi mittantur?” Et veritas ipsa praecepit Apostolis: “Rogate Dominum messis, ut mittat operarios in messem suam.” Quodsi forte quis argute respondeat, quia tales invisibiliter mittuntur a Deo, etsi non visibiliter mittantur ab

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<sup>790</sup> Dist. 8 c. 1 [Fr. v.1 cols. 12-13] This addition appeared between 1243-1245, according to MS Vatican, BAV Vat. lat. 1365, fol. 555r.

<sup>791</sup> C. 23 q. 5 c. 42 [Fr. v.1 cols. 941-942].

<sup>792</sup> C. 23 q. 7 c. 1 [Fr. v.1 col. 950].

<sup>793</sup> C. 23 q. 7 c. 2 and 3 [Fr. v.1 cols. 951-952] This addition appeared between 1243-1245, according to MS Vatican, BAV Vat. lat. 1365, fol. 555r.

<sup>794</sup> C. 23 q. 3 c. 1 [Fr. v.1 col. 896 (*Sex differentiae sunt*)].

<sup>795</sup> Cod. 8.13.3.

<sup>796</sup> This addition of Bernard’s *siglum* appeared between 1243-1245, according to MS Vatican, BAV Vat. lat. 1365, fol. 555r.

<sup>797</sup> X 4.17.13 [Fr. v.2 cols. 714-716].

<sup>798</sup> “iii.” in MS F, which is likely a scribal mistake.

<sup>799</sup> C. 2 q. 3 dict. post c. 7 [Fr. v.1 col. 453].

homine, cum invisibilis missio multo sit dignior quam visibilis, et divina longe melior quam humana, potest rationabiliter responderi, quod, cum interior illa missio sit occulta, non sufficit cuiquam nude tantum asserere, quod ipse sit missus a Deo, cum hoc quilibet haereticus asseveret: sed oportet, quod asserat illam invisibilem missionem per operationem miraculi, vel scripturae testimonium speciale. Unde, cum Dominus vellet mittere Moysen in Aegyptum ad filios Israelis, ut crederent ei, quod mitteretur ab ipso, dedit ei signum, ut converteret virgam in colubrum, et virgam iterum reformaret. Ioannes quoque Baptista speciale suae missionis testimonium protulit de scriptura, dicens: “Ego vox clamantis in deserto, dirigite viam Domino, sicut ait Ysaïas Propheta.” Licet autem scientia sit necessaria sacerdotibus ad doctrinam, quia iuxta verbum propheticum “labia sacerdotis custodiunt scientiam, et legem exquirunt ex ore eius,” non est tamen simplicibus sacerdotibus etiam a scholasticis detrahendum, cum in eis sacerdotale officium debeat honorari, propter quod Dominus in lege praecepit: “Diis non detrahes,” sacerdotes intelligens, qui propter excellentiam ordinis et officii dignitatem deorum nomine nuncupantur. Et infra. Ne quisquam suae praesumptionis audaciam illo defendat exemplo, quod asyna legitur reprehendisse Prophetam, ut quod Dominus ait: “Quis ex vobis arguet me de peccato?” +et “Si male locutus sum, testimonium perhibe de malo.”+ cum aliud sit fratrem in se peccantem occulte corripere, quod quisque tenetur efficere secundum regulam evangelicam, in quo casu sane potest intelligi, quod Balaam fuit correptus ab asyna; et aliud est patrem suum delinquentem reprehendere manifeste, quod utique nulli licet secundum evangelicam veritatem: “nam qui etiam dicit fratri, fatue, reus erit gehennae ignis.” Rursus aliud est, quod praelatus sponte, de sua confisus innocentia, subditorum se accusationi supponit propria voluntate,<sup>800</sup> in quo casu praemissum Domini verbum debet intelligi; et aliud quod subditus non tam animo reprehendendi quam detrahendi exurgit temerarius in praelatum, cum ei potius incumbat necessitas obsequendi. Quodsi forte necessitas postularet, ut sacerdos tanquam inutilis aut indignus a cura gregis debeant removeri, agendum +est+ et ordinate apud episcopum, ad cuius officium tam institutio quam destitutio sacerdotum noscitur pertinere.

### X 5.7.12—*Glossa* (27 gls.)

#### *gl. occulta conventicula*

Sicut conspiratores. **xi. q. i. conspiracyum.**<sup>801</sup> **lxxix. d. si quis Papa.**<sup>802</sup> Isti enim conspirant contra Deum: unde fortius sunt puniendi, quam si conspirarent contra hominem. **supra eod. vergentis. ad fi.**<sup>803</sup>

#### *gl. simplicitatem*

Et male. **xxxviii. di. sedulo.**<sup>804</sup>

<sup>800</sup> “propria voluntate” is added (between two lines) in MS F by the same hand.

<sup>801</sup> C. 11 q. 1 c. 21 [Fr. v.1 col. 632] (“Coniurationum et conspiracyum?”).

<sup>802</sup> Dist. 79 c. 2 [Fr. v.1 cols. 276-277].

<sup>803</sup> X 5.7.10 [Fr. v.2 cols. 782-783].

<sup>804</sup> Dist. 38 c. 12 [Fr. v.1 col. 143].

*gl. Deus enim*

Hic incipit improbare factum istorum.

*gl. in luce*

Haec est in protestationem contra occulta conventicula.

*gl. sicut enim*

Hic improbat, quod assumebant officium praedicandi.

*gl. non omnes*

Immo singula officia singulis debent esse commissa. **lxxxix.**<sup>805</sup> **d. singula.**<sup>806</sup>

*gl. alios*

Sic **infra c. plt.**<sup>807</sup> et **xvi. q. i. addicimus.**<sup>808</sup> quia nullus audet praedicare nisi sacerdos, ut dicitur, et **infra e. excommunicamus. §. quia vero.**<sup>809</sup> vel nisi esset missus, ut ibi. et **xxiii. q. iii. displicet.**<sup>810</sup> ar. ibi, missus est, ut qualia, etc.

*gl. praecipuus*

Et privilegiatus. **supra de sta. regula. quod Dei timorem.**<sup>811</sup>

*gl. rogare*

**xxi. di. in novo.**<sup>812</sup> Ergo quia isti non erant missi, nec sacerdotes, praedicare non debeant.

*gl. quod si forte*

Hic opponit, quia posset ei opponi ab alio: et ipse statim respondet.

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<sup>805</sup> “[lxxxix.]” in MS F.

<sup>806</sup> Dist. 89 c. 1 [Fr. v.1 col. 311].

<sup>807</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>808</sup> C. 16 q. 1 c. 19 [Fr. v.1 col. 765].

<sup>809</sup> X 5.7.13 §. 6 [Fr. v.2 col. 788].

<sup>810</sup> C. 23 q. 4 c. 38 [Fr. v.1 cols. 917-919].

<sup>811</sup> X 3.35.5 [Fr. v.2 cols. 598-599].

<sup>812</sup> Dist. 21 c. 2 [Fr. v.1 cols. 69-70].



*gl. non sufficit*

Bene dicit, quia etsi martires etiam aliqua mandant +feri+, non statim sunt facienda, sed ante est, ut sciamus illos<sup>813</sup> impetrare de Deo quae postulant. **I. d. si quis praepostera.**<sup>814</sup> et **xlii. d. quiescamus.**<sup>815</sup> *ar.* +Ber.+

*gl. miraculi*

Nec istud statim credendum est: quia quandoque miracula fiunt per malos, et **i. q. i. teneamus.**<sup>816</sup>

*gl. virgam*

**de con. d. ii. revera.**<sup>817</sup>

*gl. licet autem*

Hic improbat quod deludebant simplicitatem sacerdotum. +Ber.+

*gl. labia sacerdotis*

**xliii. di. sit rector.**<sup>818</sup> et **xi. q. i. sacerdotibus.**<sup>819</sup>

*gl. custodiunt*

Id est, custodire debent.

*gl. exquirunt*

Subditi, scilicet. +a scholasticis. **xxxviii. dist. sedulo.**<sup>820</sup> Ber.+

*gl. lege*

Mosayca.

*gl. ne quisquam*

*No.* ad obiectionem, quam possent +facere+ isti haeretici.

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<sup>813</sup> Here MS F copies the word “illos” twice.

<sup>814</sup> Dist. 50 c. 27 [Fr. v.1 col. 188].

<sup>815</sup> Dist. 42 c. 2 [Fr. v.1 col. 152].

<sup>816</sup> C. 1 q. 1 c. 56 [Fr. v.1 col. 379].

<sup>817</sup> *De cons.* D. 2 c. 69 [Fr. v.1 cols. 1339-1340].

<sup>818</sup> Dist. 43 c. 1 [Fr. v.1 col. 153].

<sup>819</sup> C. 11 q. 1 c. 41 [Fr. v.1 cols. 638-639].

<sup>820</sup> Dist. 38 c. 12 [Fr. v.1 col. 143].

*gl. asina*

Ut **ii. q. vii. secuti sunt.**<sup>821</sup> et **+c. nos si.+ §. item cum Balaam.**<sup>822</sup>

*gl. quod quisque tenetur*

Ad hanc correctionem quilibet tenetur secundum quod hic dicit, et hoc intellige de occulta correctione sive reprehensione., ar. **xxiii. q. v. non putes.**,<sup>823</sup> ut dicit hic; sed manifeste corripere pertinet ad Praelatos, vel ad eos, qui habent aliquam potestatem in aliquos. **xxiii. q. iiii. duo ista.**<sup>824</sup> et **c. forte.**<sup>825</sup> ar. Pater enim filium potest corripere, et Praelatus subditum, et occulte et manifeste, unde Apostolus: argue, obsecra, et increpa, ut **xliv. di. c. i.**<sup>826</sup> et **viii. q. i. quid autem.**<sup>827</sup> sed filius non potest publice reprehendere sive corripere patrem, nec subditus Praelatum, ut hic sequitur in littera, et **xxi. d. nolite.**<sup>828</sup> Erubescit enim lex filios castigaturos parentes. in **aut. de nupt. § i.**<sup>829</sup> et **§ et nullo rationabili**<sup>830</sup> +sed quod **sancitum est. coll. 4. versus fin. per unam colum.**<sup>831</sup> + Et haec est correctio canonica secundum Evangelicam veritatem, ut occulta ad omnes, manifesta ad Praelatos, vel ad alios aliquam potestatem habentes, pertineant, ut hic distinguit, et sic potest intelligi **ii. q. i. si peccaverit.**<sup>832</sup> et haec est ad hoc **xxii. q. v. hoc videtur.**<sup>833</sup> Ad denuntiationem vero Evangelicam, quae exigit admonitionem, et probationem, ut **xliv. di. sed illud.**<sup>834</sup> et **supra de testi. in omni negotio.**<sup>835</sup> et **ii. q. i. si peccaverit.**<sup>836</sup> quae fit ad penitentiam, videtur, quibus teneatur. ar. **ii. q. vii. quapropter.**<sup>837</sup> et

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<sup>821</sup> C. 2 q. 7 c. 31 [Fr. v.1 cols. 492-493].

<sup>822</sup> C. 2 q. 7 dict. post c. 41 [Fr. v.1 cols. 496-498].

<sup>823</sup> C. 23 q. 5 c. 36 [Fr. v.1 col. 940].

<sup>824</sup> C. 23 q. 4 c. 35 [Fr. v.1 cols. 915-916].

<sup>825</sup> C. 23 q. 4 c. 11 [Fr. v.1 col. 902].

<sup>826</sup> Dist. 45 c. 1 [Fr. v.1 col. 160].

<sup>827</sup> C. 8 q. 1 c. 23 [Fr. v.1 col. 597].

<sup>828</sup> Dist. 21 c. 5 [Fr. v.1 cols. 70-71].

<sup>829</sup> Nov. 22.1.

<sup>830</sup> Nov. 22.6 (?) "Per occasionem quoque necessariam et non irrationabilem distrahitur matrimonium."

