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Simon de Cramaud
DE SUBSTRACCIONE OBEDIENCIE
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The belief that Simon de Cramaud was a key figure in the story of how the Great Schism in the Western church came to be ended imposed itself upon me rather slowly, about fifteen years ago, when I was looking through the Libri de Schismate of the Vatican Archives for a quite different reason. Frequent references to “the Patriarch” suggested his leading role in Paris, and a cursory reading of his major treatise led first to grateful appreciation of its clarity and vigor, then to gradual realization of its importance. Others had no doubt read it before but I had the advantage of coming to it by way of Brian Tierney’s Foundations of the Conciliar Theory, so that I could not only recognize the nature of the treatise as an essay in corporatist ecclesiology, but also appreciate how it gave the French union program a depth and inner consistency that had not always been perceived. I could also see the identity of the Paris program to that of the Council of Pisa, and thus bring the subject of Tierney’s work into its proper relationship to Simon’s. At the same time the effort to see the treatise in its historical setting and political function led first to the project of a critical edition with full annotations, then to the study of Simon’s life, career, and political action. The final result, conceived as a single work, has had to be split into two parts, the edition of Simon’s treatise presented here, and a monograph on Simon and French policy in the Great Schism, published by the Rutgers University Press. Each, of course, has been reworked to be independent of the other.

Most of the research for this work was done in the Bibliotheque Nationale and Archives Nationales of Paris, and the Biblioteca Apostolica Vaticana and Archivio Segreto Vaticano; like all foreign workers in these institutions, I must be grateful to them for providing gratis all of their ordinary services. The same thanks are due to the Archives Départementales de la Vienne in Poitiers, and to its director, M. François Villard. Other individuals have also provided much help: Professor Gilbert Ouy; Professor Fredric Cheyette, who put both his notes and time at my disposal; Professor Bernard Guenée, who helped me to improve an earlier work on Simon; Dr. R. W. Swanson, who brought ms. L to my notice and further obliged me by engaging in a lengthy correspondence about matters relating to
the Schism; Canon José Goñi Gaztambide of Pamplona, who sent me a microfilm of ms. G; Professor Stephan Kuttner, who provided a number of canonistic materials that I could not have gotten otherwise without much effort.

Finally, and above all, I wish to thank Professor Hartmut Hoffmann of Göttingen for assistance in many ways, too many in fact to list in detail; most important, perhaps, was the help he gave me in determining the stemma.

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Abbreviations

ALKG, 5, 6, 7  Archiv für Literatur- und Kirchengeschichte des Mittelalters, ed. F. Ehrle & H. Denifle, 5, 6, 7 (Berlin, 1889, 1892, 1900)

Ampl. coll., 7 Veterrum scriptorum et monumentorum historicalorum, dogmaticorum, moralium amplissima collectio, ed. E. Martène & U. Durand, 7 (Paris, 1724)

AN Archives Nationales, Paris
ASV Archivio Segreto Vaticano

BduC H. Bourgeois du Chastenet, Nouvelle histoire du Concile de Constance, où l'on fait voir combien la France a contribué à l'extinction du Schisme (Paris, 1718), Preuves

BN Buvosson

Buisson

BL Librairie Nationale, Paris

Buisson

L. Buisson, Potestas und Caritas. Die päpstliche Gewalt im Spätmittelalter (Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht, 2; Cologne, 1958)

Bulaeus, 4, 5, 6 C. E. du Boulay [Bulaeus]. Historia Universitatis Parisiensis, 4, 5, 6 (Paris, 1668, 1670, 1673)

CUP, 3 Chartularium Universitatis Parisiensis, ed. H. Denifle & E. Chatelain, 3 (Paris, 1894)

DRTA, 6 Deutsche Reichstagsakten, 6, ed. J. Weizsäcker (Berlin, 1886)

Ehrle, Alpartil F. Ehrle, ed., Martin de Alpartil's Chronica actitatorum temporibus domini Benedicti XIII., 1 (Quellen und Forschungen aus dem Gebiete der Geschichte, 12; Paderborn, 1906)

Haller, PKR Johannes Haller, Papsttum und Kirchenreform, 1 (Berlin, 1903)


Mansi, 12, 26 J. D. Mansi, ed., Sacrorum conciliorum nova et amplissima collectio, 12, 26 (Florence, 1766, 1784)

MPL, 38, 198 J. P. Migne, ed., Patrologiae cursus completus, Series Latina, 38, 198 (Paris, 1845, 1855)
Abbreviations

Ordonnances, 6, 7, 8, 9  Ordonnances des roys de France de la troisième race, ed. D. F. Secousse, 6, 7, 8, 9 (Paris, 1745, 1749, 1750, 1755)

RSD, 1, 2, 3, 4, 5, 6  Chronique du Religieux de Saint Denys contenant le règne de Charles VI., de 1380 à 1422, ed. L. Bellaguet, 6 vols. (Paris, 1839, 1840, 1841, 1842, 1844, 1852)


Swanson  R. N. Swanson, Universitites, Academics and the Great Schism (Cambridge Studies in Medieval Life and Thought, 3rd ser., 12; Cambridge, 1979)

Thes. nov., 2  Thesaurus novus anecdotorum, ed. E. Martène & U. Durand, 2 (Paris, 1717)


Valois, 1, 2, 3, 4  Noël Valois, La France et le Grand Schisme d'Oc- cident, 4 vols. (Paris, 1896, 1896, 1901, 1902)

INTRODUCTION

§ 1. The Political Context

The Great Schism in the Western church, which broke out in 1378 when the same college of cardinals elected first the Italian Bartolomeo Prignano as Urban VI, then the French Cardinal Robert of Geneva as Clement VII, appears on its surface as the product of the Romans' passionate determination to get the papacy back from the French, the weakness of the largely French college in submitting to intimidation by the Romans, and the accident that the Italian whom they chose turned out to lack the qualities needed to overcome the crisis of his election. While all these factors were indeed in play as efficient causes, they operated within a historical context that imposed itself on all parties, and here the basic factor was the nature of the Avignon papacy that the Schism eventually brought to an explosive end. From 1305 to 1378 Europe's church had been ruled by a line of seven French popes, residing most of the time in Avignon, appointing 111 French cardinals as against only 23 non-French, maintaining a great and predominantly French court, and catering in most cases to the desires and interests of the French rulers, not only in matters of finance and appointment to benefices, but also in the area of "foreign policy." Indeed their greatest single undertaking, pursued for a long time and at tremendous cost, was the subjugation of Rome and the papal states in Italy, and it is hard not to see one aspect of this effort as a moment of the French expansionism prominent in the history of the thirteenth and fourteenth centuries. At the same time the Avignon papacy marked an elaboration of papal governance, bringing papal powers of jurisdiction, appointment to benefices, and fiscal exploitation of the clergy to extraordinary heights. One of the consequences of this development was the exaltation of the cardinalate into a princely estate, its members

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joining the popes at the head of the governmental system, receiving enormous grants of benefices and a share of the papal revenues, enjoying many other privileges granted by the popes, and developing a princely self-consciousness that manifested itself in their sumptuous way of life and their lordly behavior. Urban V, who tried in vain to transplant his papacy to Rome, 1367–70, and Gregory XI, who repeated this adventure in 1377, may well have been motivated by the desire to free themselves from excessive dependence on the Valois rulers of France, but it is hard to imagine that they looked forward to a reversal of the Avignon system in other respects. The crisis came when Gregory died in Rome on 27 March 1378, leaving the sixteen cardinals in Rome—four of them Northern-French, seven “Limousin,” one Aragonese, four Italians—subject to the pressures of the Roman people and magistrates. Divided by anti-Limousin sentiments within their ranks, and fearing for their lives if they did not elect at least an Italian, they chose the Neapolitan Bartolomeo Prignano, not a cardinal but Archbishop of Bari and longtime official of the Avignon court, in the hope that he would adapt himself to the system he knew well enough. He did not, and so the Schism began.²

Elected on 8 April, Urban VI at first enjoyed all the recognition of a true pope. The cardinals announced his election to all the princes of Europe, they assisted at his coronation, attended his court, sought and accepted the usual favors, and, along with the lesser officials of the papal government in Rome, seemed prepared to function in the usual ways. Urban, however, either would not or could not play the Avignon game of ruling as if he were primus inter pares. Against the cardinals’ no doubt sincere assumption that their magnificence was a wholesome component of the ecclesiastical institution, the new pope demanded a drastic simplification of their style of life and threatened to end the pluralism and absenteeism on which it was based. When they resisted he became angry, addressed them without respect, and at times flew into rages and screamed his omnipotence. Historians today are apt to agree with the cardinals that he was unsuitable, and some go so far as to call him mentally unbalanced.³ The cardinals drew their own conclusions. “Holy Father,”

³ For the differing views of Urban and the cardinals see Edith Pasztor, “La Curia Romana all’inizio dello Scisma d’Occidente,” Genèse et débuts du Grand Schisme
Robert of Geneva said to him, “you have not treated the cardinals with the honor you should show them, as your predecessors did, but you are diminishing our honor; I tell you in truth: the cardinals will endeavor to diminish your honor too.” As early as May they began to withdraw from him; on 9 August in Anagni the thirteen non-Italians (Jean de Lagrange had joined his colleagues after the election) declared that Urban’s election had been invalid because made under duress, and in Fondi on 20 September they elected Robert of Geneva as Clement VII, with the tacit support of three of their Italian colleagues. The legitimacy of their action has been debated ever since, with no conclusive verdict beyond the common-sense one pronounced by Coluccio Salutati in 1397: of course there had been intimidation, “otherwise so many French cardinals would hardly have voted for an Italian,” but on the other hand the cardinals did accept Urban as pope until he began to castigate them and “show himself to be their superior.” The Italianized papacy that emerged from the Schism has, to be sure, regarded the two Avignon popes of the Schism as anti-popes, along with at least one of the two Pisan popes, but it has never expressed this judgement in a decree, and if Catholic historians continue to generate arguments pro and con, they merely prove thereby the truth of Noël Valois’s dictum that the question “escapes the judgement of history.”

We shall see that this condition of permanent indeterminacy was the prime goal of France’s union policy once her political leaders decided to end the Schism; Simon de Cramaud’s program, laid out in the treatise presented here, was a prime instrument of that policy. In 1378–79, however, the Valois princes of France, led by King Charles V and his brother Duke Louis of Anjou, renounced their original adherence to Urban VI and gave full support to the cardinals and Pope Clement VII, whose goal was to depose his rival by force, and who pursued this policy even after initial failures had forced his return to Avignon in May of 1379. His hopes lay with

__d’Occident (Colloques internationaux du Centre national de la recherche scientifique, 586; Paris, 1980), 31–43. For the rest, O. Pferovský, L’Elezione di Urbano VI e l’insorgere dello scisma d’Occidente (Miscellanea della Società Romana di storia patria, 22; Rome, 1960), 63, 87, 188; Ullmann, op. cit. (repr. 1972), preface—Urban was “megalomaniac and insane.”
4 Cited in Ullmann, op. cit., p. 48.
5 Thes. nov., 2:1156.
Louis of Anjou, whom he agreed to enfeoff with a "Kingdom of Adria" carved out of the papal states that Louis would conquer, and whom he later arranged to have adopted by Queen Joanna of Naples ("Sicily") as her heir. This was a continuation of the earlier Avignon program of conquering Rome and the papal states, in which Clement as cardinal had played an important role, but in the context of the Schism it was presented as the pursuit of union by the *via facti* or "way of force." Voices of prelates, religious spirits, and academics who called for a way of judgement, either by arbitration (the *via compromissi*) or, preferably, by a general council of the whole church (the *via concilii generalis*), were refuted or disregarded, and the University of Paris where such ideas were especially cultivated was forced into silence at the beginning of the 1380's. Charles V himself had brought the French church into line behind Clement already in 1379; after his death in 1380 and the succession of the twelve-year-old Charles VI, with power in the hands of the late king's brothers, Duke Louis of Anjou, Duke Jean of Berry, and Duke Philip of Burgundy, Paris did not waver in its support of the *via facti*. Louis's death in South Italy in 1384 merely transferred his claims there to his underage son Louis II, and similar schemes of Italian conquest were revived by Charles VI during his period of direct rule, 1388–92, and were cultivated by the king's brother Duke Louis of Orléans after that. In any case Clement VII had no other union policy than the *via facti*, and it is probably fair to say that neither did his successor Benedict XIII, despite his protestations to the contrary.7

While the bare recital of facts gives the impression that the Schism was made by the French and their allies—most notably the Spanish realms and Scotland—it would be more just to think in terms of a sort of collaboration of all Europe's princes and political communities in the work of schism-making. Just as it is always the labor union that calls a strike, even though management is often responsible as well, so the circumstances of 1378 dictated that the cardinals

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and their supporters would be the apparent aggressors, the Urbanists appearing as the defenders of the pope who had, after all, been recognized originally by everybody. While the subsequent alignments were due in good part to genuine convictions or doubts about the events of 1378, the eventual result was that both papacies were weakened by the Great Schism, to the benefit of the secular rulers who by negotiation or unilateral action took over much control of their territorial churches. If, as one historian has put it, "the Great Schism began the destruction of the medieval papacy," it was because this process of reduction of papal control over church revenues and personnel was carried through on both sides for so many years before union was achieved. Conversely, one can explain Europe's turn from schism-making to unionism as, in very general terms, the natural result of the same process: glut was followed by loss of appetite. Moreover, while a Europe of two or even more papacies was by no means unacceptable to all, most princes, intellectuals, and prelates must always have experienced the Schism as a more or less painful anomaly which threatened the legitimacy of the whole order of civilization. Some laymen even began to wonder about the legitimacy of ordinations, benefice-titles, and the sacraments that assured salvation. Concerns of this sort had not been enough to prevent the Schism from beginning and maturing, but they would have been present as a ready-made reason for unionism that could focus other interests pointing the same way. One can, in other words, think of the Great Schism as a positive construction that had its own lifespan determined by its goals and their realization, with forces making for union coming into play as a natural reaction to the stresses of schism. The alternative would be to represent the Schism as a mere catastrophe caused by greedy cardinals and an inept pope, and to suppose that its long duration was due to Europe's inability to discover the magic formula of conciliarism until thirty years had passed—hardly an explanation at all. For our purposes, at any rate, it is enough to bring the above imaginings down to earth by noting that the Valois princes of France agreed in supporting Clement for

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a long time, that they all derived many advantages from having their own pope in their pocket, but that the time inevitably came when they had had enough and were therefore apt to feel the attractions of union.

The princes in question were the Dukes of Berry and Burgundy, the surviving brothers of Charles V, who dominated the political scene up to 1388, who were then relieved of power when Charles VI took direct control of the government, and who came back, this time for good, in August of 1392 when the young king suffered the first attack of the insanity that would destroy his capacity for independent political action. He did have spells of lucidity, and historians usually write as though he directed policy during them, but the evidence suggests the opposite; even when lucid Charles VI was inept and vapid, to the point that references in the sources to "the king" as decision-maker must be understood as mere conventions. If then we find that the return of the dukes in the latter part of 1392 coincided with signs of a reversal of royal policy, from Avignonism and the via facti towards unionism, we must understand the switch as the work of Berry and Burgundy. Both of them had large and important appanages that fully absorbed their interests; as far as they were concerned, the royal government was a source of powers and revenues to enhance their princely estate. Both had received a great deal from Clement VII—appointment of their clients to major benefices, grants of powers of direct nomination to other benefices, grants of many privileges that carried power and prestige—but, as suggested above, they may already have gotten most of what they wanted. In any case neither had an interest in the via facti—quite the reverse: both wanted the peace, above all with England, that would let them exploit their holdings without disturbance. It was in fact during this period of the 1390's that peace negotiations with the English were pushed to a new intensity, and while these did not absolutely require an end to the Schism, they would certainly have been helped if that issue could have been removed. Hence we find that the University of Paris was encouraged to take up the cause of union and to propose "ways" to the royal government; after an extensive survey of its members' opinions, the university issued a letter on 6 June 1394 in which three ways were recommended: a general council, arbitration, and a double abdication, the via cessio-

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The first two ways were more or less traditional by this time, hence their inclusion, but they were understood as judicial, referring back to the rights and wrongs of 1378; the *via cessionis*, on the other hand, was based on the principle of non-judgement—hence it was praised the most, "because it avoided scandal and preserved intact the honor of the princes and realms of each side."

11 This was in fact a *sine qua non*, not only for the French princes but for practically every public personage; "Who would want to be judged to have been schismatic for the past twenty years?" as Archbishop Pedro Tenorio of Toledo would put it in 1397, and as French propaganda put it over and over. 12 Common sense suggests that the point was indeed decisive, and that the only solution that had any chance of success was one that would guarantee that—in Simon de Cramaud's words—"neither side would be schismatic, but there would be one fold and one pastor." 13 In other words, once Berry and Burgundy decided for unionism, the *via cessionis* was ineluctable.

The implications of this fact were enormous, in both senses of the word, and they became clear when the policy emerged into the full light of day, after the death of Clement VII on 16 September 1394. The dukes had indeed told him of their intentions and had made it clear that they expected him to produce at least some sort of unionist activity, but they evidently hesitated to press him openly. 14 No such hesitation would be shown in dealing with his successor, Benedict XIII, who had been elected in the face of the Paris government's wish, formulated by Simon de Cramaud in the royal council, that an election be deferred until ways to exploit the new situation might be explored. Benedict at once sent Paris assurances of his readiness to work for union—he had indeed sworn an oath both before and after his election that he would undertake everything necessary to attain union, including abdication if the cardinals should deem that necessary—but he had his own, properly papalist ideas about the office he held, and he did not shrink from pointing out that as bad as schism was, there was something still worse, "to adore

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11 The text in Bulaeus, 4:687–96.
13 Glosses on the Allegations of Martin de Salva (Appendix V, No. 11), fol. 48v: "et neutra pars erit scismatica," "luce clarius esset quod neutra pars esset scismatica, sed esset unum ovile et unus pastor."
14 *SdeC*, pp. 54–65.
an idol on earth," namely a new pope who would not be in the legitimate line. And while he would frequently declare his readiness to abdicate if necessary, he always presented this possibility as the final step in consummation of what he called a juridical way or a *via iusticie*, in which the question of legitimacy would be fully discussed by the two contenders or their proctors; everything suggests that he intended the discussion to go in his favor, or hoped to escalate the verbal conflict into an actual one and carry through the *via facti*. It was unfortunate for him that affairs at the Paris end of the axis were being handled by the Duke of Berry's chief ecclesiastical client, Simon de Cramaud, not only a trained canonist but also a veteran politician who had put in time at the papal court as well as in the councils of Berry and the king; shrewd and knowledgeable in matters of practical politics, he seems also to have grasped from the first how directly the Paris principle of non-judgement contradicted everything that Benedict stood for. For if there was to be a double abdication without judgement, then Europe would never know which papacy had been the true one, and if Europe could get along without that knowledge, then it did not matter which papacy had been legitimate—a notion that pointed towards others still worse and that no papalist could accept. Nor for that matter could a papalist accept the proposition that union would have to be achieved by a program dictated by the secular powers in their own interests, with the two papal contenders—one of whom was the true pope—slated to play roles fixed in advance. All of these difficulties could be mitigated if not actually resolved, provided that the contenders freely agreed to abdicate; in that case they could legitimize each other's side and habilitate each other's cardinals so that the new election would be made by true electors. But while the *via cessionis* was originally and repeatedly presented as supposing voluntary abdication, those who knew Benedict XIII knew that he would not comply, and as for the Urbanist contender, Boniface IX, there was no reason to think that he would consider any abdication but that of his rival. Simon de Cramaud at least understood from the first that the *via cessionis* would have to include the likelihood of a coerced abdication, and it would not have taken him long to realize that coercion sounded more fruitful than it in fact could be: the

contenders would have to be deposed. Later on he would use the formula *cessio seu eieccio*, and that was what the *via cessionis* really meant—as, for example, at the Council of Pisa, which met to implement the *via cessionis* and in fact did so by deposing both contenders—under Simon de Cramaud’s presidency.

First, however, the *via cessionis* had to become the official policy of the French government. Assuming that Berry and Burgundy had already agreed on it, we can suppose that Simon de Cramaud provided the practical scenario, perhaps in association with Burgundy’s chancellor and chief clerical client, Bishop Jean Canart of Arras. Benedict XIII had sent envoys to ask for a royal embassy to Avignon, so that pope and crown could work together for union; the request would be met by an embassy at the highest level, consisting of the royal uncles of Berry and Burgundy, and the royal brother of Orléans, but the dukes would be instructed on the basis of counsel to be given by an assembly of the prelates of the realm. This was the First Paris Council, attended by 109 prelates, proctors of corporations, and other personages, meeting from 2 February to 18 February as the clerical estate of the realm, summoned by the crown, meeting in the royal palace, presided over by Simon de Cramaud as representative of the royal council, working with an agenda prepared by Simon, who handled it in ways that he devised. We see him at the Council working closely with Jean Canart, but also taking care to draw the University of Paris into his machine by associating with himself the theologian Gilles Deschamps and the canonist Pierre Leroy, both of whom spoke unambiguously for the *via cessionis* as the only possible way to union and as, therefore, obligatory. Simon’s own arguments in this sense are published in this volume (Appendix IV); one notes his insistence on compulsion by the secular powers. What actually went on at the Council is less clear, but it would seem that Simon staged a sort of prefabricated debate that made the desirability of the *via cessionis* seem all but inevitable, that he did not allow free discussion from the floor, and that in the end the prelates were allowed to vote for one or another prepared

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17 His statement for the First Paris Council (Appendix IV) suggests such a realization, which is more explicit in his major treatise; see § 3 below, also *SdeC*, index, “Deposition of popes.”

18 Appendix V, No. 10, ms. 2, fol. 221r.

19 *SdeC*, pp. 113-38, for the events summarized below; and see Appendix V, No. 1.
statement, one written by Simon and abridged for the purpose by Jean Canart, the other written by Benedict’s supporter Bishop Elie de Lestrange of Saintes, who urged only that Benedict’s program should be followed if at all possible, and if not, that the dukes should try gently to bring him around. Simon’s text provided that the *via cessionis* should be presented to Benedict as royal policy, that he should be told that the crown would work for it no matter what he decided, and that the French princes should work with princes of the other obedience to impose cession on the Roman contender. Simon said that 87 had voted for his text, 20 for Elie’s; this “counsel” was reported by him to the royal council and was accepted by “the king”—it remained only for Simon to draft the instructions for the ducal embassy according to his own statement at the Council, with summary notices of points made by others to the same effect.

The dukes were in Avignon from 22 May 1395 to 10 July, along with representatives of the University of Paris and various other personages—Jean Canart was the chief clerical politician. There was much talk, with Benedict refusing to accept the Paris program without a discussion of how it was to be implemented, and the dukes refusing to discuss anything at all. Eventually Benedict issued bulls stating that he would pursue all “juridical” ways to union, preferring specifically a meeting between the two popes (*via convencionis*) at which the issues of legitimacy would be discussed, with arbitration (*via compromissi*) as a last resort. The dukes, meanwhile, insisted that the cardinals take a stand for or against the Paris program, and all but one of them declared their adherence to it, in the face of Benedict’s prohibitions. This was perhaps the true function of the embassy, along with the more official one of formally declaring the *via cessionis* to the pope, thereby putting him on notice of his obligation to embrace it—and in the event, recording his refusal. On this basis the Paris leaders could proceed to bring their initiative to the attention of Europe’s princes, by means of a series of diplomatic missions in 1395 and 1396—Simon led the one to King Richard II of England, without immediate success, and then the one to the kings of Spain, especially Henry III of Castile, who agreed to support the French program. No other embassy achieved so clear a result, but all of them must be considered as political actions in their own right, establishing the public entity of the *via cessionis* at the highest levels of European discourse. The *via* was of course presented in its

attractive voluntary form, and as such gathered a number of testimonials of approval which could then be cited, with no doubt deliberate sophistry, as approval of the Paris program *tout court*. At the same time Richard II was moving closer to France for political reasons, and finally, in early November of 1396, he married Charles VI’s seven-year-old daughter Isabelle and, among other things, agreed to join the French in pursuing the *via cessionis*. The upshot was perhaps the greatest single success the program achieved: a joint embassy from Kings Charles VI of France, Richard II of England, and Henry III of Castile would go to both papal contenders and summon them to accept the *via cessionis*, with perhaps threats of some sort of action if they refused. The embassy did proceed as planned, in the summer of 1397, and set a deadline for compliance at Candlemas (2 February) of 1398. At the same time Wenceslas IV of Bohemia and the Empire was prevailed upon to send his own envoy to both popes. Here and elsewhere, little or nothing was done in the unambiguous and coercive style that Simon’s project called for; what was achieved was essentially the fact of action and public awareness of it. Suddenly the whole world was talking cession and taking it for granted that an end had to be put to the Schism; the rulers of both obediences were visibly collaborating in the action; the papal contenders were exhibited to public opinion as problematical figures who had it in their power to unify the church by simple acts of renunciation.

It was in these circumstances that Simon wrote his treatise *De substraccione obediencie*. The sequence of developments leading up to it, however, was rather complex. Subtraction of obedience seems to have made its first appearance in our context as a threat to back up the Valois dukes’ demand that Clement VII accept the *via cessionis*: it was uttered to this effect by the Duke of Burgundy, for example, in 1393.21 What it meant was that the royal government would prevent the pope from collating to French benefices and imposing financial exactions on the French clergy; “obedience” was understood in a reified sense, as the concrete rights and revenues in question, and it could therefore be subtracted without denying the pope’s legitimacy in other respects. According to papalist ecclesiology, of course, it could not, and subtraction of obedience drew on an alternative ecclesiology, that which had been formulated in association with Gallicanism in the thirteenth century and had been

21 *SdeC*, pp. 60 f., 146 f.
cultivated continuously at the University of Paris ever since. Originating as a reaction to extensions of papal powers that had diminished the powers of the bishops in their dioceses—papal fiscal exactations, reservations of benefices to papal collation, papal privileges of immunity and exemption from episcopal jurisdiction granted to monasteries and chapters—and amplified by the parallel reaction of the University of Paris to papal interference on behalf of professors belonging to the mendicant orders, the Gallican ecclesiology asserted that Christ himself had founded the episcopate in the persons of the twelve apostles and had founded the order of parish priests in the persons of the seventy-two disciples (Luke 10.1); since the priests and bishops had their rights from Christ, the pope might not infringe them. In this view the extensions of papal power in the thirteenth century, and then above all by the Avignon popes of the fourteenth, were usurpations. The French prelates, who bore the full brunt of the novelties, could compare their condition with that of other territorial churches, notably the English, and see that they were the most grievously exploited of all. Of course only some prelates felt strongly enough about the matter to work for reform, but doctrinaire Gallicanism flourished among the professors of the University of Paris, especially in the Faculty of Theology, and these saw the crisis of the Schism as their golden opportunity. Here the intrinsic antipapalism of the via cessionis found its resonance, inasmuch as the subtraction of obedience used as a threat to make the recalcitrant pope resign was in fact the establishment of the Liberties of the Gallican Church, and it might be hoped that the Liberties once instituted would become permanent. In the vocabulary of the time, this sort of subtraction was called partial subtraction, particular subtraction, or subtraction of partial or particular obedience; it was above all the University of Paris's program, maintained variously within, alongside, or against the political formation constructed and led by Simon de Cramaud. On 21 March 1396, right after Simon had left Paris for Spain, the university took the offensive by issuing an appeal from Benedict XIII to a future pope, because of Benedict's

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23 Haller, PKR, pp. 205 ff., 465 ff.  
24 SdeC, pp. 146, 151, and passim.
refusal to accept cession and his threats of reprisals against the cessionists. Then the university pressed for a Second Paris Council of the French clergy, which indeed met in August and September, to consider precisely the university's proposal that partial subtraction be implemented. Duke Louis of Orléans presided; there was a formal debate between the university spokesmen and the pope's supporters, and then the prelates voted—to what effect we do not know, since the duke collected the ballots but did not announce the results. Recalling that an inter-obedience embassy to both popes was being planned at this time, we can guess that subtraction still had to be kept in reserve as a threat, it could not be pronounced as a policy. This did not prevent the university from continuing to press the government to consider its proposals, and we read of debates before the royal council in early 1397, with preparatory treatises produced—as we shall see—in the last part of 1396.

At the same time Benedict and his supporters were generating their own propaganda, attacking the via cessionis itself, in its non-juridical Paris form, and developing the case for a via iusticie or way of judgement by reviewing once again the events of 1378. The reactionary thrust came to the fore even at the time of the Second Paris Council, when Pierre d'Ailly, for example, attacked the via cessionis and charged that the First Paris Council's alleged decision for that via had been somehow fraudulent. All this occurred when not only Simon de Cramaud but also the Dukes of Berry and Burgundy were away from Paris, where the dominant influence was consequently exercised by Louis of Orléans, perhaps already moving towards his future role as Benedict's supporter against his uncles. In any case it is clear that Simon's whole enterprise was in danger of collapsing, and this is the impression we get too from his later account, at the Third Paris Council of 1398, of how he came to write his treatise. "When I returned from Spain," he stated (this would have been at the end of September 1396—Berry and Burgundy had been in Paris since the beginning of the month), "the Lord Chancellor ordered some members of the royal council, and me, that I write about subtraction, and so I did." Or, a different report of the same statement: "After I came back from the King of Castile, I found that the King of France had ordained that certain clerics should examine whether the via cessionis was juridical. Seeing this

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I began to dispute a question, whether subtraction might be made from the pope in case he would not accept the *via cessionis.*" The second report is obviously clearer than the first, whose syntactical anomalies probably conceal an ellipsis, and we can guess that when Simon arrived in Paris he found the reaction in full swing to the point that Benedict's repudiation of the *via cessionis* was actually being considered seriously, with a full-scale debate to come, and that Simon inserted himself into the tractate war on the basis of the power position created by the presence of Berry and Burgundy. In the later redactions of his treatise he would write that he had composed it "at the king's command," which can be understood as an order that he would have himself obtained from the royal council. At any rate, his position was strong enough to let him ignore the debate over the *via cessionis* and move directly to the issue of subtraction—we recall that early November would see the alliance between Charles VI and Richard II, and the plans for the joint embassy to the two popes, and that the diplomatic action in this sense proceeded with increasing amplitude throughout 1397. It seems clear that whatever provoked Simon to write, he came to conceive of his treatise as the program for the next escalation of his policy, in connection with the diplomatic action just mentioned, and in preparation for the rejection of cession that he must have foreseen would come from both papal contenders. Hence his decision to treat *two* questions. First, "whether the kings and realms of both obediences can canonically subtract or entirely deny obedience to Boniface and Benedict if these two refuse to renounce the papacy"—a question that presupposed the canonically obligatory character of the *via cessionis,* which was established in the treatise by much the same arguments that Simon had used at the First Paris Council, and in this oblique way met the claim that cession was not "juridical." Then, foreseeing that progress towards union after the anticipated papal refusals would depend in the first place on France, he raised his second question: "Supposing that one of the obediences has been

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27 The first report appears in the *acta* of the Third Paris Council published in BduC, p. 25: "cum regressus sum ab Hispania, per dominum cancellarium fuit inunctum aliquibus de consilio et michi, ut scriberem super substraccione, et ita feci" (I take it direct from BN, *ms. lat.* 14644, fol. 60r). The second report is in ASV, *Arm.* 54, t. 21, fol. 194r: "postquam veni de rege Castelle, repperi quod rex Francie ordinaverat quod certi clerici examinarent, an via cessionis iuridica esset. Quo viso incepi disputare unam questionem, an posset fieri substraccio pape, casu quo viam cessionis non acceptaret."
more diligent in seeking out the better via, and has solemnly requested its pastor to accept the via cessionis, and he has refused to accept it ...—can it in this case also canonically subtract obedience?" The answer to both questions was of course yes, and while Simon would later claim that he had merely raised arguments pro and con, "for the sake of disputation," the treatise was in fact conceived as a determination.

Reserving the substance of the work for analysis below, we need note here only those traits that show its relationship to the context of political action. Addressed in the first place to the public opinion of French political society, the treatise originally began with the scriptural "Every kingdom divided against itself is brought to desolation" (Luke 11.17; in Decretum 25. q. 2, c. 4), a simple reference to the Schism. But soon after, Simon replaced this with Psalm 2.10's "Be wise now therefore, O ye kings!" (in Decretum 23. q. 4, c. 41) and went on to argue that kings might legitimately use force to compel what was required for the salvation of souls. It would seem that he now wanted to direct his work more specifically to the secular powers of both obediences, an intention also suggested by the redactional change at three points from "king" to "kings" (lines 592, 1160, 1789) in contexts urging the kings to use their coercive power. The changes are not great, to be sure, and it is clear enough from even the early redactions that Simon had Europe in mind—for example in the remarkably non-partisan account of the events of 1378 (2354-84)—but we may suppose that having begun to write in the circumstances described above, he then came to appreciate the practical utility of the work in the context of the diplomatic action planned for 1397. We know that he sent copies of the treatise to King Charles III of Navarre, King Richard II, and at least one personage in Avignon, and it may have been Simon himself who brought copies to princes of the Empire and to King Wenceslas IV of Bohemia in the summer of 1397. As Pierre Ravat would complain in 1398, copies had by that time been sent "pretty much everywhere."

As far as France was concerned, the treatise may have helped shape public opinion to ensure that after the two contenders

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**n** The two reports as in the preceding note: (1) "Nec elegi opinionem aliquam, sed solum pro utraque parte argui, ut appareat"; (2) "Et argui [ms.: arguo] pro et contra, causa disputacionis non causa decisionis, sed disputavi predictam questionem." See n. 332 to the treatise, and see SdeC, pp. 171-77.

**m** BduC, p. 53; ASV, Arm. 54, t. 21, fol. 25v; SdeC, pp. 207 f.
had failed to take cessionist action by Candlemas of 1398, France would indeed move to impose the sanction of subtraction of obedience. In any case the Third Paris Council, convoked by letters issued in March, and meeting from May to August of 1398, not only fulfilled the program of the treatise by voting for subtraction, but in a certain sense produced the treatise's scenario in the formal debate pro and con. Much of the argument on both sides corresponded closely to what had been said in the treatise, and the subtraction ordinance of 27 July 1398 that resulted from the Council included much of the treatise's argument and wording. After this, of course, the treatise itself lost its topicality, but Simon used it as a repertory of components for other works that he put together in the following years.

Finally, and most important of all, the political function of *De substraccione obediencie* was to cast the escalation of the *via cessionis* onto the path of *total* subtraction rather than partial. The latter is indeed referred to as "the means advised by the University of Paris" (2110), and is described perfunctorily as a possible alternative if total subtraction is deemed unsuitable—but the passage was obviously put in *pro forma*. For total subtraction was not, as the term might imply, the completion of partial, but rather its opposite. While partial subtraction aimed at instituting the Gallican Liberties as a curtailment of the powers of an otherwise papal pope, total subtraction was based on the premise that the pope who refused to accept the only way of uniting the church, the *via cessionis*, was therefore a promoter of schism, a schismatic, and therefore a heretic in the formal canonistic sense; as such he had no right to his papacy and was entitled to no obedience. The aim of total subtraction was, simply, reunification of the church under a single pope, a restoration of the *status quo ante*, with no ulterior aim of reform. Simon de Cramaud knew all about Gallicanism and could use its language well enough for political effect (see e.g. 1325–75), but he seems to have had no personal interest in it or in any other doctrine based on discontent with the existing system. More to the point, perhaps,

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partial subtraction was too Gallican a scheme to suit the political requirements of a program based on the collaboration of the princes of Europe, and even as a tactical measure it had little to recommend it: there was no reason to think that it would lead the popes to abdicate, and the papal powers of censure and excommunication that it left untouched, available for reprisals, could not be blocked by the canonically dubious recourse of an appeal. Total subtraction solved these problems, for its argument that a heretical pope had lost his papal rights thereby made the canonical case for his deposition. Already implicit as we have seen in the Paris form of the *via cessionis*, deposition obviously lay at the end of total subtraction, and if Simon did not come right out and say so in his treatise (he would later), there are indications enough that he had it in mind: e.g., the "pena deposicionis" in 1961, the "acrius procedendum" and "pocius procedendum" in 1889 and 1901, and the "ulterius ad alia viriliter procedendum" in 2103. The redactional history of the treatise makes this impression even clearer, as for example in 2704, where the statement that an incorrigible pope "would incur heresy" replaced the original's "would indeed be judged" (and cf. the effect of the twice-added "forte" in 763 and 771). It is in the later redactions, furthermore, that we find substantial insertions specifying the heretical status of the reluctant popes and noting the canonical penalties for heresy, including "deposition, deprivation of all property, coercion by armed force and delivery to the secular court," the last to be followed by "fire and burning to death, according to the divine law" (1205–1313).

At the same time, Simon knew that he could not simply ignore the Gallican sentiment of the University of Paris that favored partial subtraction. The passage referred to above shows at least this awareness, which evidently prompted a few insertions in the later redactions, catering to the university: 146, 1283, 1128 (app. crit.). Those university leaders who worked with him at the First Paris Council, Pierre Leroy and Gilles Deschamps, and who would stay with him at the Third and indeed to the end, were both Gallicans; both clearly distanced themselves from the anti-Gallican implication of the argument that the contending popes were heretics, even while defending total subtraction in other terms. The more prestigious leaders, the theologians Pierre d'Ailly and Jean Gerson, who never joined Simon's coalition, still argued for the Gallican Liberties even while

defending Benedict XIII against the thrust of total subtraction—perhaps indeed their defense of the pope was tied to their commitment to reform, in the sense laid out above.32 As for the coalition, its inner contradictions came out and were reconciled in practice at the Third Paris Council, when the University of Paris declared that it supported total subtraction while at the same time insisting on adding partial subtraction to it, and the prelates who voted in a large majority for total subtraction saw to it that the arrangements governing the status of the subtracted Gallican church would include the Gallican Liberties in the matter of collations to benefices and cancellation of the fiscal rights of the Apostolic Camera.33 The cardinals, all but one of whom agreed to support the subtraction at that time, had argued for recognition of papal provisions still outstanding (they themselves held many of them) and for maintenance of the fiscal rights of the Camera (in which they shared), and while Simon had explored these possibilities in his treatise, and in his speech at the Council, he had also explored the Gallican solutions; in the end he accepted the latter, no doubt because he had to. If the ruthlessness of his political program reminds us of Guillaume de Nogaret dealing with Boniface VIII, an example certainly in Simon’s mind,34 his flexibility in practice suggests an even more radically functionalist style of thought, animated by the careerist’s cult of personal success and the politician’s acceptance of anything that worked. The mentality behind the action is not revealed to us by any writings of a personal nature, but it can be inferred from the way he acted and the way he developed his theory.

Simon’s readiness to incorporate the Gallican program of partial subtraction into his own structure of total was matched by his willingness to extend the latter into a plan for a general council of both obediences. His treatise had simply rejected a conciliar solution, which had in most cases been presented by its proponents as a way of judgement between the contenders, and at the Third Paris Council he had referred at first merely to action by a concert of the secular rulers, notably the kings of France, England, and Bohemia,
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along with Spain. But after he had come to realize that something more regular and solid was required, he broached the conciliar scheme in his ballot at the Council: each realm would send princes and prelates to meet and act in conjunction with the cardinals of both colleges; this council would demand that the papal contenders abdicate, and it could depose them if they refused; election of a new pope could follow at once. On 20 June 1398 he presented the plan to the Council itself, with the approval of the royal government, and specified how the French church would constitute its delegation. After France's subtraction of total obedience from Pope Benedict XIII, 27 July 1398, the new conciliar plan was described in letters to foreign governments that called upon these to follow France in subtracting obedience—the first step. Developed strictly out of the policy of via cessionis implemented by subtraction of total obedience, Simon's conciliarism could nevertheless pick up the prestige of the earlier via concilii generalis, whose terminology and canonistic foundation it shared, even while eschewing all ideas of judgement. It also eschewed all ideas of a conciliar reform of the church beyond the goal of unification. It was in fact the program for what would become the Council of Pisa and, arguably if less obviously, for the single indubitable success of the Council of Constance.

The Third Paris Council meeting from 22 May to 8 August 1398, with several intermissions, consummated the French stage of the via cessionis and opened the way to its European development which would lead to the Council of Pisa in 1409. The clergy's insistence that the status of the French church during total subtraction be based on the Gallican Liberties of partial subtraction was gratified, after much political negotiation that lasted even into the beginning of 1399, but the subtraction was indeed total. The subtraction ordinance of 27 July 1398, publicly read out on 1 August, incorporated a long review of all the action for union since the death of Clement VII, noted Benedict XIII's rejection of the via cessionis,

35 SdeC, pp. 223 f.
36 The message to Richard II of England in Valois, 3:292; for the message to Florence see Appendix V, No. 9; that to Milan in AN, J 516 A, No. 23; see SdeC, p. 246.
37 See SdeC, pp. 229 ff., for texts and discussion of the political relationship between partial and total subtraction, the latter valuable here chiefly because it canceled the pope's power to punish the subtracters effectively.
observed that popes who kept the church in division were schismatics and comparable to heretics in this regard, and declared that no obedience should be given to a pope who commanded what would subvert the status of the universal church; therefore, the ordinance concluded, the French crown, church, and realm withdrew from total obedience to its pope, Benedict XIII. Simon de Cramaud, who either drafted or provided material for the ordinance, would later claim correctly that it had not passed formal sentence upon the pope—this would be the task of a future council; but in this matter too, the ordinance's line of argument corresponded to his doctrine. The total subtraction and the plan for a representative general council could now be advanced as a paradigm and program for Europe to follow, as already noted.

The immediate results were not encouraging, in fact the reverse, as Richard II of England was deposed in 1399 and Wenceslas IV was declared deposed by the Western Electors in 1400 (he retained recognition as Emperor in most of the eastern lands, and remained King of Bohemia); these had been the two pillars of cessionist foreign policy. Benedict XIII, moreover, not only eluded capture but fortified the papal palace in Avignon and defended it successfully against siege by the cardinals and French forces. Producing no evident results abroad, the revolutionary policy of subtraction became vulnerable to its many opponents at home, led by Duke Louis of Orléans, who in just these years was moving to build up his own bases of

58 *Ordonnances*, 8:258-68. The key formulations are in the artfully stylized canonistic phrases: "Comperto ... quod illi vere scismata faciunt, qui contra canonicas constituciones aliquid proterve agunt, per id ecclesiam dividentes, ymo et qui ... falsas ac novas opiniones vel gignunt vel secuntur, veri heretici sunt, et qui scindunt ecclesiam, eadem racione scismatici; quod insuper pape eiam unico et indubitato precipienti ... aliquid quo ecclesie universalis turbacio, subversio vel destruccio sequi verisimiliter timeretur ... obediendum non est." And: "ab obediencia totali ipsius Benedicti ... recedimus." (This and the substance of n. 40 below remedy some imprecisions in SdeC, pp. 232, 243.)

59 In his refutation of the Toulouse letter of 1402 (Appendix V, No. 15), AN, J 518, fol. 513r: "Et quamvis notorie ipse scisma foverit et nutriverit, et scissuras in partes sibi obedientes fecerit, ... nichilominus tamen ad condempnacionem super istis criminiibus contra ipsum non processimus, credentes quod ad condempnacionem formalem non habet iudicem competentem nisi consilium ecclesie sibi obedientis." Simon's advocacy of a council of the Avignon obedience was due to the political needs of the moment (SdeC, pp. 248-53).
power in opposition to the Burgundian interest. Louis persuaded Benedict to declare his readiness to make concessions and indeed to accept the *via cessionis*, so that those who invoked the formula of conditional subtraction pronounced at the Third Paris Council—but not in the subtraction ordinance!—could argue that subtraction had fulfilled its purpose and obedience could now be restored; and so it was, for about two and a half years in 1403–06. Benedict failed to live up to his promises, however, and the new surge of opinion against him was facilitated by a change in the political balance among the dukes: Philip the Bold of Burgundy died in 1404, and Jean of Berry allied himself with Louis of Orléans (Simon de Cra-maud promptly followed suit and became an Orléans councillor). Duke Jean the Fearless who succeeded his father in the Burgundian conglomerate remained a strong supporter of the *via cessionis*, while Louis of Orléans seems to have let his ties with Berry moderate his defense of Benedict and his hopes for a *via facti*. So it was that a Fourth Paris Council, meeting from November 1406 to January 1407, with Simon presiding in the decisive stages, voted to reinstate the subtraction, this time as partial, with requests for royal ordinances to give permanent validity to the suppression of papal fiscal exactions and collatory powers. The way was open for a new European drive, this time with excellent chances of success since opinion on the Urbanist side had now veered to support of the *via cessionis*.