<sup>831</sup> Nov. 22.24. This addition appeared since the recension represented by MS BAV Vat. lat. 1365 (fol. 555r).

<sup>832</sup> C. 2 q. 1 c. 19 [Fr. v.1 cols. 447-448].

<sup>833</sup> C. 22 q. 5 c. 8 [Fr. v.1 cols. 884-885].

<sup>834</sup> Dist. 45 c. 17 [Fr. v.1 cols. 166-167].

<sup>835</sup> X 2.20.4 [Fr. v.2 col. 316].

<sup>836</sup> C. 2 q. 1 c. 19 [Fr. v.1 cols. 447-448].

<sup>837</sup> C. 2 q. 7. c. 47 [Fr. v.1 cols. 499-500].

**supra de cogna. spi. tua.**,<sup>838</sup> dummodo honesta sit persona, et bonae famae: quia viles personae non admittuntur ad denuntiationem. **supra de sponsa. cum in tua.**<sup>839</sup> ubi de hoc.

*gl. fatue*

**lv. d. si Evangelica.**<sup>840</sup>

*gl. supponit*

Ut **ii. q. vii. nos si incompetenter.**<sup>841</sup>

*gl. praemissum verbum*

Scilicet, quis ex vobis arguet me de peccato?

*gl. inutilis*

Si enim praelatus inutilis aut negligens fuerit, removendus est. **supra de of. custo. c. i.**<sup>842</sup> et **lxxxi. d. dictum.**<sup>843</sup> et **infra c. proxi. in fi.**<sup>844</sup> et **xvii. q. ii. si quis abbas.**<sup>845</sup> et **C. de of. praefec. ur.**<sup>846</sup> **si quos.**<sup>847</sup>

*gl. ordinate*

Denuntiando, +vel accusando+<sup>848</sup> secundum quod traditur **supra de accusatio. qualiter.**<sup>849</sup> **supra**<sup>850</sup> **de symo. licet.,**<sup>851</sup> et +est+ ar. iuris ordinem esse servandum.

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<sup>838</sup> X 4.11.7 [Fr. v.2 cols. 695-696].

<sup>839</sup> X 4.1.27 [Fr. v.2 col. 671].

<sup>840</sup> Dist. 55 c. 13 [Fr. v.1 cols. 218-219].

<sup>841</sup> C. 2 q. 7 c. 41 [Fr. v.1 col. 496].

<sup>842</sup> X 1.27.1 [Fr. v.2 col. 155].

<sup>843</sup> Dist. 81 c. 8 [Fr. v.1 col. 283].

<sup>844</sup> X 5.7.13 [Fr. v.2 cols. 787-789].

<sup>845</sup> C. 18 q. 2 c. 15 [Fr. v.1 col. 833].

<sup>846</sup> “C. de offic. praefec. praeto. orient.” in the 1582 *ER*, which is correct.

<sup>847</sup> Cod. 1.26.3 [NOT Cod. 1.28, as indicated by MS F?].

<sup>848</sup> This part has been added between c. 1243 and 1245, see MS BAV, Vat. lat. 1365, 555r.

<sup>849</sup> X 5.1.17 [Fr. v.2 cols. 738-739].

<sup>850</sup> “C(od.)” in MS F.

<sup>851</sup> X 5.3.31 [Fr. v.2 cols. 760-761].

*gl. tam institutio*

Ad quem pertinet institutio, et destitutio. **supra de cappell. moa. c. i.**<sup>852</sup> et **+cap. ii.**<sup>853</sup> et **infra+ de privileg. cum et plantare. §. in ecclesiis.**<sup>854</sup> Sic examinatio ad eum pertinet, ad quem manus impositio spectat. **supra de elect. venerabilem.**<sup>855</sup> et **c. nichil.**<sup>856</sup> et **c. cum nobis olim.,**<sup>857</sup> institutio episcopum pertinet. **xvi. q. vii**<sup>858</sup>. **nullus.**<sup>859</sup> +Ber.+

### X 5.7.13—Canon

Idem in concilio generali.

Excommunicamus et anathematizamus omnem haeresim, extollentem se adversus hanc sanctam, orthodoxam et catholicam fidem, quam superius exposuimus, condempnantes haereticos universos, quibuscunque nominibus censeantur, facies quidem diversas habentes, sed caudas ad invicem colligatas, quia de vanitate conveniunt in id ipsum. +§. 1.+ Dampnati vero praesentibus saecularibus potestatibus aut eorum ballivis relinquantur animadversione debita puniendi, clericis prius a suis ordinibus degradatis. Ita, quod bona huiusmodi dampnatorum, si laici fuerint, confiscantur: si vero clerici, applicentur ecclesiis, a quibus stipendia receperunt. +§. 2.+ Qui autem inventi fuerint sola suspicionem notabiles, nisi iuxta considerationem suspicionis qualitatemque personae propriam innocentiam congrua purgatione monstraverint, anathematis gladio feriantur, et usque ad satisfactionem condignam ab omnibus evitentur, ita, quod si per annum in excommunicatione perstiterint, ex tunc velut haeretici condempnentur. +§. 3.+ Moneantur autem et inducantur, et, si necesse fuerit, per censuram ecclesiasticam compellantur saeculares potestates, quibuscunque fungantur officiis, ut sicut reputari cupiunt et haberi fideles, ita pro defensione fidei praestent fidei *sacramentum* +publice iuramentum+, quod de terris suae iurisdictioni subiectis universos haereticos, ab ecclesia denotatos, bona fide pro viribus exterminare studebunt, ita, quod amodo, quodcumque quis fuerit in potestatem sive perpetuam sive temporalem assumptus, hoc capitulum teneatur cum iuramento firmare. Si vero dominus temporalis, requisitus et monitus ab ecclesia terram, suam purgare neglexerit ab haeretica feditate, per metropolitanum ceteros comprovinciales episcopos excommunicationis vinculo innodetur, et, si satisfacere contempserit, infra annum significetur hoc summo Pontifici, ut ex tunc ipse vasallos ab eius fidelitate denunciarent absolutos, et terram exponat catholicis occupandam, qui eam, exterminatis haereticis, absque ulla contradictione possideant, et in fidei

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<sup>852</sup> X 3.37.1 [Fr. v.2 col. 607].

<sup>853</sup> X 3.37.2 [Fr. v.2 cols. 607-608].

<sup>854</sup> X 5.33.3 §. 2 [Fr. v.2 col. 850].

<sup>855</sup> X 1.6.34 [Fr. v.2 cols. 79-82].

<sup>856</sup> X 1.6.44 [Fr. v.2 cols. 89-90].

<sup>857</sup> X 1.6.19 [Fr. v.2 cols. 58-61].

<sup>858</sup> “16. q. 6” in the 1582 *ER*, which is likely a mistake.

<sup>859</sup> C. 16 q. 7 c. 11 [Fr. v.1 col. 804].

puritate conservent, salvo iure domini principalis, dummodo super hoc ipse nullum praestet  
 obstaculum, nec ad ipse dumentum opponat, eadem nichilominus lege servata circa eos, qui non  
 habent dominos principales. +§. 4.+ Catholici vero, qui, crucis assumpto caractere, ad  
 haereticorum exterminium se accinxerint, illa gaudeant indulgentia, illo privilegio sint muniti,  
 quae accedentibus in terrae sanctae subsidium conceduntur. +§. 5.+ Credentes praeterea,  
receptatores<sup>860</sup>, defensores et fautores haereticorum excommunicationi decernimus subiacerere,  
 firmiter statuentes, ut, postquam quibus talium fuerit excommunicatione notatus, si satisfacere  
 contempserit infra annum, ex tunc ipso iure sit factus infamis, nec ad publica officia vel consilia,  
 nec ad eligendos aliquos ad huiusmodi, nec ad testimonium admittatur. Sic etiam intestabilis, ut  
 nec testandi liberam habeat facultatem nec ad hereditatis successionem accedat. Nullus praeterea  
 ipsi super quocunque negotio, sed ipse aliis respondere cogatur. Quodsi forte iudex exstiterit,  
 eius sententia nullam obtineat firmitatem, nec causae aliquae ad eius audientiam perferantur. Si  
 fuerit advocatus, nullatenus eius patrocinium admittatur; si tabellio, instrumenta confecta per  
 ipsum nullius sint momenti, sed *contra*<sup>861</sup> auctore dampnato dampnentur. Et in similibus idem  
 praecipimus observari. Si vero clericus fuerit, ab omni officio et beneficio deponatur, ut, in quo  
 maior est culpa, gravior exerceatur vindicta. Si qui autem tales, postquam ab ecclesia fuerint  
 denotati, evitare contempserint, excommunicationis sententia usque ad satisfactionem ydoneam  
percellantur. Sane, clerici non exhibeant huiusmodi pestilentibus ecclesiastica sacramenta, nec  
 eos Christianae praesumant tradere sepulturae, nec eleemosynas aut oblationes eorum percipiant,  
 alioquin suo priventur officio, ad quod nunquam restituantur absque indulto sedis apostolicae  
speciali. Similiter quilibet regulares, quibus etiam hoc infligatur, ut eorum privilegia in illa  
 dioecesi non serventur, in qua tales excessus praesumpserint perpetrare. +§. 6.+ Quia vero  
 nonnulli sub specie pietatis virtutem eius, iuxta quod ait Apostolus, abnegantes, auctoritatem sibi  
 vendicant praedicandi, cum idem Apostolus dicat: “Quomodo praedicabunt, nisi mittantur<sup>862?</sup>”  
 omnes, qui prohibiti, vel non missi, praeter auctoritatem ab apostolica sede vel catholico  
 episcopo loci susceptam, publice vel privatim praedicationis officium usurpare praesumpserint,  
 excommunicationis vinculo innodentur, et nisi quam citius resipuerint, alia competenti pena  
 plectentur. +§. 7.+ Addicimus insuper, ut quilibet archiepiscopus vel episcopus per se vel  
 archidiaconum suum, aut alias honestas ydoneasque personas, bis aut saltem semel in anno  
 propriam parochiam, in qua fama fuit haereticos habitare, circumeat, et ibi tres vel plures boni  
 testimonii viros, vel si expedire videbitur, totam viciniam compellat, quod, si quos ibidem  
 haereticos sciverit, vel aliquos occulta conventicula celebrantes, seu communi conversatione  
 fidelium vita<sup>863</sup> et moribus dissidentes, eos episcopo studeat indicare. Ipse autem episcopus ad  
 praesentiam convocet accusatos, qui, nisi se ab obiecto reatu purgaverint, vel, si post  
 purgationem exhibitam in pristinam fuerint relapsi perfidiam, canonice puniantur. Si qui vero ex  
 eis iuramenti religionem obstinatione dampnabili respuentes, iurare forte noluerint, ex hoc ipso  
 tanquam haeretici reputentur. +§. 8.+ Volumus igitur et mandamus, et in virtute obedientiae  
 districte praecipimus, ut ad haec efficaciter exsequenda episcopi per dioeceses suas diligenter  
 invigilent, si canonicam volunt effugere ultionem. Si quis enim episcopus super expurgando de

<sup>860</sup> This word is “corrected” in the MS F as “recepta”—which is also used in the gloss as a *lemma*.

<sup>861</sup> Could this be a scribal mistake? It is not in the 1582 *ER*.

<sup>862</sup> “ut mittantur” in MS F.

<sup>863</sup> This *lemma* becomes “vitam” in the gloss.

sua dioecesi haereticae pravitatis fermento negligens fuerit vel remissus, cum id certis indiciis apparuerit, et ab episcopali officio deponatur, et in locum ipsius alter instituat<sup>ur</sup> idoneus, qui velit et possit haeticam confundere pravitatem.

**X 5.7.13—Glossa (30/32 gls.)**

*gl. superius*

**supra de summa. Tri. c. i. et ii.**<sup>864</sup>

*gl. relinquantur*

Qualiter hoc intelligatur **supra e. ad abolendam.**<sup>865</sup> +Ber.+

*gl. degradatis*

Et +**infra c. +proxi.**<sup>866</sup> et **c.+ plt.**<sup>867</sup> praesente seculari.

*gl. potestatibus*

Sic **infra de verbo. si. novimus.**<sup>868</sup> ut si voluerit redire, in perpetuum carcerem poeniatur. **infra eo. excommunicamus.**<sup>869</sup>

*gl. confiscentur*

De hoc dictum est. **supra e. vergentis.**<sup>870</sup>

+*gl. damnati*

Scilicet, de haeresi.+

*gl. stipendia*

Si plura stipendia habuerint, inter ecclesias dividantur pro rata. **supra de test. relatum.**<sup>871</sup>

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<sup>864</sup> X 1.1.1 and 2. [Fr. v.2 cols. 5-7].

<sup>865</sup> X 5.7.9 [Fr. v.2 cols. 780-782].

<sup>866</sup> X 5.7.14 [Fr. v.2 col. 789].

<sup>867</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>868</sup> X 5.40.27 [Fr. v.2 col. 924].

<sup>869</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>870</sup> X 5.7.10 [Fr. v.2 cols. 782-783].

<sup>871</sup> X 3.26.12 [Fr. v.2 cols. 541-542].

*gl. suspicione*

Id est, praesumptione. Nota quod sola suspicio sive praesumptio purgationem inducit: quod si non fiat, punitur, ut hic patet. ar. **supra de coha. clerico. tua nos.**<sup>872</sup> Et intellige quod sit probabilis praesumptio sive suspicio: alias non indiceretur purgatio, et sic non obstat. **ii. q. i. primo.**,<sup>873</sup> et ita hic respicitur infamia.

*gl. suspicionis*

Hoc semper est attendendum, ut secundum qualitatem infamiae et personae indicatur expurgatio.<sup>874</sup> **ii. q. v. omnibus.**<sup>875</sup> et **infra de pur. ca. inter.**<sup>876</sup>

*gl. condemnentur*

Videtur hic, quod aliquis sit condemnandus de haeresi, licet non videatur violenta praesumptio contra ipsum. Ar. contra. **supra de praesumpt. litteras.**,<sup>877</sup> ubi dicitur, quod licet sit vehemens praesumptio, non vult Papa illum condemnare de tam gravi crimine. Haec violentissima est praesumptio, cum primo probabilis fuerit propter infamiam, et quia noluit se purgare, fuit excommunicatus: et quia per annum stetit in excommunicatione, pro convicto habetur. **xi. q. iii. rursus.**<sup>878</sup> et **c. quicumque.**<sup>879</sup> Secus in aliis criminibus, quia si bona alicuius contumacis propter crimen annotata sunt, si infra annum non venit, devoluuntur ad fiscum. Sed quo ad crimen non obest quin post annum possit probare innocentiam suam. **ff. de requirendis. reis. l. annus.**<sup>880</sup> Sed quid est quid dicit, quod statim est condemnandus, cum saepius est admonendus ut redeat. **i. q. vii. convenientibus.**?<sup>881</sup> +Respondeo+ non contradicit: quia licet sit condemnandus, monendus est, ut redeat, ut **xxiii. q. i. quae domus.**,<sup>882</sup> ubi dicitur quod post admonitionem est vitandus. Hoc est verum in hoc, quod non sunt +ei+ secreta fidei nostrae exponenda, **xliv. di. in mandatis.**,<sup>883</sup> ut impugnet nos, ut ibi. Nec intelligas, quod si pro alio crimine seu contumacia

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<sup>872</sup> X 3.2.8 [Fr. v.2 col. 456].

<sup>873</sup> C. 2 q. 1 c. 13 [Fr. v.1 col. 444].

<sup>874</sup> In 1582 *ER* it is *purgatio*. But in selected manuscripts, other than MS Munich, BSB, Clm 26301 (the last recension) fol. 202v, it is *expurgatio*. See MS BAV, Vat. lat. 1365, fol. 555r; MS BAV, Vat. lat. 1383, fol. 216v; and MS BAV, Borgh. 237, fol. 185v.

<sup>875</sup> C. 2 q. 5 c. 19 [Fr. v.1 cols. 461-462].

<sup>876</sup> X 5.34.10 [Fr. v.2 cols. 872-874].

<sup>877</sup> X 2.23.14 [Fr. v.2 col. 357].

<sup>878</sup> C. 11 q. 3 c. 36 [Fr. v.1 col. 654].

<sup>879</sup> C. 11 q. 3 c. 37 [Fr. v.1 col. 654].

<sup>880</sup> Dig. 48.17.4.

<sup>881</sup> C. 1 q. 7 c. 4 [Fr. v.1 cols. 428-429].

<sup>882</sup> C. 24 q. 1 c. 26 [Fr. v.1 col. 976 “Que dignior domus”].

<sup>883</sup> Dist. 44 c. 2 [Fr. v. 1 col. 155].

steterit per annum in excommunicatione, quod habendas sit haereticus, sed tantum<sup>884</sup> excommunicatur per suspicionem haeresis.

*gl. iuramento firmare*

Sic **s. e. ad abolendam. §. statuimus.**<sup>885</sup> Et non solum<sup>886</sup> hoc iurare tenetur, sed hoc iurare debet, quod ipse idem catholicus sit., in **aut. de iusiuran. id est. quod praestatur. ab his qui admini. susti. circa principium. coll. iii**<sup>887, 888</sup>.

*gl. neglexerit*

Iudex, qui negligit facere iustitiam, excommunicatur. **xxiii. q. v. amministratoros.**<sup>889</sup> Et facit litem suam. **e. causa. q. ii. dominus.**<sup>890</sup> et **iii. q. vii. qui sine.**<sup>891</sup> ar. et in **aut. ut diffe. iudi. §. plt. et ulti. coll. ix.**<sup>892</sup> et **ii. q. vii. sicut.**<sup>893</sup>

*gl. absolutos*

**infra e. c. ult.**<sup>894</sup> Et ita Papa potest propter haeresim deponere omnes<sup>895</sup> tam laicos quam clericos ad dignitatibus suis, ut **supra e. ad abolendam. §. statuimus.**<sup>896</sup> et **supra e. vergentis.**<sup>897</sup> ubi de hoc.

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<sup>884</sup> “[S]ed tantum” here is copied as “si hoc tamen cum” in the MS F.

<sup>885</sup> X 5.7.9 §. statuimus insuper. [Fr. v.2 col. 781].

<sup>886</sup> “solutionem” in the MS F.

<sup>887</sup> “colla. 2” in the 1582 *ER*.

<sup>888</sup> This allegation has yet to be identified.

<sup>889</sup> C. 23 q. 5 c. 26 [Fr. v.1 col. 938].

<sup>890</sup> C. 23 q. 2 c. 2 [Fr. v.1 cols. 894-895].

<sup>891</sup> C. 3 q. 7 c. 3 [Fr. v.1 cols. 526-527].

<sup>892</sup> Nov. 86.8 and 9 = Authen. 128.

<sup>893</sup> C. 2 q. 7 c. 6 [Fr. v.1 col. 484].

<sup>894</sup> X 5.7.16 [Fr. v.2 cols. 789-790].

<sup>895</sup> “eos” in the MS F.

<sup>896</sup> X 5.7.9 §. statuimus insuper. [Fr. v.2 col. 781].

<sup>897</sup> X 5.7.10 [Fr. v.2 cols. 782-783].



*gl. salvo iure domini*

Ar. quod propter unius delictum, alius puniri non debet: quoniam pena suos debet punire auctores. **supra de his quae fiunt a maio. par. cap. quaesiuit.**<sup>898</sup> et **C. de poenis. sancimus.**<sup>899</sup> et iniquum est aliquem alterius odio praegravari. **C. de inoffi. t. si quis suo.**<sup>900</sup> Ar. contra. **supra e. vergentis.**<sup>901</sup>

*gl. se accinxerint*

Ar. quod auctoritate ecclesiae bellum fieri potest, **xxiii. q. viii. igitur.**<sup>902</sup> **ortatu.**<sup>903</sup> **xv. q. vi auctoritatem.**<sup>904</sup> **lxiii. dist.**<sup>905</sup> **adrianus.**<sup>906</sup> quod verum est contra inimicos fidei, et contra illos, qui ecclesiam impugnant.

*gl. recepta et defensores*

Sine quibus haeretici diu manere non possunt. ar. **ff. de of. praesi. congruit.**<sup>907</sup> **ff. de recepta. l. i.**<sup>908</sup> unde merito isti sunt puniendi: immo gravius delinquant, qui aliorum errores defendunt, +et acrius puniri debent.+ **xxiii. q. iii. qui aliorum.**<sup>909</sup> et ideo simili pena cum haeticis puniuntur. **xi. q. iii. qui consentit.**<sup>910</sup> **infra e. c. plt. in fi.**<sup>911</sup> et **C. de his qui latro. occul. l. i.**<sup>912</sup> etiam si essent consanguinei. ar. **xxvii. q. i. de filia.**<sup>913</sup> et **supra e. si quis episcopus.**<sup>914</sup> ubi de hoc. Ber.

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<sup>898</sup> X 3.11.2 [Fr. v.2 cols. 506-507].

<sup>899</sup> Cod. 9.47.22.

<sup>900</sup> Cod. 3.28.33.

<sup>901</sup> X 5.7.10 [Fr. v.2 cols. 782-783].

<sup>902</sup> C. 23 q. 8 c. 8 [Fr. v.1 col. 955].

<sup>903</sup> C. 23 q. 8 c. 10 [Fr. v.1 col. 955].

<sup>904</sup> C. 15 q. 6 c. 2 [Fr. v.1 col. 755].

<sup>905</sup> “53. dist.” in the 1582 *ER*.

<sup>906</sup> Dist. 63 c. 22 [Fr. v.1 col. 241].

<sup>907</sup> Dig. 1.18.13.

<sup>908</sup> Dig. 47.16.1.

<sup>909</sup> C. 24 q. 3 c. 32 [Fr. v.1 col. 999].

<sup>910</sup> C. 11 q. 3 c. 100 [Fr. v.1 col. 671].

<sup>911</sup> X 5.7.15 [Fr. v.2 col. 789].

<sup>912</sup> Cod. 9.39.1.

<sup>913</sup> C. 27 q. 1. c. 26 [Fr. v.1 col. 1056].

<sup>914</sup> X 5.7.5 [Fr. v.2 col. 779].

*gl. sit etiam intestabilis*

Isti enim, ut hic patet, a quolibet actu legitimo repelluntur, nec donare, nec vendere, possunt nec contrahere: prout haec omnia traduntur. **C. e. Manichaeos.**<sup>915</sup>

*gl. cum auctore damnato damnentur*

**supra eo. fraternitatis.**<sup>916</sup> ubi de hoc. si. **supra de testibus. licet.**<sup>917</sup> Sed etiam scriptura +vel sententia+ publice excommunicati non valet. **supra de re iudi. ad probandum.**<sup>918</sup> et **supra de except. exceptionem.**<sup>919</sup> nec rescriptum., **supra de rescriptis dilectus.**<sup>920</sup> Et hoc est quod sequitur, idem in similibus praecipimus observari. +Tamen de rescripto impetrato ab excommunicato secus est: quia rescriptum non sumit auctoritatem ab impetrante, sed a concedente. De quo dic ut **supra de except. pia.**<sup>921</sup> in notula, sed mirum. Ber.+

*gl. gravior exerceatur*

Ut **l. d. quia tua.**<sup>922</sup> Hic habes ar. quod qui in maiori dignitate est, plus punitur, et ita circumstantiae aggravant vindictam, ar. **xxxii. q. v. qui viderit.**<sup>923</sup> et **xxv. q. i. nulli fas.**<sup>924</sup> et **xlvi. d. homo Christianus.**<sup>925</sup> Crimen enim augetur per dignitatem, **ff. de re mili. omne delictum. §. i.**<sup>926</sup> et **xix.**<sup>927</sup> **dist. nulli.**<sup>928</sup> et qui magnus sine comparatione creatus fuit, sine venia dampnatus est. **de penit. d. ii. § principium enim.**<sup>929</sup> et **supra de iureiur. cum quidam.**<sup>930</sup> ubi hoc soluitur. Ber.+

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<sup>915</sup> Cod. 1.5.4.