The marks of this change are clear enough. Pope Boniface IX had never for a moment considered any solution to the Schism other than his rival's submission, but after his death in 1404 the new pope, Innocent VII, had to swear an oath to do everything in his power, even abdicate, in order to reunite the church; the cardinals who met in conclave after Innocent's death in late 1406 swore similar oaths, as did their new pope Gregory XII after his election. Gregory, moreover, displayed real enthusiasm for the *via cessionis*—without a trial of rights, hence in the French version—and his messages in this sense went to Benedict XIII and to the French government; their arrival in Paris came during the last stages of the Fourth Paris Council and evoked a decision to hold the Gallican ordinances in abeyance while a massive embassy would go to both popes to help implement their

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41 *SdeC*, pp. 244–61.
42 *SdeC*, pp. 263–69, for the Fourth Paris Council; and see below, at notes 45–49.
respective abdications. Simon de Cramaud was to lead the embassy in association with the Orléans client Pierre Fresnel, Bishop of Meaux. Since the two popes had already begun negotiations on their own, the embassy could at first do little more than tell Benedict that this time he would have to accept the *via cessionis* without his usual tricky evasions, and then go on to arrange the transport needed to bring Gregory to a place of meeting. But Benedict had already begun his tricks, urging Gregory to join him in a *via convencionis* with discussion of rights, with abdication of the one or the other coming only at the end—in short a joint papal initiative that would respect the papacy’s integrity, rather than mere obedience to the secular powers’ interest in a non-judicial solution. The role of the French embassy had to change in consequence; some members fell away but Simon kept a hard core together who resolved to work with the Urbanist cardinals for the French version of the *via cessionis* even against the two popes (the Avignon cardinals could be counted on in any case). It was this line of action that would lead to the desertion of Gregory by his cardinals, 11 May 1408, their fusion with a group of Benedict’s cardinals, and, finally, a declaration by this new union on 29 June to “pursue the union of the church . . . by the way of abdication of both papal contenders, . . . and if they refuse or are contumacious we will take other measures by deliberation of a general council.” Members of the French embassy, above all Simon de Cramaud, were involved in all these stages. The Council of Pisa in 1409 would be the direct result.

But why had the Urbanist papacy given up its intransigent assertion of its own exclusive right? A *conditio sine qua non* must have been the whole course of French action proclaiming the unique acceptability of the *via cessionis*, going on to provide the model of subtraction, and constantly pursuing a European diplomacy that brought its program and ideas to the attention of all decision makers. But this was not enough, and, as already noted, the original project of a union of secular powers to impose abdication on both popes had in fact failed. The Urbanist papacy, however, provided the remedy. From the very first, after the secession of the French cardinals and the French officials who made up the whole apparatus of papal government, this papacy had become a possession of the great families of the Neapolitan nobility, called in by Urban VI (his

43 *SdeC*, pp. 272-76; see in general Valois, 3:325-616, and 4, ch. 1.
44 *Ampl. coll.*, 7:798-803; *SdeC*, p. 279.
mother was a Brancacci) to fill the vacuum. After Louis II of Anjou’s armies had conquered Naples in 1387 these families had nothing but the papacy for themselves and they moved into it en masse. The Perrino Tomacelli who succeeded Urban VI in 1389 as Boniface IX was one of them, and by the time of his death in 1404 five of the ten cardinals were his relatives, three more belonged to other Neapolitan clans. Perhaps it was this very thrust that led to a reaction, for the next pope, Innocent VII, was not a Neapolitan (although a South Italian) and was unfavorable to the Tomacelli; his election involved, however, the oath already described to pursue union even by abdication, and an even stronger commitment to the via cessionis was made in the election of Gregory XII, a Venetian. Decisive forces in the Urbanist papacy had, obviously, come to the conclusion that union under the French program would be good for them. It is not hard to guess why. The French program by its nature renounced any claim to continue the Avignon tradition of French popes residing in France; a new united papacy would certainly be Italian and there would certainly be places in it, in rank, for all cardinals and officials of the Urbanist papacy. At the same time the extremely restricted financial resources of the Urbanist papacy would give way to the relatively vast revenues generated by the Avignon apparatus. Even though the Schism itself had diminished these and the Councils of Pisa and Constance would diminish them further, so that the new papacy after Constance would enjoy only a third of what the Avignon popes had had before the Schism, this was still much more than what the Urbanist popes had taken in. Finally, there is no reason to believe that less calculable factors like the ideal of unity, the integrity of papal authority, the prestige of a united papacy, were not also in play, in one way or another.

The key leader in this reorientation of Urbanist policy was Cardinal Baldassare Cossa, originally a Tomacelli protégé and then an autonomous power from 1403 on, as papal legate ruling Bologna. In 1405 he caused Petrus de Ancharano, a noted Ferraran jurist, to write a treatise on union in which—among many other points—the French insistence on avoiding a discussion of legitimacy was taken


46 See SdeC, p. 12, for references.
over; as Boniface Ferrer would later comment, in a discussion mentioning Ancharano by name, the Italian jurists were accustomed to obeying tyrants and to selling their opinions.\(^7\) Cossa, in any case, began systematically to accumulate his Bolognese revenues in a private account with the Medici bank in Florence, other Neapolitans did the same, and when the time was ripe, a few days before the Council of Pisa, Cossa withdrew 42,000 florins from his account to help finance the enterprise. Others prominent in this juncture were the members of the Brancacci family who held cardinalcies and other offices in both papacies. Since the Council of Pisa would choose a Cossa ally as the new pope, Alexander V, and since he would quickly be succeeded by Cossa himself, as John XXIII, this whole Neapolitan response to the openings created by the French push must be given due recognition as a major political action; in more sober terms, it was the medium in which the theory developed in Simon's treatise could find its practical success.

The Council of Pisa, summoned to meet on 25 March 1409, began without Simon, who was busy at home organizing support for it and trying to frustrate Benedict XIII's counter-moves, but he arrived on 24 April and assumed the presidency. The smooth course of the public proceedings, commented on by modern scholars, can best be attributed to Simon's manipulative skill, which indeed we see at work here using just the techniques he had used to manage the Paris Councils in earlier years.\(^8\) He was also the one who read out the decree deposing both papal contenders as schismatics, heretics, contumacious scandalizers of the church—the theory of deposition was exactly that which he had worked out in his treatise and there is no need to imagine any other source,\(^9\) although by this

\(^7\) For the works of Ancharano and others see Swanson, pp. 150–55; also idem, “The Problem of the Cardinalate in the Great Schism,” in B. Tierney & P. Linehan, eds., Authority and Power: Studies on Medieval Law and Government (Walter Ullmann Festschrift; Cambridge, 1980), pp. 226 f. For Ferrer's comments in his treatise of 1411, see Ampl. coll., 7:1467–69.

\(^8\) SdeC, pp. 281–85, for this and the following discussion of Pisa.

\(^9\) The text of the decree, which I take from Ampl. coll., 7:1096–98, is stylized as one huge sentence including much noise, which my compressed quotation omits: “Sancta et universalis synodus universalem ecclesiam repraesentans decernit et declarat omnia crimina deducata contra Petrum de Luna et Angelum Corrario fuisset vera atque notoria, ipsoque fuisset et esse notorios schismaticos necnon notorios haereticos et a fide devios, universalem ecclesiam notorie scandalisantes, et ex his se reddidisse
time there were better-known Italian professionals to make the same case. When it came time to consider how to elect the new pope Simon also intervened, not only declaring the official French position of disinterest but also manipulating a vote that implemented it, refusing to ask for arrangements to compensate for the French cardinals' numerical inferiority in the combined college.

If the new pope, Alexander V, would soon die, and if his successor, John XXIII, would prove unable to secure universal acceptance, the Pisan solution cannot be therefore written off as merely the addition of a third pope to the two original ones. For one thing the overwhelming majority of Europe's polities supported the Pisan line, either at first or in the next couple of years. Then too, as far as France was concerned the Schism was over; she was now with the majority that included England, almost all of Germany and East-Central Europe, and most of Italy. Finally, the Council of Constance which did end the Schism more or less definitely (there were Benedictine holdouts in Spain and South France, and there was Hussite Bohemia) would not have happened without the preliminary solution imposed at Pisa. Constance too deposed Benedict XIII and John XXIII, and would have deposed Gregory XII if he had not had the shrewdness to abdicate on condition that he be allowed to "summon" the council. In other words the Schism was ended pretty much in the way Simon had intended as early as 1395, in accord with the theory he had developed in the De substraccione, as amplified by his conciliar scheme of 1398. The extraordinary interest of modern scholars in the Councils of Pisa and Constance has been due to the ideas of church reform and constitutional conciliarism emerging in connection with them and transcending their context of strictly political action. Simon's treatise was part of that context and aimed no higher than was necessary, although it had its own profundities as the work of a politician and careerist—the man who now claims our attention.

omni honore et dignitate etiam papali indignos, ipsosque ne praesint a Deo et sacris canonibus fore ipso facto abjectos et privatos, ac etiam ab ecclesia praecisos; etничilominus ipsos Petrum et Angelum per hanc definitivam sententiam [synodus] privat, abjeicit et praescindit, ecclesiamque vacare Romanam ad cautelam insuper discernendo." Cf. the text of the subtraction ordinance of 1398, above, n. 38; see SdeC, pp. 282 f., for an English translation and comment.
§ 2. Simon de Cramaud

The first known appearance of Simon de Cramaud's name identifies him in 1370 as a younger son in a Limousin family of petty nobility, vassals of the viscounts of Rochechouart; his father had died and the eldest son Pierre, a knight, held the family property. We encounter Simon next in 1375 as a doctor of canon law of the University of Orléans, in April receiving papal collation to a canonry and prebend in the cathedral of Rheims, and then in June getting a canonry and semiprecept, with the office of *scolasticus*, in the cathedral of Orléans, this too by direct papal provision of the best sort; in the latter text he is identified as “licensed in laws,” and required to give up benefices that he had previously held—one in Oviedo and a chaplaincy in Meaux. In 1376, however, he appears as *maître des requêtes* of the royal palace, and it must have been at about this time that he held a professorship in the Faculty of Canon Law at the University of Paris. The bare data suggest, first, that Simon had brains and the personal qualities making for worldly success, and second, that he enjoyed the patronage of a very powerful person—almost certainly Duke Jean of Berry, whose function in this capacity is attested explicitly in documents from 1381 on, and whom Simon followed loyally and closely until the duke’s death in 1416. Pierre de Cramaud had taken part in the reconquest of Limousin and Poitou from 1369 on, under the duke’s overlordship, and we can imagine this connection as perhaps the background for the duke’s interest in Simon, who was presumably already at the University of Orléans; it would have been the duke, then, who got Simon the student benefices noted above, and who, on Simon’s graduation, obtained the more splendid ones from Pope Gregory XI, but who soon afterwards changed his plans and decided to move Simon to Paris as one of his men in the royal government, with a professional base at the University of Paris. That, at any rate, was the way careers were made in the later Middle Ages generally, and in Valois France in particular. If Simon was thirty at the time of his doctorate, a more or less normal age, he would have been born about 1345—a much

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51 *SdeC*, index, “Cramaud, Simon de: ... tie to duke of Berry,” and esp. p. 303 for evidence that the tie lasted to the very end of the duke’s life; cf. also Plate III.
earlier date would make his active last years all but superhuman (he
died in 1423), and a later one would make him rather too young to
be a Paris professor in a higher faculty—even with ducal and papal
backing.

All we know of Simon's functions at the University of Paris is
related to that body's formal declaration of adherence to Clement
VII in the first part of 1379; he was among other things the Law
Faculty's envoy carrying its benefice-roll to the pope, who duly
rewarded him with yet another canonry. Some remarks in his trea-
tise and other works might be taken as implying that their author
was among those whose adherence was nothing more than obedience
to a royal command;\textsuperscript{52} for the rest we can say only that there is no
known evidence to suggest that Simon's public actions were deter-
mined by ideals of scholarship, theory, or religion—or indeed any
other ideals beyond the functional ones of political, personal, and
familial loyalty. At the same time there is no evidence that his works
were written by anyone but himself, and they show a clear, powerful
mind capable of using its legal training to develop a corporatist
ecclesiology that stood at the height of its time even while it served
its author's political purpose; the next section will show this in some
detail. Careerist would be the word that best characterizes the pat-
tern of his thought and action, and careerism was the common de-
nominator of his multiple roles—in the academy, in the royal gov-
ernment, in the church, and—as we shall see—in the direct service
of Berry. The goal of careerism in that period was estate, a concept
that cannot be neatly defined in modern terms; for if it included
"status" defined in terms of prestige or honor, it also carried a sense
of normative right under the law, which our modern notion of legal
equality has no room for.\textsuperscript{53} On the one hand estate was the condition
resulting from the total of one's wealth, powers, privileges, offices,
and rights, also one's noble blood if one had it; on the other hand
this estate was itself the object of a property-right and as such shared
in the claim of property to be maintained under the law. Thus, for
example, a nobleman might ask for a royal grant "to maintain his
estate," and a businessman could justly make enough profit to ensure
the same end. As far as Simon de Cramaud was concerned, we can
best make sense out of his strivings by putting aside a disjunctive

\textsuperscript{52} SdeC, p. 27, for some examples.

\textsuperscript{53} I know of no systematic study of late-medieval estate; see the discussion and
references in SdeC, pp. 66–68; also the index, "Estate."
definition of roles—prelate, public official, professor, land-lord, and the like—and thinking of him as playing the game of estate, in which points could be scored in all these capacities and many more besides. These considerations will perhaps become more obviously significant as we follow him further in his life; they are introduced here to suggest that the events of his career provide one important access to the mentality responsible for his treatise.

It was no doubt Berry who secured the renewal of Simon’s appointment as maître des requêtes in 1380, after the death of Charles VI, and it may have been at this time that Simon began sitting in the royal council—the embodiment of the dukes’ joint governance of the realm. But one effect of the new situation was to give Berry back his former royal lieutenancy in Languedoc, and he used Simon there from 1381 to 1383 as a member of his government; along the way he secured for his client the bishoprics of Agen (1382) and then Béziers (1383). Then he called Simon north to function in the Paris government once more, and to accompany Berry as ducal councillor when needed—until March 1385, when he chose Simon as the chief clerical member of a royal embassy to Hungary, with the mission of making a proxy marriage between the heiress of that realm and the young Duke Louis of Touraine, the brother of Charles VI. The embassy itself succeeded, and only the intervention by force of Sigismund of Luxemburg, to get the Hungarian princess for himself, undid its work. Simon, however, had had his moment and of course his European trip; when he came back the duke made him ducal chancellor and had him transferred by the pope from the bishopric of Béziers to that of Poitiers, 24 November 1385. The young graduate in laws of ten years before had evidently proved his worth in all the places and jobs that his patron had put him into, and now held one of the top positions in the Berry machine, a massive apparatus which was centered in the duke’s appanage, including Berry, Auvergne, Limousin, and Poitou, and reaching out to Paris and Avignon, with the enormous profits and powers that were added by the royal lieutenancy in Languedoc. By this time too, Simon must have been rich: his royal and ducal offices must have brought in thousands of livres a year, his prebends and bishoprics had substantial revenues, and there must have been many gifts or other windfalls.54

54 Some details in SdeC, pp. 83 ff.
Already in 1383, when still bishop of Béziers, Simon had moved to consolidate his estate by bringing his family up alongside him, literally as well as figuratively, so that the petty nobles living in the shadow of Rochechouart would become important lords of Poitou. Renaud de Montléon, Berry’s maître d’hôtel and longtime servitor, was the head of an old Poitevin baronial family that had fallen on hard times, most recently because Renaud had been captured by the English and owed his captors the usual ruinous ransom. His properties, including the main family castle of Touffou, a fief of the episcopal lordship of Chauvigny, were heavily burdened with annuities (rentes). Perhaps Simon already knew that he would be moving into the bishopric of Poitiers; in any case he seized the chance to arrange a marriage between his nephew Jean, Pierre’s son and the sole hope of the male Cramaud line, and Renaud’s daughter Orable: the monetary dispositions, apart from whatever Simon may have paid as a simple inducement, included a dower for Orable, a handsome wedding-gift, and the purchase of several annuities on Touffou and elsewhere. The marriage-contract, negotiated by Simon on Jean’s behalf, provided for a dowry to consist of certain properties Renaud promised to turn over to the couple, a small part at once and the rest after his death; should he or his executors fail to fulfill the contract, there would be a penalty of 4,000 livres, half to go to the crown. This may have seemed unproblematical at the time, since Orable’s only sibling was a younger sister, but Renaud’s wife was pregnant and later in 1383 gave birth to a son, Renaud II; when Renaud I died in 1385, the family refused to give Jean and Orable the important properties they had been promised. The Montléons were no match for Simon, however, who was now bishop of Poitiers and, as we have seen, a very big man in the Berry machine: he used his money to acquire more rights to the heritage; he used his episcopal authority to get an annuity held on Touffou by a collegiate church; he used his position as feudal lord of Touffou for similar purposes; he used his familiarity with government to involve the law courts on his side; and he used his own henchmen and his colleagues in Berry’s service to mobilize so much power that the Montléons had to give in. Thus in 1387 they agreed to transfer Touffou to Jean and Orable in exchange for cancellation of all other obligations; Parlement in Paris registered the accord on 3 August 1387, and on

*SdeC*, pp. 85–93, for what follows in this paragraph.
14 January 1388 a royal letter, witnessed by Berry, confirmed the whole arrangement and granted Touffou to Jean and Orable as their heritage.

During the same period Simon spent a lot of money on other acquisitions as well, some in his own name but others in the name of Pierre or Jean, with Simon to have the usufruct during his lifetime. Money was also poured into the restoration and improvement of Touffou, and the redemption of annuities weighing on it. Later on, in the 1390's, Simon bought important new properties in the region around Loudun. He also acquired a house in Paris, by a combination of tricks, cash, and mere power that reminds us of the Touffou affair; this time it was only a widow who was browbeaten, not as previously a widow and two orphans. Putting all these together, on the basis of minimal estimates, we see Simon spending at least 15,000 livres on properties for himself and his family in the fifteen years following 1383. It took a lot of work, there was endless difficulty in the law courts over many if not most of the purchases, but the result was evidently worth it: mere money had been converted into lands, the mere client of Berry had become the de facto head of an important noble family, and the estate hitherto consisting of offices and emoluments had been given a solid foundation of property, family power, and lordship. The construction itself was well suited to the times, marked as these were by a crisis of seigneurial revenues and the extensive destruction of the petty nobility: a family of petty nobility had become more or less grand, it had a broad economic base consisting of widely diversified properties, and its economy was bolstered by continuous access to the revenues of church and state. One might object that there was not much else that Simon could have done with his 15,000 livres, and the point would be well taken if we were trying to make a case for his prudence or his family love, but we are not; it is enough to point to what he did and to understand how his behavior was more or less dictated by the structure of his world, reproduced in his mentality. The individuating factors would have been his talent and ambition, both extraordinarily high, and perhaps the delicacy of his moral sentiment, evidently rather low. In any case he had launched himself

56 SdeC, Appendix Three, for an itemized list and a map of Simon's acquisitions.
on a path that had to be followed to the end; for most of what he had achieved depended on the power and favor radiating from his patron, whose support he could best continue to assure by keeping active and eager.

Before picking up the story of Simon's ambition, however, it will be useful to dwell a bit on some other aspects of his Poitevin program. Neither his brother Pierre nor his nephew Jean showed much competence in life, rather the reverse, and it would be odd if Simon had not been aware of their mediocrity from the first; we must assume, therefore, that he knew how important his own power was in guaranteeing the stability of the new Cramaud family position. At the same time the demands of his careerism led him to think of moving up and therefore out—out of the bishopric of Poitiers among other things. Did he already envisage returning there at the end of his career, as he in fact did? One thing certain is that he took care to impress his mark on his see, not only by the diligent performance of his duty to keep the church in repair, to improve the episcopal properties, and to maintain the various rights of the see by appropriate legal action, but also by undertaking a major revision of the fiscal relationship between bishop and chapter. As in many other dioceses the two parties were in endless conflict over the division of episcopal revenues which they had originally shared; in the case of Poitiers the division had been sanctioned by a bull of Pope Clement V, 4 August 1307, confirming the bishop's obligation to pay 600 livres a year to the chapter in place of judicial rights that the chapter had given up. One bishop after another refused to pay and had to be sued. Simon seems to have resolved to settle the matter even before his installation as bishop, for on that occasion, when asked to swear that he would observe the "Clementine" privilege, he refused the definite formula presented by the chapter and swore only: "Clementinam vero juro in quantum de jure teneor ad jurandum"; then he had a notarized record made of the episode. Next he raised money by selling off episcopal timber and relinquished a number of episcopal rights in order to establish a yearly income for the chapter that would meet its claims; the arrangement, satisfactory to

58 SdeC, pp. 72, 307-10, 320 f.
59 SdeC, pp. 96-98.
60 SdeC, pp. 98–101, for the whole episode as follows.
61 The original in Poitiers, Archives Départementales de la Vienne, G 1, No. 16; for the oath the chapter desired see ADV, G 182, fols. 2v–3r, in the "Livre rouge."
both parties, was approved by Pope Clement VII on 22 April 1389. But then Simon claimed his own reward, getting the pope’s approval on 25 April 1390 to reobligate the bishop’s judicial revenues to the extent of 100 *livres* a year, to pay the chapter for four yearly masses in the cathedral, the beneficiaries to be Simon, his parents, the Duke of Berry, and Clement VII. Whatever we may think of this action, it had the effect of keeping alive the sense of Simon’s episcopal presence (in the right company), not least because, as Simon foresaw, succeeding bishops refused to pay and had to be sued. We shall see other examples of his attention to Poitiers after he left it, for the same purpose, and we note that the cartulary of the bishopric known as the “Grand Gauthier,” begun by Bishop Gauthier de Bruges (1278–1306) and hardly kept up at all by the bishops after about 1310, was more or less taken over by Simon, who was responsible for twenty entries from 1387 to 1421, after which there is only one entry, in 1506. All of which suggests that Simon saw himself linked to the see of Poitiers by enduring ties of both interest and sentiment, ties that would survive his departure.

Two of Simon’s predecessors as Berry’s chancellor had moved on to become cardinals, a third had become chancellor of France; Berry, apparently, saw only advantages in extending the estate of his clients. In 1390, however, when Simon wanted to move, the duke’s power had been curtailed by his exclusion from the Paris government, exercised directly from 1388 to 1392 by Charles VI. Berry even lost his lieutenancy in Languedoc. But Clement VII was still obliging, and when Berry asked him to promote Simon to the archbishopric of Sens, due to become vacant, the pope agreed in early July 1390. Unfortunately Charles VI had his own candidate for the see, and letters were sent to Simon and Berry to order them not to interfere. While it is not clear whether Simon got the letters and ignored them, or suborned the dispatch-rider into not delivering them, or was perhaps not made aware of them at all—still there was much suspicion of impropriety, and there was a judicial inquiry that could have been disastrous; why it was not can only be guessed. In any case Simon’s collation to Sens was cancelled. On 17 March 1391,

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62 L.-F.-X. Rédet, ed., *Cartulaire de l’évêché de Poitiers* (Archives historiques du Poitou, 10; Poitiers, 1881), 166–85 (entries from 1312 to 1364), 185–254 (Simon’s entries from 1387 to 1421, except for two entries by others), 254–56 (the last entry, 1506).

63 *SdeC*, pp. 102 f.
however, Clement made Simon Patriarch of Alexandria, with the administration of the see of Avignon, and we find him there for over a year, his ducal chancellorship given up. It is hard to imagine that this period of service in the papal curia was originally thought of as anything but a preliminary to promotion to the cardinalate, Simon's ambition being one of the constants in our story; that the promotion did not take place suggests that it was blocked, and we can believe Martin of Alpartil, who tells us that the chief personage responsible was Cardinal Pedro de Luna, the future Pope Benedict XIII. The crucial decision may have been made by 19 September 1391, when Clement shifted Simon from the see of Avignon to that of Carcassonne; although Simon remained in Avignon for almost a year afterwards, serving the papacy, it was probably because he had no place else to go. He did get a papal commission sometime during this period to "reform what needs to be reformed" in the church of Poitiers, and we may guess that he used it inter alia to keep his hand in the Poitevin center of his family's estate. When Berry and Burgundy returned to power, after Charles VI's madness in August 1392, Simon de Cramaud was not far behind—we find him in Paris from October onwards. His role in the dukes' discreet but definite shift to a union policy can only be guessed; perhaps the safest formulation would be that as Berry's councillor he was supposed to advise his patron, that his advice in matters of church policy might have been especially valued, and that he had his own reasons to see the Avignon adventure as no longer worth its price. The same might perhaps be said, mutatis mutandis, about his opposite number in Burgundy's retinue, Bishop Jean Canart of Arras. Leaving safety behind, we can go on to guess that while Berry would have himself appreciated the advantages of peace in the church, and with England, Simon might have been the one to lay out the strategy of the via cessionis. At the same time Berry seems to have felt a strong loyalty to Clement VII, and Simon could hardly have set himself against that. What it comes down to is that from the latter part of 1392 on, the University of Paris and others were permitted to agitate for union, the royal council entertained the question, and there was much talk in Paris about not only union but the via cessionis in 1393, with Cardinal Pedro de Luna

64 Ehrle, Alpartil, pp. 16 f., 118; SdeC, pp. 104 f.
65 ASV, Reg. Aven. 270, fol. 626v; see SdeC, p. 106.
66 SdeC, p. 106.
himself, in Paris as Clement's envoy, speaking in favor of a more active policy. In the latter part of 1393 the royal council even informed the bishops of “the king's” intention to work for union by the via cessionis. And in January 1394 a university delegation to the royal government was told, by Berry, that it should work to find some honorable way of ending the Schism; at the end of the month members of the royal council were appointed to work with the university in the matter. Simon was not one of them, for sometime after early January he had gone to Avignon, perhaps merely to transact the personal business that we know he took care of there—he bought two properties in the Loudun lordship from Duchess Marie of Anjou—but perhaps also to bring Clement the news of what was going on in Paris. Clement's reaction was to send agents to meet the unionist challenge with counter-propaganda and bribery—Simon himself received a valuable privilege of collating to eight benefices that had been granted on 20 November 1391 but was only issued now, 19 May 1394. And yet in 1406 Simon could say, “I knew Clement and ... I think that if he had lived one year longer we would now have peace in the church. I can say with certainty that he charged me in writing to tell my lord of Berry that he was fully prepared to renounce the papacy for the good of church union.” In the event Berry and with him the royal government changed course and began to discourage the university, to the point that the masters called for a cessation of classes in August 1394. This was the situation when the news of Clement's death on 16 September reached the royal council, on the 22d, and we have already seen how Simon de Cramaud at once took the lead in laying the foun-

68 Bishop Bernard Alamant of Condom noted his receipt of such a letter from the crown (on 5 November 1393) and wrote a treatise in response. Details and key passages in SdeC, pp. 53 f.; see also Valois, 2:405 f.
69 RSD, 2:96–98; Bulaeus, 4:687; SdeC, pp. 56 f.; cf. CUP, 3, No. 1676.
70 Simon was in Paris 2 January 1394 (AN, X 1A 1477, fol. 397r), but left for Avignon soon after; by 28 January, the day when the appointments were made, he was in Avignon (AN, JJ 147, fol. 4v).
71 ASV, Reg. Aven. 269, fol. 593v (“issued” is my understanding of “expedita”); for the bribery in general see RSD, 2:130–32 (“non sine donis uberioribus aulicos et servientes regios induxerunt”); see SdeC, pp. 50–64.
72 BduC, p. 216. Later Simon and others would recall 1394 as a time when the royal government was unambiguously pressing Clement VII to end the Schism—e.g., Ampl. coll., 7:713; Ordonnances, 8:259; cf. CUP, 3:631–33. See Valois, 2:407–30; SdeC, pp. 60–62.
dations of a unionist policy. We must suppose that everything had been worked out previously, that the fluctuations in the government's dealings with the University of Paris were matters of tactics and timing, and that there was a solid Berry-Burgundy understanding that union would in fact be pursued, and by the *via cessionis*. Also that Simon de Cramaud had stood very close to the center of policy-making.

His work as a leader in the policy of cession and subtraction has already been outlined; it seems to have taken up most of his time, although he continued to keep an eye out for likely properties and to buy them from time to time. After subtraction had been adopted, 27 July 1398, he had to manage the conflicts between the cardinals and the Gallican church, to keep up the flow of propaganda (based on his treatise), and to go himself on embassies to West-German diets.\(^7\) As his policy lost momentum, with the increasingly evident reluctance of anyone to follow the French lead—even Henry III of Castile fell away after the death of Pedro Tenorio, Archbishop of Toledo, in 1399—he was driven to desperate expedients, inflating the ambiguous encouragement that he got from the Germans into promises of support, and in 1401 moving towards a plan, originally proposed by his opponents, for a council of the Avignon obedience to determine further measures. But in vain: Duke Louis of Orléans, who for the past few years had been building up a strong anti-Burgundian power position, made himself the champion of Benedict XIII, and it seems that his uncles were simply unable or unwilling to bring the intra-family tensions to a head over the matter of church union. In 1402 we find little evidence of Simon at work in Paris, and it may well be that he had found it prudent to leave the capital; it was a time when he could think of his own affairs and his future in Poitou. Thus in October he carried through an extremely important foundation in the cathedral of Poitiers, endowing a music-master and six choirboys as a permanent and integral component of the chapter's structure—one of the first such foundations in France; the lands, tithes, and *rentes* that he gave the chapter for the purpose must have cost him between 500 and 1,000 *livres*.\(^7\) At the same

\(^7\) *SdeC*, pp. 244–57, for what follows in this paragraph.

\(^7\) Simon’s music foundation of 10 October 1402, his most lasting achievement, is described in BN, *ms. lat.* 18377, pp. 195–98, and in a number of other places as well, including a still extant plaque in the cathedral choir and an original parchment in ADV, G 258. See *SdeC*, p. 314.
time he would probably have begun planning for his tomb in the cathedral; for the elaborate structure of alabaster and marble, with a statue of himself standing over it and a *gisant* on top, which was finished in 1405, must have been commissioned some years earlier.\(^7^5\) It was in 1402 also that he arranged a good marriage for his grand-niece Mathea de Pressac (daughter of Jean de Cramaud's sister Jeanne), at a cost to himself of 1,200 gold *écus* for the dowry—this too was a Poitvin affair.\(^7^6\) There was indeed little scope for public action, and we can only speculate about Simon's train of thought as he saw the inexorable movement of opinion back towards Benedict XIII, and then, on 30 May 1403, saw the king decree formal restoration of obedience. The one thing he could be sure of was that the new policy would lead nowhere, inasmuch as Benedict would never abdicate and the Valois family were too involved in their own feuds to promote a serious reprise of the *via facti*. At least Benedict's renewed authority allowed him to confirm Simon's Poitiers foundation of 1402, on 23 January 1404.

The situation indeed changed rather quickly. The death of Duke Philip of Burgundy in 1404 freed the Duke of Berry from an alliance based more on the mutuality of brotherly confidence than on his own geo-political and familial interests, all of which drew him to the south. We may add that Philip's successor, Jean the Fearless, did not attract affection. On 1 December 1405, after civil war between Orléans and Burgundy had been happily averted, Berry allied himself with Orléans and Queen Isabelle, evidently against Jean the Fearless; Simon de Cramaud, as much a Berry client as ever, became a councillor of Orléans with a pension of 2,000 *livres* a year, on 11 December.\(^7^7\) His own affairs continued to claim much of his time, and we must imagine the ambiance of travel, provincial residence, family arrangements, local sociability, and the like, that would have surrounded the completion and final dedication of his tomb in Poitiers cathedral sometime in 1405, the erection and endowment of a major commemorative foundation in the Cramauds' old home church of Biennac in 1405 and 1406, another such foundation in nearby St. Junien in 1406, and other lesser actions of the same sort, like his gift

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\(^7^5\) See *SdeC*, p. 304, for references, and Plate I for a drawing of the tomb by Gaignières, *ca.* 1700, after the statues had been destroyed by the Huguenots in 1562; the rest of the tomb was destroyed in the French Revolution.

\(^7^6\) *AN*, X 1A 9190, fols. 173r–174r; *SdeC*, p. 310.

\(^7^7\) For context and references see Lehoux, 3:25, 62, 69; original records survive in *BN, ms. fr.* 27405 (P.O. 921), group No. 20357, items 2–4.
of a missal to Limoges cathedral on 26 December 1405. Simon would have been about sixty years old at this time, and would have drawn his own conclusions from the fact that the twenty-year-old marriage between Jean and Orable had produced no children, and that Renaud II of Montléon had celebrated his twentieth birthday by demanding his family seat of Touffou back from the barren couple. It would be a long time before he got it, but perhaps the writing was already visible on the wall. In any case, Simon's decision to invest in the kind of estate provided by ecclesiastical foundations, readily explainable on several grounds, can be usefully kept in mind as we return to the story of his public career, whose finest moments were yet to come but which would abruptly lapse into a final stage of narrowed horizons, illness, and aged frailty. Meanwhile, since the Berry-Orléans alliance had ended the political constellation within which Orléans's pro-Benedict policy made sense, the way was open for a return to cession and subtraction, in other words a return of Simon de Cramaud to political action in Paris.

The course of events in the matter of union policy from 1406 on has already been touched; it is reviewed here in relation to Simon's political action. It begins, to be sure, with the University of Paris playing an unusually active and independent role, to the point that Simon appears at first as only a collaborator, his main sphere of public action apparently lying in the ordinary politics generated by the tensions among the dukes. Here he had his obligations to Berry and now also to Orléans, whom he accompanied on a campaign in Guienne in the autumn of 1406. Meanwhile the University of Paris had persuaded the royal government to call a Fourth Paris Council to meet in the first part of November, to consider the university's request for a renewal of total subtraction. Simon was not present at first and, as we might expect, the Council was not firmly programmed; he arrived in time for the debate, which covered all the old issues of Gallicanism and papalism. At the end of the debate, however, on 20 December, Simon assumed the presidency, most likely at the government's order, and at once began to bring order out of confusion, crystallizing the vote by preparing "schedules" (cedule) on the points at issue that the prelates could vote either for

80 SdeC, pp. 260–69, for what follows. For Simon's work with his "schedules" (below) see Thes. nov., 2:1307–10; Bulaeus, 5:137–41; Valois, 3:481 f.
Introduction

or against. This time it was the university that demanded total subtraction, Simon and the government that favored partial, probably because the unionist scenario now included a general council of the whole church as its consummation: it would be there, rather than in Paris, that the popes could most fittingly be branded as schismatics and then deposed. Simon accordingly managed the vote so that it favored partial subtraction. At the same time, in contrast to the proceedings of 1398, the Gallican liberties were declared to be permanent, guaranteed as such by royal ordinances, and this was no doubt the matter closest to the university’s heart. It was in mid-January, right after all this had been accomplished, that the letters arrived in which Pope Gregory XII summoned all to join in implementing the via cessionis on both sides. All hopes were now pinned to the massive embassy, described in the preceding section, that Simon de Cramaud would lead to both popes. We have already noted its results; beginning at the end of March 1407 with high hopes for easy success, it ended in the summer of 1408 with the fusion of the two colleges and the call for a general council to meet at Pisa. But perhaps Simon’s hopes were not so high even at first, for he must have known what the event would prove, namely that Benedict had not given up his sense of papal supremacy in order to become the docile instrument of French policy, and even Simon’s first interview with Benedict in May of 1407 showed clearly enough that there was no meeting of the minds. In fact there is good reason to believe what the French later charged, that Benedict had persuaded Gregory of the iniquities of simple double abdication on the Paris model, and that there was collusion between the two to frustrate any solution that did not proceed from their own agreement—Benedict’s old plan of a via convencionis, a via iusticie, and perhaps at the end a via compromissi. Here we must guess what the sources naturally ignore, namely that Simon the politician recognized these dispositions from the first—there was plenty of evidence of recalcitrance on both sides—and understood that nothing would happen unless he made it happen, by negotiating, politicking,
pressuring, promising, scheming, and perhaps even, as hostile voices would allege, by bribing.\textsuperscript{83}

The same can be said of his role at the Council of Pisa,\textsuperscript{84} which we have already noted—here too his work can be sensed, beneath the smooth surface of the more or less official \textit{acta} which his method of management by "schedules" made so smooth. Unlike many others, he understood perfectly that the French program of the \textit{via cessionis} could not be directed to any other goal but its declared one, union without judgement, and that French designs on the papacy no less than Gallican hopes of reform could not be allowed to get in the way. Robert Hallam, Bishop of Salisbury and head of the English delegation, seems to have appreciated Simon's contribution when he asked the fathers to thank him for all he had done to make the Council possible.\textsuperscript{85} We can imagine that when Simon asked the new Pope Alexander V, the day after his election, to make him Archbishop of Rheims, it was with a sense of claiming only his just desserts.

His new eminence certainly amplified his estate—the archbishop of Rheims was the prelate who crowned the kings of France, and ranked as a duke and peer of the realm—but his main concern on his return from Pisa was the political situation in France, drifting rapidly into civil war.\textsuperscript{86} Duke Louis of Orléans had been murdered on 23 November 1407 by agents of Jean the Fearless, and Berry rightly or wrongly tried to avoid the outright break that this crime made inevitable; Simon was his chief agent in the Paris government working to this effect. Thus Simon did not make his formal entry into Rheims until 15 December 1409, and while he immediately took control of affairs he did so through his officials; he returned to Paris almost at once. There his role was modified by Berry's final recognition of necessity: on 15 April 1410 Berry joined his son-in-law Count Bernard of Armagnac, along with other princes of the south and west, to take up the Orléans cause on behalf of Louis's heir Charles, who then married Armagnac's daughter. The Arma-


\textsuperscript{84} \textit{SdeC}, pp. 281–85.

\textsuperscript{85} \textit{Ampl. coll.}, 7:1085.

\textsuperscript{86} \textit{SdeC}, pp. 287–99 for what follows; the political action is treated best in Lehoux, 3:108–15, 144–70, 192–232.
gnacs and Burgundians mobilized their armies, the Paris government was in between, and Simon found himself in mid-September in the strange role of the crown's envoy to his patron Berry, trying to avert war. The Peace of Bicêtre, on 2 November 1410, provided for peace and a neutral (actually bipartisan) government, in which Simon was a leader. But the arrangement collapsed in the summer of 1411, when Charles of Orléans demanded that Jean the Fearless be punished for Louis's assassination, and when Jean took up the *diffidacio* on 13 August. Paris was taken over by the Burgundians, and Simon's role there was over. In mid-August he moved to Rheims.

He had found time even in 1410 for a trip to Loudun and Poitiers to take care of his affairs and provide for the purchase of more property, and we shall see that he had definite plans to return home for good in the near future. Meanwhile, however, Rheims was there to provide the challenges and opportunities that were his natural environment. He had begun at once, in September 1409, to arrange a complicated agreement with the heirs of his dead predecessor, Guy de Roye, who had left a large sum of money to establish a library and, above all, to endow a "Collège de Reims" for students from that region at the University of Paris. Simon agreed to implement the bequest on condition that he get 2,000 *livres* for himself as archbishop and 5,500 for necessary repairs and replacement of inventory; 5,000 would finance the college, 1,200 would go for the library, and 2,000 would remain for Guy's chief heir Mathieu. Of course nothing could be done as long as Simon had to work in the Paris government, and the 5,000 for the college were deposited in the treasure of Notre Dame in Paris. At the same time Simon entered the lists against the chief archdeacon of Rheims, Cardinal Amadeo di Saluzzo, who had the right to a yearly pension of 1,115 gold francs from the archiepiscopal revenues—this by virtue of an earlier composition, similar to the Poitiers case we have already noticed, in which the archdeacon had given up rights of jurisdiction and advowson. As early as August 1409 Simon had ordered his officials to demand that dignitaries of the see take oaths of fealty and homage to him in his capacity as archbishop, and had ordered the confiscation of the benefices of those not swearing, one of whom

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87 Poitiers, Archives Départementales de la Vienne, G 257; Paris, BN, *ms. lat.* 18378, pp. 543–51.
was Amadeo. The result was of course one of the protracted lawsuits that Simon lived by; the decision eventually went against him, but with the result that he took the Guy de Roye money from Notre Dame on 29 July 1411—as we have seen, his role in Paris was now over—and sent it to the papal curia to be used, not for the establishment of a college but for settling his case with Amadeo. Simon's accumulated debt of more than 6,000 francs was all but discharged—400 francs still remained—but of course the pension itself remained in force, to plague his successors. As for the college, Simon claimed that he had provided the agreed-upon yearly income in the form of revenues and rentes from a whole package of ecclesiastical properties; Mathieu de Roye, however, charged that in fact nothing had been provided and it was all a fraud. We are reminded of the Touffou affair and the case of the Poitiers chapter and its "Clementine" privilege, and perhaps the main impression to be retained would be that of an inveterate manipulator ready to use whatever means would achieve his goals—precisely the sort of man to shape the via cessionis into its coercive form, to put together the canonistic arguments for deposing as heretics two perfectly orthodox popes, and then to bring it all off after fifteen years of relentless effort.

And yet—it is Simon's charm that there is often an "and yet" in his doings—his tenure of Rheims was by no means disadvantageous to the see. He not only carried through the library project but improved on it by having a separate building built for it, and by making important gifts of his own. The College of Rheims was somehow founded anyway. Archiepiscopal rights were not only routinely pursued in the law courts, as they perhaps would have been in any case by the legal staff, but were pursued with a diligence that earned commendation later on. And when Simon found a thirteenth-century canon Guillaume de Cramaud in the cathedral's necrology, he claimed him for a kinsman and endowed commemorative masses to follow the day after those that Guillaume had endowed. There were also important gifts of vestments, jewels, and ornaments. When the time came for him to leave, at the end of December 1412, he could feel that he had done well. His heart, however, was elsewhere, and that was why he left: he attended John XXIII's Council of Rome and arranged to have himself made a cardinal, finally, and to exchange Rheims for Poitiers. Both were done on 14 April 1413, and on 12 May Simon was formally named Cardinal Priest of San Lorenzo in Lucina, with the more familiar appellation of "Cardinal
of Rheims." Poitiers was held as a commendatory see. Remaining in Rome long enough to lose books and other possessions when the city was taken by Ladislas of Naples, 8 June, he then went directly to Poitiers. It is something of a shock to realize that he must have been about sixty-eight years old, with ten years of life to come, and even more surprising to find that there were still public duties for him to discharge in his usual energetic style.

Some of these duties were related to the Council of Constance, which Simon wanted to think of as simply the continuation of Pisa, but which turned into something else. In 1414 he wrote a work addressed to the Emperor Sigismund, urging him to reject the claims of Gregory and Benedict, and to recognize the papacy of John XXIII. In February/March 1415 he prepared to attend the Council, but decided not to after learning of John XXIII's flight from Constance on 20 March; uninterested in the big issues debated after that, he remained away until the Council took up the deposition of Benedict XIII and the election of a new pope. He was there from 28 March 1417 to January 1418, contributing not only his vote to the papal election of 11 November 1417 but also a short treatise advocating the electoral scheme that would in fact be followed. Otherwise his public actions were not important; Berry had died in 1416, Paris was turbulent and in 1418 was occupied by the Burgundians, and Simon's sphere of action was restricted to his home base of Poitou.

Here there was much to occupy him. Renaud II of Montléon and a band of his kinsmen and clients occupied Touffou in December 1417—Simon had not yet returned from Constance—and expelled Jean and eventually Orable; it took a great deal of legal action and no doubt influence to get Renaud out in 1419. He at once began a lawsuit to reverse the agreement of 1387 that had disinherited him, and Simon could perhaps foresee Renaud's eventual success—it would come in 1429. But he would not have cared too much, for Touffou was meaningless without a Cramaud dynasty to hold it. We have noted Jean's failure in this regard, and it would seem that he disappointed his uncle in other ways as well, to the point that Simon revised the original family compact and took over full proprietorship

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89 *SdeC*, pp. 301–03, for Simon and the Council of Constance.
90 *SdeC*, pp. 304–23, for this last segment of Simon's life.
of the properties that had been bought with his money in the names of Pierre and Jean. Perhaps at about this time he tried to provide for an heir by arranging with a grand-nephew Pierre Tison (son of Jean's sister Jeanne) to bear the arms and name of Cramaud, with Simon providing funds to create the appropriate "estate." But Pierre died young and Simon made no other such efforts. Instead he concentrated on getting as much revenue as he could from the benefices that a papal privilege had allowed him to accumulate, as a cardinal, and he poured what money he had left into chantries and other commemorations. Some of these have already been noted; there were a good many more, the most important of them being a foundation of 2 July 1421 to provide monthly commemorations for himself at the high altar of Poitiers cathedral, along with responsories for his soul in front of his tomb in the choir, with the music-master and choristers taking part—the whole endowment cost about 1,000 livres. All in all, by the time of his death on 19 January 1423, he had established a massive prayer-industry at altars all over France, producing not only the expected benefits for his soul but also the continuing entity of an "estate" that would have a destiny of its own. In the same spirit he made a will that restricted Jean de Cramaud's full inheritance to only a few properties; the rest would be his only for his lifetime, after which they would pass to the bishops of Poitiers. There were other dispositions in the will—for the funeral, for still more commemorative foundations, for some other relatives—but Jean was particularly provoked by the ones mentioned, and he kept after Simon even on the latter's deathbed, to get him to change the will in Jean's favor. As far as we know he did not, but Jean kept the bishops of Poitiers out of their rights and succeeded in passing on the disputed properties to his own heirs, so that traces of a Cramaud presence—all of them due uniquely to Simon's original accumulation—continue to appear for many years. His tomb, destroyed by the Protestants in 1562, also managed to generate an afterlife of estate, inasmuch as the commemorative services continued to be performed at its site, and we are told that even into the nineteenth century the choirboys of the cathedral, after their ordinary chants, moved to the site of Simon's tomb and finished their tour by saying, "Dieu fasse grâce à M. de Cramaud!" And the carved inscription of 1405 recording the erection of his tomb and of the choirboy foundation may still be seen in the choir of the cathedral.
§ 3. The Argument of the Treatise

The political function of Simon de Cramaud's *De substraccione obediencie* was to influence what counted as public opinion at the time in favor of total subtraction of obedience, which involved the repudiation of papal authority by the political community for the purpose of ending the Schism. As a university-trained canonist, Simon naturally used the form of a *questio*, which called for the canvassing of all possibilities and all possibly relevant authorities; the principles of scholastic literary composition did not encourage economy. The same can be said for the principles of legal composition followed by jurists and practicing lawyers: arguments were multiplied and texts were cited with every conceivable rationale that might relate them to the point being made. It is all the more striking, then, that Simon's treatise moves as purposefully as it does, never losing its grip on the reader but rather carrying him inexorably on to the subversive conclusion. The politician, used to speaking to the point in meetings of councils, tended to compose his arguments as straight lines leading clearly to the desired ends, a project that required considerable profundity to make the lines straight, since what was at issue was nothing less than the composition of authority and power in the church. With all parties insisting that their pope was the true one, the argument whose point of departure lay in the facts of the Schism had to move to validate subtraction of obedience even from an unquestioned single pope, so that the actual situation could appear as a special case within this frame.

That Simon could even entertain such a project was due to the existence of a canonistic *communis opinio* developed over the preceding two centuries, which defined precisely the nature and limits of the papal *plenitudo potestatis* as a legal quality. Brian Tierney's *Foundations of the Conciliar Theory* shows how the canonists worked in this sense by virtue primarily of their concern to define the rights and interests of the particular church corporations—cathedral churches, collegiate churches, monasteries. Each such corporation, conceived of in terms of Roman law, had its legal *status*—its interests, rights, powers, properties, and structures. The bishop or other head of a church corporation was obligated to preserve its *status*, which came down to the welfare of the corporation, its supreme interest. Its head was the "procurator" of its *status*, not its owner or discretionary ruler, and if the head was delinquent, the corporation had both the right and legal capacity to safeguard its
status against him. Similarly, the whole Roman church had its status, the status universalis ecclesiae, which the pope was obligated to preserve. Clear enough in Decretist writings, in which “the necessity to preserve the status ecclesiae was always presented as imposing a limit on papal authority,”91 this criterion was formulated even more categorically by the decretalists, and Simon could cite Innocent IV and Hostiensis, as transmitted by Johannes Andreae, for the principle, “If the pope should command anything that would presumably disturb the status of the church, or that would give rise to other evils too, then he should not be obeyed.”92 Simon’s most profound line of argument was based on this position, for he could claim that the contending popes’ respective claims to exercise the papal office in fact perpetuated the Schism, therefore should not be acknowledged by obedience. The question of legitimacy, which pope was the true one, a question deemed all-important by each papal contender but excluded from consideration by the French program, was thereby pushed aside. At the end of his treatise Simon could make the point tersely by remarking that St. Peter himself would be obliged to abdicate in a similar schism, and could be coerced by subtraction if he refused.

The canonistic communis opinio also drew on a theological tradition, explored by Ludwig Buisson in his Potestas und Caritas. Die päpstliche Gewalt im Spätmittelalter. The key concept here was caritas in the obligatory sense given it most influentially by St. Augustine; for this Christian duty was superior to all legal constructions, including the papal plenitudo potestatis. Scandalum, the offense against caritas, was something not even a pope might cause. This consensus too figured as a base on which Simon’s argument rested: “Even a true and undoubted pope is not to be obeyed but rather resisted if he does anything that notoriously scandalizes the church or works to the peril and subversion of souls.”93 Persistence in their claims by the two rival popes of course did just that—insofar as “the church” was defined as the totality of Western Christendom rather than, in papalist terms, as the body in solidarity with the true pope;

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92 The text of the treatise, at n. 125. References to the treatise in the following discussion will not be footnoted if they can be readily located. There is an English translation of the treatise in SdeC, pp. 331–56, and an analysis of it on pp. 178–206.
93 The passage is part of the series of suppositions at the beginning of Part 2.
and Simon's whole treatise depended on just this former definition. It is noteworthy that while Tierney does not explore the caritas-scandalum line of development, and Buisson does nothing with the corporatist tradition based on status ecclesie, Simon embraced both with no sense that they were anything but complementary and indeed largely coincident. He could therefore cite the example of scandal given by Pierre Bertrand, which was also an example of damage to the church's status—the case of a pope who would alienate church property by giving it to his relatives. It was in this context that Simon cited the glossa ordinaria on Dist. 40, c. 6, v. "Si papa," in which the canon's statement, that a pope's immunity to earthly judgement does not apply if he is a heretic, is amplified by the assertion that a pope can be judged for any crime in which he persists, if it is notorious and if it scandalizes the church. The rationale here was that persistence in such a crime was contumacy, and "contumacy is heresy." The sense of damage to the status ecclesie lurks behind this gloss insofar as a criminal pope would not only scandalize the church but also damage it, by the scandal itself but also in other ways. More significantly, the corporatist tradition dealing with status allowed the canonists to develop ideas about just how the church could act to judge its delinquent head. Tierney sees conciliar theory as the canonists' answer, and Simon de Cra-maud would see it so too when the need was thrust upon him in 1398, as noted above, but in the treatise he opted for action by the secular powers within the church, a solution no doubt suggested to

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94 Buisson seems not to appreciate the full import of the term. Thus, after citing Innocent IV's sentence justifying disobedience to a pope whose command was likely "to disturb the status ecclesie" (the passage relayed by Simon as in n. 92 above), Buisson comments, "In der Wendung 'statum ecclesie perturbari' ist im Geist der Zeit eine schwere strukturelle Veränderung der Kirche zu verstehen" (Buisson, p. 262). In fact, as explained above, the meaning was much more general—including, in Congar's terms (as cited in n. 91 above), "le bien général, la santé, la prosperité et la paix de l'Eglise."

95 See n. 120 to the treatise; cf. Buisson, pp. 183-87.

96 The equivalence must be understood in legal terms: a heretic was one who persisted in an officially condemned error, so that he was condemned not for his error but for his contumacy. As John Hus put it, referring to the Archdeacon, Huguccio, and Innocent IV, "maior excommunicacio propter solam contumaciam est ferenda"—in Super IV Sententiarum, ed. V. Flajshans (Prague, 1904), p. 612. The glossa ordinaria makes the equivalence convertible, presumably because contumacy in any case presupposed a rejection of the church's judicial authority.

him by his experience of the facts of public life in France, where
the church had already come under royal lordship to a significant
degree. It would require a more expert knowledge of late-medieval can-
on law than the present writer has to assess the quality of Simon's
work with the tradition, and to determine the influences on his
thought. The treatise itself provides one key by its incessant citation
of the standard repertories—the glossa ordinaria on the Decretum
and Decretals, the commentaries of the Archdeacon, Johannes An-
dreae, Henricus de Bohic, and others—and we can suppose, gener-
ally, that Simon must have been au courant of the canonist works
that the Schism itself had generated, and that he must have retained
even in the years of his political career a good deal of what he had
learned as a student at Orléans and what he had professed, however
briefly, at Paris. We note also that he referred more than once to
Philip the Fair's "subtraction" from Boniface VIII, and that manu-
scripts of the works produced in that controversy were being read
and copied in Simon's time; perhaps he had even read the work of
Guillaume de Nogaret, who had developed canonistic arguments to
show that Boniface was a heretic, that since his heresy was notorious
he was de jure no longer pope, that he was therefore deprived of
all papal power and was subject to deposition by a general council
to be convened by the king of France—all of which is more or less
identical to the argument of Simon's treatise. At the same time we
may observe that in the years from 1392 on, the University of Paris's
theologians expressed quite savage views pointing in the same di-
rection. Jean Gerson argued in December 1392 that a pope who
refused to resign for the common good was guilty of mortal sin;
John of Moravia, a student in theology, preached—according to
Simon—that both popes should be killed; the University of Paris
letter of 6 June 1394 asserted that a pope refusing to accept one of
its three ways of union was a schismatic and heretic who merited
death. Other such statements could be cited, and Simon must have
been familiar with all of them; perhaps they too guided him in his

64 SdeC, pp. 117–19, 191–98, 227 f., with references to the literature.
65 For Nogaret see Richard Scholz, Die Publizistik zur Zeit Philippes des Schönen
und Bonifaz' VIII. (Stuttgart, 1909), pp. 369–75; cf. Jean Rivière, Le problème de
l'église et de l'état au temps de Philippe le Bel (Paris, 1926), p. 126. Examples of
Simon's references to the episode appear in AN, J 518, fol. 508v, and BduC, p. 217'
(where the word "subtraction" is used); see SdeC, p. 179, for texts.
work with the canonistic tradition. It would however be a mistake to let such speculation about possible influences blur the picture of Simon as a bold, masterful publicist, in full control of both his intentions and his resources. While we are most interested in the subtractionist argumentation of Parts 2 and 3, we must nevertheless approach them by way of Part 1, which is nothing less than a full compendium of the high-papalist case against subtraction. Here too there were sources and influences; the point would be that Simon indeed opened his mind to them and presented the contrary case in all of its strength, omitting no significant argument that had been or would be advanced by Benedict XIII’s partisans. The man who wrote Part 1 and then went on to oppose and refute it was obviously aware of the full ecclesiological profundity of the issue between the two positions, and if the main thrust of the treatise seems subversively anti-papalist we must bear its political purpose in mind; the later refutations of Part 1 in the marginalia of ms. A (reproduced in Appendix I), which insist that the purpose of subtraction and the via cessionis is precisely to restore the full height of papal authority, allow us at least to imagine the conservative prelate beneath the radical politician.

The general principles at the bottom of the treatise’s argument have already been outlined in the above discussion of the canonistic communis opinio, status ecclesie, scandalum, and the doctrine of contumacy as heresy. Theologians tended to shy away from this last notion and some fourteenth-century authors rejected the gloss as “false,” the equivalence as only “metaphorical.” Simon naturally followed the affirmative tradition, above all in his insistence on the special case in which persistence in schism was formal heresy. While

101 Pierre de la Palu, in his Tractatus de potestate pape of 1317, written in defense of papalism against Parisian episcopalist ideas, wrote, “falsa est glossa in predicto capitulo, St papa, dicens quod de quocumque alio crimine notorio papa, si est incorrigibilis, potest accusari et amovere, quia contumacia est heresis, et contumax dicitur infidelis. Quia hoc est non proprie sed solum metaphoricum, sic et simonia dicitur heresis”; the passage is quoted here as taken over one year later by Guillaume de Peyre de Godin: W. D. McCready, ed., The Theory of Papal Monarchy in the Fourteenth Century. Guillaume de Pierre Godin. Tractatus de causa immediata ecclesiasticæ potestatis (Studies and Texts, 56; Toronto, 1982), 155. Pierre Bertrand picked the passage up in his apparatus on the Sext and Clementines, whence it was quoted by Benedict XIII’s chief apologist Pierre Ravat in his marginalia on a copy of Simon’s De substractione: ms. J in the present edition, fol. 104v. Ravat used the same citation in his speech at the Third Paris Council: BduC, p. 7, ASV, Arm. 54, t. 21, fol. 221v; see SdeC, pp. 200 f.
the canonistic authority here was too venerable to be rejected out of hand, this sort of heresy could seem to lack the full import of doctrinal heresy. Simon, however, insisted on a full equivalence in the legal sense, so that he could develop his argument for total subtraction as a canonistic remedy against a heretical pope—namely a pope who rejected the *via cessionis* and thereby convicted himself as a schismatic because he was keeping the church in schism.

The application of all this to the two contenders in the Schism was developed on the basis chiefly of two canons, *Si duo forte contra fas* (Dist. 79, c. 8), and *Nisi cum pridem* (X 1. 9. 10). The first, a rescript of the Emperor Honorius in 420, provided that in case of a conflict leading to the election of two men as pope, neither should remain in office, but there should be a new election. There were reasons in the canon and the glosses on it to suggest that it might well not be applicable to the Great Schism, especially after almost twenty years, but Simon brushed these aside and insisted that the canon still applied, because Johannes Teutonicus had interpreted it as meaning that "if scandal be feared then both elections are to be quashed," and because there were canons saying that keeping a benefice unjustly was equivalent to getting it unjustly. *Si duo* had been Simon's big gun already at the First Paris Council of 1395, precisely because it was the clearest possible validation of the French program of terminating both papacies without judgement between them, and that was why he clung to it in his treatise. At the same time he evidently felt the need to bring the argument down to particulars, and here he relied on *Nisi cum pridem*, a decretal of Innocent III providing that a bishop might refuse an appointment if the people of the diocese were maliciously set against him, and

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102 The treatise, at notes 206, 207, 208.
103 Even Simon's ally in subtraction, the Gallican Pierre Leroy, refused to associate himself with this position; see BduC, p. 208; cf. Simon's insistence that the heresy of schism was even more damaging than that of doctrine, in the treatise just after n. 210. In his "Epistola de scismate" of 1383/84 Gerard Groote remarked, "Iuriste loquuntur promiscue de heresi et de scismate," and noted his own reservations, "Michi videtur quod scisma est magis facti, heresis est magis in mente divisio et discessus"—in Georgette Epiney-Burgard, *Gerard Groote et les débuts de la dévotion moderne* (Wiesbaden, 1970), p. 178 n. 27.
104 Gratian had noted that *Si duo* did not apply when only one of the elections was irregular; the *glossa ordinaria* required a preliminary judgement of irregularity by a general council; for examples of the canon used against the *via cessionis* see the treatise, Part 1, at n. 74, also the papalist work in ASV, Arm. 54, t. 20, fol. 187r, where the regularity of Clement's election is insisted upon.
that he might be allowed to resign his see if necessary to avoid a grave scandal. Innocent IV had then commented that to avoid scandal a bishop might not only be allowed to resign but forced to do so, if the welfare of the church in question could be preserved under another—for "public utility is preferred to private." At this point in the treatise we see the cutting edge of corporatist ecclesiology, which saw no crucial difference between the status of a particular church and that of the universal church, and regarded the head in each case as fundamentally the "procurator" of that status; hence Simon could simply take the canon law of episcopal benefice-right and apply it to the papacy.\textsuperscript{105} We may observe that this nullification of the peculiar status of the papacy corresponded to the actual homogenization of all rights as property rights that was fundamental to late-medieval thought. Again and again, for example, we find Simon (and his contemporaries) using phrases like "have a right to the papacy," "possess" the papacy, "to keep that part of the papacy which he possesses," to enjoy "peaceful possession" of the papacy—the quoted words here being technical terms in the law governing benefice rights.\textsuperscript{106}

It is revealing to see that in his treatise and several times thereafter, Simon misquoted the glossa ordinaria on Dist. 15, c. 2, which stated that the pope could not "destroy statutes of councils about the articles of faith"; Simon's version was that "in matters of faith or matters which concern the status of the universal church, the pope is subject to a council."\textsuperscript{107} There were in fact other canons and glosses claiming the superiority of a general council to the pope, and not only in matters of faith—it was a generally accepted idea no matter how this or that author might modify it;\textsuperscript{108} Simon did not have to misquote the gloss in question. That he did so suggests how strongly his mind was working to generate his desired image of a

\textsuperscript{105} See Tierney, Foundations, pp. 142-49, 184-90, for the canonistic tradition in this sense; see the treatise at notes 63, 132, 307, 421. The bishop as procurator of the public utility of his church is discussed by Tierney, Foundations, pp. 96-131; Simon used the word in his speech of 1406, BduC, p. 120.

\textsuperscript{106} The treatise, passim; see SdeC, pp. 8-11, 187-89.

\textsuperscript{107} The treatise at notes 75 and 257; see the marginal note in ms. C at this point, in Appendix II; SdeC, p. 190 n. 33.

\textsuperscript{108} Tierney, Foundations, p. 53 n. 1. Even Pierre Ravat, who held that a council could judge the pope only in matters pertaining to the faith or sacraments, in another context said, "If the king wants the pope to be judged or proceedings to be taken against him, let the king work to convocate a general council!" (BduC, p. 54; ASV, Arm. 54, t. 21, fol. 221v). See SdeC, p. 202.
papacy subject to the universal church. For it was this doctrine that justified disregarding the question of legitimacy, and noting that from the viewpoint of the universal church—which could be presented imaginatively as the unity of both obediences—“it is clearer today that both are schismatics than has ever been clear about one of them; . . . this is undoubtedly clearer to the universal church than which of them is the true pope and which the intruder.” It was the mere existence of two papacies that was scandalizing the church and damaging her status, and these effects justified not only coerced abdication and subtraction of obedience, but also deposition. The only sound counter-argument had to begin by rejecting this sense of the subordination of pope to church, and it was duly developed by Benedict’s chief spokesman, Pierre Ravat, speaking against Simon’s treatise at the Third Paris Council. Agreeing with Simon’s basic canons, but putting the point in an opposite sense, Ravat said that “in those things that are not against the general estate of the church, or natural or divine law, the Roman pontiff is to be obeyed,” and “it is certain that the papacy is not lost except by infidelity alone.”

Here Ravat noted his own and others’ rejection of the glossa ordinaria on Si papa. But the main point was put in a refutation of Simon’s reference to the canon Ego N. (X 2. 24. 4), which prescribed the bishops’ oath to be faithful to St. Peter, the Holy Roman church, and the pope, textually in that order; Simon argued in the treatise that the oath to the church was therefore primary, that to the pope was of subordinate force. Ravat advanced the papalist doctrine—he made strong use of Augustinus of Ancona—that the oath to the church was an oath to the pope, inasmuch as the head of a church represented its body—“the term ‘Roman church’ in the oath means the pope.” It was with the same ecclesiological apparatus that he also refuted the Gallicanism of partial subtraction, for according to Augustinus of Ancona the bishops had no independent position vis-à-vis the pope, who “personally or by commission could do all the things in a bishop’s diocese that the bishop could do, or a priest in his parish, and still more.”

109 ASV, Arm. 54, t. 21, fol. 221v; see SdeC, pp. 199 f.
110 See n. 101 above.
111 ASV, Arm. 54, t. 21, fol. 232v; BduC, p. 51; cf. notes 22, 410 to the treatise, and see the texts and references in SdeC, p. 201. In his treatise cited above, n. 101, Guillaume de Peyre de Godin wrote (p. 295), “de potentia absoluta posset papa ecleasiam regere per episcopos legatos annuales missos ad tempus ad provincias et dioceses.”
authorities and rationalities, one chose as one listed, and Simon's treatise allowed those making the anti-papalist choice to believe that they were right.

Alongside the argumentation based on the corporatist ecclesiology of the canon lawyers, which we have just outlined, Simon's treatise developed one other line of thought of basic importance, namely that it was up to the kings of Europe to implement the via cessionis and enforce it on the popes. This also had a corporatist dimension, inasmuch as it presupposed the definition of the church militant as the congregation of the faithful, including the laity as well as the clergy. The princes who were the leaders and representatives of the laity were therefore in the church, a view that went back to the ideas in vogue before the eleventh-century reform, and that allowed Simon access to all the canons of the early ages that registered the role of secular power in the church. The most programmatic, one used lavishly for their own purposes by Wyclif, the Hussites, and other reformers of the time, was Isidore of Seville's Principes seculi (23. q. 5, c. 20): "The princes of this world sometimes hold the highest offices of power within the church in order to . . . command by the terror of discipline what priests are unable to accomplish by the word of teaching. . . . Let the princes of this world know that they must render an account to God for the church whose protection they have taken over from Christ." It was true, as Ravat for example argued, that both old and newer canon law normally supposed that secular intervention in the church would have been requested by prelates and would therefore be in harmony with the church's liberty, but Simon found canons that allowed for action even without a request, and also argued that in the special case of the papacy there could be no judicial recourse because the pope had no ordinary superior (the conciliar theme is notably absent at this point). "While one may proceed judicially against him who has a superior, by going before his judge, one has to proceed by direct action [de facto] against those who seek to usurp the papacy against the sacred canons." Hence Simon's technique was to apply to the kings all the canons that spoke about action by ecclesiastical judges, to interpret traditional formulas of dualism, like Duo sunt

112 See the treatise, at notes 50 and 141, for Simon's "ecclesia militans nihil aliud est quam congregatio fidelium," the latter case in a context justifying royal intervention; cf. Sdec, p. 192; Tierney, Foundations, pp. 41 ff., 184–41, 203.

113 BduC, p. 54.

114 The treatise, at notes 162, 251.
and Innocent III's sun-and-moon figure, as allowing the secular powers to act when the spiritual ones were not “well ordered,” and by the same token to apply to the kings a number of Roman-law provisions for judicial action that had found their way into the canon law as analogues to ecclesiastical judicial practice.\footnote{The treatise, lines 1814–57. In 1406 Simon argued that the Paris councils of the clergy, summoned by the king and meeting under royal presidency, enabled the king to exercise jurisdiction in ecclesiastical matters; see the texts in SdeC, pp. 117, 193 f.} Similarly the examples of history, some of them taken into the canon law, that showed Roman emperors exercising their powers within the church and against popes were applied to the kings without hesitation; for if the kings did not have the special qualities of Roman emperors vis-à-vis the papacy, they were nevertheless emperors in their realms, as contemporary formulas put it, and, like the emperors, were exemplars of the “public powers” that had the mission of safeguarding the public welfare.\footnote{See the treatise at n. 351, and see Simon’s glosses on the Toulouse letter (Appendix V, No. 15), AN, J 518, fol. 549v, for the formulation that those making a schism were to be coerced “per publicas potestates”—the text is quoted from Decretum, 23. q. 5, c. 48, a letter of Pope Pelagius I (556–61); see SdeC, pp. 191–98.} Much in this obviously depends on the more or less implicit assumptions governing the thinking of Frenchmen about such matters—no other polity generated the same sense of its omnicompetence and that of its kings—and it may be said that Simon’s treatise developed its European perspective of a concert of public powers to end the Schism by projecting the French image onto Europe at large.

Neither the conciliar ideas in the treatise, which derived Benedict’s obligation to abdicate from, \textit{inter alia}, the decisions taken at the First Paris Council and a subsequent council of prelates of Castile, nor the explicit provision for a representative general council to implement the \textit{via cessionis}, which Simon would advance at the Third Paris Council, carried any burden of conciliarism in the deeper sense, as a program for reform of the church and the church’s constitution. But it would be a mistake to draw too sharp a contrast between the constitutional conciliarism of Constance and Simon’s depositionary conciliarism which provided the program for the Council of Pisa. Both were erected on the same foundation, the corporatist ecclesiology of the canonists, and it is therefore all the more instructive to see how narrowly political were the aims of Simon’s extremely broad and even masterful deployment of the ba-
sic canonistic tradition. What has been said elsewhere in this intro-
duction about Simon’s mentality as a careerist and politician is prob-
ably enough, along with a reference to his politician’s sense of prac-
ticality, to explain why his conception of the universal church
as a community capable of political action came down to the idea
of a concert of Europe’s kings and other public powers. The next
century would show that history was on his side, even though mod-
ern historians often find more to excite their interest in the theories
of constitutional conciliarism.

At the same time we may remark that while Simon was essen-
tially a politician and careerist, he was also an uncommonly bright
one, with an education and perhaps intellectual interests that had
familiarized him not only with canon and Roman law, but also with
a good deal of historical literature and the more fashionable belles-
lettres of his time. In the present treatise he referred to John of
Salisbury’s *Policraticus* and the chronicles of Martin of Troppau and
Bernard Guy, as well as several other non-canonistic works. In other
works we find these and more—the *Speculum historiale* of Vincent
of Beauvais, Boccaccio’s *De casibus virorum illustrium*, the chron-
icle composed by Hélinand de Froidmont, etc.\(^{117}\) When he wrote to
the Archbishop of Canterbury he could cite many cases of collab-
oration in the past between the French and the English, ranging
from Alcuin to Thomas Becket and including the French gift of a
whole new dynasty in 1066.\(^{118}\) When he wrote to King Henry III of
Castile he adorned his work similarly with references to the ortho-
doxy of the Visigothic kings of Spain as praised by Isidore of Seville,
the progress of the Goths in civilization according to Guido and St.
Jerome, the wisdom of the Spaniard Seneca, the glories of Galicia
in resisting the Saracens, and so on and on.\(^{119}\) Most of his works are
also studded with more or less usual references to classical authors,
and it would take a special study to determine how deep his learning

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\(^{117}\) *Paris, BN, ms. lat. 1475* (see Appendix V, No. 11), fol. 49r (Martinus, Vincen-
cius, Bernardus Guidonis), fol. 34r (“Bocacius in libro suo de casu virorum illustrium,”
re Pope John XII); Hélinand is cited in the letter to the Archbishop of Canterbury,
*Thes. nov.*, 2:1244 (Appendix V, No. 12).

\(^{118}\) *Thes. nov.*, 2:1242 ff.—e.g., “de Anglia inter ceteros Albinum seu Alcuinum
in Franciam venisse legimus, qui . . . Carolum magnum in omnibus artibus liberalibus
instruxit.”

\(^{119}\) *BN, ms. lat. 1573* (Appendix V, No. 16); e.g., fol. 34r: “Fugiat vestra magestas
. . . verborum lenocinia . . . et sui Yspani Senece sequens consilium. . . .” And, fol. 35r:
“Gallicia, in quo homines sic fuisset virtuosi leguntur, quod nec tune Visigothi nec
eciam postea Sarraceni eos sibi subicere potuerunt.”
went; the point here is that he had it available for display. A reference to Joachite prophecies currently circulating fits in with the picture, and so does a reference to Jean de Meun’s *Roman de la Rose* in a context of praise for the University of Paris—here it is hard to avoid the guess that Simon had followed at least some of the “débat” about that poem in Parisian literary circles at the turn of the century, and that the reference in question was his way of scoring culture points. But maybe it was more. Lacking any direct evidence for his personal life we cannot say whether he appreciated literature or merely used it, we can only observe that the former possibility, postulating the figure of a careerist and politician who was also a cultivated intellectual, would not have been anomalous, nor would it have been irreconcilable with Simon’s worldly ambition and practical ruthlessness in getting what he wanted.

§ 4. The Present Edition

Eleven manuscript copies of the *De substraccione obedientiencie* are known to the present editor. None provide a title; the one supplied here is more or less conventional and agrees with Simon’s own statements about the origin of the work, quoted above. I list the manuscripts and the sigla I give them:

- A Paris, BN, *ms. lat.* 14644, fols. 83r–103r
- B Paris, BN, *ms. lat.* 14644, fols. 277r–304r
- C Paris, BN, *ms. lat.* 1475, fols. 93r–128r
- E Paris, AN, J 518, fols. 227r–266r
- F Oxford, Bodleian Library, *Balliol College ms.* 165b, fols. 1r–52r
- G Pamplona, Bibl. Catedr. *cód.* 3, fols. 1r–47v
- H Rome, ASV, *Arm. 54*, t. 33, fols. 7r–36v
- J Rome, ASV, *Arm. 54*, t. 26, fols. 72r–117v
- K Rome, ASV, *Arm. 54*, t. 21, fols. 112r–185v
- L Basel, Universitätsbibliothek, *ms. A. V.* 15, fols. 95r–153r

120 “Et Johachim de scismate tune futuro scribens sic dicit . . .”—*ibid.*, fol. 33v. In the glosses listed in Appendix V, No. 11, fol. 52r, Simon praised the University of Paris for its long-standing defense of the faith against schism and heresy, “Unde viriliter reprehendit Johannem papam XXII errantem in materia de visione beata, et multis alios; de quorum aliquibus ponit exemplum Johannes de Magduno in libro suo de rosa, quando loquitur de illis qui conabantur facere secundum evangelium etc., ubi . . . universitatem commendat.”
A preliminary analysis showed two major redactional groups, the early CJ and the probably final EHKL, with GF preliminary to EHKL, B somewhere in the middle, and A apparently representing a very early text systematically improved by collation of a late one. D is a late copy of E, and F is a contemporary copy of G. A number of indications in the manuscripts as well as the substance of the treatise suggest that the work grew as its author added newly remembered or discovered authorities to more or less appropriate places in the margins of one or more manuscripts in his own possession; in some cases no doubt such additions were written on slips; from time to time a new copy would have been made incorporating such additions, but it would probably be wrong to imagine Simon de Cra-maud and his secretaries throwing away any old exemplars. In any case all of this activity took place in a rather short time—between late 1396 when Simon wrote the treatise and mid-1398 when the Third Paris Council fulfilled the treatise's program of subtraction of obedience and thereby made the treatise as such obsolete. Within this period there was only one major redactional jump, from the CJ version to what would become the final version for propaganda abroad, FG/EHKL; the changes have been discussed in § 1 above and dated to perhaps early 1397. But Simon seems to have been so continuously involved with his work that no copy in his possession was safe from written or dictated additions, some of which of course were destined to sterility. The following stemma and its subsequent set of proofs will make all this clearer:
The arrows indicate contamination; C' and C" indicate C before and after fol. 111v (see line 1720 of this edition).

The main lines of the stemma correspond to the groupings exemplified below on the basis of fairly decisive variants (D is omitted, as a copy of E, F as a copy of G):

- C':ABEGHKL 134 forte] om. C'
- BC':AEGHKL 630-31 fortalicia] fortalissima BC'
- 861 contra] unum foll. BJ; verum foll. C'
- ABC':EGHKL 897 negligere] quippe foll. ABC'
- 918 possunt] nec debent foll. ABC'
- 928 malicia] contumacia ABC'
- ABC'GJ:EHKL 207-08 iii° . . . Gen.] om. EHKL
- 397 possit] tr. ABC'GJ
- ABC'EGJL:HK 57 mortales] mortalitates HK
- 659 retinere] remanere HK
- ABCGHJK:EL 555 non enim] om. EL
- 1164-65 eodem modo] om. EL
- 1628-29 (see apparatus)
- 2466 advertenda] attendenda EL

Many more such examples could be cited, along with references to the redactional variations (as distinct from purely textual variants) that lead to the same major groupings. The case for a three-branched stemma rests on the lack of clearly erroneous readings common to ABC or AEGHKL.

The case for the contamination of B by u is based on a number of otherwise anomalous ACJ:BEGHKL divisions. Two cases even reveal the contaminator at work. At 1260 B's scribe began to copy his normal exemplar b, whose reading was similar to that of CJ; then he crossed out this beginning and introduced a large chunk of material absent in CJ but present in AEGHKL. Again, at 1224-26 B includes a paragraph present in all mss. except ACJ; but whereas in EGHKL the passage appears properly integrated after the last sentence of the preceding paragraph, in B it appears in the middle of that sentence. While these two examples might suggest that the contamination was redactional, consisting of the incorporation of marginalia, there are enough other cases to make us suppose that it was textual—that B's scribe had two mss. available for his work. For example:

- 113 quia] om. BEGHKL
- 937 eleccione] contencione A; concertacione CJ
- 1042 sumus] om. ACJ
The contamination of $c$ by $w$ at 142–400 is an inference from a number of $ABG:C'EHJKL$ divisions in these lines. For example:

142 quilibet] alius foll. $ABG$
319 bene] om. $C'EHJKL$
339 recte] om. $C'EHJKL$
361 quod] om. $ABG$
387 minoribus. Sed] $C'EHJKL$ insert a long passage; see apparatus.

The contamination of $A$ by $L$ is inferred from seventeen cases in which these agree against the rest, in defiance of stemmatic relationships. Thus:

823 ordinem] ea $BCECHJK$
892 ipsum] eum $L$, $A$ (in marg.: aliter ipsum)
1478 probatum] declaratum $A$; declaratum et probatum $L$
2242 remedium] om. $AL$
2460 pro] contra $AL$

The contamination may also account for about a half-dozen cases in which $A$ agrees with $C''EHKL$ against $BC'GJ$:

316 Sit] si $BCGJ$
1380 qui] quod $BCGJ$
1393 De] supra de $BCGJ$
2155 alibi ... propositum] om. $BGJ$
2195–96 deo ... audivit a] om. $BGJ$
2282 novem] octo $BCJ$

That the contamination in fact went in this direction seems likely from the circumstances of $A$'s origin—see the description below—and also from the variants at 892 cited above (and cf. the apparatus at 856); the next case might seem to point in the other direction but there are several passages where the scribe of $L$ indulged in similar pleonasms, perhaps the result of over-eager copying coupled with a reluctance to delete (cf. 987 in the apparatus).

As for $C$'s switch of exemplars, we note that from line 1720 the regular association of $C$ with $A$, $B$, and $J$ is replaced by the following groups:

$BJ$:ACECHKL 2562 regnicole] regni (then blank) $BJ$
$ABJ$:CEGHLK 1702 quod] nos foll. $ABJ$
2019 alios] nos $ABJ$
$ABGJ$:CEHKL 1720–21 et iste non est papa] om. $CEHKL$
$ABEGJL$:CHK 1733 narrant] om. $CHK$
$ABEGJKL$:CH 2853 qui] quicunque $CH$
The Present Edition

No stemma explains every grouping, and ours fails to account for, e.g., one BH, two AHK's, three CGJ's, etc.; but there are not many such. Moreover, our stemma like all others postulates the minimal number of lost copies needed to account for the surviving ones known to the editor; in our case we can be sure that there were a good many more.

The summary that follows is intended only to describe those features of each manuscript that may relate to the establishment of the text. Except for D, all are written in a hand contemporary with the treatise, namely one or another variety of French Gothic. E and G, both official copies, on parchment, are in the bastarda of the French royal chancery, rather lightly abbreviated; F seems similar but less formal, and some folios of C are of this sort. A, B, and L are in cursive hands, normally abbreviated, and the same can be said of H, J, and K, which however are also characteristic of the "libri de schismate." All but E, G, and a few folios of C are on paper. Several copies have letters or numbers indicating the sequence of arguments; useless for our purpose, they are ignored here and replaced in the text by a new set provided by the present editor.

A: Its codex, once the property of St. Victor in Paris, is a compilation of Schism material from 1378 through to the Council of Constance, including the acta of the Third Paris Council apparently in the hand of their author Guillaume de Longueil, who also wrote the text of A, at least from fol. 88v on. The text up to there, consisting of the introduction and part 1, has very elaborate marginalia refuting the anti-subtractionist arguments of part 1 (their text is in Appendix I below); these are in the hand of Simon de Plumatot, a University of Paris compiler and collector, but their content shows them to have been composed by Simon de Cramaud, during or right after the Third Paris Council. I owe the identification of the hands of Longueil and Plumatot to Professor Gilbert Ouy; see now his "Simon de Plumatot (1371-1443) et sa bibliothèque," Miscellanea codicologica F. Masai dicata, ed. P. Cockshaw et al., 2 (Ghent, 1979), p. 374. A's exemplar may thus have been one of Simon's working copies (cf. apparatus, at 2149-55, 2465), a guess bolstered by the fact that A combines an early version of the text with some of the later redactional additions (taken perhaps from L or its exemplar). The style of A, on the other hand, is the work of someone who cared more about literary charm than Simon did: there is no revision, but certain omissions and frequent transpositions of word-order suggest such care, since they are generally for the better.
B: It is in the same codex that contains A and seems also to have been copied from an exemplar in or close to Simon’s own collection. A number of extra or deviant passages (e.g., 720, 1062, 1262–70, 1283–85, 1306) are obviously authoritative and must have come from the author. The data for B’s contamination discussed above point in the same direction.

C: Its codex is one of a group (BN, mss. lat. 1462, 1469, 1470, 1471, 1472, 1475, 1479, 1480, 1481) designated in the catalogue as containing “tractatus de schismate” and originally put together at the court of Benedict XIII (like the comparable “libri de schismate” now in the Vatican archives). According to Léopold Delisle, Le Cabinet de manuscrits de la Bibliothèque Impériale, 1 (Paris, 1860), 486 ff., esp. 506 f., these codices passed from Benedict’s successor Clement VIII to the Cardinal de Foix, who also received Clement’s submission to Martin V; the cardinal gave them to his Collège de Foix in Toulouse, and from there Colbert brought them to Paris. C begins as a copy of the earliest version, in a single hand, with many more or less substantial glosses in part 2 showing either sympathy with the treatise or a neutral desire to amplify or criticize its battery of legal references (see Appendix II); but several glosses go counter to the treatise, and there are some hostile comments in a different hand. On fol. 111r a new hand takes over; on fol. 111v we see the first sign of C’s switch of exemplars; another hand begins on fol. 112r, where the glosses peter out; most of fol. 113r is blank, as are 113v, 114rv; the treatise resumes on fol. 115r in a different hand and in two columns instead of one; on fol. 121r there is a reversion to one column, and several more changes of hand occur before the end. Perhaps a codicologist will put it all together; meanwhile we surmise that C was begun in Paris, finished in Avignon, perhaps by or for someone whose own move represented a decision to support Benedict XIII. Since the glosses seem to be in the same hand(s) as the text, and at one point (799) seem to pass into the text, we can guess that the copying was done by a self-confident canonist who glossed as he went along.

D: Its codex and the sequel (BN, ms. lat. 1480A2) are a seventeenth-century copy of AN, J 518, which contains our E. D is therefore not collated.

E: It is part of a well-written, handsomely decorated parchment codex containing a number of Simon de Cramaud’s works, plus many documents of the history of the Schism and of France’s union program (e.g., copies of all the ballots of the Third Paris Council).
The codex ends with the University of Toulouse’s anti-subtractionist letter of 1402, together with Simon’s lengthy glosses refuting it and written, as we know, immediately on receipt of the letter (Valois, 3: 266 n. 2; the author of the anonymous passage quoted there is Simon). The volume was probably prepared at Simon’s order and from materials in his possession, as a politically motivated documentation of his causa for deposit in the royal archive. The hand is a good one of the royal chancery type but the scribe was not accurate. Simon’s continued interest in his text may be seen in the passage at 2661, unique to E.

F: The ms. is now in England but its codex was probably bought in Cologne—perhaps F had originally been sent to that region; see R. A. B. Mynors, Catalogue of the Manuscripts of Balliol College, Oxford (Oxford, 1963), where the codex is dated to the early fifteenth century and its hands are identified as all or mostly French. Cf. E. F. Jacob, Essays in the Conciliar Epoch (2d ed.; Manchester, 1953), p. 69 n. 2. F has been collated but is in principle omitted from the apparatus because it was copied from G; the proof follows:

At 116–20, 1074–80, 1123–28, 1183–86, 1188–89, F has in its text all the material that was added to G as marginalia. So do EHKL, except for 116–20, but F’s dependence is still closer. Thus where at 415 G omits “auctoritas” but leaves a blank space, F keeps the blank even while supplying a conjectural “totus.” At 655 G has “fiat” by mistake; F has “faciat” with the correct “faciat” written above. At 1105 F has skipped the length of a G-line (from one “phariseorum” to another) and added it in the margin. At 1188–89 G’s exemplar evidently had the reading, “eadem racione qui papatum retinet contra sacros canones,” as do ABCJ, and G’s scribe copied it, but it happened to begin a new page (fol. 20v); G marginator, coming to a similar set of words in the preceding passage at the bottom of fol. 20r, must have supposed that the quoted phrase had been omitted, for he wrote an equivalent in the margin of G at that point: “eadem racione qui contra sacros canones papatum vult retinere.” This marginal version, not the textual one, passed into w, for it is the form found in EHKL; F, however, has both forms of the same phrase, one evidently incorporated from G’s margin, the other from G’s text. This would seem decisive, along with the fact that F always agrees with G against the others, repeating, for example, all of G’s critical omissions—237, 369, 382, 1288, 1552, 1880, 1918, 1986, 2370–71, 2773, 2779—as well as G’s other variants.

G: Written in a fine hand on parchment by a careful scribe, with spaces left for decorated initials, and bound as a codex in itself, G was evidently intended as a presentation copy; its presence in
Pamplona indicates that it was sent to King Charles III of Navarre—see J. Arraiza, "Simón de Cramaud, su embajada a Navarra, y su tratado...", *Príncipe de Viana*, 18 (1957), 508 ff. But before leaving Simon's household it served as a model for at least one other copy to be sent abroad (F); its text moreover was destined to become standard—along with its marginal additions and some other new material it passed into *EHKL*. Since G has a number of mistakes that do not appear in *EHKL* (see the recension of F above), it cannot have been their ancestor; but its marginalia must have been duplicated in or from its exemplar v.

*H:* Like its close relative K, H is a copy in the "libri de schismate" of an exemplar of the final redaction, perhaps one of those sent to Avignon by Simon. It is textually of little value to us except in the occasional correction of E. For the "libri de schismate," a many-volume collection of copies of Schism materials made by Cardinal Martin de Salva and Pierre Ravat, chiefly in the 1390's, see Michael Seidlmayer, "Die spanischen 'Libri de Schismate' des Vatikanischen Archivs," *Spanische Forschungen der Görresgesellschaft*, Reihe I, 8 (1940), 199–262; and *idem, Die Anfänge des grossen abendländischen Schismas* (Münster, 1940), pp. 195–205. H presents much of the last part of the treatise in a disordered sequence, as noted in the apparatus.

*J:* Another "libri de schismate" copy but of the early redaction and hence valuable. It is glossed heavily in the hand of Pierre Ravat and "corrected" by reference to y, which Ravat seems to have regarded as a more authentic version. So too Martin de Salva designated the J text merely as "allegaciones alicuius canoniste" and noted (fol. 72r): "de isto tractatu videtur extractus tractatus Patriarche, qui incipit Nunc reges intelligite"—a confusion due to the fact that J (like C) has a different beginning. A similar note by Salva at the end (fol. 118r) refers to another ms. of "Nunc reges" which is neither H nor K—perhaps it was the now lost y. In any case J's contamination or correction by y poses no editorial problems, for the new material was added in a distinctive hand and often marked as such.

*K:* A "libri de schismate" copy similar to H but generally more accurate. There is a list of "dubia" following the treatise, fols. 187r–189r; their numbering corresponds to the paragraph numbers in J, not those of K.