<sup>916</sup> X 5.7.4 [Fr. v.2 col. 779].

<sup>917</sup> X 2.20.23 [Fr. v.2 cols. 322-323].

<sup>918</sup> X 2.27.24 [Fr. v.2 col. 409].

<sup>919</sup> X 2.25.12 [Fr. v.2 col. 381].

<sup>920</sup> X 1.3.26 [Fr. v.2 col. 30].

<sup>921</sup> It could be VI 2.12.1 “Pia consideratione” of the *Liber sextus*, since “pia” cannot be found in the *Decretales*.

<sup>922</sup> Dist. 50 c. 38 [Fr. v.1 col. 194].

<sup>923</sup> C. 32 q. 5 c. 13 [Fr. v.1 col. 1136].

<sup>924</sup> C. 25 q. 1 c. 4 [Fr. v.1 col. 1008].

<sup>925</sup> Dist. 40 c. 5 [Fr. v.1 col. 146].

<sup>926</sup> Dig. 49.16.6 §. 1.

<sup>927</sup> “xxx” in MS F, which is likely a scribal mistake.

<sup>928</sup> Dist. 19 c. 5 [Fr. v.1 col. 61].

<sup>929</sup> *De pen.* D. 2 c. 45 [Fr. v.1 cols. 1209-1210].

<sup>930</sup> X 2.24.12 [Fr. v.2 col. 363].

*gl. percellantur*

Qui enim participat excommunicato scienter, et non se corrigit, est excommunicandus. **infra de senten. exco. quod in dubiis.**<sup>931</sup> et **xi. q. iii. qui communicaverit.**<sup>932</sup>

*gl. se apostolica speciali*

Hic reservat Papa sibi absolutionem sive restitutionem talium: ergo per hoc aliis prohibuisse videtur. si. **supra de praeben. de multa. in fi.**<sup>933</sup> et **c. grave.**<sup>934</sup> Sic et e converso, ex quo sibi non reservat, aliis indulgere videtur. **infra de senten. exco. nuper.,**<sup>935</sup> et est ad hoc quod episcopi dispensare possunt, ubi Papa non reservat sibi dispensationem. Quare ergo Papa sibi specialiter reservavit talem restitutionem, nisi ubi aliis prohiberet? Et licet episcopus ipsum restituere ad officium non possit, tamen reconciliare potest ipsum ecclesiae. **supra e. ad abolendam. §. i.**<sup>936</sup> ubi de hoc.+**b.**<sup>937</sup>

+*gl. quilibet regulares*

Repete, non exhibeant ecclesiastica sacramenta: alioquin, etc.+

*gl. eorum privilegia*

Praetextu privilegiorum participare excommunicatis non possunt, **infra de senten. exco. nulli.,**<sup>938</sup> et hoc casu possunt ab episcopo loci tanquam delegato a Papa puniri. **supra e. ad abolendam. in fine.**<sup>939</sup> ubi de hoc.

*gl. nisi mittantur*

**Supra e. c. proxi.,**<sup>940</sup> ubi de hoc.

*gl. alia competenti*

Prout visum fuerit superiori, **supra de of. delega. de causis.**<sup>941</sup>

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<sup>931</sup> X 5.39.30 [Fr. v.2 col. 901].

<sup>932</sup> C. 11 q. 3 c. 19 [Fr. v.1 col. 648].

<sup>933</sup> X 3.5.28 [Fr. v.2 cols. 477-478].

<sup>934</sup> X 3.5.29 [Fr. v.2 col. 478].

<sup>935</sup> X 5.39.29 [Fr. v.2 cols. 900-901].

<sup>936</sup> X 5.7.9 §. 1 [Fr. v.2 Fr. v.2 col. 780].

<sup>937</sup> This *siglum* is provided in MS BAV, Vat. lat. 1365, fol. 555v; however in MS BAV, Vat. lat. 1383, fol. 217r it is “ber. Jo.” The latter “Jo.,” however, seems to be added later. In MS BAV, Borgh. 237, fol. 186r, it is “b.”

<sup>938</sup> X 5.39.8. [Fr. v.2 col. 891].

<sup>939</sup> X 5.7.9. [Fr. v.2 cols. 780-782].

<sup>940</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>941</sup> X 1.29.4 [Fr. v.2 col. 158].

*gl. totam viciniam*

Ar. quod universitas praestare potest iuramentum calumniae. si. xxxv. q. vi.<sup>942</sup> **episcopus in synodo.**<sup>943</sup> sic **supra de accu.**<sup>944</sup> **sicut olim.**<sup>945</sup>

*gl. vitam et moribus*

Haec omnia suspicione inducunt. xli. d. **quisquis.**<sup>946</sup> **lxxxvi. di. inferiorum.**<sup>947</sup> **xxiii. q. viii. preterea.**<sup>948</sup> **ff. ad l. Acquil. scientiam.**<sup>949</sup> et **ff. de hiis qui no. infa. quid ergo. §. i.**<sup>950</sup>

*gl. indicare*

**ii. q. vii.**<sup>951</sup> ar. **xxii. q. i. si quis per capitulum.**<sup>952</sup>

*gl. purgaverint*

+Nota+ Deficientem in purgatione puniendum. **supra de symonia. de hoc.**<sup>953</sup> et **c. insinuatum.**<sup>954</sup>

*gl. relapsi*

Isti magis puniendi +sunt.+ deterior namque dolus eius cognoscitur, quod interruptam iterum litem deservit, quam qui semel coeptam delinquit,<sup>955</sup> in **aut. de litig. §. edita in fi.**<sup>956</sup>

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<sup>942</sup> “30. q. 6” in the 1582 *ER*, which is likely a mistake. “xxxv. q. v.” in MS F, which is also incorrect.

<sup>943</sup> C. 35 q. 6 c. 7 [Fr. v.1 col. 1279].

<sup>944</sup> “supra. e. de accusationibus” in MS F. The “e.” is likely a scribal mistake.

<sup>945</sup> X 5.1.25 [Fr. v.2 col. 747].

<sup>946</sup> Dist. 41 c. 1 [Fr. v.1 cols. 148-9].

<sup>947</sup> Dist. 86 c. 1 [Fr. v.1 col. 298].

<sup>948</sup> C. 23 q. 8 c. 12 [Fr. v.1 cols. 955-956].

<sup>949</sup> Dig. 9.2.45 pr..

<sup>950</sup> Dig. 3.2.13.1.

<sup>951</sup> C. 2 q. 7 [Fr. v.1 cols. 483-502].

<sup>952</sup> C. 22 q. 1 c. 10 [Fr. v.1 col. 863].

<sup>953</sup> X 5.3.11 [Fr. v.2 col. 752].

<sup>954</sup> X 5.3.13 [Fr. v.2 cols. 752-753].

<sup>955</sup> “delinquit” in MS F. “dereliquit” in the 1582 *ER*.

<sup>956</sup> Nov. 112.?

*gl. iurare*

Per iuramentum debet quis purgare conscientiam suam de haeresi, **de con. d. ii. Ego Berengarius.**<sup>957</sup> et **i. q. vii. quotiens.**<sup>958</sup> Unde si iurare non vult, pro condemnato debet haberi, sicut quod de calumpnia iurare non vult, actor cadit a causa, reus pro condemnato habetur, **supra de iuramen. calump. c. ult.**<sup>959</sup> et **C. e. t. iudices. §. quod si actor.**<sup>960</sup> Et est similis illi, qui neque defendit neque exhibet, et condemnatur, ut contumax. **ff. de noxat. quotiens. §. in potestate.**<sup>961</sup> Tenui enim religione iuramenta etiam necessaria contempnunt. **supra de symonia. etsi quaestiones.**<sup>962</sup> et **C. de fide instru. l. ult.**<sup>963</sup> +Ber.+

*gl. indicis*

Nota quod per indicia probatur<sup>964</sup> crimen. **supra e. §. proxi. ibi quod +si+ quis.,**<sup>965</sup> etc. et **ii. q. viii.**<sup>966</sup> **sciant.**<sup>967</sup> et **xxxii. q. i. dixit Dominus.**<sup>968</sup> et **infra de privil. cum olim.**<sup>969</sup> et **C. de rei ven. indicia.**<sup>970</sup> Item habes hic quod propter negligentiam removetur prelati. ar. **supra c. proxi. in fi.**<sup>971</sup> et **i. q. i. §. ecce cum.**<sup>972</sup> +Ber.+

## X 5.7.14—Canon

Gregorius VIII. Archiepiscopo Mediolanensi.

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<sup>957</sup> *De cons.* D. 2 c. 42 [Fr. v.1 cols. 1328-1329].

<sup>958</sup> Both C. 1 q. 7 c. 9 [Fr. v.1 cols. 431-432] and c. 14 [Fr. v.1 col. 433] begin with the incipit “quotiens.” Only the former concerns *iuramentum*.

<sup>959</sup> X 2.7.7 [Fr. v.2 col. 268].

<sup>960</sup> Cod. 2.58.2.6.

<sup>961</sup> Dig. 9.4.21.3.

<sup>962</sup> X 5.3.18 [Fr. v.2 cols. 754-755].

<sup>963</sup> Cod. 4.21.21 / 22 (a Greek text).

<sup>964</sup> “probantur” in MS F.

<sup>965</sup> X 5.7.13 §. 8 [Fr. v.2 cols. 789]? The format of this allegation is confusing, and it is uncertain which text is being quoted here.

<sup>966</sup> “iii. q. ix” in MS F.

<sup>967</sup> C. 2 q. 8 c. 2 [Fr. v.1 col. 503].

<sup>968</sup> C. 32 q. 1 c. 2 [Fr. v.1 col. 1116].

<sup>969</sup> X 5.33.12 [Fr. v.2 col. 853-854].

<sup>970</sup> Cod. 3.32.19.

<sup>971</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>972</sup> C. 1 q. 1 dict. post c. 43 [Fr. v.1 col. 375].

Sicut in uno corpore, et infra. Cum igitur nonnulli laici praedicare praesumant, et verendum +nimis+ existat, ne vitia sub specie virtutum occulte subintrent, nos, attendentes, quod doctorum ordo est in ecclesia quasi praecipuus, mandamus, quatenus, cum alios Dominus apostolos dederit, alios prophetas, alios vero doctores, interdicas laicis universis, cuiuscunque ordinis censeantur, officium praedicandi.

#### X 5.7.14—Glossa (2 gls.)

*gl. sub specie virtutum*

**supra c. proximi. §. quia vero.**<sup>973</sup> **xli. d. sepe vitia.**<sup>974</sup> praetextu pietatis non est impietas committenda,<sup>975</sup> **xxx. q. i. nosse.**<sup>976</sup> Et ita nullus potest praedicare, nisi mittatur, unde Dominus discipulis suis dixit: euntes praedicate Evangelium omni creaturae, et iubente Domino in toto orbe dispersi sunt. **xxi. d. in novo.**<sup>977</sup> Unde Ysa: Ecce ego, mitto me. **viii. q. i. in scripturis.**<sup>978</sup> et **xvi. q. i. in scripturis** et **xvi. q. i. §. hoc idem.**<sup>979</sup> ar. **ff. de tu. et cu. ubi.**<sup>980</sup> et **l. pretor.**<sup>981</sup>

*gl. alios Dominus Apostolos*

Sic **supra e. cum ex.**<sup>982</sup> Nec<sup>983</sup> universitas alia poterat ratione subsistere, nisi huiusmodi magnus eam differentiae ordo servaret. **lxxxix. d. ad hoc.**<sup>984</sup> Laici ergo cuiusque ordinis sint vel meriti,<sup>985</sup> predicandi officium non debent assumere.