*L:* The codex is a miscellany with only a few items relevant to the Schism—an anti-cessionist tractate by Petrus de Muris, Konrad
of Gelnhausen’s *Epistola concordie*, Salutati’s letter of 20 August 1397 to Margrave Jobst of Moravia, and Simon’s treatise; the other items range over the whole span of the later Middle Ages. The scribe of *L* or *L*'s exemplar may have referred to another exemplar at least once: at 100 where all the other known texts have “revocacionibus,” *L* has “renunciacionibus alias et melius revocacionibus”—cf. also the cases cited above for *AL* contamination. An additional authority unique in *L* at 1260 was evidently a marginal note in *L*'s exemplar, and a long addition at 1128 must have had a similar origin—one supposes that Simon had used *L*'s exemplar for recording his new ideas. Whether the same may be said about the more than three dozen cases where *L* alone has the full or correct form of reference to authorities may be doubted: one does not imagine Simon’s memory suddenly improving, nor his taking time out from his affairs to look things up, and it would seem more likely that a knowledgeable scribe introduced the improvements—a guess supported by the case at 2806–07 where a title from the Sext appears in *L* right after the chapter and must then be eliminated further on where all the other mss. have it: this seems like the work of a scribe adding as he moved along. Finally, on fols. 90r–94v of *L*'s codex there is a contemporary compendium of the treatise’s contents.

When A. E. Housman wrote that textual criticism is “the science of discovering error in texts and the art of removing it,”¹²¹ he was not thinking of a text of legalistic propaganda built up by spasmodically accumulated authorities and written by a man who could complacently remark that “We Paris canonists do not study the art of fine discourse, nor do we strive for the eloquence of orators and literary men.”¹²² What has been said about our treatise in the foregoing sections is enough to show that scribal errors (almost all of which can be discovered and removed with little science and less art) constitute a very minor portion of the variations among the manuscripts that might be of interest to us. It was Simon de Cra-maud himself, scribbling on the margins of several copies (or dic-


¹²² In the glosses against the Toulouse letter, AN, J 518, fol. 554v (addressing the king): “Et si rethorice hec venusta non sint exornata gravitate et politi sermonis nitore decorata, sed inclinato stilo deducta per planum, non curet vestra Maiestas Regia. Nam communiter nos canoniste Parisius artem ornate loquendi non discimus, neque facundie rethorum oratorumque operam damus.”
tating to a secretary), who created variations, and these are therefore all authentic; at the same time even the "errors" in succeeding copies were almost all unimportant alternations—of the *ergo/igitur* sort—or omissions that did not affect the substance or Latinity of the text and were therefore approved at least passively by Simon as he ordered such copies made and sent out. The editor of such a work cannot then use methods devised for the purpose of restoring the pure text of a poet. On the other hand he cannot simply ignore modern criteria and, like the great editors of the seventeenth and eighteenth centuries, print one manuscript's text with opportune collations or emendations. Bearing in mind the nature of the treatise, and presuming that those interested in it will be chiefly historians of politics and canonistic theory, the present editor has aimed at producing a text that can qualify as authentic, that embodies the redactional development of the work, and that can commend itself as readable.

Authenticity for our purpose is taken to mean the author's acknowledgement of a text, by publishing it or sending it out. Other definitions would be possible but not suited to the present case. Thus (1) a single stable original or even archetype probably did not exist and there would be no point in trying to construct one; (2) the author's working copies—any or all of *a, b, c, u, v, w, x*—were probably in service together at various times in the year of the treatise's growth and distribution; (3) a reconstruction of an indubitably early text—say *a, b, or u*—would relegate to the apparatus a large body of authentic and only slightly less early material that the author himself wanted to be published (in *G/EHKL*). One practical solution would have been to print the text of *G*, which Simon probably sent to Navarre, but the excellence of *G*’s text does not make up for its lack of passages in the latest stage of the treatise’s redaction. The decision therefore has been to print essentially the text of *E*, which Simon ordered for deposit in the royal archive; *E*’s many scribal errors have been removed by reference to *HKL* in order to obtain *wx*, and by reference to *G* in order to correct *w* by *v*; other patent errors are removed by reference to *A, B, or CJ*. The passages added in *E, EHKL, EGHKL*, and sometimes *A/B, EGHKL*, have been distinguished by indentations in most cases. The apparatus notes these and other changes, and includes a few additions found only in *L*.

Our definition of authenticity imposes a certain attitude to error, namely that scribal (or perhaps authorial) deviations in the final
redaction are not to be rejected if they make sense and conform to decent Latin usage; only a few such deviations failed to qualify. But there are some cases in which E and others have a bad text owing to mistaken incorporation or location of what must have been marginalia or additions on loose slips; these have been corrected according to logic. Thus at 387, in the context of arguments against subtraction, CEHJKL incorporate a passage refuting one such argument; it must have been a marginal note for the author's use which the scribe of w put into his text by mistake. At 501–05 there is a paragraph located here only in the margin of A; the actual text of all mss. including A locates it elsewhere (at 638), but since the order of refutations in part 3 agrees with the location in A-margin, this must have been what the author intended. Again, at 2464–2520 only BJ have a sensible order of paragraphs, the others all mess it up; therefore the BJ order is followed.

The late-medieval spelling has not been classicized but it has been normalized in both the text and the apparatus to eliminate confusion, most notably between “c” and “s.” Thus “consilium” has been changed to “concilium” where appropriate, “cedacio” to “sedacio,” “senseo” to “censeo”—even in the face of all the mss. The many errors in references to authorities have been corrected in the text, either silently when only numbers are involved, or in square brackets for additions or alternatives (the latter signalled by “!”); however mistakes that seem to have stemmatic value are noted in the apparatus. Square brackets are used for all editorial supplements; words added to the text as emendations are in angle brackets. Paragraphing, parentheses, and punctuation are added according to sense, not necessarily in accord with E, because Simon's run-on style has seemed to require it. Quotation marks have been used to mark passages taken from a source, even when there has been some alteration of the wording; they have not been used for actual paraphrase. The principles of the apparatus are explained below; the reader is assured that the original collation was undiscriminatingly total. Here as elsewhere, the non-philological intention of the edition may be kept in mind.

The annotations and indices have been prepared with especial seriousness. The frequent practice of annotating a reference by merely giving its location in a printed edition is pretty much useless; here the texts of the cited authorities have been given or summarized, since otherwise few readers would know what Simon was talking about in many cases, or how sound his argument is, how he
Introduction

could have developed it differently. Accurate and honestly applied quotations need no special annotation, but false or tendentious ones do, and passages like “pro quo videtur casus in capitulo Non liceat pape” must obviously be supplied with the text or a summary of the canon—otherwise the conscientious reader would have to look it up himself, perhaps on his next visit to a major library. The notes provide such material, also the usual historical explanations; they do not cover the canons merely listed in chunks taken over by Simon from Bohic, Andreae, the Archdeacon, and the like, since he merely borrowed the titles. As for identification of legal references by modern numbers, the indices can be used in lieu of footnotes. The indices will also allow the student of Schism literature to readily compare Simon’s battery of authorities with those of other treatises.

The Apparatus

1. In principle the apparatus includes only variants of substantive importance or interest, or variants common to a group of mss. and hence possibly significant in determining stemmatic relations. Excluded in principle are substantively unimportant variants in only one ms., most variations in the citation of legal authorities, and evident mistakes in only one ms. These principles are modified from time to time, according to circumstance; for example a useless or erroneous variant in a stemmatically important ms. (like j, for example) may be noted, while a comparable variant in, say, H will almost never be. Exceptions are also made in cases of linguistic interest.

2. The apparatus does not include indications of how words are abbreviated, exactly how insertions have been made, errors corrected, etc. A number of scribes used ambiguous endings or other abbreviations, but these have usually been resolved one way or another without notice in the apparatus; in the few cases when it has seemed useful to note that a word has been abbreviated, the actual letters are given, followed simply by a period.

3. The following abbreviations are used:

_codd._—codices: the consensus of the manuscripts
_corr._—corrected: when used alone, it means the noted variant has been corrected to the reading in the text.
_foll._—follows in
_om._—omitted by
_tr._—transposed by
_vv._—vice versa: reversal of word order
4. The order of mss. is alphabetical, but when there is reason to note something about one ms. in a series, it is put at the end, separated from the others by a comma. Thus, e.g., "quid] quod AC,B(corr.)" means that ABC all have "quod," but that B has corrected it to "quid."
Outline of the Text

The numbers refer to the line numbers in the edition.

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[E 227r] “Nunc reges intelligite” etc., ut in psalmo [2.10]. Quod intelligitur ut nunc, quando ecclesia est in tanta tribulacione, ut dicit Augustinus, in epistola ad Vincencium; et scribitur in c. Non inventur, xxiii. q. iv. Quia

“omne regnum in se divisum non stabit, et omnis scien
cia et lex adversum se divisa destruetur” (c. Si ea, xxv. q. ii.);

“nec vos hominum vaniloquia retardent, dicencium quod per
seccionem facit” vestra regalis potencia, “dum vel ea que com
mittuntur reprimit, vel animarum salutem requirit. Errant huius
modi fabulares rumoris. Non persequitur nisi quid ad malum cogit”; “malum autem est scisma esse; et per” vestras “potestates huiusmodi opprimi debere homines, et canonice scripture au
toritas et paternarum nos regularum nos regularum veritas doce

Et ille “versutus hostis qui mille habet modos nocendi, nec ign
oramus astuciam eius, conatur namque a principio ruine sue uni
tatem ecclesie rescindere, caritatem vulnerare, sanctorum operum
dulcedinem invidie felle inficere, et omnibus modis humanum genus
evertere et perturbare—dolet enim satis et erubescit, caritatem quam
in celo nequit habere, homines constantes ex lutea materia in terra
tenere”

mortem dominum Benedictum, qui nunc stat in Avinione. Et super hoc dubietas talis exorta, quod maiores clerici fuerunt et adhuc sunt in opinionibus diversis. Ex quo nos reputamus ipsos scismaticos et adherentes intruso et per consequens excommunicatos a canone, per c. i. [Quod a predecessore], De scismaticis; et: “perpetuo anathematæ a liminis ecclesie sancte dei separatos, sicut invasores et destructores tocius cristianitatis, et ab omni ecclesiastico gradu in quo prius fuerant depositos vel deponendos, et cum impii qui non resurgent in iudicio reputatos. Et quod cuncta elementa debent eis esse contraria, et omnium sanctorum quiescencium merita illos debent confundere, et in hac vita super eos apertam vindictam ostendere”; et per consequens eos esse et fuisse “in potestate dyaboli sicut pecus” in potestate domini sui, per decretum concilii generalis, In nomine domini, ibi cum dicit “quod si quis quasi per sedicionem vel presumpcionem electus seu intronizatus fuerit etc., cui si quis adheserit etc.,” sic quod “nisi per satisfaccionem reconciliati fuerint, ipsi ianua regni celestis clausa erit.” Ut ponit Iheronimus in c. Nichil, in fine, xi. q. iii., et in c. Audi denique, cum glosa Ioannis, eadem causa et quostione.

Et ipsi idem dicunt de nobis, dicentes quod secundo electus “non fuit secundus sed nullus,” per c. Factus est Cornelius, vii. q. i. Et nos “indignacionem dei incurrimus cum illis qui scisma faciunt et relictum suo episcopo, aliun sibi foris pseudoepiscopum constituerunt.” Unde dominus sic indignatur quod nos “in direpcionem et perdicionem dedisse” videatur. Et licet cum ipsis “eundem patrem, eundem filium, eundem spiritum sanctum credamus, hoc tamen nos adiuware non potest,” sicut scribitur de Dathan et Abiron, quos terra absorbuit vivos (vii. q. i., Denique). Cuius occasione orto sunt inter cristianos guerre mortales in pluribus locis; homines occisi, depredati; raptus, adulteria, incendia, et mala infinita secuta. Et quando in regnis et partibus ipsorum nos reperiunt, de ecclesiis ipsorum, quando aliud malum facere non possunt, ignominiose nos proiciunt, credentes mortaliter peccare indubie, per c. Sacris, Quod metus causa [De his que vi metusve causa fiunt], si nobiscum communicent in divinis et aliis. Et nos idem de ipsis.
De substraccione obediencie

Et ita ecclesia militans, "que Christi corpus est, et in duo vel plura dividit non potest," ut dicit Augustinus in c. Scisma, xxiii. [E 228r] q. i.,\(^{10}\) stat sic lamentabiliter lacerata. Et mala et inconvienientia que ex ista divisione orientur et sunt oriri disposita, nisi deus adverat, non possent enumerari. "Unde oportet, quantum fragilitati nostri conceditur, ut omnes aditus nocendi eius versucie premiumamus, ne mors intret per portas nostras," iuxta consilium canonis Vitis, xvi. q. ii. Et "oportet nos humiliari sub manu potentis dei, ut liberet nos in tempore tribulationis, nam dyabolus non cessat circuire, querens quem devoret" (scribitur in c. Nulli, iii. q. i.), et "ponere nos murum pro defense domus Israel," iuxta illud Ezechielis [13.5] quod transsumptive habetur xliii. di., Sit rector, et omnes clamare ut inhabitemus in unum, iuxta illud, "Clama ne cesses" etc. [ibid.; Isa. 58.1].

"Illi vero non habitant in unum qui fratrum se solacio substrahunt, aut quod deterius est, fratribus insidias aut laques ponunt," iii. q. i., Nulli. Et qui non potest aliud, saltim clamet, iuxta l. i. [Cum aliter], ff. Ad Syllanum [De senatusconsulto Silaniano],\(^{11}\) et precipue reges, de quibus Ysidorus ait, quod "sive augeatur pax in ecclesia, scilicet per principes fideles, sive solvat, ille ab eis racionem exigit qui eorum potestati sua ecclesiam credidit committendam," in c. Principes, xxiii. q. v. Quod est bene durum verbum, quia "iudicium durissimum fiti qui presunt, exiguus fit misericordia, et potentes potenter tormenta sustinebunt," Sap. vi. [6-7]. Et "illa vox domini" terribilis: "Auferetur a vobis regnum" etc. [Matt. 21.43], in c. Si de rebus, xxiii. q. vii. Et propter talia, contra ipsos excitat dominus populos ad rebelliones, sediciones, et talia, ut pulcre deducit Ambrosius, c. Remittuntur, eadem causa et questione [q. v.].\(^{12}\)

Quod advertentes, reges et maxime Francie, quia cause arduitas

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67 advertat\] avertat CJ / 69 omnes\] omnis J / 69 nocendi\] incendi H / 69 premuniamus\] presuniamus A; corr. to premuniatur J / 70 canonis\] c. AHJK / 71 potenti\] potentis ABHJK / 72 tempore\] die H / 73 quem\] quos ACGJ / 75 transsumptive\] transsumptum ACGJ / 75 Sit\] si ACEJKL; sic G / 76-78 iuxta ... unum\] om. C / 80 (24) i.\] iii\] codd. / 82 de quibus Ysidorus ait\] quibus per prophetam [propheciam CJ] divinitus dictum est, Nunc reges, etc., ut in principio [psalmo CJ], quod intelligitur ut nunc, quando ecclesia est in tanta tribulatione, ut dicit Augustinus in epistola ad Vincencium, et scribatur in c. Non inventur, xxiii. q. iv, et Ysidorus ACGJ; quibus per prophetam divinitus dictum est, Nunc reges intelligite etc. Quia ut dicit Ysidorus B; quia ut dicit Ysidorus G / 83 scilicet\] sancta B / 84 crediti\] tradidit A / 87 potentes potenter\] potentes B; vv. CJ; potenter G / 88 Auferetur\] aufertur HK / 90 talia\] alia L / 90-91 deduict CJ deduxit E
et dubii probabilitas hoc exposcunt, iuxta consilium canonis, "senioribus" regnorum "congregatis et interrogatis" (facilius namque invenitur quod a pluribus queritur, quia verus repromissor ait [Matt. 18.19], "Si duo ex vobis vel tres in unum convenerint super terram in nomine meo, de omni re quacunque pecierint fiet illis a patre meo," xx. di., c. finali [De quibus]), invenerunt quod via cessionis seu renunciacionis amborum contendencium de papatu, cum certis precedentibus revocationibus processuum et confirmacionibus promocionum, et statim in forma iuris sequente eleccione futuri [E 228v] unici et indubitati pastoris, ut hoc in consultione super hoc habita clarius declaratur, est ad delendum penitus scisma et uniendum ecclesiam melior et brevior, et in omnibus, stante casu sicut est, conveniencior. Et quia ipsi vel alter ipsorum, requisiti solemniter, istam non acceptant viam, dubitatur apud multis qua- liter contra non acceptantes vel non acceptantem sit procedendum. Et inter ceteros modos est tactum per multos, quod ipsis ambobus vel uni non acceptanti esset per ambas obediencias, vel per partem illius qui refutaret, penitus obediencia substrahend. Et quia "ille non solum est proditor veritatis qui mendacium asserit, sed eciam ille qui libere veritatem non pronunciat" (xi. q. iii., Nolite timere; et c. Quisquis metu), et quia "iura provident ne veritas occultetur" (Extra, De confirmacione utili, Cum dilecta; et xiii. q. i., Quod debetur), ego

Symon de Cramaudo, lemovicensis diocesis, nuper inter decre- torum doctores Parisius minimus, et nunc sicut deo placuit pa- triarcha alexandrinus et administrator ecclesie carcassonensis, de mandato regis Francie domini mei naturalis, de cuius concilio sum quamvis immersus iam pridem retentus, per dei gracion non mee salutis immemor, libenter ad sedacionem
De substraccionе obedientиe

proprie consciencie et ad dandum occasionem alii investigandi veritatem (quia ut dicit Philosophus, 2° Methaphisice, eciam ex falso scriptis commendabor, quia per ipsa alii materiam investigande veritatis preparabo, ut notat Iohannes Andree in fine glose sue Libri sexti), proposui iura aliqua ad memoriam videre volencium in materia reducere, et dicta doctorum,

"malens aliena verecunde dicere quam mea imprudenter ingere," cum Iheronimo in principio epistole ad Paulum, in prologo biblie, reservans in veri investigacione cuilibet liberum iudicium. Sic tamen quod preferatur pars que pociori racione iuvatur, ut faciunt acha
demici, de quibus Salisberiensis, libro vii°, in prohemio. Nec mi
retur aliiquis si inveniantur in processu dicciones "forte," "fortassis," "forsitan," quia ut dicit idem Salisberiensis, talia demonstrant acha
demicum temperamentum, et fuerunt acha
demici magis temperati quam alii philosophi, qui veriti sunt temere diffinire et in falsum precipitare, ut dicit idem Salisberiensis, libro vii°, ca. 2°.

Nec intendo aliquid per dei graciam temere in materia asserere seu pertinaciter defendere, nec in iniuriam domini Benedicti eciam aliquid dicere, sed solum pro unione ecclesie sic lamentabiliter lacerate. [E 229r] Cui ego et quilibet catholicus sum prius quam pape iuratus, iuxta c. Ego N., De iure iurando; et istud placeat haberi pro repetito in quolibet dicendorum. Sed correccioni sancte romane ecclesie quicquid dicam submitto, et matris mee universitatis parisien
sis et cuiuscunque clarius videntis.

Ut igitur veniam ad materiam, quero aliqua. Et primo quero, numquid reges et regna superius declarata tam obedienti
cionem Bonifacii
De substraccione obediencie

quam obediencie domini Benedicti, ipsis ambobus nolentibus renunciare, possint obedienciam canonice substrahere seu penitus dene- gare. Secundo quero utrum supposito quod una obediencia super inquisitione vie melioris maiorem diligentiam fecerit, et suum pastorem de acceptingo viam cessionis solemniter requisiverit, sibi non acceptanti in casu quo alter contendens ad istam venire vellet, possit eciam obedienciam substrahere canonice.

[Part 1: Proof of the Contrary]

Et probabo primo quod neutrum istorum facere "licet secundum equitatem, decet secundum honestatem, expedit propter ecclesie utilitatem."

[Quod non licet]

150 Pro primo, quod non licet, supponitur quod quelibet pars est fixe determinata, una quod Bonifacius est verus successor Petri et vicarius Ihesu Cristi, et per consequens caput et princeps ecclesie militantis; alia eciam quod dominus Benedictus est verus successor et vicarius Ihesu Cristi, caput et princeps ecclesie militantis. Tunc arguitur sic: "Non licet membra a capite discedere," sed papa est caput ecclesie militantis et nos membra, ergo non licet partibus Bonifacium papam vel tenentibus Benedictum papam ipsis quoquo-modo obedienciam substrahere. Maior probatur per c. Cum non liceat, De prescriptonibus, et c. i. [Non decet], xii. di., ubi dicitur quod non licet membra etc.

Minor probatur per dictum Ambrosii in c. Beati Petrus et Paulus, ii. q. vii., ubi dicit quod non sine causa deus ordinavit quod beati Petrus et Paulus recipierent martirium in Roma, sed "ut ibi esset caput sanctitatis ubi antea fuerat caput supersticionis." Et per dictum Augustini in c. Puto, ibi cum dicit de Petro, "quis enim nesciat illum apostolatus principatum cuilibet episcopatu preferendum" etc. Et per Iheronimum in c. Hec est fides, xxiii. q. i., ubi

Iheronimus pape: [E 229v] “Hec est fides, beatissime pater, in qua si minus perite aut parum forte caute aliquid positum est, emendari a te cupimus, qui Petri sedem tenes et fidem” etc. Et per Karolum Magnum, qui sanctus apud multos reputatur, dicentem quod pape est obediendum, “licet velit aliquid vix ferendum,” in c. In memoriam, xix. di. Et per canonem concilii calcedonensis, in quo sic scribitur:25 “Si quis episcopus petitur infamis, liberam habet licenciam appellandi ad summum antistitem quem habemus, Petrum petram refrigerrii, et ipsis soli libera potestate, loco dei, sit ius discernendi episcopi criminati infamam, secundum claves a domino sibi datas.” “Et Cirillus” alexandrine urbis episcopus et olim primus patriarcha, “in Libro thesaurorum,” ubi tractat illud Mathei xvi°, Tu es Petrus, etc., et porte inferi non prevalebunt, dicit: Secundum autem hanc promissionem, ecclesia apostolica Petri ab omni seductione et heretica circumvencione immaculata manet, et super omnes primatum ecclesiarum et populorum in suis pontificibus plenam auctoritatem obtinet.” Quod recitat Petrus Bertrandi olim cardinalis, in prohemio Sexti.27 Et in concilio sardensi idem, de quo habetur in c. Si episcopus, ii. q. vi. Et ista sanctorum doctorum dicta deberent claudere os illorum qui dicunt quod canonibus ampliantibus potestatem pape, per romanos pontifices factis, non est adhibenda magna fides, quia in facto proprio.28 Et quod ipsi fideles sint membra militantis ecclesie probat Apostolus, prime ad Corinth, xii. capitulo, et deducit pulcre Cardinalis, in c. Fundamenta, De eleccione.29

[2] Item potestatem et principatum habet papa a deo et non ab hominibus, ut appareat per ea que dicunt Innocencius et Iohannes Andree in c. Licet ex suscepo, De furo competenti, ubi dicunt quod deus creator celi et terre rexit mundum per se ipsum aliquo tempore, sine ministerio alterius, ut ab Adam usque ad Noe (Gen. iii° cap., ibi: “mulieri quoque dicit,” et ibi: “Ad vero dicit” [3.16–17]. Et Gen. iii°, qualiter per se ipsum Cain, Lamech, et quosdam alios [4.15, 24]), et sic, mundo gubernato per ipsum deum usque ad
Noe, cepit deus creaturas suas regere per ministros, de quo apparat quod fuit rector populi, ex eo quod sibi dominus gubernacionem arche commisit, Gen. iii° et v° capitulo [6.18–7.5]. Item dominus in Noe et filiis suis rectoriam et legem dedit, Gen. ix° [1–17], et licet non legatur fuisse sacerdos, officium tamen exercuit sacerdotis, Gen. viii° [20]: Et edificavit autem Noe altare domino. Et in eius locum successerunt patriarchae, iudices, et sacerdotes, qui prefuerunt regimini populi usque ad Cristum, inter quos semper preerat et president unus [E 230r] summus sacerdos, ut ponit Magister in Historia scolastica, in Deuteronomio, in titulo De appellacione ad summum sacerdotem, et titulo sequenti. Et Ihesus Cristus qui fuit dominus iudex noster, et dominus legifer noster, scribitur Isa. xxxiii° capitulo [22], vicarium suum constituit Petrum et successores suos, quando dedit eius claves regni celorum, et quando dixit ei, Pasce oves meas [John 21.17]. Et ob hoc reprehenduntur, et non sine causa, illi qui dicunt quod canonibus factis per papam quo ad hoc non est fides adhibenda, etc.; quia habent fundamentum a iure divino. Et ob hoc sic dicentes penam sacrilegii incurrunt, ut dicunt Johannes Andree et Hostiensis in c. Licet ex suscepio, allegato. Unde qui romane ecclesie privilegium ab ipso summo ecclesiarum capite traditum auferre conatur, hic procul dubio in heresim labitur. Fidem quippe violat qui adversus illam agit que est mater fidei. “Unde et ipse sanctus Ambrosius se in omnibus sequi magistrum sanctam romanam ecclesiam profiteatur,” in c. i. [Omnes sive], xxii. di. Et alibi: “Sancta romana ecclesia non ab apostolis sed ab ipso domino et salvatore nostro obtinuit primatum” (in c. Sacrosancta, eadem di.). Ergo non potest auferri seu denegari per hominem potestas pape, iuxta illud [Matt. 19.6]: Quod deus coniunxit homo non separat; quia minor non potest tollere factum superioris, in c. Cum inferior, De majoritate et obediencia.

De substraccione obedientie

Gentiles, titulo de potestate episcoporum, hoc pulcre deducit, dicens quod senciens contrarium errat. Et frater Hastensis in titulo de papa et patriarchis. Et prior Sancti Eligii, super dicccione "unio" seu "unitas," dicit quod iste est unus error Grecorum, negare vide- licet quod successor Petri est caput et princeps ecclesie militantis. Et ibi loquitur de differencia inter thyaram pape et mitram episcoporum. Et facit quod notat Archidiaconus in c. Denique, vii. q. i., dicens quod tales peccant contra articulum "et in unam sanctam ecclesiam" etc.

Item probatur quia "dubius in fide infidelis est," in c. i. [Dubius in fide], De hereticis, "eciam in tenui articulo." Scribitur, "qui totam legem observaverit, si offendit in uno, omnium factus est reus," scilicet quantum ad vitam eternam.

Item nonne naturalis instinctus seu racio proveniens nobis a deo hoc clare nobis suadet, quod in quacunque pluralitate ordinata, debet esse unus superior et cetera subiecta, ut ponit expresse Philosophus in Politicis Quanto magis in pluralitate et congrega- cione fidelium, que est ipsa ecclesia militans, et cuius finis est in- pressus et acquisicio regni celestis, ut dictum est. Item nonne in ecclesia triumphanti est unus rex regum et dominus dominancium, ad cuius exemplum, quantum est nobis possibile, nos regere debe- mus? Omnia enim naturaliter attendunt ad suum principium, et in signum huius habet homo staturam rectam, ut scilicet ad deum et bona celestia continue respiciat et attendat, iuxta illud Ysa. li. [1]: "Attendite ad petram unde excisi estis." Unde dicit Philosophus, primo Metheorum, quod tota regio elementorum contignatur lacioni astrorum, ut omnis eius virtus inde gubernetur. Et inde dicunt iura quod ars imitatur naturam in quantum potest, 1. i. [Filiosfamilias], ff. De adopcionibus, et in § Minorem natu, Instit., eodem titulo.

Item vidi aliquos scribentes, qui dicunt quod Petrus non exercuit maioritatem aliquam inter apostolos, et pro eo dicitur quod eius successores non sunt nec fuerunt maiores aliorum episcoporum. Et tamen fatentur gerarchiam ecclesie militantis, videlicet maioritatem...
patriarcharum, primatum, archiepiscoporum, etc.; et tamen isti sunt omnes loco apostolorum—in c. Cleros et clericos, xxi. di.47—et pro bono regiminis est maioritas inter eos. Quanto magis fuit expediens et necessarium "quod unus presset ecclesie militanti in remedium scismatis" et divisionis, iuxta dictum Iheronimi in c. Legimus, xciii. di. Nonne in hiis que sunt fidei esset possibile quod unus patriarcha vel primas unum statueret in patria sibi subjecta, et alter eciam in alia aliter ordinaret, quia ad diversitatem corporum etc. (in c. Quia diversitatem, De concessione prebendarum);48 sicut visum est de Grecis, postquam de facto se substraxerunt ab obediencia romani pontificis? Et ita istorum error esset destruccio fidei, et per consequens ecclesie militantis.

Nec valet quod dicunt: licet nos dicamus quod apes et grues unam secuntur, non tamen omnes apes secuntur unam, sed nec omnes grues aliam, sed quelibet congregatio suam.49 Sed nichil ad propositionem, quia ecclesia militans nichil aliud est quam congregatio fidelium (ut in c. Fundamenta, De eleccione; in c. Legimus, xciii. di., circa medium; et in c. Ecclesiae, De consecracione, di. i.),50 in qua debet esse unus episcopus vicarius scilicet Ihesu Cristi (in c. Loquitur, xxiii. q. i.).51 Item, "leges fiunt cum promulgantur, et firmantur cum moribus utencium comprobantur," in c. Denique [§ Leges!], iv. di. Modo [E 231r] etsi ex divina scriptura, secundum eos, hoc clare concludi non possit,52 tamen ita receptum est per patres nostros quasi a mille annis citra. Nonne imperium transtulit de Grecis in Germanos, regem Francie deposuit (in c. Venerabilem, De eleccione; in c. Alius, xv. q. vi.)?53 Et iura per summos pontifices condita sunt; et "consuetudo est optima legum interpres," etc., De consuetudine, Cum dilectus. Item, nonne Foca cesar, contra patriarcham Constantinopolitanum qui primum de facto se scribebat, ordinavit quod inposterum subesset romano pontifici, ut ponit Martinus in cronica sua?54 Dicamus ergo de talibus cum Iheronimo, quod ipsi excedunt "terminos quos posuerunt patres eorum"; dicens ulterius quod "veteres scrutans hystorias, non invenit ecclesiam dei scidisse, nec in domo domini populum seduxisse, preter eos qui in

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sacerdocio positi sunt." "Tales enim vertuntur in laqueum tortuosum, in omnibus locis ponentes scandalum" (in c. Transferunt, xxiii. q. iii.). Et contra tales loquitur Apostolus [Rom. 12.3]: "Non plus sapere quam sapere oporteat, sed ad sobrietatem"; ut transsumptive habetur in c. Sit rector, xliii. di. Et utinam talia scripta comburentur! Et ille cui ista non sufficient, videat Armachanum, in libro vii° De questionibus Armenorum, qui per sacram scripturam hoc summe bene deducit.55

In nomine Domini, xxiii. di., et in c. Ubi [periculum] maius, § Ceterum). Et postquam non potest esse nisi unus, clarum est quod una pars vel forsán ambe, ut infra laicius dicetur, careret vero pastor.

Ex quo possent sequi infinita pericula animarum, et involvere crisisfideles in tali laberinto propter unum vanum honorem mundanum, in quo presidens "plus meroribus afficitur quam honoribus gaudet" (in c. Nervi, xiii. di.). Et Salisberiensis in Policraticon, libro viii°, pulcre hoc narrat, quando loquitur de scismate.\(^{59}\) Eciam non esset forsán bene catholicum; ymo istam viam prosequentes forsán debent reputari suspecti in fide, quia ex levi articulo in hiis que sunt fidei, quis redditur suspectus de heresi, ut in l. ii. [Omnes], C. De hereticis; et notat hoc Henricus in c. i. [Dubius in fide], De hereticis, in antiquis.\(^{60}\)

Nunc redeamus ad propositum.

[3] Item, non valet ut videtur si dicatur quod papa in scandalum et destruccionem retinet papatum; quia sacra scriptura docet obediencie principibus "eciam discolis," I. Petri ii. c. [19]: "Hec est enim gracia, si propter dei conscienciam sustinet quis tristiciam pacienter et inuste." Et propter hoc dicit lex civilis quod lex quantumcumque dura tenenda est, et pro racione sufficit quod ita scriptum est: l. Prospexit, ff. Qui et a quibus.

[4] Item, licet in malo notorio pocius esset recognoscendus papa celestis,\(^{61}\) tamen in facto dubio, secundum quod est casus presens ut probabo, nunquam est obediencia substrahenda, ut dicit Augustinus in libro Contra Manicheos, et habetur xxiii. q. i., Quid culpatur, in fine.\(^{62}\) Quod casus presens sit dubius—videlicet, an via cessionis sit pro sedacione scismatis melior—apparet per dictum Cypriani martiris, "Quam periculosum sit in divinis rebus, ut quis cedat iuri suo et potestati, scriptura sacra declarat," in c. Quam periculosum, vii. q. i. Et facit nota Innocencii posita in c. Licet de vitae, que dicit,

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342 maius\] De eleccione Libro sexto foll. L / 342-49 § Ceterum\] et in c. Ceterum codem titulo L / 348 Policratonic\] Policraticum BCJ / 349 Eciam\] etc BCEGHJKL / 349 esse B / 350 ymo qui follows, inserted in C / 350 prosequentes\] prosequuntur CJ / 351 articulo\] arbitrio C / 352 ut\] om. CEHJKL / 355 Nunc . . . propositum\] at end of preceding paragraph, codd. / 357 destruccennem\] ecclesie foll. BG / 359 tristiciam\] tristis CJ / 360 dict\] after civilis B; om. CEHJKL / 360 quod\] et HK / 361 tenenda est\] tenenda ACEGHK; teneatur J / 361 quod\] om. ABC / 363 notorio\] notorie B; notorium CJ / 363-64 papa celestis\] om. E / 369 in divinis rebus\] om. G / 369 divinis\] dominiis E / 371 vitanda\] evitanda BCEGHKL; De eleccione foll. L
loquens de papa formaliter, quod non debet cogi renunciare iuri suo.\footnote{63}

[5] Item, eciam quia iam una notabilis pars cristianitatis dicit aliam esse meliorem, videlicet concilii generalis, et videtur reicere istam, si videatur \[E 232r\] epistola oxoniensis.\footnote{64} Item, sunt multi magni iuxta papam qui tenent quod alie sunt multe vie aperte ad sedacionem scismatis, que primo debent temptari quam veniatur ad istam; et dicunt quod iuramentum factum in ingressu conclavis non aliter dominum nostrum astringit.\footnote{65} Ex quibus redditur iste articulus bene dubius, quia sola opinio doctorum relevat litigatorem quandoque ab expensis, iuxta l. \textit{Qui solidum}, in \$ Eciam, ff. \textit{De legatis}, 2°.\footnote{66}

[6] Item, videtur quod non liceat sibi substrahere obedienciam alia racione, quia quociens potest haberi remedium ordinarium, non debet haberi recursus ad extraordinarium, in l. \textit{In cause [cognicione]}, 2° responso, ff. \textit{De minoribus}. Sed in casu nostro potest provideri per remedium ordinarium, ut probabo; ergo minus iuste petitur a domino nostro quod propter sedacionem scandali cedat; et per consequens non licet substrahere obedienciam si non cedat. Facit quod pulcre notat Accursius in l. i. [\textit{Post acciones}], \$ \textit{Per hanc}, ff. \textit{De rei vendicacione}, ubi dicit quod nunquam extraordinarium remedium quod est de iure introductum in subsidium concurrit cum ordinario; et ita intelligit l. \textit{Quedam}, in principio, ff. \textit{De edendo}.\footnote{67} Et in terminis nostris est casus in \$ \textit{Pro gravi quoque scandalo}, ibi cum dicit, \footnote{68} si aliter sedari non possit.

Et quod per ordinarium remedium provideri possit, appareb quia dominus noster offert quod eligantur valentes viri deum timentes ab utraque parte, et illi videant quis habet ius in papatu, vel dominus noster vel Bonifacius.\footnote{69} Et vidi in scripturis aliquidus, que dicebantur scripta domini mei Pampilonesis, quod dominus noster intelligit quod huiusmodi compromissum haberet vim concilii generalis.\footnote{70} Et tunc oporteret quod illi eligerentur de consensu amba-

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rum obedienciarum, nam alias non ligaret eorum dictum vel sentencia reges et prelatos obedientes domino nostro; quia "res inter alios acta" etc.\(^{71}\) (Et videtur casus in racione in l. \(S\) dictum, in \(§\) In compromisso [\(S\) compromiserol], ff. De evictionibus.\(^{72}\) Et facit quod notat Bernardus in capitolo finali [\(S\) venditori], \(D\) empcione et vendicione.\(^{73}\) Et tunc non dubium quod esset concilium generale, et per consequens remedium ita ordinarium quod non potest esse magis. Primo quia concilium generale de iure \([E\ 232v]\) ut videtur habet cognicionem istius discordie, ut ponit Iohannes glosator Decreti in c. \(S\) duo [forte] contra fas,\(^{74}\) et in c. Sicut, xv. di., in fine, ubi dicit quod in hiis que concernunt fidem et statum universalis ecclesie, papa subest concilio, quia "auctoritas orbis maior est urbe," in c. Legimus, xciii. di.\(^{75}\) Item, haberent sic electi cognicionem istius cause ex submissione parcium, quia verus papa, et multo magis intrusus, possunt bene se submittere (in c. Nos si incompetenter, ii. q. vii.), eciam usque ad privacionem papatus, ut ibi dicit glosator, et clarius in c. In synodo, lxiii. di.\(^{76}\)

[7] Item, quomodo dicemus nos quod domino nostro debeat substrahere obediencia, qui sepe et publice, ut asseritur, dicit quod dum conveniat cum adversario, eciam si deberet remanere sine beneficio pauper presbiter, faceret pacem in ecclesia?\(^{77}\) Quid autem refert, quid de equipollentibus fiat? Nichil, iuxta notam Iohannis Andree in c. i. [\(D\) Quodvoltydeo], \(D\) iudiciis, et l. \(S\) mater, \(C\). \(D\) institutionibus et substitucionibus sub condicione factis.\(^{78}\) Et satis est quod aliquid sit certum, licet non nominatum: ff. [\(D\) rebus credits,] si certum petetur, in l. Cum quid mutuum, etc.

[8] Item, ut videtur firmiter tenendum, incole regni, clerici et laici, tenent in consciencia quod dominus noster est verus papa, et per consequens quod substrahere obedienciam sibi esset male factum; ergo rex non debet ordinare quod domino nostro obediencia substrahatur—per c. Literas, in \(§\) Porro, \(D\) restitucione spolii, et per c. Per tuas, \(D\) symonia, et c. Inquisicioni, \(D\) sentencia excommunicacionis. Ubi dicunt textus, quod quis non debet per superiorum cogi ad faciendo contra conscienciam, nec subditi de-

\(^{71}\) Etr. videtur casus in racione in l. \(S\) dictum, in \(§\) In compromisso [\(S\) compromiserol], ff. De evisionibus.\(^{72}\) Et facit quod notat Bernardus in capitolo finali [\(S\) venditori], \(D\) empcione et vendicione.\(^{73}\) Et tunc non dubium quod esset concilium generale, et per consequens remedium ita ordinarium quod non potest esse magis. Primo quia concilium generale de iure \([E\ 232v]\) ut videtur habet cognicionem istius discordie, ut ponit Iohannes glosator Decreti in c. \(S\) duo [forte] contra fas,\(^{74}\) et in c. Sicut, xv. di., in fine, ubi dicit quod in hiis que concernunt fidem et statum universalis ecclesie, papa subest concilio, quia "auctoritas orbis maior est urbe," in c. Legimus, xciii. di.\(^{75}\) Item, haberent sic electi cognicionem istius cause ex submissione parcium, quia verus papa, et multo magis intrusus, possunt bene se submittere (in c. Nos si incompetenter, ii. q. vii.), eciam usque ad privacionem papatus, ut ibi dicit glosator, et clarius in c. In synodo, lxiii. di.\(^{76}\)

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bent in hoc obedire suis superioribus, eciam supposito quod consciencia sit erronea, si non potest deponere scrupulum. “Et heronimus dicit quod consciencia est dux anime; et secundum Damascus, iii° libro, c. xiii., est lex intellectus nostri, id est anime humane. Et ideo consciencia eciam erronea ligat voluntatem ab ea discordantem quandiu durat.” Ut ponit Henricus in c. Per tuas, l. ii., De symonia.

[9] Item, quod non liceat procedere per istam viam, scilicet substraccionis: non esset sedacio scismatis. Si nos dicimus eleccionem vel nominationem Bartholomei pro eo non tenuisse quia non fuit facta libere: nonne eadem racione diceret mundus, non valuit renunciatio quia coacti renunciaverunt? [E 233r] Et inde diceretur de illo qui eligeretur, per quamlibet obedienciam que tenet suum esse verum papam: Ille vero qui superadditur “non est secundus sed nullus”—in c. Factus est Cornelius, vii. q. i.; quia metus subversionis status etc., Quod metus causa [De his quae vi metusve causa fiunt!], c. 2° [Abbas], per Hostiensem, et c. Cum dilectus, per Bernardum. Et licet quis inciderit in metum propter culpam, si tamen timeat verisimiliter de processu iniurioso et violento, excusatur: ff. Quod metus causa, l. Nec, § Providere [Proinde!]; De [sentencia et re] iudicata, Pastoralis, in Clementinis.

illos qui consulunt quod pape obediencia substrahatur. Et facit c. *Qui cathedram*, eadem distinctione, ubi Cyprianus: "Qui cathedram Petri, super quam ecclesia fundata est, deserit, in ecclesia (se) esse non confidat."

479 nec est qui sibi dicat, Cur ita facis?—ut est dictum—sic quod pro libito voluntatis potest super beneficiis et viris ecclesiasticis onera, qualia sibi placent, imponere, ut expresse ponit Henricus in c. *Significasti, De electione*, in antiquis, et Hostiensis in c. finali [*Mandato nostro*, *De symonia*].

Ergo nec in talibus est sibi obediencia substrahenda, quia "nemini facit iniuriam qui utitur iure suo."*86

Et quo ad collacionem beneficiorum videtur casus pro isto in c. i. [*Si duobus*, *Ut lite pendente*, in Clementinis, in fine.]


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474 Petri] sancti Petri

CJ / 475 confidat] etc foll. BCGJKL / 477 et ... beneficiorum] om. L / 479 qui de iure] de iure quia A; quia de iure B; que de iure CJ / 487–88 Et ... fine] om. ABCGJ, [added] / 501–05 Item ... Si qui sunt] in margin for insertion, A; tr. BCEGHJKL (cf. infra, line 638, apparatus, v. "intrusum," also lines 2739–43); Ymo ... spoliatorum (infra, line 638, apparatus, v. "intrusum") added in margin of A
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[Quod non decet]

Item non decet regiam maiestatem regum qui et eorum prede-
cessores obediverunt domino nostro, sibi obedienciam substrahere,
per raciones que secuntur. [1-a] Primo, si de iure non licet hoc facere,
per consequens non decet, quia "nichil tam proprium imperii quam
legibus vivere," in l. Ex imperfecto, C. De testamentis, et l. Digna
vox, C. De legibus. Et iurisconsultus: "Non puto verecundie nec
dignitati nec pietati convenire, quicquam non iure facere"—in
l. penultima [Creditores], ff. Ad legem iuliam de vi privata.92

[1-b] Item, rex et pater suos felicis memorie tenuerunt indubi-
tanter dominum Clementem predecessorem domini nostri (si sic de-
beat appellari: quia Iohannes de Bracho in repertorio suo super dic-
cione "papa" dicit quod non; et bene, quia honor debitus creatori
non debetur creature)93 veros esse et fuisse summos pontifices [sic].
Nunc perseverancia in bonum multum approbatur, iuxta illud,
"Beatus qui perseveraverit usque in finem," vii. q. i., Suggestum
[cf. Matt. 10.22], specialiter in bono proposito conservando, xvi.
q. i., Vos autem. Et variacio multum reprobatur, iuxta illud, "Qui
ponit manum ad aratum et respicit retro non est aptus regno dei,"
in c. Magne, De voto [Luke 9.62], et facit Clementina Cum illusio,
De renunciatione.94 Ergo non decet tantum regem reprobare quod
semel sic sollemniter approbavit—per regulam iuris, "Quod semel
placuit" etc.,95 et per l. Generaliter, C. De non numerata pecunia,
ibi quando dicit "quod quis propria voce dilucide confessus est" etc.96 Et facit optime c. Dilectissimi, viii. q. ii., ibi cum dicit: "Iu-
dicari namque a vobis ultra non debet semel prelatus, sed tanto a
principio subtiliter iudicandus est, quanto postmodum iudicandus
non est."

[2] Item non decet propter conservanciam fame et boni nominis
regii, quia dicetur: Si esset de regno suo vel parentela sua, [E 234r]
on ita rigide procederet rex contra eum, sicut nec fecit contra
Clementem predecessorem suum. Item: Vult habere papam de reg-
no suo.97 Et "qui famam negligit crudelis est," xii. q. i., Nolo. Et
scribitur Ecclesiastici xli° [15], "Curam habe de bono nomine." Et

511 iurisconsultus] senatusconsultus C / 512 quicquam] quam quid A; quicquid BCJ
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"gravior est amissio fame quam oculorum"—in l. Infamia, C. De decurionibus, libro x°; De procuratoribus, Querelam, per Hostiensem.88

[3] Item pater regis, Karolus felicis memorie, nunquam processit ad substraccionem obediencie pape Clementis, nec ceteri reges, excepto rege Portugalie, qui semel fuit determinatus pro Clemente et post, ipso dimisso, adhesit Bartholomeo.89 Et ceteri reges Francie, precipe tempore scismatum, nunquam ad substraccionem obediencie illius quem papam tuerentur processerunt. Ymo ut dicunt hystorie, illi qui habuerunt regem Francie pro se semper obtinuerunt; ut de Alexandre III° et de Sergio narrat inter ceteros Martinus, in cronica sua.100 Attendat ergo rex illud quod ad propositum dicit Iheronimus: In nobilitate, dicit, appetendum quod nobiles quadam necessitate astringuntur ne a predecessorum probitate degenerent.101 Et Cassiodorus: Sicut indigna posteritas laudes antiqui generis abnegat, ita preclara egregie de patribus dicta confirmat.102

[Quod non expedit]

Item quod non expedit videtur. Non enim omnia que licent expediti, iuxta verbum Apostoli [1 Cor. 6.12] quod habetur transsumptive xi. q. i., Alitud. Istud autem, et si liceret, videtur tamen summe non expedire, propter raciones que secuntur.

[1] Primo, si substrahatur sibi obediencia, recedet et latitabit alicubi, ut verisimiliter dubitant multi, et tunc excommunicabit regem, et forsan iuste per predicta. Et facit c. ii. [Si quis venerit], De maioritate et obediencia, quia "qui non obedierit principi morte moriatur"; et "sive iuste sive iniuste," postquam ipsum pastorem tenemus, "ipsius sentencia timenda est"—xi. q. iii., Sentencia patris. Et Augustinus: "Nichil sic debet formidare cristianus quam separari a corpore Christi; qui enim separatur a corpore Christi non est membro eius, et si non est membro eius, non vegetatur spiritu eius. Si quis autem, inquit Apostolus [Rom. 8.9], spiritum Christi non habet, hic non est eius"—xi. q. iii., Nichil. Et excommunicacio...
efficitur mortalis cum contemptitur—De sentencia excommunica-
cionis, [E 234v] Cum medicinalis, Libro sexto. “Et ubi est incolu-
mitas obedientie, ibi sana forma doctrine,” in c. Miramur, lxi. di.

[2] Item sunt multi casus in quibus solus papa potest dispensare,
et de quibus absolvuc est sibi de iure reservata, qui enumerantur
in c. Deus qui, De penitenciis et remissionibus, per Henricum,103 et
in c. Quod translacionem, De officio legati,104 et in Speculo, titulo
De legato, § Nunc videndum.105 Item, maiores cause sunt per sedem
baptismo. Nunc, obedientie sibi substracta, non esset qui super hiis
possit remedium apponere: ergo non expedit obedientiam sibi sub-
strahere, et “debet inspici, quod evenire potest”—in l. St quis do-
num, in § i. [Hic], ff. Locati, et in c. i. [Alia quidem], De procura-
toribus.106

[3] Item laici, qui “clericis oppido sunt infesti” (in c. Clerici
[laicos], De immunitate ecclesiarum, Libro sexto), ecclesia stante
sine capite, magis libere impedirent ecclesiam in iuribus suis, et ad
bona ecclesie manum apponerent. Et ita quilibet dei ecclesiam la-
ceraret, insurgerent errores et hereses; et propter hoc, ut dicit the-
ronimus, voluit deus quod unus quos preesset, “ne unusquisque ad se
trahens ecclesiam dei laceraret” etc., in c. Legimus, xciii. di., su-
perius allegato.

[4] Item si substraheretur per reges obedientia istis ambobus, vel
per unam partem suo, ea racione qua non obediretur eis, eadem
racione nec obediretur episcopis creatis per ipsos, et ceteris prelatis
vel curatis et beneficiatis; quia clarum est quod ordinati per papam
reprobatum eciam tanquam reprobi sunt abiciendi, per c. i. [Quod
a predecessore], De scismaticis et ordinatis ab eis, et c. Ordinacio-
nes, ix. q. i.107 Et si dicatur: Non, quia ambo reputantur veri summi
pentifices, quilibet in obedientia sua; sed quia nolunt acceptare viam
que videtur melior et conveniencior pro habendo pacem in ecclesia,
percepcio bonorum crucifixi eis substrahitur, etc.: non valet, quia et
si substraccio obedientie fiat ad istum finem, opinio communis ha-
bebbit contrarium, et dicetur quod hic fit quia nunquam fuerunt veri

570 575 580 585 590
595 600 605

De substraczione obediencie


[7] Item per hoc non haberetur unio ecclesie, quia quilibet ipsorum habet de patrimonio ecclesie magnas villas, castra, et fortalicia, et forsan de proprio, in quibus se retraherent, et non renunciabant, et tenebunt sic ecclesiam involutam. Non ergo est procedendum ad substraccionem obediencie, que utique facta non prodesset et multum noceret: per predicta, per 1. Ad probacionem, et l. Neque natales, C. De probacionibus, in quibus dicitur quod quis non debet admiiti ad faciendum quod factum non prodesset.

[8] Item non expedit quod equa lance procedatur contra verum papam et contra intrusum.
Videtur contrarium, videlicet quod substrahere obedienciam ambobus concertantibus licet, decet, et expediat.

Pro cuius evidencia [E 235v] suppono aliqua. Primo, quod lamentabilis divisio que hodie prochdolor est in ecclesia dei, in subversionem status universalis ecclesie et infinitarum periculum animarum, est ita evidens et manifesta quod fere nichil potest esse magis notorium; ymo est notorium facti permanentis taliter quod non potest aliqua tergiversacione celari.

Et quod vehemens est presumpcio contra ambos concertantes, quod ipsi tenuerunt ita diu ecclesiam in isto lamentabili statu, et adhuc tenent, ut presint non ut prosint, “querentes que sua sunt. Et quid est sua querere? Temporalia commoda sequi, lucris inhiare, honores ab hominibus appetere”—ut dicit Augustinus in c. Sunt in ecclesia, viii. q. i. Et quod istis cessantibus cessabit eciam scisma, et acceptabunt concertantes libencius viam pacis.

Item, hoc supposito arguitur sic: Vero pape et indubitato, si faciat aliquid quod notorie scandalizet ecclesiam vel inducat periculum et subversionem animarum, non est obediendum, ymo de facto resistendum. Ergo multo magis istis duobus concertantibus

(quorum quilibet magis vult ecclesiæ sic laceratam et truncatam penes se retinere quam sub alio integram esse. Ex quo clare se ostendunt veros patres non esse, per c. Afferte, De presumpctionibus. Et per hoc nedum scandalizant ecclesiam, ymo ip-

prelati obediencia quanliqui toleratur ab ecclesia (viii. q. iii [iii L (correctly!)], Nonne, et xxi [xvii] di., Hinc eciam), quia melior est obediencia quam victimæ (viii. q. i, Scendum, et c. Illud, De maloritate et obediencia), et peccatum ariolandí et peccatum [om. A] paganïtis incurrít, qui cristianum se asserit et sedi [sedis ABCJ] apostolice obedire [obedienciam AB]; obediencie C] contempnít—lxxxi. di., Si qui sunt, etc. (The order of refutations, below, lines 2739–43, shows that it belongs above rather than here.) Then another paragraph follows here in B: Ymo intruso et iniuste papatum detinenti non est substrahenda obediencia, ut videtur dicere Innocencius in simili, in c. [In] letteris, De restitucione spoliatorum. This is also in A’s margin, along with the preceding paragraph, for insertion above, but it is not taken into the present text because it is neither refuted nor referred to in the last part of the treatise—cf. also n. 111a—and it appears only in AB / 642 dei] om. HKL / 647–53 Et . . . pacis] om. ABCJ[added] / 648 ipsi . . . diu] ita ipsi diu tenuerunt JK / 655 faciat] fiat G / 656 de] om. H / 658–63 quorum . . . deberet] om. ABCGJ / 659 retinere] remanere HK
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sam penitus destruunt. Et videat quilibet sane mentis si filius patri volenti matrem truncare per frusta obedire deberet!

qui papatum retinere nituntur in maximum scandalum ecclesie universalis, in subversionem et periculum innumerabilium animarum, si non velint acceptare viam cessionis, que sola penitus eradicativa scismatis reputatur, ut infra dicam.

Maior probatur sic per dictum Leonis pape sic dicentis: "Si nos, qui aliena debemus corrigere peccata, peiora committimus, certe non veritatis discipuli sed, quod dolenter dicimus, erimus pre ceteris erroris magistri." Et ob hoc ad reprehensionem Ludovici Augusti ad correccionem se reddidit paratum—in c. Nos si incompetenter, ii. q. vii. Et per dictum Gregorii sic dicentis: "Si ea destruerem que antecessores mei statuerunt, non constructor sed eversor esse iuste comprobarer"—in c. Si ea, xxv. q. ii. Et per dictum Sexti pape, qui de se ipso dicit quod "alter non licet sibi in papatu presidire, nisi omnes [E 236r] conatus suos ei cause in qua universalis ecclesie salus infestatur impendat"—in c. Memor sum, xxiv. q. i. Et inde est quod duo testes ad ipsum condemnandum sufficiunt, licet in aliis prelatis secus; quia faciendo aliquid precipue quod ad destruacionem ecclesie tendit, ipse peior est omnibus aliis, "et ideo sine spe venie, condempnandus est ut dyabolus—De penitencia, di. ii., Principium," ut notat Iohannes glosator Decreti in c. Presul, ii. q. iv. Et ob hoc dicunt doctores quod in talibus papa non habet po-testatem contra deum, per c. Sunt quidam, xxv. q. i., ut ponunt Hostiensis et Henricus post eum in c. Proposuit, De concessione prebende; et idem Hostiensis, Iohannes Andree, et Henricus post eos, in c. Magne, De voto. Quod probatur per dictum Pauli, II. ad Corinthios, ultimo capitulo [10.8], ubi dicit quod potestas apostolica est ad edificacionem, non ad destruacionem; et facit quod dicit Petrus Bertrandi, olim cardinalis, in Clementinam Ne Romani, De

elecione, ubi dicit quod si papa faciat aliquid quod scandalizet ecclesiam, et ponit exemplum quod si vellet dare patrimonium totum vel partem notabilem ecclesie parentibus suis, quod resistendum esset sibi in facie, sicut Paulus resistit Petro, ii. q. vii., Paulus [Gal. 2.11].

Quanto magis in casu nostro, pro quo videtur casus in capitulo Non liceat pape, xii. q. ii., et facit quod notat Iohannes glosator Decreti in c. Si papa, xl. di., ubi dicit quod papa sic scandalizans ecclesiam, eciam monitus desistere, si non desistat est censendus hereticus, quia contumacia est heresis—lxxxi. di., Si qui sunt.

Nec hoc in aliquo debet offendere reges et dominos temporales qui non recognoscunt superiorem, quia Cristus dixit apostolis, Reges dominantur, vos autem non sic, Mat. xx° [25 f.]. Et beatus Bernardus ad Eugenium papam, in fine quarti libri: "Consideres romanam ecclesiam, cui actore deo prees, omnium ecclesiarum matrem esse, non dominam; te vero non dominum episcoporum sed unum ex ipsis" etc.

Et istud notanter pono, quia vidi aliqous maioribus assistentes, qui provocabant dominos dicendo quod hoc facere esset apperire viam rebellandi regibus.

Minor apparat manifeste, quia si hoc est licitum in papa indubitato, multo magis in istis duobus concertantibus, qui scilicet papatum retinere nuntuntr in scandalum ecclesie universalis et subversionem status ecclesie et pericum fidelium animarum. Quia clarum est, quod si nos [E 236v] semper obediamus nostro ut pape, et alii Bonifacio, ecclesia nedum enormiter scandalizetur, ymo lacerratur et penitus destruitur. Et facit optime quod notat Iohannes Andree in Novella, in c. Inquisicioni, De sentencia excommunicacionis, super verbo "mortale," ubi formaliter ponit quod "si papa preciperet aliquid ex quo presumeretur status ecclesie perturbari,
vel exinde alia mala eciam ventura, tunc non debet sibi obediri—
ymo qui sibi obedit peccat, quia futura mala debent precaveri, et
non debet papa iuvari ad illa committenda." Et recitat Innocencium
qui fuit papa, et Hostiensem qui fuit cardinalis, et allegant c. Mag-
ne, De voto, et c. Proposuit, De clerico excommunicato ministran-
te.125

(Nam si licet in uno casu particulari vero pape, quando est ve-
vehemens presumpicio de turbacione ecclesie et malis venturis etc.,
ut est dictum, obedienciam substrahere, quare non nunc, eadem
racione, istis ambonus concertantibus? Quia clarum est vel sal-
tem presumpicio est bene vehemens, quod si quilibet obediat suo
eclesia semper remanebit in scismate, et verisimiliter si quilibet
substrahat obedienciam suo, tedio affecti venient cicius ad viam
pacis.)

Et per locum a maiori: Autentica, Multo magis, C. De episcopis et
clericis.126 Et facit, quia non est idem iudicium de dubitato et in-
dubitato, quia dubius de statu suo non potest testari, in l. De statu,
ff. De testamento [Qui testamenta facere possunt!], et in l. i. [Si
incertus], ff. De legatis, 3°.127 Et ille de cuius iurisdictione dubitatur
non debet de ea se intromittere, in c. Cum contingat, De rescriptis.
Et licet quilibet pars dicat quod de suo non dubitat, tamen forsan
nulla parcius est de suo ita secura sicut esset si unus pacifice pre-
sideret, nec esse debet, ut per sequencia apparebit.

Ex istis infero quod neuter concertantium debet se reddere ita
securum de iure suo, quod stante casu sicut est non habeat proba-
biliter dubitare. Probatur per dictum Apostoli sic dicens [1 Cor.
10.27–28]: "Si qui infidelium vocant vos ad cenam, quicquid vobis
appositor fuerit comedite, nichil interrogantes." Et sequitur quod
facit ad propositum: "Si quis vobis dixerit, hoc ydolis immolatum
est, nolite comedere"—ecce quod ad dictum unius Apostolus credere
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iubet! (i. q. iv., in § finali [Notandum]).

Et facit c. Preterea, ii., De sponsalibus; l. Item veniunt, § A quo autem [denunciatum], ff. De hereditatis pecione; [ff.] De administracione [et periculo] tutorum, [E 237r] l. Quidam decedens, § Ex quo. Et facit l. Si fundum, C. De rei vendicacione. Que iura probant quod dictum unius probalit iter loquentis debet hominem reddere dubium. Quanto magis in casu nostro, in quo cristianitas est divisa, et maiores clerici in opinionibus diversi: pro certo, pars que de iure suo non dubitat "innitat ur prudentie sue," contra dictum Apostoli, c. Ne innitaris etc., De constitutionibus. Et per ista apparat intellectus verus ad dictum Iohannis glosatoris Decreti, xxiii. q. i., in summa [§ Quod autem], ubi dicit quod si duo sunt electi ad papatum et quilibet credit habere ecclesiam penes se, forte neuter est scismaticus. quia nunquam hoc intellexit in casu tali sicut nunc. Quod apparat per ipsummet, qui dicit quod ubi sunt duo electi et de eorum eleccione oritur scandalum notabile, neuter debet remanere—in c. finali [Si forte], lxiii. di. Ex quo sequitur quod illi qui contra canones volunt papatum retinere non excusantur a scismate, ut infra lacies dicetur. Intellexit ergo Iohannes, quando duo sunt electi ad papatum, et de eleccione dubitatur a principio, sed quilibet credit habere ius, neuter forte est scismaticus; sed ubi vident quod scandalum est maximum pro eleccione ipsorum, tunc talis credencia fors an ipsos non excusat, per predicta.

Item supponitur quod ad sedacionem huius scismatis et pacem ecclesie totis viribus procurandam, reges sunt astricti sub pena peccati mortalis, et in quantum homines privati et in quantum reges—per dictum Augustini sic dicentis: "Scribitur in psalmo, 'Nunc reges intelligite' " etc., et sequitur, "'Servite domino in timore' " etc. "Quomodo reges servient in timore, nisi ea que contra dominum iussa fuerint religiosa severitate prohibendo atque plectendo? Aliter enim servit quia homo est, aliter eciam quia rex est. Quia homo est, servit vivendo fideliter; quia rex est, servit leges iusta precipentes et contraria prohibentes convenienti vigore sanxiendo." Et hoc dicit

Item probatur per aliam racionem. Reges de iure canonico et divino habent potestatem ambos concertantes compellere ad viam pacis; ergo si non faciant, mortaliter peccant. Maior probatur per
dictum Augustini supradictum, et alibi sic dicentis: "Mirantur autem
quia commoventur potestates cristiane contra dissipatores ecclesie;
si non moverentur, quomodo racionem redderent de imperio suo?
Intendant caritas vestra quid dicam: hoc pertinet ad reges seculi cris-
tianos, ut temporibus suis pacatam velint esse matrem suam eccle-
siam, unde spiritualiter nati sunt"—xxiii. q. iii., Quando. Quia sicut
deus factor celi et terre ordinavit ad stabilitatem firmamenti solem
et lunam, ita ad stabilitatem ecclesie militantis ordinavit sacerdota-
lem dignitatem et regalem potestatem: in c. Solite, De maioritate
et obediencia,188 et in c. Duo sunt "quibus mundus regitur, videlicet
auctoritas sacra pontificum et regalis potestas"—xcvi. di. Et in Au-
tentica, Quomodo oporteat episcopos et ceteros clericos ad ordinem
producit, Coll. i.190 Et licet regalis potestas sit minor respectu sacer-
dotalis bene ordinate, utitur tamen mucrone suo intra ecclesiam,
"ad laudem honorum, vindictam malefactorum"—Prima Petri 2°
[E 238r] vel 3° c. [2.14]; Extra, De homicidio, Postulasti; et De usuris,
Post miserabiliem.190 Et merito, quia ecclesia militans nichil aliud
est quam congregacio fidelium in via militans,141 quia mundus, caro,
demonia diversa movent prelia, ut finaliter veniat ad triumphantem
in patria, ut superius est dictum; que per decreta sanctorum patrum
et iura per ora principum divinitus promulgata (viii. di., Quo iure) 
debet regi, regulari, et disponi; que decretum, canones, et iura parum
fuisse condere, nisi eciam fuisse ordinati qui ea tuarentur—in l. ii. [Necessarium], § Post originem, ff. De origine turis.142

Item probatur hoc, quia reges secundum iura antiqua iudicabant
clericos delinquentes—in c. Si quis cum clerico, xi. q. i., et in c.
Filitis, xvi. q. vii., et notatur in c. Qualiter, De iudicis.143 Et adhuc
hodie possunt iudicare, quando ecclesiastica potestas deficit, ut notat
Iohannes in c. Principes, xxiii. q. v.144 Quod probat clarissime beatus

812 sic om. CJ / 812 dicentis] super Io. foll. C / 814 suo]
deo suo A; suo deo CJ[& orig.] / 818–19 ad . . . ordinavit] om. A / 818 stabilitatem
. . . ordinavit] partly crossed out in C, and written above: firmamentum celi, hoc est
ecclesia universalis, fecit deus (and continued in margin) duo magna luminaria, id
est duas instituit dignitates, que sunt pontificalis auctoritas, regulis potestas / 822
auctoritas] auctoritate C; auctoritates E / 822 di.] di. omni ad verum E / 823 oportet
opertum ABEGHKL / 823 ordinem] ea BCCEGHJK / 824 produci] perduci G / 825
militans] militantium L / 830 diversa] adversa C / 830 ut finaliter] et finaliter BC
/ 830 veniunt] veniunt B; veniunt AGHJK / 831 que] et B / 832 vii. di., Quo iure
B / 838 notatur] notata AB; notetur qualiter C; notat E; notantur H; notata sunt J
/ 840 beatus] om. B
Ysidor us dicens: "Principes seculi nonnunquam intra ecclesiam po-
testatis adepte culmina tenent, ut per eandem potestatem discipli-
nam ecclesiasticam muniant. Ceterum intra ecclesiam potestates ne-
cessarie non essent, nisi ut quod non prevalent sacerdotes efficere
per doctrine sermonem, potestates hoc imperent per discipline ter-
orem. Sepe per regnum terrenum celeste regnum proficit, ut qui
intra ecclesiam positi contra fidem et disciplinam agunt, rigore prin-
cipum conterantur. Ipsamque disciplinam quam ecclesie utilitas
exercere non prevaelet, cervicibus superborum potestas principalis
imponat, et ut venerationem mereantur virtutem potestatis imper-
ciantur. Cognoscant principes seculi deo se debere esse racionem
850 suam tradidit commendantem." Audiant ergo reges, quomodo canon
ipsos alloquitur!

"Et Augustinus de talibus dicit: Multa eciam cum invitis benigna
quadam asperitate plectendi sunt agenda, quorum pocius utilitati
quam voluntati consulendum est." "Facite eciam vos!"—in capitullo
Non vos, xxiii. q. v.; et facit c. De Liguribus, eadem causa et
questione. Et licet loquantur illa capita de illis qui contra epis-
copum erigunt altare et faciunt scisma etc., [E 238v] tamen ecclesia
stante in casu in quo est, idem videtur in ambobus concertantibus
nolentibus acceptare viam canonica distantiam et viam pacis, ut clarius os-
tendetur.

Item minor probatur per ea que notant doctores Bernardus et
De substrancione obediencie 97

Hostiensis in c. i. [Quia quesitum], De officio [et potestate iudicis] delegati, et Henricus, di. ii\textsuperscript{a}, c. Sicut dignum. Ubi dicit quod negligencia crassa iudicis in providendo, ubi providere tenetur, est grave peccatum, per c. Quante, De sentencia excommunicatorum. Et idem dicit doctores in c. Quante allegato, et probatur quia sentenciam excommunicacionis incurrit, ut in predicto capitulo, et potest eciam per negligenciam excommunicari—in c. Administratores, xxiii. q. v.\textsuperscript{147} Et tamen excommunicacio “non debet ferri nisi pro mortalii”—in c. Nemo episcoporum, xi. q. iii. Et facit optimae quod dicit Augustinus in 2\textsuperscript{o} libro Contra Parmenianum, in c. Ita plane, xxiii. q. iv., et quod idem dicit in libro psalmorum, de quo habetur in c. Duo ista, eadem causa et questione.\textsuperscript{148}

Ex quibus infero correlarie, quod reges eciam non requisiti debent totis viribus ad pacem ecclesie laborare, alias non excusantur a peccato. Istud correlariorum ultra predicta probatur sic: “Qui certus est, certiorari non debet”—in lege i. [Si res vendita], ff. De accionibus empti, et in regula iuris, “Eum qui certus est,”\textsuperscript{149} et in c. Volumus, lxxxix. di.\textsuperscript{150} Et facit quod dicit doctores: Bernardus primo, in c. Cum non ab homine, De iudicis; et Iohannes, lxxxi. di., Presbiter, glosa ultima; frater Iohannes in Summa confessorum, titulo De sentencia excommunicacionis, q. xxv., versu xi., in fine; et Innocencius, De sentencia excommunicacionis, Ut fame; et Iohannes Andree in c. preallegato Cum non ab homine: dicentes quod iudex secularis, si videat clericum in flagranti delicto, sine metu excommunicacionis potest ipsum capere, eciam non requisitus per episcopum.\textsuperscript{151} Quorum opinionem credo verissimam, quia in casu illo non est suasio dyabolica que requiritur ad hoc ut c. Si quis suadente locum habeat.\textsuperscript{152} Et facit c. Cum voluntate, De sentencia excommunicacionis;\textsuperscript{153} et facit c. Error, lxxxiii. di., ubi “error cui non resistitur approbatur,” et sequitur: “Negligere cum possis disturbance perversos nihil aliud est quam fovere, nec caret” etc. Et Gregorius: “Consentire videtur erranti qui ad ea que corrigi possunt debite non occurrit,” in c. Consentire, eadem distincione. Et vi-

\textsuperscript{147} 870

\textsuperscript{148} 875

\textsuperscript{149} 880

\textsuperscript{150} 885

\textsuperscript{151} 890

\textsuperscript{152} 895

\textsuperscript{153} 900

Istis ergo suppositis, debent reges et tenentur diligenter inquirere, quid in isto vix solubili dubio sit agendum, et servare ordinem per canonem traditum—videlicet "primo recurrere ad scripta novi et veteris testamenti, secundo ad canones apostolorum vel concilio- rum, tercio ad decreta et decretalia romanorum pontificum, postea ad scripta sanctorum patrum latinarum, ultimo ad exempla sancto- rum. Et si nec sic veritas possit haberis, congregandi sunt sapientes, et quid sit agendum dominus revelabit"—secundum Huguccionem et Archidiaconum, qui hoc notant in c. De quibus, xx. di.155 Hiis ergo sic premisis, arguitur sic: Secundum scripta veteris et novi testamenti, decretalia conciliorum et summorum pontificum, reges non possunt sine offensa dei scisma tolerare; ergo possunt et debent am-bobus concertantibus, viam pacis eis consulte et digeste oblatam non acceptantibus, obedienciam substrahere.


Item secundum scripta novi testamenti et patrum decreta, ne- ter istorum debet in papatu remanere; ergo licet regibus eis obe-
De substraccione obedientie. Maior probatur per dictum salvatoris, quod scribitur Mat. xx° [26–27], qui dicit apostolis concertantibus de maioritate: Qui voluerit esse inter vos maior, fiat sicut minor, etc. Per quod dat nobis intelligere quod ubi ex eleccione duorum nascitur grave scandalum, ut in casu nostro, ambo debent fieri sicut minores, et ita non remanere in dignitate de qua queritur. Pro quo dictum Augustini [E 239v] in libro De doctrina cristiana, qui dicit quod ubi oritur inter cristianos tanta dubietas et ita probabilis, quod maius pars est in una opinione et sanior in alia, quod ambe opiniones sunt equalis auctoritatis (ex quo clare apparat ut videtur quod de duobus nunc concertantibus de papatu, unus non debet magis remanere quam alius), in c. In canonicis, xix. di.¹⁵⁸

Et per decretum sanctorum patrum, quando duo eliguntur ad papatum, quorum eleccione forte est contra fas, id est, probabiliter dubitaturn cuius eleccione est canonica et cuius non, quia verbum “forte” denotat dubitacionem iuris et facti, neuer debet remanere—in c. Si duo [forte] contra fas, lxxix. di.¹⁵⁹

Unde narrat beatus Ysidorus in Libro de conciliis, quod cum Honorius imperator quoddam scisma sedasset, duobus contendentibus de papatu, ecclesia requisivit eum facere legem per quam precluderetur omnibus ambicio in papatu. Et tunc fecit istam, que canonizata est; et debet formaliter hodie practicari.¹⁶⁰

Et specialiter quando ex dubitacione electionum oritur notabile scandalum, ut expresse ponit Iohannes glosator Decreti, lxiii. di., in c. finali [Si forte].¹⁶¹

Minor apparat per predicta, quia reges ex debito officii tenentur providere, etc., et substraccio obedientie est provisio canonica, ut est dictum. Et facit quia ubi contra illum qui haberet superiorem procederetur iudicialiter coram iudice suo, est procedendum de facto contra illos qui contra sacros canones papatum usurpare nituntur, ut ponit textus in § Patet, iii. q. i., et facit c. Licet de vitanda, in fine.¹⁶²

Item ubi requiritur quod unus habeat ius sicut in casu nostro, et duo concurrunt de quorum iure est incertitudo talis quod non potest bene apparere quis eorum habeat verum ius, concursu se impedunt sic quod neuter debet habere: in l. Si fuerit, ff. De rebus dubis, et l. Si quis de pluribus, eodem titulo, et l. Duo sunt Ticii, ff. De testamentaria tutela. Et notat hoc Speculum plene in titulo de locato [De emphyteusi], § Nunc aliqua, versu lix° et versiculo lxii°. Et facit c. ii. [In eleccionibus], De eleccione, Libro sexto, ubi notat Iohannes Monachus quod incertitudo vel perplexitas viciat eleccionem. Et racionabiler hoc legum latores decreverunt, quia melius est quod neuter habeat quam quod ille haberet propter incertitudinem qui alias ius non haberet. Et quod ecclesie militanti in se sit incertum quis duorum concertancium habet ius, apparat per [E 240r] diversitatem opinionum illorum qui scripserunt ab utraque parte, quibus opinionibus diversis est cristianitas lamentabiliter divisa, ut est dictum.

Nec est qui super hoc iudicet. Quia concilium non: quia notabiliter maior pars cristianitatis, specialiter episcoporum, fixe tenuit illum de Roma, quem nos dicimus intrusum, et adhuc tenet, et sunt per eum omnes fere promoti, et sic de statu ipsorum agitur, et per consequens non debent esse iudices. Ymo pocius debent reputari pars quam cardinales antiqui qui interfuerunt ambabus eleccionibus, quos tamen repellit Iohannes glosator Decreti a iudicando in hac causa ex isto capite, in c. Si duo [forte] contra fas, cuis opinionem irrevelabiliter amplactuntur illi qui obediunt Bonifacio. Et idem dicendum est de illis qui obediunt Benedicto, ita quod non iudicabunt. Et ita nec concilium nec cardinales in hoc casu iudicabunt. Et minus compromissarii, propter raciones que inferius tanguntur. Item, licet nobis non deficiat ius, deficeret tamen probacio iuris, quia pars adversa testamentum dominorum cardinalium admittere non vult, qui eleccionibus—si una sic dici debat—interfue-
runt. Et propter multa alia, que causa brevitatis scribere obmitto, dubium huius scismatis est ita involutum et ita respectu tocius ecclesie militantis incertum, quod per predicta ut videtur, neuter debet remanere. Et per ista clare appareret quod Gracianus, in § Hoc autem quod immediate sequitur c. Si duo [forte] contra fas, nunquam voluit loqui de casu ita dubio et ita probabili. Sed verum est quod si clare appareret quod unus esset intrusus per apostasiam et impressionem, et alter canonice electus, tunc forma capituli Si quis pecunia locum haberet, et que ibidem dicit Gracianus.

De substraccione obedientie

Et si dicatur, in decem et novem annis potuistis bene cicius percipere, dico cum Augustino, in libro De civitate dei, quod si tempus opportunum expectavi, bene feci;\textsuperscript{172} ut infra dicetur.

Item supputo quod unius istorum eleccio non sit contra fas, ymo iusta, sancta, et canonica: nichilominus secundum canonicas sanciones et dicta sanctorum doctorum, propter maliciam plebis vel propter sedacionem gravis scandali, verus papa cogitur et debet cedere; ergo sibi non cedenti licet obedientiam substrahere. Maior probatur per capitulum Nisi cum pridem, De renunciacione, § Propter maliciam et § Pro gravi quoque scandalo—quod papam astringit, quia racio capituli nittitur iure divino, quo non dubium papa ligatur, per c. Sunt quidam, xxv. q. i.\textsuperscript{173} Et per Augustinum contra Cresconium grammaticum, dicentem: “Neque enim episcopi propter nos sumus, sed propter eos quibus verbum et sacramentum domini comministramus, ut eorum sine scandalo sese necessitas habet, ita vel esse vel non esse debemus quod non propter nos sed propter alios sumus. Deinde nonnulli sancta humilitate viri prediti propter quedam in se offendicula, quibus pie religiose movebantur, episcopatus officium non solum sine culpa, verum cum laude, deposuerunt.”\textsuperscript{174} Item, Libro gestorum, libro x°: “Pro pace Cristi esse episcopi debemus vel non esse”; et subdit: “Quid, dubitamus redemtori nostro sacrificium istud humiliatissimus offerre? An non ille de celis in membra humana descendit, ut membra eius essemus, et nos, ne membra eius crudeli [E 241r] divisione lanientur, de cathedris descendere formidamus? Propter nos sufficit quod cristiani fideles et obedientes simus; hoc ergo semper simus. Episcopi autem propter populos cristianos ordinamur; quid ergo cristianis populis ad christianam pacem prodest, hoc de nostro episcopatu faciamus.” Et subdit, c. xi.: “Si servi utiles sumus, cur domini eternis lucris pro nostris temporalibus sublimitatibus invidemus? Episcopalis dignitas fruc-
tuosior nobis erit si gregem deposita magis collegerit quam retenta disperserit." Et infra: "Nam qua fronte in futuro seculo promissum a Christo sperabimus honorem, si cristianam in hoc seculo noster honor impedit unitatem?"\(^{175}\) Ex quibus sequi videtur clare quod papa pro unione ecclesie iuri suo tenetur cedere. Et facit quod notat Iohannes glosator Decreti in c. Quam sit, xviii. q. ii., ubi dicit quod papa quando tenetur cedere debet hoc facere, "quia cum teneatur de aliis iusticiam facere, multo forcius de se ipso," per I. Alcius, ff. Si servitus vendicetur.\(^{176}\)

Minor probatur per primam racionem istius partis, ubi dicitur quod vero pape in hiis pro quibus scandalizatur universalis ecclesia, et que sunt in subversionem et periculum animarum, non est obedientium. Ymo in talibus est papa celestis recognoscendus, ut notat Henricus post alios in c. Proposuit, De concessione prebende, et in c. Magne, De voto.\(^{177}\)

Et per dictum Augustini super psalmo, "Deus iudicium," ibi: "Suscipiant montes pacem" etc. [71.3], ubi ad literam sic dicit: "Excellentes quippe in ecclesia paci debent vigilanti intencione consulere, ne propter suos honores superbe agendo scismata faciant, unitatis compage dirrupta. Colles autem eis obediendo ita subsequantur, ut eis Cristum anteponant, ne maiorum vana auctoritate seducti se a Cristi unitate dirrumpant."\(^{178}\)

Item videtur clarissime quod de iure divino et canonico, propter sedacionem tanti scandalii, verus papa tenetur cedere; quia cum scandalo dato nichil penitus est faciendum, ut dicunt doctores theologiae, specialiter beatus Thomas, in titulo De scandalo;\(^{179}\) et de talibus veraciter dicitur: "Ve illi per quern scandalum venit" etc. [Matt. 1085

18.7]. Nunc videamus si scandalum presens est datum vel acceptum. Et multi non reputant dubium quin sit scandalum datum. Nonne domini cardinales, postquam nominaverunt, ut asseritur per impressionem, Bartholomeum, scripscrunt multis qued ipsi canonice elegerant? Nonne fuerunt cum [E 241v] eo per longum tempus, exhibuerunt reverenciam, supplicaverunt pro beneficiis, etc., ut multi dicunt? Et licet ista non tribuant ius in papatu illi qui per impressionem est nominatus, tamen dant occasionem scandalo, quia "scandalum est factum vel dictum minus rectum, occasionem prebens proximo ruine," ut ponit Henricus in c. Cum ex intunclo, De novi operis nunciacione—et recitat Iheronimum, et beatum Thomam ubi supra. Et qui non removet scandalum cum potest, transgressor est evangeli, ut ponit beatus Bernardus in sermone.

Et propter sedacionem scandalii sunt omnia obmittenda que pos sunt obmitti sine peccato mortali, in c. Cum ex intunclo. Ergo papatus est propter hoc dimittendus, qui deo teste bene potest dimittii sine peccato mortali—in c. primo [Quoniam aliqui curiose, De re-nunciacione, et recitat lxv°]. Nec est appetendus per aliquem ut presit, sed ut prosit—c. Qui episcopatum, viii. q. i. Nec potest dici quod istud sit scandalum Phariseorum in dubio ita probabili; et scandalum Phariseorum erat in hiis que sunt fidei, in quibus "utilius scandalum nasci permittitur quam veritas relinquatur." In casu tamen nostro, ubi solum agitur de presidencia certe persone, sedum pro scandalo colorato et probabili, ymo et pro mera malicia—quando homines sunt fortiter obstinati contra prelatum, et salus ecclesie potest esse tuta per alium—prelatus ut videtur potest cogi cedere, ut in c. allegato Nisi cum pridem, in § Propter maliciam, et § Hoc [Non!] autem, et c. Mutaciones, vii. q. i. Et racio: quia omnis pontifex qui ex hominibus eligitur, propter homines est, non propter se, ut dicit Apostolus [Heb. 5.1], etc. Et ad verum, scandalum non potest esse maius; et tamen qui scandalizat unum de pusillis, expedit ei ut demergatur in profundum, etc. [Matt. 18.6]—in c. Cum ex intunclo allegato. Ubi Henricus recitans beatum Thomam dicit quod illi qui
sunt in causa magni scandali et non cedunt quando possunt, peccant mortaliter. Et ita qui talibus obedit talibus favet, et hoc faciendo ut videtur participat cum ipsis in crimen criminoso, ut infra lacius dicetur.

Et Augustinus, *De verbis domini*, sermone xvi., ad propositum sic dicit: Duobus modis te non maculat malus—si non consencias et si redarguas; et circa finem [*E 242r*] dicit sic: Exit ille liber in conspectu dei, cui neque sua peccata deus imputat, quia non fecit, neque aliena, quia non approbavit, neque negligiariam, quia non tacuit, neque superbia, quia in unitate permansit.  


Et maxime in casu presenti, ubi tantum scandalum sequitur et periculum animarum, in quo illi de quibus agitur offendunt canones, volendo retinere papatum contra sacros canones;

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**1119 cedunt**


1145 quicquid dicatur, videtur quod hoc faciant per cupiditatem et ambicionem, in quo casu loquitur Innocencius ubi supra. Et notabiliter facit quod notat Johannes glosator Decreti in c. Sacerdotes, ii. q. vii., ubi dicit quod subditi possunt recedere ab obediencia prelati qui non servat canones. Et idem Huguccio in c. Si qui sunt, lxxxi. di.; et facit optime c. Sane, ii., xvi. q. ult. [vii.], et quod notat Archidiaconus in c. Dominus deus noster, xxiii. q. ii. [Quid culpatur, xxiii. q. i.], ubi dicit quod minus canonice volenti retinere imperium non est obediendum a subditis. Et istud precipue est intelligendum, quod illis qui contra canones nituntur retinere papatum non 1150 est obediendum, per predicta. Et nedum contra canones continentes preceptum, sed consilium reverencie vel diffinicionem, ut notat Bernardus in c. Ad aures, De etate et qualitate, et habetur in c. Dudum, De eleccione, per Henricum.


Item taliter papatum retinere volentes contra sacros canones veri scismatici sunt, ut videtur dicere Innocencius in c. i. [Super eo vero], De sentencia excommunicacionis, ubi dicit quod scismatici sunt qui

constituciones ecclesie non servant, et per hoc ecclesiam dividunt. 109
Et idem ponit Huguccio in c. Quia per ambicione, lxiv. di., superius
allegato, super verbo “tradicionum,” ubi dicit quod qui transgre-
diuntur tradiciones paternas, illas obmittendo et scisma faciendo,
etc. 200

Et Gauffredus: “Scisma est illicita dissencio illorum inter quos
unitas esse debet”—in Summa, titulo De scismaticis—sicut vere
est contendere de primatu sic scandalose, per c. Multi sacer-
dotes, xl. di. 201

Et probatur hoc quia eadem racione qua quis dicitur scismaticus
quando se intrudit in papatu contra sacros canones, eadem racione
qui contra sacros canones papatum vult retinere, per c. Sepe con-
tingit, De restitutione spoliatorum, ubi textus, quod idem est male
intrare et male retinere. Et facit quia ista tria equiperantarunt, eccle-
siam “invadere aut iniuste possidere, aut iniqua vel iniusta defen-
sione perdurare” velle, in c. Indigne, xii. q. ii. 202

Ergo non est eis obediendum, ymo de facto resistendum (per c.
Non vos, et c. De Liguribus, xxiii. q. v., et in § Paet, iii. q. i.,
superius allegato), 203 et acius contra ipsos procedendum, ut videtur.
Quod dolenter dico et scribo; quia ille cui obedio est talis quern vidi,
quem amavi, quem credidi, quem dilexi, et per dei graciam taliter
se habebunt quod non oportebit amplius loqui. 204 Et c. Nisi cum
pridem loquitur de precepto, quia lex vel canon loquitur de precep-
to, licet non exprimatur quando est racio evidens [E 243r] que cogit
sic intelligere (ut in casu nostro), ut ponit Archidiaconus in c. De-
nique [§ Hec etsi legibus], in fine iv. di., ubi habes quod facere sic
dampnabiliter contra sacros canones est pena deposicionis. 205

Et ex supradictis inferunt scolastici aliqui, et forsan non male, 1205

... di.] om. ABCJ,G (added) / 1188–89 eadem ... retinere] eadem racione qui pa-
patum retinet contra sacros canones ABCJ,G(with the other added in margin) / 1191
cium dixerit alterum et sibi adherentes scismaticos, et eontra, tamen hodie magis
constat quod ipsi ambo sunt scismatici, quam unquam apparuerit de iure alicuius
istorum. Quia ambo pro tanti scandalis sedacione cedere tenentur, quod si non faciant,
quod licet Bonifacius et sibi adherentes semper a principio schismaticis dixerunt quod Benedictus cum sibi adherentibus est schismaticus, et dominus Benedictus et pars sua idem dixerunt de Bonifacio et suis, et verum est de uno ipsorum: tamen hodie constat magis clare quod ipsi ambo sunt schismatici quam unquam apparuerit de ipsorum altero. Probatur hoc, quia luce clarius est, ut videtur per predicta, quod ipsi ambo pro sedacione scandali prochdolor hodie in ecclesia vigentis, tenentur cedere; quod si non faciunt, solemniter requisiti, veri schismatici sunt, ut est dictum. Et istud sine dubio magis est clarum ecclesiae universali quam sit clarum quis ipsorum est verus papa et quis intrusus.

Item videtur per predicta quod nedom sunt schismatici, ymo heretici, quia “scisma non potest esse sine heresi,” ut notat Iohannes, xxiv. q. i., in summa, et probat Iheronimus in c. Inter heresim et scisma, xxiv. q. iii., ibi cum dicit: “Ceterum nullum est scisma nisi sibi aliquam heresim confingat, ut recte ab ecclesia discessisse videatur.”

Ubi Archidiaconus: “Qui in schismate perseverat, iam heresim confingit, per c. Denique, vii. q. i.”; et in fine glose dicit: “Nota tamen quod si schismaticus perseverat, hereticus est.”

De substraccione obedientie

teneri pro unione et pace ecclesie, et tenent sic ecclesiam divisam in scismate, est heretica; quia heresis est proprie eleccio opinionis per quam ecclesia dividitur, vel per quam quis ab unitate segrega-
tur. Unde Iheronimus: “Heresis grece ab eleccione dicitur, quod scilicet sibi eam unusquisque eligat opinionem quam putat esse me-
liorem.” Et Augustinus pulcre et bene ad propositum: “Hereticus est qui alicuius temporalis commodi, et maxime glorie principatus-
que sui gracia, falsas ac novas opiniones vel gignit vel sequitur.” Et ista omnia habentur in c. Heresis et c. Hereticus, xxiv. q. iii. Et intellige, precipe quando ecclesia universalis propter talam opinio-
remanet in scismate, in quo casu videtur proprie habere locum

illud quod notat Johannes glosator Decreti in c. Si papa, ubi dicit [E 243v] quod contumacia vel obstinacio in papa est heresis, ut superius est dictum,120 per illud

quod sequitur, I. Regum xv° capitulo [22–23], et in c. Si qui sunt, lxxxi. di.: “Peccatum ariolandi est non obedire, et quasi scelus ydo-
latrie non acquiescere.” Et sequitur: “Peccatum paganitatis incurrir si quis dum christianum se esse asserit, sedi apostolice obedire con-
tempnitet.” Sedi apostolice: id est: canonibus, qui “instinctu sancti spiritus et dono dictati sunt” per veros et indubitatos summos pon-
tifices, dampnabiliter resistit—in c. Violatores, xxv. q. i.209

Et Ysidorus: Hereticus est qui sanctorum patrum tradiciones superbe contempnitet, et unitatem ecclesie per hoc scindit—quod recitat Archidiaconus in c. Inter heresim allegato.210

Et ymaginantur multi quod sine comparacione magis ledunt eccle-
siam isti duo propter eorum duram opinionem quam faceret unus qui teneret unam proposicionem hereticam, qui sine dubio, si per-
tinax esset, ut verus hereticus haberetur. Et propter hoc, non sine causa illi qui occasione papatus faciunt scisma vocantur non solum heretici sed heresiarche, in c. i. [Quod a predecessore], De scisma-

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110  

De substraccione obedientie

Ex quibus clare sequitur quod in hoc non est eis obediendum.