#### X 5.7.15—Canon

Idem.

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<sup>973</sup> X 5.7.13 §. 6 [Fr. v.2 col. 788].

<sup>974</sup> Dist. 41 c. 6 [Fr. v.1 col. 150].

<sup>975</sup> “committendi” in the MS F.

<sup>976</sup> C. 30 q. 1 c. 3 [Fr. v.1 col. 1097].

<sup>977</sup> Dist. 21 c. 2 [Fr. v.1 col. 69-70].

<sup>978</sup> C. 8 q. 1 c. 9 (*In scriptis?*) [Fr. v.1 col. 592-593].

<sup>979</sup> C. 16 q. 1 dict. post c. 40 [Fr. v.1 col. 773].

<sup>980</sup> Dig. 26.5.19.

<sup>981</sup> Dig. 26.5.4.

<sup>982</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>983</sup> “nos” in the MS F.

<sup>984</sup> Dist. 89 c. 7 [Fr. v.1 col. 313].

<sup>985</sup> “meriti sint” in the MS F.

Excommunicamus et anathematizamus universos haereticos, Gtharos, Patarenos, Pauperes de Lugduno, Passaginos, Ioseppinos, Arnaldistas, Speronistas, et alios, quibuscunque nominibus censeantur, facies quidem habentes diversas, sed caudas adinvicem colligatas, quia de vanitate conveniunt in id ipsum. Dampnati vero per ecclesiam saeculari iudicio relinquantur, animadversione debita puniendi, clericis prius a suis ordinibus degradatis. +§. 1.+ Si qui autem de praedictis, postquam fuerint deprehensi, redire noluerint ad agendam condignam penitentiam, in perpetuo carcere detrudantur. Credentes autem eorum erroribus haereticos similiter iudicamus.

#### X 5.7.15—*Glossa* (4 gls.)

*gl. conveniunt*

**supra e. excommunicamus.**<sup>986</sup> quia ad eundem finem tendunt, scilicet deceptionis.

*gl. puniendi*

Et hoc totum habes **supra e. excommunicamus.**<sup>987</sup> Sed qualiter debent puniri isti haeretici secundum leges, postquam sunt condemnati per ecclesiam, ut hic dicit? Ultimo supplicio puniuntur +per iudices seculares, cum distinctione ut+ *condictione non* videtur, ut docentes ultimo supplicio, addiscentes vero x. libris auri, ut **C. e. t. quicumque. ad fi.**<sup>988</sup> Sed contra **C. de mathematic.** +et **mathe. culpa**<sup>989</sup> ubi dicitur, culpa similis est, tamen prohibita discere, quam docere. Non est contra, quia lex quicumque intelligitur de illis, qui nondum didicerunt, sed causa addiscendi ad haereticos accesserunt: si autem ad actum pervenissent, simili poena punirentur, ut docentes secundum illam legem, culpa. +Ber.+

*gl. si qui autem*

Ab hoc loco usque ad finem additum est, aliud totum habes **supra e. excommunicamus.**<sup>990</sup> et **c. ad abolendam. §. i. et ii.**<sup>991</sup> +Ber.+

*gl. deprehensi*

Publice, ita quod notorium, vel etiam condemnati. Si vero post redire voluerint, recipiendi sunt: quia ecclesia non claudit gremium redeuntibus ad ipsam., **C. de summa. Tri. inter cla. circa fi.**<sup>992</sup> et delicti veniam penitentibus damus., et **C. e. t. Manichaeos.**<sup>993</sup> Ita tamen, ut in perpetuum

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<sup>986</sup> X 5.7.13 [Fr. v.2 cols. 787-789].

<sup>987</sup> X 5.7.13 [Fr. v.2 cols. 787-789].

<sup>988</sup> Cod. 1.5.8.13.

<sup>989</sup> Cod. 9.18.8.

<sup>990</sup> X 5.7.13 [Fr. v.2 cols. 787-789].

<sup>991</sup> X 5.7.9 §. i. and ii?

<sup>992</sup> Cod. 1.1.8.39.

<sup>993</sup> Cod. 1.5.4.

carcere maneant, ut hic patet. Sic et symoniaci in monasterio sub perhenne paenitentia detrudantur. **i. q. i. reperiuntur.**<sup>994</sup> et **supra de symonia. quoniam.**<sup>995</sup> quia ipsi haeretici censentur. **i. q. i. eos qui.**<sup>996</sup> et **vi. q. i. §. sed licet.**<sup>997</sup> et *idem iudicium De credentibus est huiusdum. in fi. +Ber.+*

### X 5.7.16—Canon

Idem.

Absolutos se noverint a debito fidelitatis hominii et totius obsequii, quicumque lapsis manifeste in haeresim aliquo pacto, quacunq̄ firmitate vallato, tenebantur adstricti.

### X 5.7.16—Glossa (2 gls.)

*gl. absolutos*

Ipsa iure: ex quo manifeste lapsi sunt. Simil. **xv. q. vi. iuratos.**<sup>998</sup> **nos sanctorum.**<sup>999</sup> Et est ar. quod Papa potest laicum absoluere a iuramento fidelitatis, ar. praedictorum c., quia ad ipsum spectat interpretationem iuramenti. **supra de elect. venerabilem.**<sup>1000</sup>

*gl. aliquot pacto*

Ergo si sub poena tenetur eis aliquid soluere certa die, licet non soluat, non incidit in poenam. Et eodem modo, si per iuramentum, quid est verum: quia in illa obligatione et iuramento tacite subintelligitur: si talis permanserit, cui communicare liceat. **xxii. q. ii. ne quis arbitretur.**<sup>1001</sup> **ff. de solut. pr. cum quis. i.**<sup>1002</sup> R. **supra de iureiuran. iii. quemadmodum.**<sup>1003</sup> et **supra e. excommunicamus. §. credentes.**<sup>1004</sup> +Ber.+

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<sup>994</sup> C. 1 q. 1 c. 7 [Fr. v.1 col. 359].

<sup>995</sup> X 5.3.40 [Fr. v.2 col. 765].

<sup>996</sup> C. 1 q. 1 c. 21 [Fr. v.1 col. 364-366].

<sup>997</sup> C. 6 q. 1 dict. post c. 19 [Fr. v.1 col. 559].

<sup>998</sup> C. 15 q. 6 c. 5 [Fr. v.1 col. 756].

<sup>999</sup> C. 15 q. 6 c. 4 [Fr. v.1 col. 756].

<sup>1000</sup> X 1.6.34 [Fr. v.2 cols. 79-82].

<sup>1001</sup> C. 22 q. 2 c. 14 [Fr. v.1 col. 871].

<sup>1002</sup> Dig. 46.3.38.1. However, Dig. 46.3.38.pr. is apparently the text that Bernard intended to support his note, as Dig. 46.3.38.1 does not concern any tacit principle within obligation/oath. Curiously this issue was not fixed in the 1582 *ER*.

<sup>1003</sup> X 2.24.25 [Fr. v.2 cols. 368-369].

<sup>1004</sup> X 5.7.13 [Fr. v.2 col.788 §. 5].



## X 5.9 *De apostatis et reiterantibus baptisma*

### X 5.9.1—Canon

Alexander III.

Praeterea clerici, qui, relicto ordine +clericali+ et habitu suo, in apostasia tanquam laici conversantur, si in criminibus comprehensi teneantur, per ecclesiasticam censuram non praecipimus liberari.

### X 5.9.1—*Glossa* (2 gls.)

*gl. apostasia*

Est autem triplex apostasia, scilicet perfidiae, quando quis recedit a fide. **ii. q. vii. non potest.**<sup>1005</sup> Inobedientiae, quando quis transgreditur praeceptum. **supra de maio. et obe. si quis venerit.**<sup>1006</sup> et **c. illud.**<sup>1007</sup> Irregularitatis, cum quis recedit ab ordine suo, sive sumptae religionis: ut hic, et **l. d. c. ult.**<sup>1008</sup> et dicitur apostata. id est. retro stans. **xxvi. q. ult. non observetis.**<sup>1009</sup> *et apostata testis esse non potest vel alium accusare*<sup>1010</sup> **iii. q. iii. si quis vero.**<sup>1011</sup> et **c. beatus.**<sup>1012</sup> +Vin.+

*gl. liberari*

Ar. contra. **infra de senten. exco. si vero aliquis.**<sup>1013</sup> illud intelligitur, quando clericus +licet+<sup>1014</sup> tonsuram non portat, alias clericaliter se habet: isti vero tanquam laici per omnia se habebant. Vel sic, non denegantur hoc, quin capientes tales sint excommunicati, sed ecclesia non preci[p]it illos liberari, si **supra ne clerici. vel mona. c. ii.**<sup>1015</sup> Si vero tertio essent adimoniti, +ut se non

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<sup>1005</sup> C. 2 q. 7 c. 24 [Fr. v.1 col. 488].

<sup>1006</sup> X 1.33.2 [Fr. v.2 cols. 195-196].

<sup>1007</sup> X 1.33.5 [Fr. v.2 col. 196].

<sup>1008</sup> Dist. 50 c. 69 [Fr. v.1 col. 203].

<sup>1009</sup> C. 26 q. 7 c. 16. Here the 1582 *ER* reads “q. vlt. cap. potest.”

<sup>1010</sup> This section in italics does not exist in the 1582 *ER*.

<sup>1011</sup> C. 3 q. 4 c. 3 [Fr. v.1 col. 512].

<sup>1012</sup> C. 3 q. 4 c. 2 [Fr. v.1 col. 512].

<sup>1013</sup> X 5.39.4 [Fr. v.2 col. 890].

<sup>1014</sup> This addition appears in MS Munich, BSB Clm 26301, fol. 203v.

<sup>1015</sup> X 3.50.2 [Fr. v.2 col. 658].

correxerint, et<sup>1016</sup> nullo privilegio postea gauderent. **infra de senten. exco. in audientia.**<sup>1017</sup> et +c. **contingit.** et<sup>1018</sup> Si de talibus vis intelligere, quod hic dicit, planum est.

### X 5.9.2—Canon

Idem Abbati ecclesiae. Genovefae.

Ex literarum tuarum tenore perpendimus, quod quidam, aegritudine longa confectus, insano sortilegarum mulierum credens consilio, ut sanaretur, per iterationem fecit iniuriam baptismatis sacramento. Quia ergo nos tua duxit prudentia consulendos, qualiter puniri debeat acolutus, quem minor aetas et intentio fraternae salutis excusare videtur, discretioni tuae praesentibus ut respondemus, quod, ad superiores ordines promoveri, si publicum est quod proponitur, non valebit, nisi ad religionem transire voluerit, ut favore religionis ipsius circa eum valeat dispensari. Si vero occultum est, promoveri poterit, et excessum suum dignis penitentiae fructibus expiare.

### X 5.9.2—Glossa (6/7 gls.)

*gl. consilio*

Et malo. et male. **de con. d. iii. quibus.**<sup>1019</sup> **li. d. qui in aliquo.**<sup>1020</sup> **xxiii. q. i. +c. miramur.**<sup>1021</sup> **§. his auctoritatibus.**<sup>1022</sup>

*gl. iniuriam*

Quod fieri non debet. **i. q. i. quod quidam.**<sup>1023</sup> **de con. d. iii. ostenditur.**<sup>1024</sup> et **xxiii. q. ii.**<sup>1025</sup> **§. hiis auctoritatibus.**<sup>1026</sup> Sed quid est facere iniuriam sacramento? Dixit Vin. animae infligitur quidam ymago sive pictura, vel character: si alia ymago supponentur, illa prima pictura confundaretur: et ita videretur obfuscari primum sacramentum.

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<sup>1016</sup> This addition appears in MS Munich, BSB Clm 26301, fol. 203v.

<sup>1017</sup> X 5.39.25 [Fr. v.2 cols. 897-898].

<sup>1018</sup> X 5.39.36 [Fr. v.2 cols. 904-905]. This addition appears only in the 1582 *ER*.