1260  Ex quibus videntur clare inferenda que secuntur:
Primo, quod ille qui credit se esse verum papam, et tamen in veritate non est, sed intr usus, et longo tempore tenet se in credencia sua, propter quod tenet ecclesiam in scismate iam antiquato, non excusatur a scismate vel heresi propter talem credenciam. Apparet, quia concilium lateranense de quo loquitur c. i., De scismaticis, allegatum, vocabat concertantes de papatu cum Alexandro tercio nedum scismaticos vel hereticos, ymo heresiarchas—id est, summos hereticorum. Et tamen forsan credebat quilibet ipsorum habere papatum suo tempore penes se.

1265  Et facit, quia in dubiis pocius tales debent dimittere papatum, per c. Significasti, De homicidio, et regulam iuris, “In dubiiis” etc., quam sic ecclesiam dei destruere.

De substraccionone obedientie

per consequens non potest excommunicare aliquem, vel aliam sentenciam ferre, ut notat idem glosator, xxiv. q. i., in summa.\textsuperscript{213}

Et quod dicit in fine illius glose, "nisi forte in duobus electis ad papatum" etc., et in c. Didicimus, eadem causa et questione—intellige ut supra satis dixi.\textsuperscript{214}

Et ob hoc dicunt multi quod universitas parisiensis vel alii consequentes viam cessionis non habent dubitate processus domini Benedicti vel Bonifacii.\textsuperscript{215}

Item inferunt aliqui unum, quod utinam dominus Benedictus advertat, quem semper, in quantum humana fragilitas nosse sinit, credidi esse bonum et probum: quod ipsi ambo viam cessionis pertinaciter refutantes, vel acceptare plus debito differentes (sicut dicimus de illo qui remanet in excommunicacione plus quam per annum, qui eo ipso est de heresi suspectus; et si per aliud mairius tempus perseveraverit, est hereticus censendus—ut notant doctores in c. Excommunicamus, De hereticis;\textsuperscript{216} quia per tale tempus arguitur perseverancia vel pertinacia in scismate, quae est heresis, etc.), incurrunt vel merentur penas que secuntur: Primo, sentenciam excommunicacionis ipso facto, ut est dictum; merentur deposicionem, rerum omnium ablacionem, militarem persecucionem, et curie seculari tradicionem secundum canones, et secundum legem divinam ignem et cremacionem—quod ultimum probatur ex verbis domini dicentis, Iohannis xv° [6], "Si quis in me non manserit, mittetur foras et arescet, et colligent eum et in ignem mittent" etc. Notat hoc Hostiensis in Summa,
De substraccione obedientiencie

De hereticis, § Qua pena, et Henricus in c. Ad abolendam, De hereticis, allegato.\textsuperscript{217} Et hoc forsan volebat dicere de Moravia, qui predicabat tempore Clementis quod ambo maclarentur.\textsuperscript{218} Nec turbentur duo concertantes contra sic scribentes, quia “rea-itus omnem honorem excludit”—in l. i. [Quicunque], C. Ubi se-natores vel clarissimi; et notat hoc Iohannes expresse de papa in c. Achacius allegato. Sed habeant in se “cautelam que debet esse prepositorum, in qua totum racio agat et nichil furor sibi vendicet, nec aliqual agant priusquam concitata ad tranquillita-tatem mens redeat,” iuxta consilium Gregorii, de quo habetur in c. Illa, xi. q. iii.


Item quod licet eis substrahere obedienciam, precipue quantum ad ea que recipiunt ab ecclesia contra dispositionem iuris, ut de beneficiis vacantibus primam annatam—que tamen debet in uti-

litatem beneficii converti, vel futuro successori reservari, ut in c. Presenti, De officio ordinarii, in Sexto—et iuribus communibus in procuracionibus, “que pro visitacione debentur” (in c. Cum ex officii, De prescriptacionibus etc.), et similibus.\textsuperscript{221} Facit, quia licet romana ecclesia sit aliarum ecclesiarum mater, non tamen domina, sicut dicit beatus Bernardus ad Eugenium papam, in fine quarti libri: “Consideres sanctam romanam ecclesiam, cui auctore deo prees, omnium ecclesiarum matrem esse non dominam, te vero non dominum episcoporum sed unum ex ipsis, porro fratrem diligencium deum” etc.\textsuperscript{222} Et facit illud Mat. xx\textsuperscript{9} [25–26]: Reges autem dominatur, vos autem non sic. Et illud: “Episcopi sacerdotes se esse sciant, non dominos”—et illud Petri: “Neque ut dominantes in clero, sed ut forma facti gregis ex animo” [1 Pet. 5.2]: in c. Esto subjectus, xv. di. Nam “quando culpa non exigit, omnes secundum rationem humilitatis pares sumus”—in c. De Constantinopolitana, xxii. di. Et quod papa non sit dominus aliorum est argumentum vii. q. i., Mutaciones, in principio, “ad dominacionem” etc.\textsuperscript{223}

Multa autem in libris ibi precedentibus beatus Bernardus dicit de potestate pape;\textsuperscript{224} et beatus Thomas. “Quamvis enim res ecclesie eius sint sicut principalis dispensatoris, non tamen ut domini seu possessoris”; “et ideo si recipit pro aliqua re spirituali pecuniam, non caret vicio symonie, secundum Thomam.” Et ista recitat Archidioconus in c. Non decet, xii. di.\textsuperscript{225} Et doctores in c. Quia plerique et c. Que in ecclesiarum, De constitutionibus, dicunt quod si aliquis princeps fecerit constitucionem contra ius naturale, puta quod dominia de uno in alium transferantur sine iusta causa, talis constitucio nee in foro anime nee civili conservanda est: quod recitat Archidioconus in c. Ius civile, i. di.\textsuperscript{226} Et idem tenet Henricus per c. Si quando, De rescriptis, et per c. Imperiali, cum sequenti [Nec dampnosa], xxv. q. ii. Et notant hoc Accursius et Odofreus, C. De

[E 245r] precibus imperatori offerendis, in l. Quociens. Et Innocen-
cius et Compostellanus, De constitucionibus, Que in ecclesiarum;
et Henricus in c. Ex parte, ii., De officio delegati.227 Ymo forsan
papa qui gravat in exaccionibus ecclesias tenetur ad restitutionem
et ad tantundem, ut "paciatur legem quam ipse tulit"—in c. Pro-
curaciones, in fine, De censibus, iuxta notata Hostiensis in c. Quia
plerique, De immunitate ecclesiarum.228 Et sentencia propter hoc
per ipsum lata non est timenda, ut notat Iohannes glosator Decreti
in c. Sentencia pastoris, xi. q. iii., et in c. i. [Omnes leges], prima
di.229 Unde licet papa habeat plenitudinem quantum ad omnia bona
ecclesiastica temporalia et spiritualia, non tamen habet illam ut do-
minus sed ut minister et dispensator domini principalis.230 Et ideo
dispensacio talium bonorum ab eo non debet fieri, nisi in illis de
quibus verisimiliter apparret quod dominus principalis consensus
adhiberet, ut "potestas sub racione restringatur"—xi. q. iii.,ILLA. Pro
isto facit c. Quia cognovimus, x. q. iii., ibi cum dicit quod illi qui
recipiunt ab ecclesia ultra quam sacri canones ab antiquo permit-
tunt, "pocio meretur exactores quam pontifices nominari."

Unde quilibet ea que agit tenetur agere secundum iudicium
recte racionis, et si sic fiat, faciens virtuose agit et meretur. Et qui-
cunque agit contra iudicium recte racionis peccat. Hec Henricus in
iv. distincione quam ponit in c. Cum ad monasterium, De statu
monachorum.231 Et est recitare Iohannem Monachum, qui hoc ponit
in extravaganti, quod est precipue intelligendum de papa, per c.
Homo christianus, xl. di.232 Et si in papa indulbato hoc locum habet,
quanto magis in istis duobus concertantibus, qui ita sunt respectu
ecclesie militantis dubitati, et de quibus verisimiliter creditur quod
propter talem lanam tenent nos sic involutos. Et quia sunt contra
pacem ecclesie, debent et dignitate nudari et propria substancia
privari—in c. Qui contra pacem, xxiv. q. i.233 "Et prelatus non debet
querere predam in subditis, sed eis preesse ut prosit, xciii. di., Dia-
coni, versu Nunc autem. Et dicitur ad electum: Rectorem posuerunt
1390 te, noli extolli, sed esto in illis quasi unus ex ipsis, curam eorum

1360 ii.] le second BCG; le ii KL / 1362-63 Procuraciones] con-
stituciones J / 1363 Hostiensis] hoc B; om. CJ; per Hostiensem L / 1365 ipsum] hoc
BCGJ / 1381 extravagant] Super cathedram foll. L / 1382 haberet] habeat
ABCLJ / 1386 debent et] debent ex E / 1388 ut prosit] ut presit B; non ut presit
EGHK; non ut presit foll. L / 1389 Rectorem] rectoris CEHJK / 1389 posuerunt]
proposuerunt CJ
habe—Ecclesiastici xxxii. [1–2]. Et ita maioritas habet certum ordi-
nem ad subditos, cuius excessus parit tyrannidem, et eius neglectus 
cohercitacionem, et discrecio rectum ordinem [E 245v]—De officio 
custodis, c. i. [Custos ecclesie].” Et ista habentur per Iohannem Mon-
achum in summa super rubrica De maioritate et obediencia, in 
Sexto. Ergo licet eis in hoc obedienciam substrahere, per iura in 
racione precedenti immediate superius laciis allegata,

que dicunt quod illi qui notorire violat canones non est obedien-
dum, etc.

Item, qui propter contumaciem vel alias excommunicatur, si 
sentenciam excommunicacionis sustineat per annum, dicitur de fide 
suspectus, ut dicunt Hostiensis et post eum Henricus et alii, in c. 
Excommunicamus, De hereticis, per c. Gravem, De penis. Quod 
est intelligendum, sive sentencia sit iusta sive inusta, id est, si pro-
babiliter dubitetur de ea; ut notatur in simili in c. Si celebrat, De 
clerico excommunicato ministrante, ubi dicunt quod sive sentencia 
sit iusta sive inusta, celebrans tamen incurrit penam illius capituli, 
ut ponit Henricus ibidem. Quanto magis illi qui tenuerunt in isto 
scismate iam ecclesiam per decem et novem annos, et in casu ita 
probabili et ita dubio, in quo maiores clerici sunt in opinionibus 
diversi, unus excommunicat alium, anathematizat cum adherenti-
bus, etc., et de sentencia non curatur, etc. Ergo nedum licet talibus 
obienciace substrahere, ymo est necessarium, sub pena suspicionis 
et fatorie—in c. finali [Absolutos], De hereticis.

Item adhuc videtur quod licet regibus ambobus substrahere obedi-
ciam alia racione. Scribitur enim Mat. xviii° [15–17]: “Si pec-
caverit in te frater tuus, etc. Et si non audierit, die ecclesie. Et si 
non te audierit, sit tibi tanquam ethnicus et publicanus,” etc. Et ista 
auctoritas secundum Hostiensem—quern recitat Henricus in c. In omni, De testibus (et idem Hastensis, libro ii°, titulo De correc-

cione fraterna)—est sub precepto in quantum est actus caritativus, nedum illis ad quos spectat ex officio corrigere, ymo omnibus, per c. Tam sacerdotes, xxiv. q. iii., ubi dicitur quod “tam sacerdotes quam reliqui fideles omnes summam debent habere curam de illis qui perunt, quatenus eorum correccione aut corrigantur de peccatis, aut si incorrigibles sint, separantur ab ecclesia.” “Et probatur eciam per legem naturalem, que dicit: hoc facias aliis quod tibi vis fieri. Debes autem velle quod alius te corrigat quando peccas, ut emendes; igitur et tu debes hoc aliis facere. Secundo per legem moysaicam, Deut. xxii. [1]: non preteribis bovem aut ovem errantem, sed reduces. Ergo fratrem errantem tenetur quis corripere, quod est ad deum reducere. Tercio per legem ewangelicam, Mat. xviii. [15-17]: si [E 246r] peccaverit in te frater tuus—and non dicit ‘subditus’; et subdit: lucratus es fratem tuum. Quia ergo omnes sumus fratres, omnes tenemur nos invicem corrigere, quando contingit aliquem peccare.” Et facit quod dicitur “Ecclesiastici xvii. [12]: unicumque mandavit deus de proximo suo.”

Ergo si reges et domini utriusque obediencie supplicaverint et requisiverint cum humilitate et mansuetudine, quilibet suum, quod viam istam velint acceptare, vel aliam eque bonam si posset reperiri (si pro non!), et videntes se non posse proficere cum ipsis, dixerint ecclesie, id est cardinalibus, qui forsan in hoc satis representant ecclesiam—iuxta notata per Petrum Bertrandi in prohemio Sexti libri, ibi cum dicit quod in eleccione romani pontificis, universalem ecclesiam representant239—et in regimine ecclesie sunt sibi coadiutores (in c. Fundamenta, De eleccione),240 et dixerint eciam prelatis regnorum quorum consilium habuerunt super isto, et si videant se proficere non posse: quid restat? Illud quod in fine auctoritatis dicitur, videlicet quod debent ipsos habere tanquam ethnicos et publicanos, et ita obiedienciam sibi substrahere, iuxta illud quod dicitur omnibus, ad Ephes. v. [11]: “Nolite communicare operibus infructuosus tenebrarum, magis autem redarguite.” Nec valet si dicatur, preceptum est affirmativum, quod non ligat nisi pro loco et tempore necessita-

De substraccionone obedientie

tis.241 Ubis unquam fuit magis locus necessitatis huius correccionis—

Novit deus! 1455

Et videamus si illa sex que doctores notant242 concurrunt hodie

Ad propositum in personis regum. Dicunt quod ex parte corripientis,

Ad hoc quod astringantur sub precepto servare ordinem evangellii—

Ibi cum dicit, "si peccaverit" etc.—debent concurrere tria. Primo,

Certa peccati cognicio, propter quod dicitur Eccli. xi. [7]: "Prius-

Quam interroges, non vituperes quemquam, et cum interrogaveris,

corripe iuste." Secundum est mansuetudo in corripiendo, quia cor-

Ripiens cum ira magis ad pelus provocat quam corripiat. Ideo dicitur

In psalmo [89.10], "superveniet mansuetudo et corripiemur." Ter-

cium est quod in alio non sit tanta aptitudo ad corrigendum. Et si

Ista tria hodie in regibus, principibus, et maioribus prelatis habeant

Locum, videat quilibet!

Ex parte vero illorum de quorum correccione agitur, debent

Concurrere alia tria. Primum, quod sit spes de correccione; secun-

dum, [E 246v] quod peccatum sit mortale, non veniale; tercium,

Quod non sit spes quod habeant maiorem opportunitatem temporis

Ad corrigendum. Et ista tria hodie et eciam clarissime concurrunt.

Nonne est verisimile quod isti duo concertantes sic diu nos teneant

Involutos propter obedientiam que datur eis, ex qua ipsi habent bona

Crucifixi in maxima habundancia, ditant se et suos? Qua obedientia

Subtracta, cessabit affectus et libido dominandi, et inducentur ita

Ad cessionem et pacem et unionem ecclesie, etc. Secundo, quod sit

Peccatum mortale; et illud vere satis est superius probatum; et probat

Beatus Bernardus, qui dicit in sermone: Qui non removet scandalum

Cum potest, transgressor est evangellii.243 Et beatus Thomas, quem

Recitat Henricus in c. Cum ex iniuncto, De novi operis nunciacione:

"Qui non obmittit propter gravis scandalii sedacionem illa que pos-

Sunt obmitti sine peccato mortali"—sicut est dimittere papatum, in

c. unico [primol; Quoniam alquì curiosi], De renunciacione, in Sexto—

"Mortaliter peccat."244 Item, ubi unquam potest esse maior op-

1454 fuit magis] vv. AL / 1454 locus] magis foll. EGHJKL / 1454 neces-
portunitas quam nunc, quando sancto spiritu corda hominum visitante, omnes clamant pro pace ecclesie et pro via cessionis amborum?

Ex quibus clarissime potest concludi, quod reges, principes, et maiores prelati, qui servaverunt formam ewangeli, ibi cum dicitur, "si peccaverit" etc., istos concertantes summando et requiringo dulciter et amicabili, et postmodum dixerunt cardinalibus et prelatis, habendo consilium cum ipsis, etc., tenentur sub precepto substrahere obedienciam. Nec valet si dicatur quod predicta auctoritas non habet locum de subiecto ad superiorem; quia falsum est, specialiter in tanto casu et quod popam, sicut dicimus de Paulo, qui Petrum reprehendit [Gal. 2.11], etc.; quod intelligit Gracianus de reprehensione in quantum est actus caritativus, in c. Paulus, ii. q. vii. Et licet Iohannes Andree in c. Proposuit dicat quod ista auctoritas non habet locum in papa, saltim quando dicitur "dic ecclesie" etc.: in casu tamen nostro, in quo deus ita notorie offenditur, habet locum secundum eum, qui dicit quod in tali casu cessat potestas papalis et est recognoscendus papa celestis, ut ponit in c. Proposuit, in fine glose. Et taceant illi qui volunt movere reges, dicendo quod hoc dicere esset aperire viam rebellionibus, quia subiecti possent dicere: Rex noster facit [E 247r] sic, moneamus eum quod desistat, et si nolit desistere, monitus, dicamus ecclesie; et si nec sic proficiamus cum eo, habeamus eum sicut ethnicum et publicanum. Quia ista nichil ad propositum, iuxta dictum salvatoris [Matt. 20.25-26]: Reges dominantur, vos autem non sic. Et papa non est dominus ecclesie sed dispensator, ut supra satis probatum est. Ymo Gregorius magnus vocavit se, et post eum sui successores, non sine causa, servum servorum dei, ut ponit Martinus in cronica sua.

Item si dicamus, sicut verum est, ut opinantur multi, quod ad reges spectat ex debito officii istos concertantes reducere ad pacem et unionem ecclesie, quia deus ad stabilitatem ecclesie ipsos ordinavit (et ob hoc dicit Ysidorus quod "intra ecclesiam potestatis adep-
De substraccione obedientie

De culmina tenent," "ut regnum celeste per regnum terrenum proficiat," in c. Principes seculi, etc.), tunc clarissimum est quod illud "si peccaverit" etc. quae posita est sub precepto, et peccant non observando mortaliter, ut notat Innocencius in c. Novit, De iudiciis, glossa ii, et Cardinalis, De religiosis domibus, c. unico [Religionum diversitatem], Libro sexto—quos recitavit Henricus in c. In omni, De testibus.248 Et facit c. *Ita plane et c. Duo ista*, xxiii. q. iv. Dicamus ergo quod sive loquamur de correccione in quantum est actus caritativus, sive loquamur de correccione in quantum est actus iusticie, licet regibus—et nedum licet, ymo tenentur—obedienciam svestra-

here per predicta. Et si dicatur quod reges, si competat eis ex debito officii, non possunt ipsos corripere nisi convictos, per c. *Nos in quem-

quam*, ii. q. i.,249 et isti non sunt convicti, etc.: dico quod attento notorio iuris et facti, alia conviccio non est necessaria, per c. *Evi-

dencia patrati sceleris, De accusacionibus*, per Henricum post alias, et c. *De manifesta*, ii. q. i.250 Et specialiter quia in casu presenti non est superior coram quo possit fieri processus, iuxta c. *Licet de vitan-

da*, in fine, De eleccione.251

Item in casu presenti sic arduo debemus ut videtur nos regere per exempla patrum qui sacros canones ediderunt (per c. *De quibus*, xx. di., superius allegatum), quia "non potuerunt omnes articuli le-

gibus comprehendi," sed "de similibus ad similia est proceden-

dum."252 Nunc ad propositum: contra magnates de quibus non potest faciliter haberi quod iuris est, introduxerunt patres predicti reme-

dium cessacionis et interdicti. Unde canonici possunt contra prela-

tum, ut cicius veniat ad illud quod iuris est, uti remedio cessacionis, et hoc quandoque concessum est [E 247v] eis ex privilegio, consue-
tudine, vel alias—iuxta c. [Irrefragabili, §] *Si canonici, De officio ordinarii*.253 Et idem: interdicitur terra principis propter factum suum, in c. *Alma mater*, et iuribus communibus. Ergo videtur quod

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ad exemplum istud debemus cessare a prestacionibus et obediencia consueta, ad finem quod isti concertantes cicius veniant ad viam pacis. Unde eciam contra illos qui quandoque propter ambicionem vel alias tenebant ecclesiam involutam sine pastore, ordinavit ecclesia quod talibus victualia substraherentur et includerentur in loco stricto, etc., in c. Ubi [periculum] maius, De eleccione, in Sexto. Et ita videtur quod reges qui contra turbantes pacem ecclesie habent canonicam potestatem, ut supra satis probatum est, possunt ad substraccionem obediencie procedere, et ad peius, etc. Nec est curandum quod fiat in ista materia, sed quare fiat, ut notat pulcre Johannes glosator Decreti in c. Ipsa pietas, xxiii. q. iv., per l. Verum, ff. De furtis, quia causa faciendi inspicitur.

Item concilium episcoporum qui obediunt Benedicto vel illorum qui obediunt Bonifacio faciunt concilium generale respectu utriusque—ut sit sensus, quod si episcopi vel maior pars ipsorum qui obediunt Benedicto, congregati canonice in concilio, decernent ipsum cedere debere, ipse cedere teneretur, quia in hoc concilio generali subest, ut dicit Johannes glosator Decreti in c. Sicut, xv. di. Ubi dicit quod in hiis que sunt fidei, que concernunt statum universalis ecclesie, papa subest concilio, quia “auctoritas orbis maior est urbe,” ut dicit Iheronimus in c. Legimus, xciii. di. Nec est curandum de aliis qui sibi non obediunt; ymo secundum nos sunt excommunicati et scismatici, ita que potestas concilii resedit in nobis licet simus pauciores—per c. Gratum, De postulacione prelаторum, et c. Bone, i., De eleccione, ubi textus, quod quando maior pars amittit ius eligendi, pauciores habent ius illud, etc. Et facit quod notat Petrus Bertrandi in Clementina Ne Romani, ubi dicit quod si omnes cardinales essent mortui, omnes episcopi eligerent papa. Illi tamen qui sibi non obediunt, in eius eleccione ius non haberen. Ergo si prelati regni Francie et regni Hyspanie, congregati ad nutum regum, licet separatim, qui faciunt sine dubio maiores partem obediencie domini Benedicti, decreverunt papam cedere debere, eorum ordinacio, tanquam a suo iudice dicta, ipsum astringit
taliter, [E 248r] quod si eciam in casu refutacionis ipsi dicant obedientiam sibi debere substrahi, vel magis rigorose contra ipsum procedi debere, reges debent hoc execucioni demandare, per l. Qui restituere, ff. De rei vendicacione. Et facit c. Nolite, xi. q. iii., ubi dicit Crisostomus: "Sicut sacerdos debitor est, ut veritatem quam audivit a deo predicet libere, sic laicus debitor est, ut veritatem quam audivit a sacerdotibus, probatam quidem scripturis, defendat fiducialiter; quod si non fecerit, prodit veritatem."

Et si consideretur quomodo concilia generalia fuerunt hactenus celebrefa, istud concilium deberet censeri sedum concilium generale, ymo concilium generalis bene solemne. Papa Benedictus requisivit regem, quod vellet sibi dare consilium super modo habendi pacem et unionem in ecclesia dei et sedacionem huius scismatis. Rex, attenta arduitate negocii, consultus deliberavit vocare omnes prelatos regni sui, ut consuluius posset videre in hac materia quid agendum. Et scripsit hoc pape Benedicto, qui per literas suas re-scripsit regi, quod bene placebat sibi, et precepit prelati regni residentis in Avinione, quod ipsi venirent ad mandatum regis. In quo concilio fuerunt duo patriarchae, qui in regno tenent ecclesias in commendam, sex archiepiscopi, et quadraginta et ultra episcopi, abbates, notabiles magistri in theologia et doctores diversorum studiorum, usque ad numerum centum et decem personarum. Et cum hoc rex voluit quod universitas parisensis super hoc quantum maturius posset videret. In qua et isti omnes, valde paucis exceptis—si qui sint—convenerunt in hoc, quod via cessionis amborum concerti est via sola per quam radicitus potest deleri scisma et haberi pac et unio in ecclesia dei. Et quod ita erat per regem pape consulenda, et si Benedictus ipsam renuerit, esset per regem omnibus viis quibus fieri posset canonicum ad effectum deducenda. Et in ista conclusione fuerunt omnes domini cardinales in Avinione, qui erant in numero viginti vel viginti duorum, uno excepto, post multas disputations.
cussiones et deliberaciones vicibus repetitis super hoc habitas; quam deliberacionem significaverunt nuncis regis super hoc solemnner misis.\(^{264}\) Et rex postmodum conclusionem istius concilii intimavit regi Castelle, non ut predictus rex Castelle [E 248v] istam sequeretur, nisi in quantum videret ipsum fore racionabilem. Et in presencia dicti regis Castelle racionibus et motivis facientibus pro ista conclusione solemnner et ad longum recitatis per ambassatores solemnnes regis Francie,\(^{265}\) in presencia nunciorum pape et multorum solemnnum prelatorum, magistrorum, doctorum, et baronum regni Castelle, ipse rex, habitis super hoc pluribus consilliis et deliberacionibus, conclusit in effectus eodem modo ut videtur quo fuerat conclusion in concilio Francie. Et de hoc eciam certificavit rex Francie reges Arragonie et Navarre, qui solemnner et publice omnia ista audierunt, et idem eciam fecit regi Scocie; qui omnes sunt de obedien-
cia Benedicti.\(^{266}\) Et per hoc, postquam ipsi, sic summari ad videndum qualiter canonice possit fieri unio in ecclesia, ad hoc debite attendere contmpnent,

(adverte quod reges Navarre et Scocie sunt in eadem conclusione determinati)\(^{267}\)

tota potestas remanet in duobus regibus predictis Francie et Hys-
panie forsan, sicut dicimus de cardinalibus in c. *Ubi* [periculum] *matus,*\(^{268}\) et de canoniceps, etc. Sed tamen regnum Francie et Hys-
panie habent multo maiorem partem episcoporum et prelatorum, ymo bene duas partes istius obediencie. Videat ergo quilibet, si causa ista unionis ecclesie fuerit in obediencie nostra precipe bene gene-
raliter consulta! Et sic concilium tale bene meretur dici generale.

Sed restat respondere ad duo. Primum est, quod prelati tocius obediencie non fuerant simul congregati, et ita videntur pocius ista concilia particularia quam concilium generale, per c. *In Genesi, De*
De substraccione obediencie. 

Et racio: quia si fuissent omnes simul congregati in unum, tacta fuissent forsan per aliós venientes motiva talia, que aliam conclusionem recipere suasissent, per l. Si in tres, ff. De arbitris. 

Item, quia papa qui pars est in causa ista non fuit vocatus neque auditus, nec huiusmodi conclusioni auctoritatem prebuit, quod erat necesse.

Ad primum respondetur, quod multa fuerunt hactenus in ecclesia dei concilia generalia, et quorum statuta habent vim concilii generalis, in quibus non fuerunt tot sicut in concilio Francie super hoc Parisius celebrato, ubi fuerunt centum et decem persone, et universitas parisiensis que habet bene ducentos magistros in theologia quam doctores decretorum, bacallarios solemnes in theologia, licenciatos in decretales et in legibus, et in aliis [E 249r] facultatibus eciam magistros. Et si obstante iusto impedimento, videlicet distancia locorum, diversitate regnorum—quia hodie scissum est imperium—non potuerunt illi de Hyspania nobiscum convenire, nobis tamen et motivis nostris solemniter auditis, et cum rege suo solemniter in magno numero prelatorum et clericorum congregatis, sic convenerunt nobiscum: non video quod hoc impediat effectum concilii generalis—per c. St quis iusto, De eleccione, Libro sexto, ubi permissum est iusto impedimento detento declarare votum suum eciam singulariter per nuncium, et habet vim eleccionis canonice.

Et facit quare statuta conciliorum habent maiorem vim et auctoritatem quam alia, certe quia plurium sentenciis sunt comprobata, ut in iuribus communibus, et quia “verus repromissor dicit quod ubi duo vel tres” etc. [Matt. 18.19]—in c. De quibus, xx. di. Nunc ad habendum istam conclusionem fuerunt congregaciones non una solum sed diverse, et multo plurium personarum quam si in Roma vel in Avinione fuisse concilium convocatum, quia plures fuerunt presentes in regnis suis, qui non exivissent regna ita longe. Et ita clare apparat, quod non est idem sicut de opinionibus singularibus, de...

Et postmodum adhesit nobis expresse rex Anglie, non sine magna maturitate, ut verisimiliter credendum est. Et domini electores imperii valde solemniter requisiverunt Bonifacium, quod vellet recipere viam pacis, et quid ipse responderit sciant ipsi—et ego qui vidi responesiones suas in scriptis, et testificor quod pessime, non tanquam pastor sed sicut mercenarius. Ex quibus videtur clarissime concludendum, quod si domini electores et eeteri prelati Alamanie convenient quibus cedendum et nos nostrum, utique facientes maiorem partem utriusque obediencie, poterimus compellere ad cedendum per substraccionem obediencie, per predicta.

Nec obstat illud quod dicitur supra: Benedictus non fuit vocatus, etc. Quia in facto ita notorio non est necessaria evocatio, [E 249v] per c. Evidencia, De accusacionibus, et ibi Henricus post alios. Et tamen ut videtur uterque, Benedictus primo et Bonifacius secundo, sunt satis auditi, quia dominus Benedictus ita fuit solemniter requisitus et humiliter sicut fieri potuit, quod vellet acceptare istam viam, sed noluit. Et per regem Francie, et per regem Hyspanie, et per collegium cardinalium, et noluit, sed solum obtulit viam cessionis amborum, in qua simpliciter non remansit, sed obtulit viam compromissi, etc. Que in suis responsionibus utique non sufficentibus, ut nobis Gallicos et Hyspanis videtur, videntur laciis contineri. Et Bonifacius solemnissime pro parte sua requisitus, quod vellet aliquam viam pacis acceptare, nullam voluit acceptare, ymo nec aperire, nisi quod reduceremur ad obedienciam suam.
De substraccione obedientie

Et deus scit quod ante staremus sic usque in finem seculi, quam sibi obediremus—et causas nolo hic inserere, causa brevitatis. Ex quo clarissime apparat, quod amplius non sunt vocandi.

Item nec in isto concilio est eorum auctoritas necessaria, quia in causa propria nullus debet dare auctoritatem, sicut dicitur de tutore pupillii qui contra ipsum agit, ut in § finali [Si autem], Instit., De auctoritate tutorum, et in l. finali [Cum non solum], in § Necessitate, C. De bonis que liberis, ubi hoc notatur. Et hoc clare suadet racio iuxta illa, Ne quis in causa sua ius sibi dicat, Codice, in rubro et nigro. Sed statim opponetur contra me de § Hinc eciam, xvii. di., ubi licet in causa propria pape, concilium debuit vocari per eum. Sed solutum est, ut videtur, quoniam rex Francie, domino Benedicto certificato, sciente, et ratum habente, vocavit concilium prelatorum regni sui; et rex Hyspanie, presentibus nunciis suis et consencientibus ut credo, eciam vocavit prelatos regni sui super isto negocio. Item si hec non sufficiant, dicamus quod in causa ista, utique causa fidei ut videtur, non est necessarium quod auctoritate pape convocetur. Et licet non sit ex fide dicere, Iste est papa et iste non est papa, tamen ex fide est quod unum debemus habere, ut supra satis probatum est.

Et reperintur concilia multa fuisse vocata sine auctoritate pape, ut probat c. Canones, xv. di.; et inferius lacius dictetur. Et specialiter quando sunt duo contendentes, sicut fuit factum tempore Alexandri secundi, ubi Henricus imperator in Mantua concilium solemniter celebravit, anno domini octingentesimo lxvii° [E 250r] vel lxviii. Et de Symacho et Laurencio adversario suo, legitur quod potentia Theodorici regis hanc altercacionem compressit, fecitque ambos contendentes convenire apud Ravennam, ut eius iudicium subirent, anno domini quingentesimo primo. Et de Benedicto IX. et eius adversario, qui ambo fuerunt per imperatorem expulsi, et Clemens secundus electus in papam, ut narrant Martinus et Bernardus Guidonis in chronicis suis. Et idem narrat Iheronimus de Ho-

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De substraczione obediencie

1735 norio. Et facit quia Symmachus—in § Hinc ectiam—non tenebat nec ita diu tenerat ecclesiam in scismate, sed erat tunc temporis unicus papa et indubitatus, qui accusabatur de heresi per calumpniam; ut ponit Iohannes glosator Decreti, ibidem. Non ergo mirum si sibi erat deferendum, licet sibimet, quando habuit competitorem, non fuit delatum: ymo Theodoricus ipsos ambos fecit venire Ravennam, ut est dictum. Et imperator met respondit episcopis, quod placebat sibi deferre pape, “dummodo venerandi provisione concilii pax in civitate romana daretur.”

Per quod evidenter apparat quod ubi sunt duo qui ita diu tenuerunt ecclesiam in scismate, quod reges sine ipsis pro pace ecclesie possunt, per consilium prelatorum, canonicas providere. Et in negocio communi expediendo secundum necessitatem et utilitatem, sicut in isto, semper tenet opinio maioris partis: “x. q. ii., Hoc tus porrectum; De eleccione, Qua propter; et in c. Quod sicut; et in c. Venerabilem; et De hits que fiunt a maiori parte capituli, c. primo [Cum in cunctis], et finali [Ex parte tua]; et ff. Ad municipalem, l. Quod maior—secundum Innocencium, Hostiensem, Compostella-num, et Iohannem Andree,” in c. Cum omnes, De constitutionibus.

1750 Item decet quod reges pro pace ecclesie habenda ipsis ambobus obedientiarcam substrahant, quia ut dicit Cassiodorus, Decet regalis auctoritas generalitatis custodire concordiam; quoniam ad laudem regnantis trahitur si ab omnibus pax ametur. Et nichil est quod sic principem predicet, sicut quietus populus et concors senatus, et tota res publica morum honestate vestita. Item, nichil est quod sic deceit principem sicut attendere ad “vera dei dogmata et honestatem sacerdotum.” Et si principes ad hoc diligenter advertant, “magna eis a deo dona dabuntur, et illa que nunc sunt firma habebunt, et que nunquam habuerunt acquirent”—in Autentica, Quomodo oporteat episcopos, etc., collacione prima. Unde Iustinianus in Autentica, Ut divine iussiones, circa principium, collacione viii.: “Nostre serenitatis sollicitudo remediiis invigilat sub-

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De substraccione obedientie, nec cessamus inquirere si quid sit in nostra re publica corrigendum. Ideo namque voluntarios labores appetimus, ut quiem aliis preparemus." Et alibi in Autentica, *Ut iudices sine quoquo suffragio*, collacione ii.: "Omnes nobis dies ac noctes (contingit) cum omni lugubracione et cogitacione degere semper volentibus, ut ali- quid utile et placens deo a nobis collatoribus prebeatur. Non in vano vigilias ducimus, sed in huiusmodi eas expendimus consilia provocantes, et noctibus sub equalitate dierum utentes, ut tam subiecti sub omni quiete consistant, sollicitudine liberati, nobis in nosmet ipsos pro omnibus cogitacionem suscipientibus," etc. Quid est quod magis deceat bonos reges, quam in magnis tribulacionibus bonum remedium apponere?—iuxta illud Gregorii in *Moralibus*: Sicut flatus premitur ut crescat, sic virtuosus tribulacionibus comprimitur ut virtus eius augeatur.291 Et Augustinus in libro *De vera innocencia*: Necesse est ut veniat magnus medicus, quando magnus ubique iacet infirmus. Unde in ista ecclesia militanti, que non est nisi congregatio fidelium christianorum, quanto est maior tribulacio, tanto est magis milicia que fortiter resistit commendanda, quia mundus, caro, demonia diversa movent prelia.292 Et Seneca in epistola lxv.: A magno, inquit, de rebus magnis iudicandum est.293 Et Tullius in libro *De officiis*: Magnanimitas est virtus difficilium aggressiva.294 Et talem debent habere reges, alius nomen regis habere non merentur—in c. *Sceclus quod Lotharius*, ii. q. i.295

Item expedit substrahere obedientiam, et alias providere ad sedacionem huius lamentabilis scismatis, propter communem utilitatem, que semper est preferenda, et maior utilitas minori (et hoc importat istud verbum "expedit" ut notat Hostiensis, Iohannes Andree, et Henricus post eos, in c. *Magne, De voto,*296 et per c. *Bone*, i., *De postulacione prelatorum*):297 si considerentur scandala, mala irreparabilia, que occasione huius scismatis iam per decem et novem annos evenerunt, periculum subversionis tocius fidei christianae—si consideremus preterita, et disponamus presencia, et prevideamus...
futura, iuxta doctrinam Senecae, [E 251r] quam ponit Archidiaconus in c. Quando [Quot] episcopus, xxiii. di.²⁹⁸ Nonne legitur in Gestis Romanorum quod propter ambacionem papatus—quia Nicholaus tunc cardinals et electus in papam contra alium electum non potuit obtinere—fuit introducta lex Machometi?²⁹⁹ Ante, videlicet tempore I 1805 heronimi, “Gallie, Britannie, Affrica, Persis, et Oriens India et omnes barbare naciones, unum predicabant Cristum, unam observabant regulam veritatis”—in c. Legimus, circa medium, xcviii. di. Nonne eciam scisma Grecorum propter libidinem dominandi eciam habuit orum? Nam patriarcha constantinopolitanus primum se scribebat, et romanus pontifex a Foca cesare impetravit quod constantinopolitanus sibi subesset, ut narrat Martinus in cronica sua.³⁰⁰ Ne 1810 igitur perant anime infinite, de cetero corrutu fides Cristi, et eclesia radicuit destruat, expedit pacem ecclesiæ inquirere et prosequi per omnes vies; et reges, qui ex debito officii sunt astricti ad inquirendum et prosequendum pacem ecclesiæ et habent de hoc in tremendo iudicio reddere racionem, ut est dictum, habent diligentem perpendere per quales vies poterunt istos ambos concertantes ad viam pacis consultam inducere. Et in hoc est ipsorum iudicis officium latissimum, iuxta l. i. [Ius dicentis], ff. De iurisdiccione omnium iudicum.³⁰¹

Et facit quod notat Archidiaconus in c. Quia res, xi. d. i., in ultima columnana, ubi hoc pulere dicit, videlicet quod iudex debet uti remedio per quod verisimiliter partes tedio affecte cicius veniant ad viam pacis, iuxta c. ii. [Ex literis vestris], De dolo et contumacia, 1825 ibi cum dicit “tedio affecti” etc.³⁰² Dicit eciam in pagina secunda quod ubi iudex videt partes non curantes venire ad viam pacis, sed pocius ad facta prosilire, potest fructus rei de qua agitur ad manum suam ponere vel sequestrare. Et 1820 ita intelligitur l. Equissimum, ff. De usufructu;³⁰³ et magis proprie: “quod si duo contendunt de beneficio, quorum nullus fuit possessor pacificus, fructus poterunt sequestrari quousque concertatio sopiatur, maxime ubi possessor vi-
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iciose intravit;" sicut nos dicimus de Bonifacio et pars adversa dicit de Benedicto; "quia tales non debent gaudere commodo possessionis, ff. De probacionibus, in l. Si quis liberum (et facit Extra, De re- scriptis, in c. Cum contingat), et dictum beneficium non duos ministros sed unum debet habere. Nec est mirum, [E 251v] nam iudex videns quod duo dicunt se ius habere in dignitate, quilibet insolitum, in qua ius non potest creari a possessione, sed canonica institucione—ff. De decurionibus, l. Herennius—que quidem dignitas duos sponsos habere non debet, fructus ad conservandum futuro possunt iudicis officio sequestrari." Et hoc credit Archidiaconus indubitatum in causa beneficiai, ut ponit ibidem, per iura multa que ad propositum illud allegat. Et quanto magis in casu nostro, in quo est ita solemniter conclusum quod ambo concertantes tenentur ad cessionem, et ita sentenciam videntem habuisse contra se! Est ergo locus sequestracione per Clementinam uniam [Ad compescendas], De sequestracione. Et est verum quod neuter concertancium possedit pacifice usque nunc. Et si iura non loquantur formaliter in papatu, tamen in casu isto ita arduo et ita inaudito, debemus procedere ad similibus ad similia, et habere oculum ad iura que ad casum nostrum magis appropinquant; ut supra in aliquidus racionibus inductis pro ista parte lacius est deductum. Et facit quod notat Archidiaconus in c. Quia res, xi. q. i., ubi dicit quod ubi "iudex non potest facere quod ius precepit, debet providere ut potest," et "quando missio in possessionem cessat, debet fieri quod est sibi simile et vicinius," ut ponit ibidem in principio ultime columpne.

Item expedit ut videtur summe obedienciam substrahere ambobus concertantibus alia racione. Nos videmus clarissime quod quandiu permittentur sic vivere, quilibet ipsorum reputabit se fixe papam et utetur vel abutetur papatu, sicut iam fecerunt per decem et novem annos; ex quo sequitur perpetuacio scismatis, subversio fidei, et destruccio ecclesie, ut est dictum. Et si fructus ecclesie ipsis totaliter substrahantur et obediencia denegetur, venient ad viam

cessionis per quam, supposita practica de qua superius est facta mencio—et infra eciam lacius dicetur—habebimus pacem nunc. Et si per raciones que supra pro parte contraria fuerunt allegate possit dici quod substrahere obedienciam malum esset, audiamus quid in concilio toletano super hoc ecclesia alias ordinavit: \[\text{\textsuperscript{309}}\] "Duo mala licet cautissime omnino sint precavenda, tamen si periculi necessitas unum ex hiis temperare compulerit, illud debemus re\[E 252\]solvere quod minori nexu nostrum obligare. Quod autem levis ex hiis, quidve gravius sit, pure racionis acumine investigemus." Quia autem isti sic concertantes "que muni sunt iubent," nos "obedire trepidamus et non obedire formidamus; ne aut obedientes deum in suis praecipitibus deseramus, aut rursus non obedientes deum in electo nostro con-

Cum ergo ut dictum est, per obedienciam veniat verisimiliter destruccio totalis ecclesie, et per inobedienciam reparacio, debemus obedienciam substrahere, per predicta. Et in hoc est unum adversendum, quod aliqui bene prudenter tetigerunt, videlicet quod ad finem quod mala que per obedienciam sunt venire disposita et per inobedienciam possent evenire (evitarentur?), esset ex nunc contra ipsos acius procedendum. Quod satis videntur probare alique raciones pro ista parte superius inducte, ille videlicet que sunt scismatici et heretici. Sed hoc non obstante, videtur pocius expedire primo substractio fructuum.\[\text{\textsuperscript{311}}\] Scribitur enim: "Argue, ob-

1866 dicetur] dicemus A
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secra” etc. [2 Tim. 4.2]; et quia “melius est de misericordia quam de crudelitate reddere racionem”—in c. Alligant; et sive plectendo sine ignoscendo, hoc solum bene agitur ut vita hominum corrigitur. Et facit quod notant Bernardus et Hostiensis in c. Cum non ab homine, et Henricus post eos—ubi dicunt quod ubi aliquis delinquens reperitur corrigibilis propter penam sibi inflictam, statur in illo gradu pene et ulterius non proceditur, etc. Fateor tamen quod si per substraccionem obedientie non corrigentur se ipsos, quod tunc sine magna dilacione esset pocius providendum.