<sup>1019</sup> This allegation's incipit is different in 1582 and Friedberg's CIC edition.

<sup>1020</sup> Dist. 51 c. 5 [Fr. v.1 cols. 204-205].

<sup>1021</sup> C. 24 q. 1 c. 37 [Fr. v.1 col. 981].

<sup>1022</sup> C. 24 q. 1 dict. post c. 37 [Fr. v.1 col. 981].

<sup>1023</sup> C. 1 q. 1 c. 97 [Fr. v.1 cols. 393-394].

<sup>1024</sup> *De cons.* D. 4 c. 32 [Fr. v.1 cols. 1371-1372].

<sup>1025</sup> "34. q. 1" in the 1582 *ER* and Vat. lat. 1383.

<sup>1026</sup> C. 24 q. 1 dict. post c. 37 [Fr. v.1 col. 981].

+*gl. acolythus*

Supple, qui ministerium suum praestitit rei nefandae.+

*gl. minor aetas*

Ar. quod aetati minori subvenitur. **de con. d. iiii. eos.**<sup>1027</sup> et **c. quibus.**<sup>1028</sup> et **xv. q. i. § ut itaque. in fi.**<sup>1029</sup> et **ff. de minori. auxilium. §. in delictis. ibi, nisi quatenus miseratio.,**<sup>1030</sup> et contra. ar. **ff. eo si ex causa. §. nunc videndum.**<sup>1031</sup> Sed illud verum est, quod minor aetas non excusat in totum: sed in obseratione aetatis mitius punitur. **ff. e. auxilium. §. in delictis.**<sup>1032</sup> et **infra de delic. pue. pueris.**<sup>1033</sup> ubi de hoc.

*gl. intentio*

Unde facile abstergitur haec elemosina, propter fraternam pietatem. **xxii. q. ii. si quelibet.**<sup>1034</sup>

*gl. non valebit*

Nam delicti manifestatio dispensationem prohibet saltem, propter scandalum quod non est in occulto: immo post actam penitentiam et in susceptis remanere, ad alios promoveri potest praeter reos homicidii. **supra de tempo. or. c. ult.**<sup>1035</sup>

*gl. favore religionis*

Ex hoc videtur, quod ingressus religionis non tollat irregularitatem, ex quo sine dispensatione, promoveri non potest. Ar. contra. **supra de fil. presby. cap. i.**<sup>1036</sup> et **lvi. di. c. i.**<sup>1037</sup> et in **aut. de monach. in prin.**<sup>1038</sup> ubi dicitur, quod ingressus religionis omnem tollit irregularitatem, tollit etiam ingratitudinem. **xix. q. ulti. non licet.**<sup>1039</sup> Solutio: irregularitas illa que surgit ex proprio

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<sup>1027</sup> *De cons.* D. 4 c. 118 [Fr. v.1 col. 1398].

<sup>1028</sup> *De cons.* D. 4 c. 117 [Fr. v.1 cols. 1397-1398].

<sup>1029</sup> C. 15 q. 1 dict. post c. 2 [Fr. v.1 col. 746].

<sup>1030</sup> Dig. 4.4.37.

<sup>1031</sup> Dig. 4.4.9.

<sup>1032</sup> Dig. 4.4.37.

<sup>1033</sup> X 5.23.1 [Fr. v.2 col. 824].

<sup>1034</sup> C. 22 q. 2 c. 20 [Fr. v.1 col. 873].

<sup>1035</sup> X 1.11.17 [Fr. v.2 col. 124].

<sup>1036</sup> X 1.17.1 [Fr. v.2 col. 135].

<sup>1037</sup> Dist. 56 c. 1 [Fr. v.1 col. 219].

<sup>1038</sup> Nov. 5 Preface / Auth. 5 Preface.

<sup>1039</sup> C. 19 q. 3 c. 10 [Fr. v.1 col. 843].

delicto, non tollitur per ingressum religionis, +sed favore religionis+<sup>1040</sup> cum eo dispensatur: ut hic, et **infra de eo qui fur. or. re. c. i.**<sup>1041</sup> Cum vero non surgit ex delicto proprio: ut **infra de pur. c. accedens.**<sup>1042</sup> tunc per ingressum religionis tollitur illa irregularitas, ita quod sine dispensatione potest ad ordines promoveri, ut in ecclesiis, sed non ad dignitatem sine dispensatione. **infra de penis. in quibusdam.**<sup>1043</sup> et **supra de fil. presbyt. c. i.**<sup>1044</sup> Quidam dicunt, cum in neutro casu tollitur, sed defertur tantum ad facilitatem dispensandi. L.<sup>1045</sup> +Ber.+

### X 5.9.3—Canon

Innocentius tertius.

Tuae fraternitatis, et infra. Super secundo articulo inquisitioni tuae duximus respondendum, quod clerici *sponte*,<sup>1046</sup> qui sunt de apostasiae crimine infamati, qui videlicet habitu abiecerunt clericalem, non sunt in saeculari habitu tolerandi, sed per distractionem ecclesiasticam coercendi, donec deficiente probatione, ad infamiam abolendam purgationem canonicam curaverint exhibere.

### X 5.9.3—Glossa (2 gls.)

*gl. habitum clericalem*

Qui habitum clericalem abieat, nisi trina monitione praemissa reassumunt, ipsum perdit privilegium clericale. **infra de senten. exco. in audientia.**<sup>1047</sup> +et **cap. contingit. <2.>**<sup>1048</sup>

*gl. tolerandi*

Sed quare non sunt tolerandi in habitu saeculari,<sup>1049</sup> cum liceat illis qui sunt in minoribus ordinibus, uxorem accipere, +et+ cum ea conmorari. **supra de cleri. con. c. i.**<sup>1050</sup> **xxxii. di. si qui**

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<sup>1040</sup> This key phrase does not exist in MS F, but appears in all other selected manuscripts and the 1582 *ER*. This omission is likely a scribal mistake, judging from the integrity of the logic in this passage.

<sup>1041</sup> X 5.30.1 [Fr. v.2 col. 834].

<sup>1042</sup> X 5.34.4 [Fr. v.2 col. 870].

<sup>1043</sup> X 5.37.12 [Fr. v.2 cols. 883-884].

<sup>1044</sup> X 1.17.1 [Fr. v.2 col. 135].

<sup>1045</sup> This *siglum* “L.” does not appear in the 1582 *ER*.

<sup>1046</sup> This word in X 5.9.3 appears in MS F only.

<sup>1047</sup> X 5.39.25 [Fr. v.2 cols. 897-898].

<sup>1048</sup> X 5.39.45 [Fr. v.2 col. 908]. Note that X 5.39 actually has another canon that begins with “contingit,” i.e., X 5.39.36 [Fr. v.2 cols. 904-905], while only the 1582 *ER* adds a “2” following this word to clarify the situation. It remains to be investigated how Bernard and his medieval readers distinguished these two canons.

<sup>1049</sup> “habitu saecularem” in MS F.

<sup>1050</sup> X 3.3.1 [Fr. v.2 col. 457].

**vero.**<sup>1051</sup> **lectores.**<sup>1052</sup> **seriatim.**<sup>1053</sup> Apostata enim excommunicatus non est. Ut cesset omnis obiectio, intellige quod hic dicitur, de eo qui infamatus est quod est in ordine sacro, vel in aliqua professione. Cui non licet ultra ad seculum redire, unde tollerandi non sunt in habitu seculari,<sup>1054</sup> sed per censuram ecclesiasticam compellendi, nisi se purgaverint, accusatore deficiente redire ad ordinem vel religionem. ar. **supra de regul. c. plt.**<sup>1055</sup> et **xx. q. iii. eos qui semel.**<sup>1056</sup> Immo incarcerari possunt, **infra e. c. plt.**<sup>1057</sup> ne dampnabiliter evagentur. De aliis in inferioribus ordinibus constitutis non posset intelligi: quia possunt renuntiare in totum ordini clericali. **supra de vita. et ho. c. ult.**<sup>1058</sup> et **supra de clericis. coniu. c. plt.**<sup>1059</sup> et **ulti.**<sup>1060</sup> Io. +Ber.+

#### X 5.9.4—Canon

Idem in concilio generali.

Quidam, sicut accepimus, +qui+ ad sacri undam baptismatis voluntarie accesserunt, veterem hominem omnino non exuunt, ut novo perfectius induantur, cum, prioris ritus reliquias retinentes, Christianae religionis decorem tali commixtione confundant. Cum autem maledictus sit homo, qui terram duabus viis ingreditur, et indui veste non debeat lino lanaque contexta, statuimus: ut per praelatos ecclesiarum talis observantia veteris ritus omnimode compescatur, ut, quos Christianae religioni liberae voluntatis arbitrium obtuerit, salutiferae coactionis necessitas in eius observatione conservet; cum minus malum existat viam Domini non adnoscere, quam post agnitam retroire.

#### X 5.9.4—Glossa (4/5 gls.)

+gl. ut novo

Istud, ut, non tenetur consecutive, sed ironice hic dicitur: quia non induunt novum hominem, ex quo reliquias prioris hominis retinent.+

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<sup>1051</sup> Dist. 32 c. 3 [Fr. v.1 col. 117].

<sup>1052</sup> Dist. 32 c. 8 [Fr. v.1 col. 120].

<sup>1053</sup> Dist. 32 c. 14 [Fr. v.1 col. 121].

<sup>1054</sup> “habitum secularem” in MS F.

<sup>1055</sup> X 3.31.23 [Fr. v.2 col. 578].

<sup>1056</sup> C. 20 q. 3 c. 3 [Fr. v.1 col. 849].

<sup>1057</sup> “1.” in the 1582 ER. X 5.9.5 [Fr. v.2 cols. 791-792].

<sup>1058</sup> X 3.1.16 [Fr. v.2 cols. 453-454].

<sup>1059</sup> X 3.3.9 [Fr. v.2 col. 459].

<sup>1060</sup> X 3.3.10 [Fr. v.2 col. 460].

*gl. duabus viis*

Nisi quandoque ratione officii. **iii. q. vii. §. tria. in fi.**<sup>1061</sup> et **supra de praesumpt. litteras.**<sup>1062</sup> et **ff. de rei ven. inter officium.**<sup>1063</sup> Sed id ignoravit, quod praestaret patrociniū in re sua.

*gl. de lana*

**xvi. q. vii. in nova.**<sup>1064</sup> et **supra de electio. +et electi pot.+ cum causam.**<sup>1065</sup> Et nemo debet claudicare in duas partes. **xlix. di. c. ulti.**<sup>1066</sup> et nemo potest duobus dominis servire. **xxvii. d.**<sup>1067</sup> **acutius.**<sup>1068</sup> et **supra de cleri. con. +diversis fallaciis.**<sup>1069</sup> Nemo autem filius Dei, et diaboli simul esse potest. **de peniten. d. i. §. item ut Christus ait.**<sup>1070</sup> Nec duobus dominis servire, ut ibi.

*gl. liberae voluntatis*

Sicut enim libero arbitrio homo serpenti obediens periit, sic se gratia Dei vocante propriae mentis conversione saluentur: sed tantum si conditionali conditione coacti fidem suscipiund, ea servare coguntur. **xlv. d. de Iudaeis. et c. i. et ii.**<sup>1071</sup> et **xxiii. q. v. ad fidem.**<sup>1072</sup> +et hic.+ **ber.**<sup>1073</sup>

*gl. retroire*

Quia qui posuerit manum ad aratrum, et respexerit retro, non est aptus regno Dei. Et **supra de vo. magna.**<sup>1074</sup> si **xii. q. i. scimus. in fi.**<sup>1075</sup> <**de peni. dist. iv. si refugientes. versus fin.**<sup>1076</sup> **Ber.**>

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<sup>1061</sup> C. 3 q. 7 dict. post c. 1 [Fr. v.1 col. 524].

<sup>1062</sup> X 2.23.14 [Fr. v.2 col. 357].

<sup>1063</sup> Dig. 6.1.54.