...
ligari, letargici nolunt excitari, sed vere diligencia caritatis frenetici nam freneticum ligare et letargicum stimulare, ambos amore. Ambo offenduntur sed ambo diliguntur; ambo molestati quandiu egri sunt indignantur, sed ambo sanati gratulantur"—ut accedat quod scribitur in c. Quid faciet, xiii. q. iv., quod nobis et ipsis concedat ille qui sine fine vivit et regnat. Amen.


Item negligencia illius qui magis specifice et solempniter est summatus et requisitus exigit eciam sceleriorem [!] penam. Unde negligencia post admonicionem aggravatur quantum ad culpam et quantum ad penam—in c. Indigne, xii. q. ii., cum glosa Iohannis.
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Dicamus ergo cum Gregorio: "Evigila! Et excitatus saltim exquire quod usque nunc pressus ignavia distulisti"—ut ista habentur in c. Si custos, xxvii. q. i.


Item quelibet obediencia magis astringitur laborare cum suo, quia maiorem habet opportunitatem, et verisimilium est quod magis proficiet; "quia dum is qui displicet ad intercedendum mittitur, irati animus ad deteriora provocatur”—xlvi. di., in principio [§ Ecce]. Et ista sunt duo de illis que debent concurrere ad hoc quod preceptum illud affirmativum, "Si peccaverit in te frater tuus" etc., liget; ut notat Henricus post alios in c. In omni, Extra, De testibus.

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Et per ista satis apparat quod uni parcium licet obedienciam substrahere, eciam alia non substrahtente. Sed dico quod decet ista fieri, et expedit.325


Item expedit pro bono pacis et unionis ecclesie quod reges qui

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solemniter requisiverunt suum, subtrahant sibi obedientiam, eciam aliis hoc non facientibus, per raciones que secuntur.

Primo, quod si nos expectemus illos de alia obedientia, qui forsunt in materia tepidi et negligentes, et ipsi tunc expectarent nos, nunquam esset finis, et ita staremus vagando in prejudicium ecclesie, ymo pocius destruccionem totalem. Et tamen iura prohibent ne hoc fiat in prejudicium unius ecclesie particularis, vel unius persone singularis, iuxta c. unicum [Perpetuo], De postulacione, Libro sexto, et l. Diffamari, C. De ingenuis manu[E 254r]misst. Quanto minus debet hoc fieri in casu nostro, iudicet discretus.

Item debemus verisimiliter credere, quod postquam reges unius obedientie vel unus ipsorum incipient apponere manum ad remedium per substraccionem obedientie et alias, aliis omnes eciam consimiliter hoc facient. Non quod teneant aliis sequi, sed quia bene, iuste, et canonice videbunt quod alii procedunt. Unde Gregorius: "Ego minores meos, quos ab illicitis prohibeo, in bono imitari paratus sum. Stultus enim qui in eo se ipsum maiorem estimat, ut bona que viderit facere contemnati"—in c. De constantinopolitana, xxii. di.

Item, hoc faciendo, videlicet quod potest ad sedacionem scismatis, mundus est quoad deum et homines ab omni labe; et si hoc non faciat, remanet in contagio scismatis non modicum labefactus, iuxta illud, "Nil conscire sibi, nulla pallescere culpa," De penitencia, di. iii., Ille rex, per Iohannem.

Item postquam sunt duo contendentes, quos tenemur inducere ad viam pacis mature consul tarn, expedit laborare sine dilacione et cum uno et cum alio. Et si non laboraret cum uno expedit tamen laborare cum alio, quia si habeamus consensum unius, iam habebimus dimidiam pacem, et tunc remanebit totum pondus scismatis super humeros non acceptantis. Et facilius reduceretur unus quam H 2010 staremus faciemus J / 2012 (1*) unius
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ambo, et essent remedia faciliora, etc. Unde Augustinus: "Si duo aliqui in una domo simul habitent, quam certe scimus ruituram," et "unus illorum nobis diceret, Quomodo intrastis eruere nos? Ego vere me ipsum trucidabo. Alter autem nec exire quidem nec inde erui vult, sed neque necare se audet. Quid eligeremus? Ambos ruine opprimendos relinquere? An uno saltem per nostra opera liberato, alterum non nostra culpa sed sua pocius interire?" Et sequitur: "Nemo tam infelix est qui non quid fieri in talibus rebus replevit facillime iudicet, quod si plures essent in domo ruitura, et inde saltim unus posset liberari, dolor esset de mortuis et de unius salute saltim consolaremur." In c. *Ipse pietas*, xxiii. q. iv. Et si hoc facere pro salute temporali et brevi racio compellit, quanto magis "pro vita adipiscenda et pena eterna vitanda" hoc facere debemus, ut ibidem. Et sic manifesto [E 254v] concluditur quod per substraccionem obedientie vel alias debet una parcium laborare cum suo, ut veniat ad viam pacis, eciam altera hoc non faciente, per predicta.

Item aliqui dicunt quod pro bono unionis assequende probant raciones tue, quod obedientia sit substrahenda: Nunc supposito quod noster vellet renunciare, altero renunciante—quia aliter ista via nec est consulta nec deliberata. Si alter cedere nolit, non habebis unionem; et ita substrahere obedientiam uni de nullo operaretur, nec debet fieri quod factum non prodesset, et "frustra expectatur eventus cuius nullus sequitur effectus"—in l. *Aliquando*, in fine, ff. *Ad senatusconsultum* velleyanum.\(^{329}\) Per predicta apparat satis responsio ad istud; sed adhuc dico, quod qui teneret se in ista generalitate esset perpetuacio scismatis, quia sicut nos dicimus, *Non substrahamus obedientiam nostro quia per hoc non haberemus unionem*—ita diceret pars adversa, et ita semper sic staremus. Et posset dicere noster, Non stat per me, vadatis ad alium; et idem alter; et ita per maliciam ipsorum possent nos involvere sicut iam stetimus per decem et novem annos. Et tamen maliciis talibus est obvian-dum—in l. *In fundo*, ff. *De rei vendicacione*.\(^{330}\) Et "ecclesia non debet in suis actibus fraudem admittere"—in c. *Per tuas, De do*
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nacionibus. Bene tamen fatoer, quod si deus vellet quod omnes reges unanimiter procederent in ista materia ad substraccionem obedientie et alia remedia canonica, melius esset; sed hoc non videtur fore expectandum, attento quod aliqui sunt qui, licet sollempniter sint super hoc per regem Francie excitati, sunt tamen tepidi, ut in rationibus aliis superius laciis declaratis.

Item si sunt scismatici et heretici, ut supra videtur clare probatum fuisset, clarum est quod si et alii reges obedirent quilibet suo, rex tamen catholicus quicunque non debet expectare alios reges ad substraccionem obedientie vel alia remedia apponenda, quia factum aliorum a labe fautorie non excusaret, iuxta illud, "Non minus ardebunt qui cum multis ardebunt" — ii. q. i., Multi.


Item, vel ille cui substrahetur obedientia acceptabit hanc viam cessionis, et tunc habemus propositum, quia tunc habebimus dimidiam pacem; et statim habito consensu suo, sibi obediet pars sua

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donec ambo renunciaverint, et ita erit tuta ab omni labe scismatis, ut est dictum. Vel propter substraccionem obediencie non veniet ad viam pacis, sed stabit in opinione sua. Et tunc dicunt multi, quod non esset simpliciter in substraccione obediencie remanendum, sed ulterius ad alia viriliter procedendum, ut superius est laciis dictum, donec haberetur consensus suus eciam coactus, ut infra in responsionibus laciis declarabitur.

Item est alia pars christianitatis que neutri concertancium iam per decem et novem annos obedivit;331 tamen bene vivunt et forsan magis expediret non habere aliquem quam habere duos in tali scismate.

Et si predicta non sufficiant, teneatur modus opinatus per universitatem parisensem, videlicet quod collaciones beneficiorum, exacciones procuracionum, prime annate beneficiorum vacancium, etc., que sunt contra disposicionem iuris communis, ipsis ambobus substrahantur primo, vel uni ipsorum, et demum aliter procedatur.

Et qui vellet sequi partem istam, restat respondere ad raciones in contrarium.332

[Part 3: Reply to the Contrary Arguments]

[Against arguments quod non licet]

[1, 2] Ad primas duas raciones, videlicet quod a papa tanquam a capite non est recedendum, nec potestas sibi a deo data est quoquomodo substrahenda, appareat solucio clara per racionem primam supra in secunda parte positam, in qua probatur quod pape vero et indubitato, facienti aliquid de quo notorie ecclesia scandalizetur, non est obediendum, ymo pocius de facto resistendum. Et ista responsio adhuc fortificatur sic: ponitur exemplum per Petrum Bertrandi, si papa vellet totum patrimonium ecclesie [E 255v] vel parentem notablem dare parentibus suis.333 Et Iohannes glosator Decreti, de quocunque peccato gravi de quo ecclesia scandalizaretur dicens:

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quod de tali, si monitus non se correxerit, potest accusari. Quod est intelligendum civiliter, videlicet quod si sit notorium, potest sine accusacione puniri, per c. Evidencia patrati sclerits, De accusacionibus. Et istud fuit alias practicatum in persona pape, sicut inventur de Iohanne XII. in cronicis; et Oquam in Dialogo suo fortiter probat quod hoc fuit canonice factum.

Nunc consideremus casum nostrum. Isti duo concertantes qui sic lamentabiliter tenent nos in scismate: Vel neuter debet remanere, per c. Si duo forte contra fas, quod fortiter facit qui videt Ysidorum in Libro suo de concilidis, ubi narrat quomodo Honorius ad requestam ecclesie, ne ecclesia per ambicionem destrueretur, ordinavit quod si contingere duos eligi, quorum electio esset dubia probabiliter, id est forte contra fas, neuter debet remanere. Vel tenetur ille qui habet ius in papatu, pro sedacione tam gravis scandali, secundum deum papatui renunciare; et quia nescitur quis est ille, tenetur ambo, ne magis videantur appetere pompam temporalem quam gloriam eternam. Nunc videamus: Secundum deum ipsi debent dimittere papatum, ut satis est probatum superius. Nolunt. Cui obediemus, ipsis vel deo? Indubitanter deo, quia “sicut potestas maior minori preponitur ad obediendum, sic deus hominibus”—viii. di., Que contra, et xi. q. iii., Si dominus, et c. Non semper, et c. sequenti [Iulianus]. Unde Augustinus: “Scribitur in psalmo, Nunc reges intelligite” etc. Et sequitur: “Servite domino in timore.” “Quomodo ergo reges servient in timore nisi ea que contra deum iussa fuerint religiosa severitate prohibendo? Aliter enim servit quia homo est, et aliter eciam quia rex est. Quia homo est servit vivendo fideliter; quia rex est, servando leges iusta precipientes et contraria prohibentes convenienti vigore sanxiendo”—xxiii. q. iv., Si ecclesia, in fine

(alibi est allegatum, sed non ad istud propositum).

Serviant ergo reges domino in timore et abiciant a nobis iugum

ipsorum, quoniam papalis potestas non est ad destructionem sed ad edificationem, ut dicit Apostolus [2 Cor. 10.8], ubi supra.\(^3\)

[3] Item non obstat tercia racio, cum dicitur quod dominus precepit obedire principibus eciam [E 256r] discolis, etc., et pro tanto lex quantumcunque dura tenenda. Nam ad hoc respondet Iheronimus in epistola ad Ephesios, alias Si dominus, ubi dicit sic: "Si dominus iubet ea que non sunt adversa sanctis scripturis, subiciatur domino suo servus. Si vero contrarium precipit, magis obediat spiritus quam corporis domino. Et infra: Si bonum est quod precipit imperator, iubentis exequere voluntatem; si malum est, responde: Oportet deo magis obedire quam hominibus." Et idem in c. Non semper, et c. Iulianus, et c. sequenti [Qui omnit potentem]. Nunc ad propositum. Istorum concertancium quilibet precipit ut sibi obediatur tanquam pape; deus autem ordinavit quod non esset nisi unus, ut supra est satis probatum, et quod ubi duo eligentur, quod neuter remaneret, et quod verus pastor propter maliciam plebis et propter grave scandalum cedere teneretur. Et verum est dicere quod deus ista precipit,\(^3\) quia pro bono regiminis ecclesie iura per ora principum promulgavit, in l. finali [Sepe quidam], C. De prescrizione xxx vel xl annorum,\(^3\) et melius in c. Violatores, xxv. q. i., ibi cum dicit, "Et a sancto spiritu cuius dictati sunt" etc.\(^3\) Et idem in c. Quid culpatur, etc. Pro quo suppono illud quod dicit legislator: "Nichil inter homines sic est indubitatum ut non possit, licet aliquid sit valde iustissimum, tamen suscipere quandam sollicitam dubitacionem"—in Autentica, De tabellionibus, circa medium, § Non fingant, coll. iv. Et propter hoc docent sacri canones et leges, quod in re dubia habeatur consilium seniorum, et

\(^{2159−60}\) precepit\( J / 2160\) obedire\( E H / 2161\) quantumcunque\( A H / 2162\) alias\( ABJ / \) in c. allegato\( ABJ / \) in c.\( L / 2162\) Si dominus\( B / \) ubi\( CHK / 2164\) contrarium\( CHK / 2165\) corporis\( C H K / 2165\) infra\( L E / 2165\) precepit\( C E K / 2166\) imperator\( CHKL / 2166\) exequere\( L / 2166\) respondere\( AH K / 2171\) est\( C / \) exequi\( L / 2166\) iubentis\( CHKL / 2171\) est\( C / \) et\( E / 2171\) ubi\( B / \) nisi\( C / \) duo\( B / \) ibi\( C / \) duo\( B / \) ibi\( H / \) ibi\( K / 2173\) verum\( CHK / 2185\) habetur\( CHK / 2185\) seniorum\( C / \) saniorum C
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quod maior pars decreverit, illud sine dubio sit tenendum—in c. De quibus, xx. di., et in c. In canonicitis scripturis, xix. di.; in l. Quod maior, ff. Ad municipalen. 343 Ex quo sequitur quod reges qui super hoc solemnem concilio in regnis suis congregato invenerunt per maio-

rem partem concilii quod ad viam cessionis acceptandam tenetur isti duo concertantes tanquam utiliorem et meliorem, et quod ad istam habendam expedit obedientiam substrahere, debent hoc sine dubio execucionii demandare. Quia ut dicit Iohannes Crisostomus in c. Nolite, xi. q. iii.: “Sicut sacerdos debitor est, ut veritatem quam audivit a deo predicet libere, sic laicus debitor est, ut veritatem quam audivit a sacerdotibus, probatam quidem scripturis, defendat fiducialiter; quod si [E 256v] non fecerit prodit veritatem.” “Quid autem iniquius est quam sapiencioribus et doctoribus non credere? Sed in hanc insipienciam cadunt qui, cum ad cognoscendum veri-

tatem alioqu impediuntur obscuro, non ad perfectas voces, non ad apostolicas literas, nec ad evangelicas auctoritates, sed ad semetipsos recurrunt, et ideo magistri erroris existunt”—in c. Quid autem, xxiv. q. iii.

[5] Nec obstat quod dicitur de epistola oxoniensis studii. Quia nuda cessio nisi bene practicata non sufficeret ad sedacionem scis-
matis (ut ipsi dicunt, respondendo ad epistolam universitatis pari-

siensis, que epistola solum loquitur de cessione, et non fit in eadem mencio de practica), 344 sed practicata per modum deliberatum per prelatos Francie 345 sufficit melius ad sedacionem scismatis, non du-
bium, quam quecunque alia, ut infra laecius declarabitur.

Practicetur ergo via cessionis sic: Conveniant ambo concertantes in uno loco medio et bene tuto, sicut Ianue, et in isto cum suis cardinalibus et ipsis ibidem simul convenientibus, revocent, quilibet eorum, processus quos fecerunt unus contra alium et eis adherentes,
et absolvi in modo quo fieri poterit meliori. Et post-modum confirmant collaciones beneficiorium, promociones hinc et inde factas, ita tamen quod ubi sunt duo episcopi ad unam ecclesi- 
2220 
siam, ille remaneat episcopus qui civitatem possidet, assignata alteri 
pensione super proventibus episcopatus, de tanta summa sicut porcio 
quam alter tenet; potest sibi valere donec futurus pontifex sibi aliter 
providet. Et si nichil possidet in episcopatu, nichil eciam recipiet, 
2225 sed expectet provisionem pape futuri. Et idem in aliis beneficiis. De 
cardinalibus autem sunt tituli quinquaginta et unus, ut narrat Martinus 
in cronica sua, et in ambobus collegiis non sunt tot cardinales. 
Illi qui sunt duo ordinati ad unum titulum, remaneant in titulo qui 
2230 primo fuerunt cardinales, et alteri assignetur unus alius titulus, et si 
non sint tituli episcopales, fiant episcopales, vel diaconales, et sic de 
aliis. Et per istum modum remanebunt conscientia omnium cristia-
norum bene pacificate, quia non dubium quod papa bene potest 
renunciare papatui, ut in c. primo [Quoniam aliqui curiosi], De 
renunciacione, et cardinales post renunciacionem bene eligere papa-
2235 pam. Et ego credo quod domini oxonienses nunquam, [E 257r] tempore 
quo fecerunt istam epistolam, audiverant istam practicam. Et ad verum, eciam in epistolae sua ipsi patentur quod verus pastor, qui 
videt quod aliter bono modo non potest sedari istud scandalum, 
debet pocius cedere quam in isto scandalo remanere, ne magis vi-
deatur gloriar temporalem appetere quam eternam. Et rex Anglie 
deliberavit unionem ecclesie prosequi per viam cessionis, motus cre-
do principaliter per rationem predictam. 
2240 [6] Item non obstat alia racio, in qua dicitur quod ubi habet 
locum ordinarium remedium, non est recurrendum ad extraordi-
narium remedium. Quia supposto quod concilium generale deberet 
discernere que istarum eleccionum est canonica, hoc ut videtur fieri 
non potest—et propter difficultatem que est in aggressu huius vie,
et propter eciam maiorem difficultatem que est in progressu. Primo, ad nutum Bonifacii nos non congregaremur; et minus illi qui obe-
diunt Bonificio congregarentur ad nutum Benedicti; et ita verum
eset dicere quod non esset concilium sed conventiculum—per c. Mul
ipsi ambo concordent quod concilium convocetur: quis presidebit?
Aut ambo, et tunc erunt duo capita, ut videtur, aut alter ipsorum,
et hoc nunquam concordaretur, quia nos nec vellemus habere Bo-

nificium presidentem, nec ipsi Benedictum.

Item ad nutum imperatoris, vel pocius regis Romanorum, nos
nunquam iremus, quia iam se fecit partem, nec unquam voluit au-
dire dominos cardinales antiquos, quamvis sepsissem requisitus.
Sub tali congregari non esset bene securum, iuxta c. Pastoralis, De
sentencia et re iudicata, in Clementinis—ibi cum dicit quod “talia
iure timentur, de more vitantur, hoc refugit racio, hoc abhorret
natura.” Ymo nec cum salvo conductu in dominio inimici, etc. Et si
videantur bene historie quando imperatores congregaverunt concilia
super sedacione scismatum, non invenitur quod et ita formaliter
partes se reddissent pro uno sicut nunc. Item, hodie scismum est
imperium, et reges nostri se reputant imperatores in regno suo, nec
recognoscent superiorem, nec in hoc deferrent regi Romanorum, ne
suis dignitatibus in aliquo detrahirerent.

Et si dicatur, cardinales congregabunt, [E 257v] sicut superius
est tactum, respondetur: Quales cardinales essent illi? Vel nostri, vel
adversarii? Ad mandatum illorum Bonifacii non iremus, nec ipsi
ad mandatum nostrorum. Et nos dicimus quod ipsi sunt excommunicati, et nedum ipsi—ymo omnes prelati facti per Urbanum et
Bonificium; et ipsi idem dicunt de nobis. Quomodo ergo valoret
sentencia in isto turbine sic lata, quia sentencia lata per excommu-

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nicatum non valet—in c. Ad probandum, De sentencia et re iudicata.

Item, si dicatur: Reges omnes ordinabunt quod prelati congregentur in uno certo loco—hoc non est facile fieri propter turbaciones que hodie sunt in christianitate et fuerunt a longo tempore. Quomodo venirent Ungari, qui hodie prochdolor sunt in tali desolacione? Et tamen in regno ipsorum sunt multi notabiles prelati. Qualiter venirent de alis partibus multum longinquus? Si poneremus nos in ista materia: stetimus per decem et novem annos in isto scismate, et erimus tantundem et ultra vel forsan perpetuo, quando esset concordatum de loco ubi fieret congregatio! Nos autem non iremus in obedientia Bonifacii per raciones supra tactas, et alii utique non venirent in obedientia Benedicti, eadem racione. Et per ista videtur via concilii difficilis, ymo et difficillima, in aggressu.

In progressu autem videtur fieri non posse. Nonne “omnis sus-picio pocius est repellenda quam approbanda”?—vi. q. i., Oves—et ob hoc illi qui sunt iudices debent esse tales quod “in causarum processibus nichil sibi vendicet odium, nichil favor usurpet,” “sed stateram in manibus gestent, lanceam appendant equo libramine,” etc.—in c. Cum eterni, De sentencia et re iudicata, in Sexto. Item, nonne illi qui sunt affectati verisimiliter magis ad unam partem quam ad aliam repelluntur a testimonio? Sicut dicimus de illo qui fuit advocatus vel procurator in causa principali, qui non potest esse testis in causa appellacionis, licet aliter causa in nullo ipsum tangat; quia “uterque reputat se vituperatum si amittit et honoratum si lucretur causam, et ideo tanquam suspecti repellunt”—in c. Romana, De testibus, Libro sexto, cum glosa Iohannis Monachi super verbo “in testes.”

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iudicent, quia favor est una de quattuor causis que [E 258r] iudicium humanum pervertunt—in c. Quattuor modis, xi. q. iii.\textsuperscript{355} Et deus scit si in casu nostro pars que lucraretur reputaret se honoratam, et illa que perderet vituperatam!

Item in causa Benedicti certe nos omnes sibi adherentes, et specialiter prelati promoti per ipsum et predecessorem suum, et doctores et magistri qui obtinuerunt puingua beneficia ab ipsis: quia ex iusticia sua vel in iusticia accidunt nobis commodum magnum vel incommodum; et per hoc causa videtur propria nostra, per c. Biduum, in fine, ii. q. vi. Verbi gracia, si Bonifacius reportaret pro se sentenciam concilii generalis, certe de iure omnes ordinaciones facte per Benedictum essent irritae vel irritande—ut in c. Ordinaciones, superius allegato—et ita fuit factum in concilio lateranensi tempore Alexandri terrci, ut appararet in c. i. [Quod a predecessore], De scismaticis.\textsuperscript{356} Et idem invenitur regulariter quandoqueque per viam discussionis, duobus concertatibus, fuit scisma sedatum. Et idem esset de adherentibus Bonifacio si Benedictus obtinuerit pro se sentenciam. Et si dicatur: Non, ymo futurus pontifex omnia confirmaret; hoc non obstante, labes infamie facti remaneret et non posset aboleri—per l. Honori, ff. De obsequiis a liberis prestandis.\textsuperscript{357}

Item, nonne reges et principes et prelati obediencie Benedictii, visis scripturis domini Iohannis de Liniano iteratis et aliorum qui pro parte Urbani scripserunt,\textsuperscript{359} et omnibus mature et digeste rimatis, determinaverunt se fixe pro parte Clementis et Benedictii? Et in ista steterunt fixe iam per decem et fere novem annos, et sunt in ista opinione ita firmati sicut homines possunt esse. Et idem reges, prelati, et principes qui obediunt Bonifacio. Ad quid ergo congregarentur partes iste, ut de causa in qua sunt partes iudicarent? Non debet fieri, ut videtur, quia nemo est iudex ydoneus in causa propria—C.
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Ne quis in causa sua propria ius sibi dicat, in rubro et in nigro.\textsuperscript{359} Item nonne est verisimile ex preteritis iam, et ex opinione fixa quam ita diu tenuerunt, quod eciam in futurum perseverabunt, quod una pars non flecteretur per aliam sed quelibet vellet fixe stare in opinione, et sic recederent [E 258v] sine conclusione, et esset error novissimus peior priore?

Item non valet si dicatur: Non, quia quod diceret maior pars haberet vim sentencie. Quo supposito, causa est iam decisa, quia Bonifacius habet maiorem partem prelatorum, computatis episcopis

Ytalie, ubi fuerunt tot creati episcopi hactenus—vel pocius episcopelli—ut domini ytalici in illis que per concilia tractarentur facilius obtinerent, ut audivi. Et omnes isti per predicta censentur pars formata contra Benedictum. Non ergo prudenter ageremus nec esset iustum si eorum ordinacioni nos submitteremus. Ymo per hoc pars quam indubitanter credimus habere ius succumberet. Item dicemus, et forsan bene, quod pars nostra licet minor in numero prelatorum, sanior tamen est, et per consequens maior; quia maior pars est que maior racione et pietate nititur—ix. di., Sana quippe; et lxi. di., Nullus; et xxxi. di., Nicena; et xix. di., In canonicis; et Extra,

De testibus, In nostra. Et hoc notat Iohannes glosator Decreti in c. Multi sacerdotes, xl. di.,\textsuperscript{360} et Henricus post alios in c. Cum omnes, De constitutionibus.\textsuperscript{361} Et ita dum crederemus evitare inconveniens scismatis, forsan incideremus in maius.

Item non valet si dicatur: Deus non permittet errare concilium, etc. Quia ego hoc fataeor in illis que sunt fidei, sed dicere “Iste est papa et iste non est papa” non est fidei. Et sic in talibus ecclesia militans fallit et fallitur—in c. A nobis, De sentencia excommunica
cionis\textsuperscript{362}—et precipue quando subsunt cause propter quas humana num iudicum quasi naturaliter pervertitur—sicut sunt ille de quibus superius facta est mencio. Item multa dicuntur pro parte Bonifacii quae facti sunt, et pro parte Benedicti multa alia que in facto consistunt. Et in talibus ecclesia militans potest veritatem probabiliter ignorare—in c. i. [Licet romanus pontifex], De constitucionibus, in Sexto.\textsuperscript{363} Verbi gracia, pro parte domini Benedicti asseritur impresso

notoria, et omnes domini cardinales deponunt, in eleccione Urbani impressionem notoriam intervenisse.\[147\] Pro parte vero Urbani dicebatur quod antequam intrarent conclave, domini cardinales erant deliberati eligere Ytalicum, et in eum direxerant vota sua.\[365\] Quomodo posset hoc probari nisi per cardinales, et cetera [E \[259r\] que fiebant, ipsis solis existentibus in conclavi? Et tamen cardinales antiqui sunt iam fere omnes mortui,\[366\] et per consequens non possunt amplius loqui. Et pars Bonifacii dicit quod si viverent, vel illi qui vivunt, debent a testificando repelli, quia pars sunt; et nos dicimus contrarium, et forsan bene, per l. Consensu, C. De repudiis.\[367\] Si ipsi starent fixi in ista opinione et nos in nostra, quis iudicaret? Nullus. Et si ipsi admitterent adhuc cardinales, non proficeret ad causam, quia mortui sunt. Sed nos statim dicemus quod quando moriebantur in periculum animarum suarum assuerunt Clemen tem fuisse canonice electum, et Urbanum per impressionem fuisse nominatum. Vere ego audivi quod pars Bonifacii habet instrumenta, quomodo cardinales alieni deposuerunt in morte Urbanum canonice fuisse electum. Et ego scio quod nos habemus vel habere debemus multa instrumenta de directo contraria.\[368\] Quid fiet in talibus?

Quia quod dixi de cardinalibus, quod mortui sunt, idem de testibus per quos potuisset forsan probari veritas. Unde recordor de uno bene notabili, qui fuerat socius et valde amicus Urbani dum erat archiepiscopus acherontinus et post barrensis et regebat cancellariam in Avinione, et ille habebat ibidem officium bene notabile et erat magne reputacionis: et vocabatur Poncius Beraldi.\[369\] Qui narravit mihi fortiter iurans hoc esse verum, quod ille qui post fuit nominatus Urbanus, et ipse, erant simul in ecclesia beati Petri quando domini cardinales intraverunt conclave Rome pro eleccione futuri pontificis post mortem Gregorii; et erat ibi tumultus popularium.
armatorum vociferancium et percuciacium ad hostia. Et tunc archiepiscopus barrenensis, qui satis cito fuit nominatus Urbanus, dixit predicto Poncio: "Vide Ponci quales modi servantur! Vere quinque fuerit electus in isto tumultu non erit papa, nec ego vellem sibi obedire, nec deberet facere quinunque bonus catholicus." Si essent multi tales testes, congregato concilio, bene facerent ad propositum! Sed scio quod ille mortuus est; et testis est michi deus quod non mencior, ymo predicta audivi ab eo.

Item si dicatur: Faciat quelibet diocesis vel quelibet provincia unum valentem virum, omni suspicione carentem, pro se procuratorem, et ita congregentur de consensu regum in aliquo loco seguro, forsan in patria que isto seismate durante neutri [E 259v] obedivit; et illi cognoscant quis istorum habet ius, et stetur sentencie ipsorum; hoc bene potest fieri per c. Scriptum est, cum glosa Innocencii, De eleccione—adhuc istud videtur fieri non posse. Quia aut isti erunt in pari numero, id est tot pro parte Benedicti quo pro parte Bonifacii, et tunc, attenta fixa opinione cuiuslibet obediencie, verismile est quod res remanebit sine exitu; aut erunt in numero impari, et tunc nos non vellemus, nec esset iustum, quod ipsi essent plures quam nos, nec eciam ipsi vellent de nobis. Et si veniretur ad hoc, quelibet provincia vel diocesis vellet mittere procuratorem suum, et illi de parte Bonifacii habent plures provincias seu plures dioceses quam nos, licet nostra obediencia preponderet, ut dicimus, per rationes que infra tangentur. Item, si in hiis que facti sunt, ecclesia tota posset errare, quanto magis procuratores tales, si qui essent in minori numero, nec ad sentenciam ipsorum sedaretur scandalum. Ymo pars que succumberet dicet, et forsan iuste: "Habuit sentenciam contra se, ergo non est papa: non sequitur!" Et forsan de personis non esset satis leviter concordatum.

Item recipere viam quamcunque nisi penitus eradicativam scismatis et sedativam scandalii non est provisio competens. Nunc vi-
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deamus: Si pars Benedicti haberet sentenciam concilii generalis pro se, et pars Bonifacii contra se, oportet facere unum de duobus. Vel omnes ordinaciones factas per Bonifacium irritas decernere, sicut alias semper fuit factum: probatur de Stephano lxxxix° papa—hic tam a Gallia quam Ytalia episcoporum synodum Rome congregavit, in qua omnia a Constantino ordinata exordinavit, preter baptismum et crisma, decernente synodo ut episcopi ab illo consecrati ad gradum quem ante consecracionem habeant redirent, et si digni iudicarentur, iterum electi, consecrarentur. Presbiteri vero aut dyaconi ab illo consecrati similiter ad priorem gradum redirent, et ipsi si digni essent consecrarentur, sed alciorem gradum vel ordinem nunquam attenderent. Et idem quandocunque legitur scisma fuisse sedatum per viam discussionis. Advertat deus, et homines, si talia homicide temptarentur, si esset sedacio scandali—ymo vere maius scandalum! [E 260r] Ego testificor de me ipso, quod propter rationes predictas et multas alias, si sentencia concilii veniret contra Benedictum, ego recalcitrarem quantum in me esset; et iuste secundum me, quia “eterni tribunal iudicis” etc. “nee dampnabis eum cum iudicabitur illi.”372 Et ita credo quod facerent alii.

Vel per concilium generale esset dictum, quod per eos omnia confirmarentur; et adhuc esset scandalum maximum, ymo irreparabile, quia omnes prelati mundi et beneficiati fere sunt promoti per unum vel alium, et pars que haberet sentenciam contra se saltem incurreret infamiam indelebilem, et forsan contra deum et justiciam, per predicta. Quia laici, qui “clerics oppido sunt infesti,”373 dicerent: Prelati nostri non sunt prelati, et deceperunt nos iam per decem et octo annos,374 et facta per ipsos non valuerunt. Aperiretur via guerris et scandalis. Nonne Bonifacius dispensavit cum rege Anglie et filia regis Francie, quia erant in gradu prohibito?375 Pone ergo
quod de isto matrimonio venerunt filii, sicut per dei graciam venient: filii viventibus, moritur rex; per sentenciam concilii generalis est dictum, sicut est possibile. Bonifacium non habuisse ius in papatu. Illi ad quos successio regni Anglie deberet venire filii legitimis non existentibus—nonne possent dicere: Nos succedemus quia vos non estis habiles. Nec potuit eciam ille qui habuit sentenciam pro se in papatu vobiscum dispender, eciam si dispensaverit in preiudicium nostrum, quia eo ipso quod regnum fuit sine legitimis hereditibus, ius est nobis acquisitum. Et sic in talibus infinitis.


Et talium sentencia non tribueret ius in papatu illi qui ante non habebat, quia sentencia non tribuit novum ius sed declarat antiquum, per l. Sicut, in § Sed si queritur, ff. Si servitus vendicetur, per l. Et ex diverso, in § Ubi, ff. De rei vendicacione.377 Et pro tanto dicit Innocencius quod propter tale arbitrium non potest haberi ca-

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2455 venerunt] veniant A; veniunt BJ / 2459 Nos] non BJ / 2459 succedemus] succeditis J / 2460 pro] contra AL / 2461 vobiscum] nobiscum BCEGHKL / 2464–2520 Item si dicatur . . . xxiii. q. iv.] the order here follows BJ which alone make logical sense, J deviates slightly: Pro quo . . . nichil valet (2465–91); Item . . . valeret (2464–65), quia in preiudicium . . . xxiii. q. iv. (2492–2520). In all the others the order is: Item quia in preiudicium . . . xxiii. q. iv. (2492–2520); Pro quo . . . nichil valet (2465–91); Item si dicatur . . . non valeret (2464–65); with some variants intended to supply sense. J's "corrector" thought J was defective and indicated insertion of the whole passage in the majority order, as written on fol. 147r of ASV, Arm. 54, t. 27; it has no significant variants. / 2465 primo non] non A; per predicta non BCEGHKL / 2465 valeret] valet ACEGHKL; ut supra dictum est. Facit quia non potest ista via habere locum nisi consentirent ambo contendentes et adherentes, potissime principes et cardinales, quorum omnium plurimi contradicunt, ut clare et notorite constat. Aliam reprobationem vide infra, hoc libro, in literis regis Hyspanie ad regem Arragonum, ut est dictum foll. A (this letter, of 10 September 1397—see Valois, 3:137, is not in A's codex; cf. supra, apparatus, lines 2149–55) / 2466 advertenda[cum BJ / 2470 litigancium] om. B / 2473 ante] antea J / 2474 novum] om. J / 2474–75 antiquum] om. C / 2475–76 per . . . vendicacione] order varies A

*[E 260r]* Item quia in preiudicium obediencie que sentenciam haberet contra se, nisi esset recepta de consensu suo, eciam non valeret, ut videtur per l. *Si dictum*, in § *In compromisso [Si compromiserol], ff. De eviccionibus*. Facit quia res inter alios acta, etc.\(^{380}\)

Ponatur ergo quod ambe obediencie consenciunt quod eligantur certi compromissarii. Nonne difficultates que sunt in progressu concilii generalis, superius tacte, sunt eciam in via compromissi? Indubitans sic; et multo maiores, quia adhuc sentencia aliquorum compromissariorum in modico numero non esset tante auctoritatis sicut concilii generalis, quia illa est melior sentencia [E 260v] que plurimum sentencis comprobatur, ut superius est dictum.\(^{381}\)

De via facti non est multum loquendum, quia illa videtur omnino damnąbilis, per c. *Nisi cum pridem*, in § *Propter maliciam plebis*, etc., ubi pocius prelatus cogit tur cedere quam procedatur ad effusionem sanguinem humani,\(^{382}\) eciam contra illos qui propter maliciam meram vero prelato resistunt, quando ecclesie salus potest sub alio esse tuta—ut dicit Gracianus, et bene, in § *Quod autem [Hoc

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tunc[, vii. q. i.383 Item Cristus noluit quod pro vicariatu suo obti-
nendo fierenz incendia, raptus, et homicidia, quando dicit apostolis:
Reges dominantur, vos autem non sic—Mat. xx.[25–26]. Et pro tanto
doct constitucio ecclesie cicius dimittere pallium quam sevire in
sanguinem humanum, in c. Suscipimus, De homicidio.384 Item,
“bellum geritur ut pax acquiratur,” ut dicit Augustinus, et habetur
in c. Noli, xxiii. q. i. Nunc videamus: Si nos moveremus guerram
Bonifacio, verisimiliter illi qui sibi obediunt eciam moverent guer-
ram nostro, et ita esset cristianitas magis involuta quam sit nunc.
Et propter hoc dicit Augustinus, “non potest esse salubris correccio
 nisi cum ille corripitur qui non habet sociam multitudinem,” in c.

Non potest, xxiii. q. iv.

[Æ 261r] Et per ista satis apparet, ut videtur, quod proprie sumus
in terminis capituli Nisi cum pridem, in § Pro gravi quoque scan-
dalo, De renunciacione, ut dicamus quod pro sedachine huius gra-
vissimi scandalì ambo concertantes tenetur cedere, quia scandalum
predictum aliter sedari non potest.385 Et vere ut videtur non bene
potest aliter sedari. Sed si videretur quod posset sedari, sed non
leviter et commode, adhuc est dicendum quod ambo concertantes
cedere tenetur; quia textus, quando dicit “si aliter sedari non pos-
sit,” est intelligendus: si non posset sedari commode—per l. Nepos
Proculo, ff. De verborum significacione.386 Et facit quod dicit Ac-
cursius in l. ii. [Vis], ff. Quod metus causa, ibi cum dicit, “cui resisti
non potest,” quando dicit: “Subaudi, commode.”387 Et quod notat
Innocencius in c. Accedens, De concessione prebende.388 Et quod
notat Iohannes Monachus in c. Cupientes, De eleccione, super verbo
commode.”389 Item, quando pinguius providetur ecclesie per re-
medium extraordinarium, tunc obmissò ordine est extraordinari-
urn amplexandum, ut notat Iohannes Monachus in c. Cupientes,
in § Gracia, De eleccione, supra allegato.390 Et merito, specialiter in
casu nostro, ubi de utilitate ita publica, pro qua semper est certan-
dum, agitur; etc.

[7] Item non obstat racio in qua dicitur quod dominus Benedictus
obtulit in effectu viam cessionis, quia dicit quod dum tamen con-

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veniat cum adversario, eciam si deberet remanere pauper presbiter sine beneficio, ipse faciet pacem in ecclesia.\textsuperscript{591} Utinam hoc dixisset patruis regis et fratri, quando fuerunt ad eum, et tradidisset super hoc bullam, sicut fecit de aliis responsonibus suis; et si noluisset expresse et nominatim acceptasse viam cessionis, saltim stetisset [E 261v] in terminis istis. Sed magis clare aperuit mentem suam offere-endo viam compromissi et reprobando viam cessionis tanquam non iuridicum, et alias a summis pontificibus in casu similis refutatam. Et in fine unius bulle sue dixit quod si ipsis congregatis per viam compromissi non posset haberi pax in ecclesia, quod tunc ipse aperi-riet alias vias iuridicas.\textsuperscript{592} Ex quibus simul combinatis infertur quod ipse viam cessionis acceptare non vult, sed per verba generalia transire, et retinere quandiu vixerit partem papatus quam possidet—ita quod postquam ita clare aperuit mentem suam, de via cessionis per ipsum amplectenda sperare non debemus, quia in incertis, et non in certis, locus est coniecturis, in l. \textit{Continuus}, in § ii., ff. \textit{De verborum obligacionibus}.\textsuperscript{593}

\textbf{[8]} Item non obstat ratio in qua dicitur quod reges non debent ordinare quod obedientia substrahatur istis ambobus concertantibus, quia forsas regnicole non haberent conscientiam hoc faciendi, et per consequens non deberent in hoc regibus obediare, etc. Pro quo sciemund quo ad reges spectat in ista magna tribulacione ecclesie ipsos ambos concertantes ducere ad viam pacis, et in ipsos nolentes viam pacis acceptare, possess et debent seuire et ipsos cohercere, ut veniant ad viam pacis, ut supra probatum est. Et probatur adhuc per dictum Augustini sic dicentis: “Nabugodonosor decrevit, quicunque dixerit blasphemiam in deum Sidrac, Midrac, et Abdenago, in interitu erit et domus eorum in dispersione.” Et sequitur: “Ecce, quomodo rex alienigena sevit, ne blasphecemetur deus Israel, qui potuit tres pueros de igne liberare! Et nolunt ut seviant reges cristiani, quia Cristus exsufflatur, a quo non tres pueri sed orbis terrarum cum piis regibus a Gehennarum igne liberatur. Quomodo igitur re-

ges non moverentur, qui non tres pueros (attendunt) de flamma libera
teratos, sed se ipsos de flamma Gehenne, quando vident Cristum e
xsufflari? Nam videte qualia” hodie “fiunt et qualia” hodie “pati-
mur” per istos concertantes: “Occidunt animas, sempiternas mortes f
aciunt” etc.—in c. Quando, xxxii. q. iv. Et istam potentatem ha
bent a deo, ut supra satis est probatum. Hoc ergo supposito, reges
non habent considerare consciencias singulorum, sed solum quod cum
bona intencione [E 262r] et ad finem pacis procedant. Et sub
iecti in hoc debent ipsis omnes obedire, et si habent remorum con
sciencia, illi qui habent debent ipsum deponere vel talem con
scienciam captivare, et obedire regibus—iuxta illud Apostoli, II. ad
Corinthios, x. [5]: “Captivantes omnem intellectum in obsequium 
Cristi”; ut ponit Hastensis, libro ii., in titulo De bonitate et malicia
interioris actus. Et si velint sequi suam conscienciam erroneam,
nichilominus reges compellent eos suis ordinacionibus obedire, iuxta
notata in c. Inquisicioni, allegato. Quia ista duo stant simul: iu
dex compellet me ad faciendum aliquid iuste, et tamen consciencia dic
tabit michi contrarium, ut in c. Litteras, allegato.

[9] Item non obstat racio in qua dicitur: Qua racione dicimus eleccione
Urbani non tenuisse, quia non fuit facta libere, etc. Pro quo scient
quod aliqua sunt, quae de sui natura et de iure requi
rant libertatem et que debent omnino fieri libere, sicut est eli
gere papam vel episcopum. Nam non dubium quod ibi “cessat eleccio
ubi libertas amittitur eligendi,” in c. Ubi matus periculum [l]. §
Ceterum, De eleccione, in Sexto; et in c. In nomine domini, 
xxiii. di., ibi cum dicitur quod eleccio debet esse “pura, sincera, et gra
tuita”—quod intellige verum de eleccione persone que debet assumi
in papam. Sed ad eligendum illum debent de iure compelli cardi
nales, per substraccionem victualium et per inclusionem in concla
vi—in c. Ubi [periculum] matus, allegato. Et racio: quia ad ea que
sunt pacis et unionis, licet ista debeat a bonis hominibus inquiri et
prosequi (iuxta illud [Luke 2.14], “Et in terra paci hominibus bone
voluntatis”): tamen ad ista qui libere non attendit compelli debet,
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sic ut in casu nostro. Unde si inter prelatum et subditos sit dissensio
que proveniat propter maliciam subditorum, non de levi sedabilis,
prelatus hoc videns et quod salus ecclesie potest esse tuta in manus
alterius debet cedere, et si non velit debet ad hoc cogi. Item, si inter
prelatum et subditos sit grave scandalum quod aliter commode, ut
supra dictum est, sedari non possit, prelatus debet liberaliter cedere,
et si nolit debet ad hoc cogi, per c. Nisi cum pridem, in § Propter
maliciam, et in § Pro gravi quoque scandalo, De renunciacione,
cum opinione Innocencii, qui hoc expresse ponit ibidem, “quia utili-
itas publica debet preferri private.”