<sup>1064</sup> C. 16 q. 7 c. 22 [Fr. v.1 cols. 806-807].

<sup>1065</sup> X 1.6.27 [Fr. v.2 col. 71].

<sup>1066</sup> Dist. 49 c. 2 [Fr. v.1 col. 177].

<sup>1067</sup> Scribal mistake in MS F. "26. dist." in the other collated manuscripts and the 1582 *ER*.

<sup>1068</sup> Dist. 26 c. 2 [Fr. v.1 col. 95].

<sup>1069</sup> X 3.3.5. It is likely a scribal mistake in MS F (no canon specified).

<sup>1070</sup> *De pen.* D. 1 dict. post c. 35 [Fr. v.1 cols. 1166-1167].

<sup>1071</sup> Dist. 45 c. 5, c. 1, & c. 2 [Fr. v.1 cols. 161-162], [Fr. v.1 col. 160], & [Fr. v.1 col. 160].

<sup>1072</sup> C. 23 q. 5 c. 33 [Fr. v.1 col. 939-940].

<sup>1073</sup> Not in the 1582 *ER*, but in other manuscripts.

<sup>1074</sup> X 3.34.7 [Fr. v.2 cols. 591-593].

<sup>1075</sup> C. 12 q. 1 c. 9 [Fr. v.1 col. 679].

<sup>1076</sup> *De pen.* D. 4 c. 18 [Fr. v.1 col. 1236].

## X 5.9.5—Canon

Honorius III. Archiepiscopo Turonensi.

A nobis competiit tua fraternitas edoceri, quid de apostatis sit agendum, cum in custodia detinentur, qui minis vel blanditiis nullatenus possunt induci, ut abiectum habitum reassumant. Ad quod tibi breviter respondemus, quod tales, si volueris, poteris sub gravi custodia incarcerare. Ita, quod solummodo vita sibi misera reservetur, donec a suae praesumptionis nequitia resipiscant.

## X 5.9.5—*Glossa* (4 gls.)

*gl. minis*

Comminando diuinum iudicium. **ii. q. i. si peccaverit.**<sup>1077</sup> **xiii. q. ulti. si res.**<sup>1078</sup> **xxvii. q. i. c. ulti.**<sup>1079</sup> et **ff. de temp.**<sup>1080</sup>. **or. c. ulti.**<sup>1081</sup>

*gl. blanditiis*

Blanditiis enim et non asperitatibus ad fidem est aliquis invitatus. **xl. d. qui sinceram.**<sup>1082</sup> immo et praemiis quandoque **xxiii. q. iii. debet homo.**<sup>1083</sup> Tamen si isti apostatae per huiusmodi non conficiunt, fiat quod hic dicitur +, quod intelligo de his, qui sunt in sacris ordinibus, aut in aliqua professione: ut **supra eo. tuae.**<sup>1084+</sup>

*gl. misera vita*

Simile reservatur vita de misericordia filiis eorum, qui *crimen laesae maiestatis* committunt. **vi. q. i. §. verum.**<sup>1085</sup> et *l. +ver. fin. C. ad l. Iul. ma. Si*<sup>1086</sup> **quisquis cum militibus.,**<sup>1087</sup> ut vitam

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<sup>1077</sup> C. 2 q. 1 c. 19 [Fr. v.1 cols. 447-448].

<sup>1078</sup> C. 13 q. 6 c. 1 [Fr. v.1 cols. 742-743].

<sup>1079</sup> C. 27 q. 1 c. 43 [Fr. v.1 col. 1062].

<sup>1080</sup> Scribal mistake in MS F. “supra. de tempo” in the 1582 *ER*. maybe all of other collated manuscripts.

<sup>1081</sup> X 1.11.17 [Fr. v.2 col. 124].

<sup>1082</sup> Dist. 45 c. 3 [Fr. v.1 cols. 160-161].

<sup>1083</sup> C. 23 q. 4 c. 53 [Fr. v.1 col. 928].

<sup>1084</sup> X 5.9.3 [Fr. v.2 col. 791].

<sup>1085</sup> C. 6 q. 1 dict. post c. 21 [Fr. v.1 cols. 559-560].

<sup>1086</sup> This addition appears in MS Munich BSB Clm 26301.

<sup>1087</sup> Cod. 9.8.5.

sibi penam existiment. **lxxiii. di. quorundam.**<sup>1088</sup> Sic clericus potest uxorem suam ligare. **xxiii. q.**<sup>1089</sup> **ii. placuit.**<sup>1090</sup> Ut sic pena docente humiliter debeant obedire. **supra de electio. cum in cunctis.**<sup>1091</sup> +et **xxvii. q. i. si homo esses.**<sup>1092+1093</sup>

*gl. resipiscant*

Tunc cum venia poterunt recipi: quia ecclesia non claudit gremium redeuntibus. **C. de summa. Tri. inter claras. in fi.**<sup>1094</sup> Et ar. **i. q. vii. si quis omnem.**<sup>1095</sup>

### **X 5.9.6—Canon**

Idem Archiepiscopo Ludunensi.

Consultationi tuae breviter respondemus, quod monachus, aliquem sacrum ordinem in apostasia recipiens, quantumlibet suo fuerit reconciliatus abbati, et receperit penitentiam, absque dispensatione Romani Pontificis ministrare non poterit in ordine, sic suscepto.

### **X 5.9.6—Glossa (1 gl.)**

*gl. dispensatione Romani Pontificis*

Hic ergo Papa sibi reservat dispensationem. sic. **supra de haeret. excommunicamus. §. sane.**<sup>1096</sup> **Supra de filiis presbyt. c. plt. et ulti.**<sup>1097</sup> Item si iterata<sup>1098</sup> unctio <fuerit> maculatus. **i. q. ult. saluberrimum. in fi.**<sup>1099</sup> Item qui rebaptizati sunt. **de con. d. iiiii. quibus.**<sup>1100</sup> et **c. eos quos.**<sup>1101</sup> Item et qui in subversionem fidei, ordinationem recipiunt ab haereticis. **i. q.**

<sup>1088</sup> Dist. 74 c. 6 [Fr. v.1 col. 263].

<sup>1089</sup> “33. q.” in the other manuscripts and the 1582 *ER*.

<sup>1090</sup> C. 33 q. 2 c. 10 [Fr. v.1 cols. 1154-1155].

<sup>1091</sup> X 1.6.7 [Fr. v.2 cols. 51-52].

<sup>1092</sup> C. 27 q. 1 c. 19 [Fr. v.1 col. 1054].

<sup>1093</sup> This addition appears in MS Munich BSB Clm 26301.

<sup>1094</sup> Cod. 1.1.8 (1.1.8.35/39?).

<sup>1095</sup> C. 1 q. 7 c. 2 [Fr. v.1 cols. 426-427].

<sup>1096</sup> X 5.7.13 [Fr. v.2 cols. 787-789].

<sup>1097</sup> X 1.17.17 and X 1.17.18 [Fr. v.2 cols. 140-141] and [Fr. v.2 col. 141].

<sup>1098</sup> *iteratam* in MS F.

<sup>1099</sup> C.1 q. 7. c. 21 [Fr. v.1 col. 435].

<sup>1100</sup> *De cons. D. 4 c. 117* [Fr. v.1 cols. 1397-1398]. The incipit for this allegation is “Quis bis” in Fr. v.1 cols. 1397-1398.

<sup>1101</sup> *De cons. D. 4 c. 118* [Fr. v.1 col. 1398].



**vii. invenientibus. in fi.**<sup>1102</sup> in quibus casibus solus Papa dispensare potest. Tamen si ad aliam religionem transisset, et ibi ordinem suscepisset, sine dispensatione posset in suscepto ordine ministrare. **supra de tempor. or. ex parte.**<sup>1103</sup> quia ordinem non suscepisset in apostasia. +Ber.+

## X 5.21 *De sortilegis*

### X 5.21.1—Canon

Ex penitentiali Theodori

In tabulis,<sup>1104</sup> vel codicibus, aut aliis, sorte<sup>1105</sup> furta non sunt requirenda, nec divinationes aliquas in aliquibus rebus quis observare praesumat. Qui autem contra fecerit, xl. dies peniteat.

### X 5.21.1—*Glossa* (2 gls.)

*gl. sorte*

Sic electio per sortem non est facienda, et **infra e. c. ult.**<sup>1106</sup> Ar. **contra. xxvi. q. ii. sors.**<sup>1107</sup> et **c. hii. qui.**<sup>1108</sup> Licet sors in fui natura non sit mala, tamen, prohibetur, ne propter assiduitatem labantur in ydololatriam, sicut est in eo iuramento. **xxii. q. i. considera.**<sup>1109</sup> et **illud c. hii.**<sup>1110</sup> qui loquitur de comparatiua permissione, ibi, potius permittuntur sortes, quam ad daemonia consulenda concurrant, et propter divinationes futuras sortes prohibentur, ut hic patet, et **xxvi. q. ii. illud.**<sup>1111</sup> et **q. v. c. sortes.**<sup>1112</sup> et **c. peruenit.**<sup>1113</sup> Quandoque tamen permittitur per sortem aliquid fieri, ut dicitur **infra e. c. ulti.**<sup>1114</sup>

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<sup>1102</sup> C.1 q. 7 c. 4 [Fr. v.1 cols. 428-429] (in MS Vatican Borgh. 237, MS Munich BSB clm 26301, MS BAV Vat. lat. 1365, and the 1582 *ER* it is “convenientibus”).

<sup>1103</sup> X 1.11.10 [Fr. v.2 cols. 120-121].

<sup>1104</sup> “talibus” in the 1582 *ER*.

<sup>1105</sup> It was copied as “forte” in MS F, which is likely a scribal mistake.

<sup>1106</sup> X 5.21.3 [Fr. v.2 col. 823].

<sup>1107</sup> C. 26 q. 2 c.1 [Fr. v.1 col. 1020].

<sup>1108</sup> C. 26 q. 2 c. 3 [Fr. v.1 col. 1021].

<sup>1109</sup> C. 22 q. 1 c. 8 [Fr. v.1 col. 863].

<sup>1110</sup> C. 26 q. 2 c. 3 [Fr. v.1 col. 1021].

<sup>1111</sup> C. 26 q. 2 c. 6 [Fr. v.1 col. 1021-1022].

<sup>1112</sup> C. 26 q. 5 c. 7 [Fr. v.1 col. 1029].

<sup>1113</sup> C. 26 q. 5. c. 8 [Fr. v.1 col. 1029].

<sup>1114</sup> X 5.21.3 [Fr. v.2 col. 823].

*gl. xl. dies*

Si laicus fuerit, communione ecclesiae privetur; si vero clericus, officio et beneficio potest privari. **xxvi. q. v. non oportet.**<sup>1115</sup> et **duobus c. sequentibus.**<sup>1116</sup> Et ar. **infra c. proxi.**<sup>1117</sup> contra ar. **infra e. c. ulti.**<sup>1118</sup> ubi non puniuntur.

### **X 5.21.2—Canon**

Alexander. tertius Gradensis Patriarchae.

Ex tuarum tenore litterarum accepimus, quod V. presbyter cum quodam infami, ad privatum locum accessit, non ea intentione ut invocaret daemonium: sed ut inspectione astrolabii furtum cuiusdam ecclesiae posset recuperare. Verum licet hoc ex bono zelo, et simplicitate se fecisse proponat: id tamen gravissimum fuit, et non modicam inde maculam peccati contraxit: et infra. Mandamus, quatenus talem ei pro expiatione illius delicti penitentiam imponas, quod per annum et amplius, si tibi visum fuerit, eum ab altaris ministerio praecipias abstinere: et extunc liberum sit ei sacerdotis officium exercere.

### **X 5.21.2—Glossa (3 gls.)**

*gl. bono zelo*

Quia bono zelo hoc fecit, aliquantum excusatur. ar. **s. de apost. c. ii.**<sup>1119</sup> et quia per simplicitatem dignus fuit misericordia, nam simplicitati parcendum est. **supra de rerum. permu. cum universorum.**<sup>1120</sup> ubi de hoc. +Ber.+

*gl. et amplius sit tibi*

Et ita tempus penitentiae arbitrarium est. **xxvi. q. vii. tempora plenitudinis.**<sup>1121</sup> Sed minorem penitentiam anno non posset, ex quo Papa annum sibi praesixit, sed supra est ad arbitrium episcopi.

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<sup>1115</sup> C. 26 q. 5 c. 4 [Fr. v.1 col. 1028].

<sup>1116</sup> Possibly denoting C. 26 q. 5 c. 5 & 6 [Fr. v.1 col. 1028] & [Fr. v.1 col. 1028].

<sup>1117</sup> X 5.21.2 [Fr. v.2 cols. 822-823].

<sup>1118</sup> X 5.21.3 [Fr. v.2 col. 823].

<sup>1119</sup> X 5.9.2 [Fr. v.2 cols. 790-791].

<sup>1120</sup> X 3.19.8 [Fr. v.2 col. 524].

<sup>1121</sup> C. 26 q. 7 c. 2 [Fr. v.1 cols. 1041-1042].

*gl. liberum*

Hoc intellige dictum ex dispensatione: nam de iure communi debuit remanere privatus, et episcopus de iure contra illum processit. **xxvi. q. i**<sup>1122</sup>. **non oportet.**<sup>1123</sup> **siquis episcopus.**<sup>1124</sup> **aliquanti.**<sup>1125</sup> Sed quia bono zelo per simplicitatem<sup>1126</sup> delinquit, Papa mandat ipsum restitui. Et episcopus auctoritate sua cum isto potuit si voluisset, dispensare, cum in casu isto ei hoc non sit prohibitum, et dispenset etiam in maioribus. **i. di. presbyteros.**<sup>1127</sup> et **s. de iudic. at si clerici.**<sup>1128</sup> ubi de hoc. +Ber.+

### X 5.21.3—Canon

Honorius tertius capitulo Lucanensis

Ecclesia vestra episcopo destituta, vos convenientes in unum, ut de futuri tractaretis electione pontificis, unum elegistis ex vobis per sortem, qui tres auctoritate vestra elegit, per quos vice omnium Lucanensis, provideretur ecclesiae de pastore. Quorum duo tertium, magistrum Ricardum scilicet elegerunt: quod expresse licebat eisdem, secundum traditam a vobis omnibus potestatem. Procuratoribus igitur vestris super hiis, in nostra praesentia constitutis, nos tali examinato processu, licet nota non careat, quinimo multa reprehensione sit dignum, quod sors in talibus intervenit, et infra, electionem celebratam de ipso, ad gratiam confirmationis admittimus: sortis usum perpetua in +electionibus+<sup>1129</sup> prohibitione dampnantes.

### X 5.21.3—Glossa (4 gls.)

*gl. potestatem*

Simile, habes **supra de elect. cum in iure.**<sup>1130</sup> dicunt tamen quidam, quod idem esset si aliqua forma non fuisset expressa, quod possent unum de se eligere, ut dicitur in **c. cum in iure.**<sup>1131</sup> quod non credo, quia ubi simpliciter datur potestas eligendi *eos*. +tribus, nulla forma adiecta, ita habent potestatem eligendi omnes,+ quia unus vel duo sine tertio eligere non possunt. Unde si duo eligant tertium, non valet quod faciunt, quia hanc potestatem non habent: si ille eligat se cum

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<sup>1122</sup> “26. q. 5” in the 1582 *ER*, which seems to be correct.

<sup>1123</sup> C. 26 q. 5 c. 4 [Fr. v.1 col. 1028].

<sup>1124</sup> C. 26 q. 5 c. 5 [Fr. v. 1 col. 1028].

<sup>1125</sup> C. 26 q. 5 c. 6 [Fr. v.1 col. 1028].

<sup>1126</sup> A “Papa” is copied following this word in MS F.

<sup>1127</sup> Dist. 50 c. 32 [Fr. v.1 cols. 191-192].

<sup>1128</sup> X 2.1.4 [Fr. v.2 col. 240].

<sup>1129</sup> This word is not copied in the canon in MS F, but it is copied in the gloss area as a lemma.

<sup>1130</sup> X 1.6.33 [Fr. v.2 col. 79].

<sup>1131</sup> X 1.6.33 [Fr. v.2 col. 79].

aliis, non valet: quia nemo se ipsum eligere potest. **supra de instit. cum ad nostram.**<sup>1132</sup> quia alius debet esse electus, et alii eligentes, ut ibi dicitur, sicut inter baptizantem et baptizatum. **supra de bapt. debitum.**<sup>1133</sup> et **supra de iure pa. per nostras.**<sup>1134</sup> **xxix. q. i. dicimus.**<sup>1135</sup> et **ff. de tu. et cu. datis. ab hiis. l. pretor.**<sup>1136</sup> et **ff. de testa. tute. ex sententia.**<sup>1137</sup> et **ff. ad Trebell. ille, a quo. §. Tempestivum.**<sup>1138</sup>, quia duplici officio finigi non potest, ut ibi dicitur. Sicut si tres iudices vel arbitri data sint simpliciter sine illa clausula, quod si non omnes, etc., duo sine tertio procedere non possunt, quia potestas indicandi ita data est omnibus, quod duo sine tertio, vel alter sine altero procedere non potest. **supra de of. dele.**<sup>1139</sup> et **+c. uno delegatorum.**<sup>+1140</sup> **c. causam matrimonii.**<sup>1141</sup> De hoc etiam dixi **s. c. cum in iure.**<sup>1142</sup> +Sed cum datur aliquibus potestas eligendi de se vel aliis, si volunt aliquem eligere de se, tunc potestas eligendi remanet penes illos tantum, et eis solis data intelligitur, sicut quando committitur causa cum illa clausula, quod si non omnes, etc. Sed si simpliciter datur aliquibus potestas eligendi, tunc non possunt aliquem eligere de se, sicut est in iudicibus, ut dictum est, et persona electa nullo modo debet computari inter eligentes, ut **s. de elect. Cumana.**<sup>1143</sup> et ideo dicit hic, quod eis licebat secundum traditam, etc. Et hoc arg. non valet. Capitulum potest eligere unum de se: sed isti quibus data est simpliciter eligendi potestas, funguntur vice capituli. Ergo possunt eligere unum de se. Capitulum enim eligit iure communi, sine ordinario, sed isti non eligunt iure communi, sed potestate sibi concessa per capitulum. Ber.+

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<sup>1132</sup> X 1.6.37 [Fr. v.2 col. 83].

<sup>1133</sup> X 3.42.4 [Fr. v.2 cols. 646-647].

<sup>1134</sup> X 3.38.26 [Fr. v.2 cols. 617-618].

<sup>1135</sup> “24. q. 1” in the 1582 *ER*, which is correct. C. 24 q. 1 c. 31 [Fr. v.1 cols. 977-978].

<sup>1136</sup> Dig. 26.5.4.

<sup>1137</sup> Dig. 26.2.29.

<sup>1138</sup> Dig. 36.1.13.4.

<sup>1139</sup> X 1.23.10 [Fr. v.2 cols. 152-153].

<sup>1140</sup> X 1.29.42 [Fr. v.2 col. 182]. Later additions mistakenly cite a canon from title 29, possibly thinking it is the same title as the previous allegation.

<sup>1141</sup> X 1.29.16 [Fr. v.2 cols. 162-163].

<sup>1142</sup> X 1.6.33 [Fr. v.2 col. 79].

<sup>1143</sup> X 1.6.50 [Fr. v.2 cols. 91-92].

*gl. examinato*

Et merito: ad quem enim<sup>1144</sup> pertinet confirmatio, et examinatio processus et personae. **supra de elect. nichil est.**<sup>1145</sup> et **c. cum nobis.**<sup>1146</sup> et **c. venerabilem.**<sup>1147</sup> et **supra de translatur. c. ult.**<sup>1148</sup> +et **supra de haere. cap. cum. ex. iniuncto. in fin.**<sup>1149+</sup>

*gl. ad gratiam*

Hoc ideo dicit, quia de iure debuit cassari, sed ipsum de gratia confirmavit.

*gl. in electionibus*

Per hoc quod dicit, in electionibus, videtur, quod in aliis usum sortis non reprobet. Ar. **xxv. di. qualis.**<sup>1150</sup> et **ff. de iudic. cum praetor.**<sup>1151</sup> **ff. de testi. ex eo.**<sup>1152</sup> et **xv. q. iii. de crimine.**<sup>1153</sup> Praeterea in multis casibus usum sortis admittimus. **ff. de iudic. sed cum ambo.**<sup>1154</sup> **ff. fa. herc. si quae sunt.**<sup>1155</sup> **C. contraria de l. si duobus. circa prin.**<sup>1156</sup> Sed quare prohibetur usus talis in electionibus? Nonne Matthyias sorte electus fuit? **xxi. dist. clerics. in prin.**<sup>1157</sup> Et sors non est aliquid mali. **xxvi. q. ii. sors.**<sup>1158</sup> Dicas quibus licet Mathias vel Ionas sorte fuissent electi, non tamen eorum exemplo eligendus est aliquis per sortem, ut **xxvi. q. ii. non statim.**<sup>1159</sup> **non exemplo.**<sup>1160</sup> quia illud factum fuit divina inspiratione. sic. **xiii. q. v. dixit.**<sup>1161</sup> Quod autem

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<sup>1144</sup> In MS F “enim” is copied as “eius.”

<sup>1145</sup> X 1.6.44 [Fr. v.2 cols. 89-90].

<sup>1146</sup> X 1.6.19 [Fr. v.2 cols. 58-61].

<sup>1147</sup> X 1.6.34 [Fr. v.2 cols. 79-82].

<sup>1148</sup> X 1.7.4 [Fr. v.2 cols. 99-100].

<sup>1149</sup> X 5.7.12 [Fr. v.2 cols. 784-787].

<sup>1150</sup> Dist. 25 c. 4 [Fr. v.1 col. 94].

<sup>1151</sup> Dig. 5.1.12.

<sup>1152</sup> Dig. 22.5.18.

<sup>1153</sup> C. 15 q. 3 c. 1 [Fr. v.1 col. 751].

<sup>1154</sup> Dig. 5.1.14.

<sup>1155</sup> Dig. 10.2 (Familiae erciscundae).5.

<sup>1156</sup> Cod. 6.43.3.

<sup>1157</sup> “31. dist” in the 1582 *ER*, which is likely a mistake. Dist. 21 c. 1 [Fr. v.1 cols. 67-69].

<sup>1158</sup> C. 26 q. 2 c.1 [Fr. v.1 col. 1020].

<sup>1159</sup> C. 26 q. 2 c. 2 [Fr. v.1 col. 1021].

<sup>1160</sup> C. 26 q. 2 c. 4 [Fr. v.1 col. 1021].

<sup>1161</sup> C. 14 q. 5 c. 12 [Fr. v.1 col. 741].

dicitur, sors non est aliquid mali, verum est considerata in se, sed ex causa prohibetur, ut dixi **supra e. c. i.**<sup>1162</sup> Et praeterea hic non fuit servata forma concilii., **supra de elect. quia propter.**<sup>1163</sup> ut videtur. Propter dissensiones vero et lites dirimendas sortes admittuntur<sup>1164</sup> circa iudicia, ut dicunt praedictae leges, in quo casu potest intelligi, **c. illud. sors.**<sup>1165</sup> Sed in electionibus licet ibi sit discordia, non licet per iura praedicta. +Ber.+

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<sup>1162</sup> X 5.21.1 [Fr. v.2 col. 822].

<sup>1163</sup> X 1.6.42 [Fr. v.2 cols. 88-89].

<sup>1164</sup> In the 1582 *ER* it is “sors admittitur.” In other words, “*sors*” is used in its singular form.

<sup>1165</sup> C. 26 q. 2 c.1 [Fr. v.1 col. 1020].