Et quod dixi de prelato qui cogitur [E 262v] cedere, intelligo
quod reges debent in casu nostro, ubi est tantum scandalum et ita
grave, et possunt ad cedendum ambos compellere, ut satis supra
probatum est. Et adhuc clare probatur per dictum Augustini sic
dicentis: “Cur eciam hoc fieri non potest, ut per ordinatas et legiti-
mas potestates, de sedibus quae illicite usurpantur vel ad dei iniuriam
retinentur, pius expellat impium et iustus iniustum” etc.—in c. Qui
peccat, xxiii. q. iv. Et alibi: “Putas neminem cogi ad iusticiam de-
bere, cum legas patremfamilias dixisse, Quoscunque inveneritis co-
gite intrare? Et ipsum Saulum, postea Paulum, ad veritatem cog-
oscendam et tenendam magna violencia Cristi cogentis esse
compulsam?” Unde “nimium sunt inquieti qui per ordinatas potes-
tates a deo cohiberi atque corrigi” nolunt—in c. Nium, xxiii.
q. iv. Dicant ergo reges ambobus concertantibus cum Augustino
illud quod sequitur: “Non ideo vobis displiceamus quia revocamus
errantes et querimus perditos; melius enim facimus voluntatem do-
mini monentis ut vos ad eius olve redire cogamus, quam conscen-
ciamus voluntati errancium, ut perire vos permittamus.” Hoc Au-
gustinus in c. Displicet, xxiii. q. iv. Unde “ecclesia non solum invitat
sed eciam cogit ad bonum,” ut ibidem.

Ex quibus clare concluditur quod licet eleccio que non est facta
libere sed per impressionem vel compulsionem non valeat, cessio
tamen istorum duorum conciuentium facta per compulsionem et
potenciam regum erit iusta et canonica; nec poterunt de hoc con-
queri, quia iusta causa subest propter quam hoc fieri debet—per l. *Si mulier, in principio, ff.* *Quod metus causa.* Nec amissio status in hoc casu aliquid facit, quia ut ponit Innocencius ubi supra, fiet eis bona recompensacio status, si non reddant se nimi contumaces. Si non sit equivalentis, sufficit modica compensacio, per l. *Item si verberatum, in § Ubi, ff. De rei vendicatione.* Nec habent con- queri de processu injurioso quando primo proceditur ad substrac- cionem obediencie quam ad graviora, ut patet per predicta. Et facit quod dicit Augustinus in c. *Vides, xxiii. q. vi., ubi dicit quod ipse quandoque fuit opinionis quod nullus debet cogi ad bonum; raciones tamen dicencium contrarium fuerunt sibi demonstracio. Et dicit exemplum [E 263r] de civitate sua, cuius incolae erant pessimi heretici, et tamen propter coaccionem quam habuerunt ab imperatoribus fuerunt optimi cristiani, iuxta illud [Prov. 9.9]: “Da occasionem sapienti et sapiencior erit.” Et sic fiet per dei graciam in istis duobus; nam substracta obediencie, sapienciores fient, etc.

Et casus expressus quod scismatici debent cogi, in c. *Ipsa pietas, xxiii. q. iv., ubi Augustinus de talibus: “Nec quia coguntur reprehendat sed quo coguntur attendant.”

Nec valet quod aliqui false adinvenire nituntur, quod auctoritates et iura predicta non locuntur in papa; per c. *Sicut, xcvi. di., ibi cum dicit, “non tamen contra religionem uulantem excedentes”; ubi glossa: “vel eciam si scisma fuerit,” etc. In quo caso papa forcius est puniendus quam alii, ymo sine misericordia sicut dyabolus, ut supra dictum est.

[10] Item non obstat alia racio, in qua dicitur quod nullus est qui possit dicere pape, Cur ita facis? Quia hoc intelligitur: nisi faciat aliquid quiet notorie scandalizet ecclesiam et de quo deus notorie offendatur, quia tunc est recognoscendus papa celestis et obiedien- dum deo, ut est dictum. Et facit c. *Non liceat pape, xii. q. ii., ubi pape alienanti res ecclesie potest resisti, etc.* Quanto magis in casu
nóstro precipue, ubi ambo concertantes volunt retinere papatum, quilibet contra opinionem collegii suorum cardinalium. Unde dicunt aliqui quod iura que locuntur de obediencia papali semper exprimunt quod sedi apostolice est obediendum, et ecclesie romane; et istud importat quod pape est obediendum quando in arduis regit se per consilium fratum. Et pro hoc facit quod notat Iohannes Monachus in c. Super eo, De hereticis, in Sexto, ubi dicit quod decet papa non facere aliquid in arduis sine consilio fratum, et quod aliter facta per papam quandoque fuerunt revocata. Et dicunt doctores quod domini cardinales sic cum papa sunt uniti, quod reputantur membra sua, et ob hoc non iurant sibi obedienciam, ymo videntur esse unum corpus cum eo. Ex quo inferunt quod in arduis nichil debet facere papa nisi cum consilio ipsorum, et allegant c. In Genesi, De eleccione; c. Quociens, De purgacione canonica; [Per- ventit.] De excessibus prelatorum. Et hoc ponit Henricus post alios in c. Antiqua, De privilegiis, in secunda distinzione. Et clarum est quod quando prelati iurant, iurant primo obedire ecclesie romane, et secundo pape—in c. [E 263v] Ego N., De iureiurando. Et hoc satis plene deducit cardinalis Ebredunensis in illis que scripsit volens probare quod presens questio non est per concilium generale decidenda. Unde valde durum esset dicere quod uni vel duobus, qui propter opinionem suam singularem contra opinionem fratum suorum cardinalium ecclesiam totam destruerent, esset necessario obedientium. Item quando dicitur, Nullus iudicabit papam, etc.: Audivi aliquos dominos theologos qui satis aperte dicebant quod c. Nemo et similia fuerunt facta per papam, etc. Verum est quod nullus papam iudicabit, nisi in casu heresis, vel nisi feceret talia, que notorie ecclesiam scandalizarent vel inducerent subversionem et periculum animarum. Nam tunc non esset sibi obedientium, et si esset incorrigibilis eciam

incurreret heresim,
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2705 ut supra laciis est deductum. Vel aliter: Nullus iudicat papam; verum est—papam indubitatum et pacificum. Sed quando sunt duo concertantes, quorum quilibet vult papatum retinere, nec volunt propter sedacionem gravis scandali renunciare, ut tenentur, tunc si nullus eos iudicaret, semper remaneremus in isto statu et veniremus ad peius. Et in casu isto sunt iam per predecessores iudicati, sic quod non restat nisi facere iuris executionem contra eos; sicut dicimus de Symacho qui iudicavit successorem, in c. *Non liceat*, allegato.  

2710 Et iura contra ipsos exequi spectat ad reges, ut supra satis evidenter est probatum. Et facit quia "qui male sedet in cathedra, de sacerdocio crimen acquirit non dignitatem," sicut fit quando sic scandalose concertatur de primatu, ut dicit Crisostomus in c. *Multi sacerdotes*, xl. di.  

2715 Et Salisberiensis, in *Policraticon*, consilio Bruti consultit esse utendum contra duo concertantes de papatu et facientes scisma; et pulere contra eos invehit, libro viii., titulo *Consilio Bruti*, etc. Et ibi vides, nam eius dicta causa brevitiatis inserere pretermitto.  

2720 [11] Item non obstat racio alia, in qua dicitur quod nec in collationibus beneficiorum, nec in indictissionibus vel excussionibus alios, est sibi obediencia deneganda; quia per racionem que superius facta fuit in contrarium, satis videtur fuisse solutum. Et facit c. *Non liceat pape*, ubi quando bona ecclesie contra iuris disposicionem dissipat, est licitem sibi resistere et non obedire.  

2725 [12][E 264r] Item non obstat alia racio, in qua dicitur quod licet reges ordinarent quod ambobus obedoia substraheretur, si papa preciperet contrarium, sibi pocius esset obedoium. Quia licet vetrum sit dicere quod papa maior est quam aliquis rex, in casu tamen isto videtur magis fore obedoium regi quam pape. Quia faciendo ea que sibi facere liceret et expedient pro pace et unionie ecclesie, sunt dei ministri, et qui eis in hoc obedoit, pocius deo obedoit quam
ipsis. Unde ad Romanos, xiii. [4], scribitur: "Dei enim minister est vindex in iram ei qui male agit." Et facit c. *Qui resistit*, xi. q. iii.\[1\]

[13] Item eodem modo respondetur ad rationem immediate sequentem. Nam quicquid sit de aliis casibus, in isto possunt et debent reges providere, ut supra clare est ostensum.

[14] Item non obstat c. *Nonne et § Hinc eciam*; nam iam satis superius est solutum.\[4\] Et verum est quod ante sentenciam non est ab obediencia presbiteri recedendum, nisi fiat auctoritate illius qui potest hoc canonice precipere, sicut sunt reges in casu presenti, ut appareat satis per predicta.

[Against arguments *quod non decet*]

[1] Item non obstat prima racio in qua dicitur quod postquam patres regum et ipsi obediverunt aliqui Clementi, alii vero Urbano, et postmodum Benedicto et Bonifacio. Quia licet ipsi tenuerint et adhuc teneant fixe quilibet suum, et ipsis obediverint, nunc quando vident quod scisma ita diu lamentabiliter durat et quod isti non curant de inquirendo et prosequendo pacem: si ad hoc quod cicius ad pacem inclinationem ipsis subtrahant obedienciam, non est indecens neque inhonestum. Pro quo: Quia "alma mater ecclesia plurimum nonnulla racionabiliter ordinat, et consulte a suadente subjiciens utilitate postmodum consului ac racionabilius revocat, in meliusve commutat"—in c. *Alma mater, De sentencia excommunicationis*. Et imperator pocius eligi se corrigere quam quod ab alii corrigratur, in § i., in Autentica, *De nuptiis*.\[4\]

[2] Item non obstat eciam alia racio, quia postquam cum sinceritate cordis et ad finem pacis reges hoc faciunt, vel rex hoc facit, "non habet curare quid os loquencium mala loquatur, dum tamen non recedat a tramite veritatis"—in c. *Magne, De voto*. Unde Au-
gustinus, in libro De civitate dei: Si propterea quisque obiurgandum corripiendumque [E 264v] male agentibus parcit, quia tempus opportunius inquirit, non est hoc occasio cupiditatis sed consilium caritatis.420

2765 [3] Item non obstat alia racio, quia reges non debent se regere exemplo sed legibus, quia pro certo nunquam legitur quod fuerit scisma simile, nec temporibus retroactis romanus pontifex solebat sic dare prelaturas. Nunc vero omnes prelati et de una obediencia et de alia, fere, sunt creati per istos, et per consequens quasi partes formate, et per consequens scisma magis radicatum quam unquam. Et nos bene legitim quod quandoque ecclesia stante in scismate, illi quibus rex Francie obedivit obtinuerunt, sed quod istud semper fuerit verum, ego nescio nec credo.

[Against arguments quod non expedit]

[1] Item non obstat prima racio per quam probatur quod non 2775 expedit sibi substrahere obedientiam, quia procederet ad fulminandum sentencias, etc. Quia reges qui substrahunt obedientiam ad hoc quod ponant unionem in ecclesia et pacem, non habent eum timere, quia non debet respici in ista materia quid fiat sed causa propter quam fit, ut dicit Iohannes glosator Decreti, proprie in materia scismatis, in c. Ipsa pietas, xxiii. q. iv.421 Et facit quod ipse Iohannes glosator ponit in c. Quodcunque ligaveris, xxiv. q. i.—quod papa quoad deum nullius potestatis vim exercet, nec est excommunicatus quod deum ille quem ipse excommunicat sine causa iusta,422 iuxta illud Psalmiste [36.33]: “Nec damnabis eum cum iudicabitur illi.”

2780 Et propter hoc in hoc casu non dicitur sentencia contempti. Nam “contemptor dicitur ille qui sine causa contra canones aliquid facit,” ut notat Archidiconus in c. Si quis erga, ii. q. vii.423 Et facit, quod a iudicio illius qui accusatur accusantes sunt absoluti, quia accusatus

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Et quod dixi de substraccione quoad ambos est idem de ipsorum quolibet, quia ubi eadem racio, ibi idem ius.

[3, 4] Item non obstant due raciones que dicunt quod si obedientia substrachetetur, laici ponerent manus ad bona ecclesie et ipsa occuparent; et, eadem racione qua ipsis non obediretur, ita nec epis-
copis et archiepiscopis et aliis prelatis creatis per ipsos, et ita esset
destruccio totalis ecclesie. Pro quo advertendum, quod in aliquibus
partibus cristianitatis, verbi gracia hic in Hanonia et in aliquibus
aliis locis, determinaverunt se neutri obedire donec haberemus in
ecclesia unum solum et indubitatum, et ita fecerunt iam per decem
et novem annos, vel fere. Et licet secundum me male fecerint,
quia non obederunt nostro, tamen in maiori libertate vivunt quam
illi qui obediunt Bonifacio vel illi qui obediunt Benedicto. Et nunc
quando videmus quod aliter non possumus habere unionem, per
raciones superius tactas, licet, decet, et expedire facere sicut et ipsi
feuerunt et facient; et licet ipsi neutri obedient, obediunt tamen
episcopis suis. Nec sequitur: Substrahitur obediencia pape, quia
propter sedacionem gravissimi scandali nunc prochdolor in ecclesia
existens non vult renunciare sicut quilibet bonus pastor debet fa-
cere—ergo non obedietur episcopis creatis per eum, qui sunt veri et
pacifici episcopi quilibet in episcopatu suo. Pro certo qui bene con-
siderat, sine comparacione maius inconvieniens est sic in scismate
stare quam [E 265v] per substraccionem obediencia et alias unionem
et pacem ecclesie procurare, et per consequens est eligibilium, per
dictum Gregorii in c. Duo mala, et c. Nervi, xiii. di.; nec est adversa
fortuna speranda, per l. Inter stipulatam, § Sacram, ff. De ver-
borum obligacionibus.

[5] Item non obstat alia racio, in qua dicitur quod per hoc frus-
trarentur suis graciis multi valentes viri qui ab utroque impetrave-
runt literas expectativas, etc. Quia eciam si non substrahatur obe-
diencia, iam frustrati sunt multi notables clerici. Verbi gracia,
universitas parisiensis, que vere tanquam lucerna fulgoris decorat et
illuminet ecclesiam dei, que nunquam voluit facere rotulum, ut
tolleret quamcumque occasionem tepiditatis in prosecucione unionis
suppositis suis. Et deus scit quod illa alma universitas pre ceteris
collegiis mundi, cum vera animi sinceritate, prosecuta est indefesse
unionem ecclesie et adhuc continue prosequitur, nec per dei graciam
De substraccione obediencie

cessabit, sciens quod qui perseveraverit usque in finem, hic salvus erit, etc. Si igitur veniretur ad substraccionem obediencie, expediret quod per medium regum, prelati darent unum bonum ordinem in conferendo beneficia, taliter quod valentes clerici primo loco beneficia haberent, et gradatim illi qui scirent, vellent, et possent ecclesie proficere promoverentur, iuxta c. *Super inordinata, De pre-bendis*. Et per hoc cessarent omnia. Et quia in brevi per dei graciaram habeboimus unum verum unicum et indubitatum pastorem, et pro bono publico quis eciam quandoque privat re sua propria, per l. *Ita [Item sil] verberatum*, in fine, et per l. *Lucius*—quanto magis debet privari iure quod habet ad rem, non in re, sicut sunt expectantes. Et si dicatur: Gracie iam facte habent decretum quod papa decrevit irritum et inane "si secus a quoquam" etc.—raciones supra allegate, per quas probatum est quod pro bono pacis et unionis ecclesie licet, decet, et expedite ipsis ambobus concertantibus obedienciam subtrahere, satis solvunt ad istud, una cum regula catholniana, quia res venit ad casum a quo incipere non potuit, etc. [6] Item non obstat alia racio, in qua dicitur quod innumerabilia inconveniencia sequeruntur, quia sine dubio maiora sequerent si ecclesia sic remaneret lacera, quod absit, ut superius est magis [E 266r] declaratum.

[7] Item non obstat quod dicitur, quod per hoc non haberetur unio, etc.—quia raciones alique superius allegate satis probant quod si per substraccionem obediencie non corrigerent se, esset aliter procedendum.

[8] Item non obstat quando dicitur, quod non expedit quod equa lance procedatur contra verum papam et contra intrusum; quia multi dicunt quod si beatus Petrus viveret hodie, et divisio esset similis in ecclesia sicut est, que posset sedari ipso sedente, ipse deberet cogi
cedere per substraccionem obediencie et alias, ut est dictum. Nonne legimus de beato Clemente successore suo, quod propter scandalum quod de eleccione sua erat inter fratres, renunciavit papatui?—in c. 2885

Si Petrus, viii. q. i. 439

Et quia multi sunt qui non habent Poliercaticon, hic in fine feci inserere ipsius dicta loquentis de duobus concertantibus de papatu; ut de illis que michi in materia occurrerunt “nichil penitus ignoretur”—iuxta § i., Instit., De testamentis. (Sed causa brevitatis omisi.) 440 Et Augustinus ad propositum sic loquitur: “Ideo divina providencia multos diversi erroris hereticos esse permittit, ut cum interrogant nos ea que nescimus, sic discuiciamus pigriciam, ut divinas scripturas capiamus. Propeterea Apostolus ait, Ut probati raa-ranifesti riant”—xxiv. q. ultima [iii.], in fine [Ideo divina]. Et vere, 2895 sicut dixi a principio, ista solum ad memoriam videre volencium reduco, ut melius veritas possit haberi. Nec ex presumpcione, odio, vel favore, teste deo, aliquid scripsi. Et si de meo aliquid posuerim, vel iura vel dicta doctorum minus bene allegaverim, suppleat legens benivolus, et mee imbecillitati fraternaliter parcat. Quia si unum pedem haberem in fovea et alium extra, adhuc addiscere vellem, iuxta dictum iurisconsulti in 1. Apud Iulianum, ff. De fideicommis-sartiis libertatibus. 441

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Annotations

The notes that follow are keyed to the footnote numbers in the edition above. In addition to the works listed at the beginning of this volume, the following printed sources are cited:

1. **Canon Law**
   
   *Decretum Gratiani . . . una cum glossis*. Lyons, 1613
   *Decretales D. Gregorii Papae IX. . . . una cum glossis*. Lyons, 1613
   *Liber sextus decretalium D. Bonifacii Papae VIII., Clementis Papae V.*
   *Constitutiones, Extravagantes tum viginti D. Ioannis Papae XXII. tum communes*. Lyons, 1613

2. **Roman Law**
   
   *Digestum: Corpus iuris civilis Iustiniani*, 3 vols. Lyons, 1612 (with glossa ordinaria)
   *Volumen (Institutiones; Novellae [Authenticum]; Codex, 10–12)*: The Venice edition, 1489, repr. CGJC, 11. *Accurssii Glossa in Volumen*. Turin, 1969

3. **Commentators on the Canon Law**
   
   Henricus de Bohic: *Henrici Boich Lugdunensis I.U.D. clarissimi, in Quinque decretalium libros commentaria*. Venice, 1576 (5 bks. in 1 vol.). All references to Bohic are to this edition unless otherwise indicated.
   ———: *Primum (-Tertium) volumen . . . distinctionum . . . Henrici Bouhiec . . . in . . . Libros decretalium*. Lyons, 1620 (5 bks.; 3 tomes in 1 vol.)
   Hostiensis: *Henrici de Segusio, Cardinalis Hostiensis . . . in primum*
Annotations

(-sextum) Decretalium librum commentaria. Venice, 1581; repr. Turin, 1965 (2 vols.)
———: Henrici de Segusio, Cardinalis Hostiensis Summa aurea. Venice, 1574; repr. Turin, 1963
Innocent IV: Innocentii IIII. . . . in Quinque libros decretalium . . . commentaria. Frankfurt, 1570; repr. 1968

4. Other Sources
Martini Oppaviensis Chronicon pontificum et imperatorum, ed. L. Weiland, Monumenta Germaniae Historica, Scriptorum, 22. Hannover, 1872

Reference is also made below to the following manuscript sources:
Johannes Monachus: Apparatus in Librum sextum. Paris, BN, ms. lat. 16901; ms. lat. 4069
Petrus Bertrandii: Apparatus super sextum librum Decretalium et supra Constituciones . . . Clementis Pape. V. et Iohannis Pape XXII. BN, ms. lat. 4085. [the abridged version]
———: The same, unabridged: Catholic University (Washington, D.C.), ms. 195

* * *

1 Augustine's text (23. q. 4, c. 41), cited only in the later redactions, is addressed to the problem: "Non invenitur exemplum in evangelicis et apostolicis litteris, aliquid petitum a regibus terrae pro ecclesia contra inimicos ecclesiae." He explains: "Sed nondum inplebatur illa prophetia: 'Et nunc reges intelligite, erudimini, qui iudicatis terram.'" In Christian times, "nunc illud inpletur."

2 "Versutus hostis . . . in terra tenere," in Decretum 16. q. 2, c. 1.

3 Since Clement VII was elected 20 September 1378, the nineteenth year of the Schism ran from September 1396 to September 1397. See Valois, 3: 109 n. 3, 138 n. 4.

4 Urban VI was elected pope 8 April 1378; he died 15 October 1389. Boniface IX was elected 2 November 1389 and died 1 October 1404.

5 Pope Clement VII died 16 September 1394; Benedict XIII was elected 28 September 1394 and died 29 November 1422 (or 23 May 1423; Valois, 4: 452).
For the gist of the canon see below, n. 107. It also provided “Si quis autem contraire praesumperit, excommunicationi se noverit subiacere.”

Most of the preceding dozen or so lines are adapted by Simon from In nomine domini (Dist. 23, c. 1), the decree on papal elections promulgated by Pope Nicholas II at the Lateran council of 14 April 1059. The relevant passages read: “Quod si quis . . . per seditionem, vel praesumptionem, aut quolibet ingenio electus, aut etiam ordinatus, seu inthronizatus fuerit: auctoritate divina . . . perpetuo anathemate . . . a liminis sanctae Dei Ecclesiae separatus abiiciatur, sicut Antichristus, invasor, et destructor totius Christianitatis . . . [et] ab omni ecclesiastico gradu in quocunque fuerat prius . . . deponatur: cui quisquis adhaeserit . . . pari sententia sit mancipatus. Quisquis autem huius nostrae decretalis sententiae temerator extiterit, . . . perpetuo anathemate, atque excommunicatione damnetur, et cum impiis, qui non resurgent in iudicio, reiputetur . . . et cuncta elementa sint ei contraria, et omnium sanctorum quiescentium merita ilium confundant, et in hac vita super eum apertam vindictam ostendant.” The passage “nisi per satisfaccionem . . . ,” is attributed to St. Jerome in an addendum to 11. q. 3, c. 33 (Nihil). And the passage “in potestate diaboli . . .” is from § His auctoritatibus, after 24. q. 1, c. 37, via the glossa ordinaria on X 5. 39. 47 (Quantae), v. “interpretans”: “ita videtur peccare omnia [sic], qui non defendit alium si potest, 23. q. 3. Non inferenda, et c. ult., et si non possit aliter defendere, saltum defendat clamore, FF. Ad Silla. L. 1. § Hoc autem.”

Denique (7. q. 1, c. 9) is Cyprian’s assertion of the absolute need to obey one’s bishop. It includes the passages quoted here, and also the proof from the case of Korah, Dathan, and Abiram (Num. 16), who rejected the sacerdotal distinction of Moses and Aaron on the grounds that “all the congregation are holy.” Even though, as the canon notes, they invoked the same God and law as the rest, God caused the earth to swallow them up alive.

Sacris (X 1. 40. 5) refers to those who communicate with the excommunicated as incurring mortal sin.

The canon is in fact a letter of Pope Pelagius, although some of Augustine’s dicta are quoted in it elsewhere.

The passage to which Simon refers (Digest 29. 5. 1. § 28) supports his phrase, but his wording is much closer to that of the glossa ordinaria on X 5. 39. 47 (Quantae), v. “interpretans”: “ita videtur peccare omnia [sic], qui non defendit alium si potest, 23. q. 3. Non inferenda, et c. ult., et si non possit aliter defendere, saltum defendat clamore, FF. Ad Silla. L. 1. § Hoc autem.”

Ambrose in fact wrote: “Puniuntur peccata etiam per populos, sicut legitimus, quia saepe ab alienigenis, dei iussu excitatis propter divinæ maiestatis offensam, subactus est populus Iudeorum.”

The reference is to the First Paris Council, discussed above in the Introduction, § 1. The “consultacio” was in fact Simon’s formulation of the majority opinion (Appendix V, No. 1b). Simon’s use of the plurals, “reges” and “regna,” is designed to cover the action of King Henry III of Castile; see below, n. 265.
Benedict XIII was formally presented with the decision of the First Paris Council on 1 June 1395 by an embassy of the Dukes of Berry, Burgundy, and Orléans; he refused to accept the via cessionis. Simon's ambiguous language here shows that he was writing before a similar request was made to Boniface IX, September 1397, by a joint embassy from the kings of England, France, and Castile; he refused. But King Richard II of England had agreed in August 1396 to send a mission to both popes urging abdication; the mission aborted but he was supposed to have at least sent the popes letters to that effect. In October 1396, when meeting with King Charles VI, he agreed to the joint mission that finally took shape a year later. Simon no doubt had these events in mind. (Valois, 3:44–67, 108, 119–23; SdeC, pp. 138–45, 153–56, 208 f.)

The modes of subtraction are discussed above, Introduction, § 1.

Although all the mss. give the reference as 14. q. 2, the only Quod debetur is 14. q. 1, c. 2, and it deals with the morality of collecting debts; it seems quite unrelated to Simon's point.

See the Introduction, above, for the circumstances under which Simon began this treatise.


The "Epistola LIII. Sancti Hieronymi ad Paulinum presbyterum" commonly appeared as a prologue to the Vulgate; the text is in Biblia Sacra iuxta Latinam vulgatam versionem, 1: Librum Genesis, ed. H. Quentin (Rome, 1926). In contrast to Simon's quotation, the text (p. 5) reads, "discere" and "sua impudenter."


Ibid., bk. 7, ch. 2 (2:99): "... ut, cum apud scriptores in locis non passim dubius verba quodammodo ambigu, qualia sunt haec: si forte, ffortasse, et forsitum, proferuntur, Achademico dicantur usi temperamento, eo quod temperatores alii Achademici fuerint, qui omnem veritatem subire notam et praecipitium falsitatis."

X 2. 24. 4: "Ego N. episcopus ... fidelis ero sancto Petro, sanctaeque Romanae ecclesiae, dominoque meo papae C. eiusque successoribus canonice intrantibus."

For the wording see X 3. 34. 7 (c. Magne).

The canon reads, "Non dect a capite membra discedere," and is so cited by Simon below, at n. 225; Friedberg does note, however, that some editions give "licet."
Pierre Bertrand’s *Apparatus* on the Sext, BN *ms. lat.* 4085, fol. 6v, col. 1, has both the preceding authorities, in sequence and as cited by Simon (i.e., the canon of the Council of Chalcedon and the text from Cyril of Alexandria). The identification of Cyril as “bishop of Alexandria and formerly first of the patriarchs” was added by Simon, his titular successor in that see.

See note 34 below and the text at n. 411. The canon *Si episcopus* defines the appellate jurisdiction of the Roman bishop vis-à-vis other bishops; since it was decreed by a council (A.D. 343), it could not be regarded as pope-decreed papalism, nor could the two preceding authorities.

1 Cor. 12.12, “corpus unum est et membra habet multa; ... ita et Christus.” For *Fundamenta* see below, n. 50; this “Cardinalis” would have been Johannes Monachus (*Dictionnaire de droit canonique*, s.v. “Cardinalis”), whose gloss here has been unavailable.

Hostiensis and Johannes Andreae continue the passage quoted above, n. 31: “... et rex noster. Unde Psal., Deus iudicium tuum regi da etc., et Esiae xxxiii, Dominus iudex noster, dominus legifer noster, dominus rex noster. Ipse vero dominus noster Iesus Christus vicarium sibi constituit beatem Petrum et successores suos ...” (etc. as in text). Note that Simon has left out “reges”—cf. n. 33 below.

Virtually all of this paragraph has come, condensed and paraphrased, from Johannes Andreae, *Commentaria*, II, 21r, on *Licet ex suscepto* (X 2. 2. 10), v. “imperio,” a more or less literal copy of Hostiensis, *loc. cit.*, who had worked up what Innocent IV had written. The context is a discussion of papal authority to supply secular judges’ or rulers’ defects of justice. Andreae gives Hostiensis’s formulation of an extreme position: “Tu vero dicas, quod vacantibus regnis, et principatibus quibuscunque, et ubicunque etiam iudex saecularis negligens est in iustitia reddenda, papa non solum de potestatis plenitudine, sed etiam de iure et consuetudine potest, et debet iustitiam reddere.” He then mentions the views of Innocent and Hostiensis on this, refers to several cases in which the principle applies, and adds, more or less in the words of Hostiensis: “Sed ad hoc [sic] quae de his casibus dicuntur, opponit sic Innocentius: Dicet aliquis, quamvis non sine poena sacrilegii, haec sibi pro se summii pontifices statuerunt; unde non est his tanta fides adhiben-
da.” Innocent had written “culpa” instead of “poena” but the quote is otherwise true. Innocent here is also the source of the discussion of God, Adam, and Noah, above.

35 X 1. 33. 16: “Cum inferior superiorem solvere nequeat, vel ligare; sed superior inferiorem liget regulariter, et absolvat . . . ” Simon’s “tollere factum” refers to this.

36 Nulli fas (Dist. 19, c. 5) states: “Sit ergo ruinae suae dolore prostratus, quisquis apostolicis voluerit contraire decretis.” The gl. ord., v. “prostratus”: “Hic videtur, quod omnis, qui non obedit statutis Romanae sedis sit haereticus . . . . Sed intelligas, quod hic dicitur, quod qui dicit Romanam ecclesiam non esse caput, nec posse condere canones, iste est haereticus . . . . Sed si quis alias transgreditur eius mandata, non propterea est haereticus . . . .”


39 The Franciscan Astesano’s Summa de casibus conscientiae has not been available.

40 Not checked; the Prior of St. Eligius was Pierre Bersuire.

41 Archdeacon, Rosarium, fol. 186r: on 7. q. 1, c. 9 (Denique), v. “adieuare” (cf. above, n. 8): “id est, quo ad vitam aeternam . . . , quia scismatici hunc articulum non credunt, scil., ‘Unam sanctam ecclesiam,’ et de talibus dicitur, quod qui in uno offendit, factus est omnium reus, de. poe. di. 5. Fratres isti tales, et si fidem erga Deum videantur habere, non erga Dei ecclesiam . . . . Et in hoc omnes haeretici et scismatici peccant, quia quamvis omnes alios articulos teneant, si tamen sacramento unitatis discordant, et unitatem ecclesiae scindere conantur.” See also below, n. 207.

42 Gl. ord. on X 5. 7. 1 (c. Dubius in fide), v. “in fide,” adds the “eciam” passage with a reference to Codex 1. 5. 2; see n. 60 below.

43 Aristotle, Politicorum liber primus, the “antiqua” translation, in Sancti Thomae Aquinatis . . . opera omnia, 21 (Parma, 1866; repr., New York, 1949), 375: “Quandocumque [sic, for “quaecumque”] enim ex pluribus constituta sunt, et fiunt unum aliquod commune, sive ex conjunctis, sive ex divisis, in omnibus videtur principans et subjectum. Et hoc ex omnium natura instet animatis.”


45 Dig. 1. 7. 1: “Filiosfamilias non solum natura, verum et adoptiones faciunt.” Institutes 1. 11, § 4: “Minorem natu non posse maiorem adoptare placet: adoptio enim naturam imitatur et pro monstro est, ut maior sit filius quam pater.”
For the fourteenth-century development of these episcopalist ideas see Wilks, *Problem of Sovereignty*, pp. 338 ff.; see also the Introduction, n. 22, above.

The canon (Dist. 21, c. 1; from Isidore’s *Etymologies*) discusses the church hierarchy, including the rank of patriarch, who “primum, id est, apostolicum retinet locum,” and that of archbishop, who “tenet ... vicem apostolicam.” In the preceding § *Inter eos*, Gratian writes: “maiorum et minorum sacerdotum discretio in novo testamento ab ipso Christo sumpsit exordium, qui duodecin apostolos tanquam maiores sacerdotes, et lxxii discipulos quasi minores sacerdotes instituit. Petrum vero quasi in summum sacerdotem elegit.”

X 3. 8. 5: “Quia diversitatem corporum diversitas saepe sequitur animorum.”

Given the importance of this definition of the *ecclesia militans* (see the Introduction, n. 112; cf. infra at n. 141), its forced relationship to the cited authorities is remarkable. *Fundamenta* (Sext 1. 6. 17) includes the remark, “Ne ... ecclesia in congregatone et pastura fidelium temporalibus careret auxiliis. . . .” *Legimus* (Dist. 93, c. 24) is perhaps to the point in its “Nec altera Romanae urbis ecclesia, altera totius orbis existimanda est.” *Ecclesiam* (De cons. Dist. 1, c. 25) strikes from another angle: “Ecclesiam, in qua mortuorum cadavera infidelium sepeliuntur, sanctificare non licet.”

Cyprian, in *Loquitur* (24. q. 1, c. 18), refers to Peter’s primacy, “super unum edificat [Dominus] ecclesiam,” and then to the unity of the episcopacy, “episcopatus unus est, cuius singularis in solidum pars tenetur.” He does not say that there must be one bishop as vicar of Christ.

The rejection of the divine (i.e., scriptural) origin of papal primacy, especially in its coercive, juridical components, appears in Marsilius of Padua, *Defensor pacis*, II, ch. 18 ff., esp. ch. 29—ed. R. Scholz (Hannover, 1933), pp. 575 ff. It was also argued by John Wyclif, e.g., in *Opera minora*, ed. J. Loserth (London, 1913), p. 262, and of course by John Hus. See Scholz’s introduction, p. xlviii, for the intense interest in Marsilius’s work in Paris, in Simon’s day; and see *SdeC*, p. 119.

Venerabilem (X 1. 6. 34) has Innocent III’s statement that the apostolic see “Romanum imperium . . . a Graecis transtulit in Germanos” in the person of Charlemagne. Alius (15. q. 6, c. 3) tells how Pope Zacharias “regem Francorum . . . a regno deposuit, et Pippinum . . . substituit.” When this latter papalist argument was actually used by an opponent of subtraction, in 1406, its alleged insult to the monarchy caused a scandal: Valois, 3:460.

*Martini Oppaviensis Chronicon* (MGH, *SS.* 21; Hannover, 1872), 422, “Bonifacius IV. . . . optinuit ab augusto Foca imperatore, ut ecclesia beati Petri apostoli caput omnium ecclesiarum, quia Constantinopolitana primam omnium ecclesiarum se scribebat.”

Not checked.

See Decretum 7. q. 1, c. 5, as cited below, lines 451–52.
57 Dig. 48. 19. 38. § 5: “Qui abortionis aut amatorium poculum dant, etsi dolo non faciant, tamen quia mali exempli res est... , si eo mulier aut homo perierit, summo supplicio adficiuntur.”

58 Mulier is Augustine’s comment on Lev. 20.16, which reads: “If a woman approach unto any beast, and lie down thereto, thou shalt kill the woman, and the beast.” Augustine asks: why kill the beast, “cum sit irrationabile, necullo modo capax legis est?” Because “pecora... tali flagitio contaminata indignam refricant facti memoriam.”

59 John of Salisbury, Policraticus, bk. 8, ch. 23 (ed. Webb, 2:399-411). The whole chapter is a condemnation of those who fight to secure church offices, in particular the papacy, and whose interest in having them is to secure wealth, power, and honors; such men are contrasted with the “antiqui” who “primas cathedras carcere peius et cruce fugiebant.” For (pp. 409 ff.) the papacy was only toil, grief, and care to a conscientious pope. See also below, n. 414.

60 Bohic, V, 128, on c. Dubius in fide, ii, refers to the Codex, as Simon indicates, where the relevant passage (1. 5. 2) classifies as heretics those “qui vel levi argumento iudicio catholicae religionis et tramite detecti fuerint deviare.” Henricus distinguishes between suspicion and conviction, for which latter the “argumentum” (cf. Simon’s “articulum” from the gl. ord.; above, n. 42) can indeed be light, in matters of faith, but the proof must be substantial.

61 See below, n. 177.

62 The canon (23. q. 1, c. 4) states: “vir iustus... etiam sub rege, homine sacrilego, recte potest illo iubente bellare, si... quod sibi iubetur vel non esse contra dei preceptum, certum est, vel utrum sit, certum non est.”

63 Licet (X 1. 6. 6; see below, n. 162) prescribed that no one might become pope if elected by less than a two-thirds majority, and that automatic excommunication would be incurred by such a one “si... noluerit abstiner.” Innocent IV’s comment on “noluerit” (printed “voluerit”): “id est, si se immiscuerit, vel, id est, monitus non renunciaverit; sed prius dictum magis placet, quia nemo cogitur renunciare aliqui rei, in qua se credit ius habere, et nemini facit iniuriam qui ius suum prosequitur.”


65 The oath sworn by the cardinals on entering the conclave that elected Benedict obliged each of them, if elected pope, to pursue all ways of union including the via cessionis, if this way should be advised by a majority of the cardinals. See Valois, 3:14, for the text, 3:51, n. 2, for Benedict’s supporters’ interpretations of the oath—these are what Simon here refers to: they put the via cessionis last among possible ways.

66 Digest 31. 1. 78. § 2; I find nothing to the point.
The text of *L. In causae cognitione* (Dig. 4. 4. 16) states: “Nam si communi auxilio et mero iure munitus sit, non debet ei tribui extraordinarium auxilium.” The *gl. ord.* of Accursius on a preceding passage, v. “compitere,” notes: “Alibi autem extraordinarium cum ordinario bene concurririt, ut patet infra, *De rei vindicatione*, L. i [Post actiones]. § Per hanc [Dig. 6. 1. 1. § 2].” And in the gloss on this law, v. “vindicare posse,” Accursius notes the principle of *L. In causae cogn.*. but also notes qualifications thereto: “Sed huic responsioni est contra supra *De edenda*, L. Quaedam [Dig. 2. 13. 9], ubi extraordinarium, quod est de iure communi, non competit cum ordinario. Sed ibi in subsidium illud extraordinarium datur.” Simon has built up his dossier from these cross-references and has twisted the formulations to suit his purpose by replacing the “competit” of the latter gloss with the ambiguous “concurrit” of the former, and by using “nunquam” instead of “non.” All of which fits in with his program at this time, for he indeed regarded the *via cessionis* and the general council as mutually contradictory. Hence his refutation of the present argument for the council (below, at n. 390) does not exploit the distinction made by Accursius and argue from these Roman-law texts that the extraordinary remedy of the *via cessionis* might be combined with the council, in the way he would later advocate, and which indeed would be pursued at Pisa and Constance.

68 X 1. 9. 10 (c. *Nisi cum pridem*), § *Non autem*: “Pro gravi quoque scandalo evitando (cum aliter sedari non potest) licet episcopo petere cessionem ne plus temporalem honorem, quam aeternam affectare salutem.”

69 The proposal for union that Benedict XIII offered the royal dukes on 20 June 1395 combined the *via convencionis* (a meeting of the contenders) and the *via compromissi* (arbitration), the last with the proviso referred to by Simon, that each contender would choose an equal number of “personas deum timentes” to judge the case. *SdeC*, pp. 141–44; see the text in Bulaeus, 4:748 f.; cf. *Thes. nov.*, 2:1138 f.

70 The Cardinal of Pamplona, Martin de Salva, was Benedict’s closest associate and the only cardinal to stay with him against the French program. He was said to have written the text referred to above, n. 69 (see *Ampl. coll.*, 7:504), but the *scripta* Simon refers to were the “Allegaciones domini Pamplonensis,” in BN, *ms. lat.* 1475, fols. 33r–53r (see Valois, 3:50), where the work is accompanied by very extensive critical glosses, whose anonymous author was Simon de Cramaud (see Appendix V, No. 11). On fol. 35v Simon refutes the assertion that the *via compromissi* offered by Benedict would have the force of a general council.

71 Codex 7. 60, rubric: “Res inter alios acta aliis non noceat.” It is quoted in *gl. ord.*, X 2. 27. 25, v. “res.”

72 Dig. 21. 2. 56. § 1: “Si compromisero, et contra me data fuerit sententia: nulla mihi actio de evictione danda est adversus venditorem. Nulla enim necessitate cogente id feci.” See the next note.

73 Bernardus, *gl. ord.* on X 3. 17. 7 (c. *Si venditori*), v. “institutum”: the
canon deals with the extent of a seller's responsibility for defending the buyer against eviction from the purchased property; the gloss comments: "Item si empor compromittit in arbitrum, et contrariam sententiam reportaverit, venditor non tenetur. FF. de evicionibus, Si dictum, § Si compromisero."

For the canon see below, n. 159. The gl. ord., v. "contra fas": "Sed quis erit judex de hoc, an electio sit contra fas? Non ipsi cardinales: quia si sic, essent judices in proprio facto. . . . Dic istud c. locum habere, quando neuter est electus a duabus partibus. Vel dic, quod concilium convocabitur."


Nos si incompetenter, 2. q. 7, c. 41, is a letter (ca. 855) from Pope Leo IV to the Emperor Lewis II: "Nos, si incompetenter aliquid egimus, . . . vestro, ac missorum vestrorum cuncta volumus emendare iudicio: quoniam si nos, qui aliena debemus corrigere peccata, peiora committimus . . ." (see below, at n. 114, for the rest). The gloss on "alia" reads: "Hic papa se subiicit aliorum iudicio: quod facere potest, ut FF. de tur. om. iud., Est receptum. Non tamen eum possunt deponere, 2. q. 3, Nemo. Secundum Huguccionem possunt: quia et seipsum potest deponere, ut 21. di., Nunc autem.

The canon In synodo (Dist. 63, c. 29) is Pope Leo VIII's grant to Otto I of the right to elect and invest all bishops in Italy, including the pope (it was a forgery). The gl. ord., v. "apostolicam," reads: "Sed nunquid papa posset ei potestatem dare, ut deponeret ipsum? Sic in haeresi, et de consenso cardinalium. Immo in omnibus se potest subiicere ei, ut 2. q. 7, Nos si [incompetenter]."

For comparable statements see Valois, 3:88 f, and SdeC, p. 53.

Johannes Andreae, Commentaria, II, 2v (c. De Quodvultdeo, v. "communicet"): "Per haec verba, Nullus Titio communicet, feratur excommunicatione . . .; et hoc concedatur ubi appareat, quod iudex hoc intendit, et talis erat, qui excommunicare poterat. Et tunc procedat, quod dicitur, non referre quid ex aequipollentibus fiat." For the same maxim see also gl. ord. to Codex 6. 25. 3 (L. Si mater), v. "sua causa."

Since these validations of conscience against legality come in for important consideration further on (below, lines 717 ff., 1022 ff., 2580 ff.), it will be useful to quote them here. For the text of Inquisitioni (X 5. 39. 44) I quote the summary heading: "Si coniunx scit pro certo impedimentum matrimonii, non debet reddere debitum, sed potius excommunicationem pati. Si autem hoc credat ex causa probabilis et discreta, potest reddere debitum, non autem exigere. Sed si ex levi et temeraria causa, deposita conscientia potest reddere et exigere." The text of § Porro, c. Litteras (X 2. 13. 18), has a similar validation of conscience in the face of legal sanctions, in regard to
the impediment of consanguinity: "cum mulier, quae consanguinitatis habet notitiam, ... non possit huiusmodi viro sine mortali peccato carnaliiter com-
misceri ... cum illa contra deum non debeat in hoc iudici obedire, sed 
potius excommunionem humiliter sustinere...." *Per tuas* (X 5. 3. 35) 
discusses the case of a cleric ordained by a bishop whom he subsequently 
believed to be simoniac; the pope decrees: "respondemus ut idem in ordine 
sic suscepto secure ministret, sed contra conscientiam ad superiores ordines 
non ascendat ..., licet ex eo, quod conscientiam nimis habuerit scrupulosam, 
in difficultatem huiusmodi sit collapsus: quam utique non evadet, nisi de-
ponat errorem."

80 Bohic on *De simonia*, c. *Per tuas*, ii (X 5. 3. 32; edit. Lyons, 1520, V, 
14v). The context is a discussion of under what conditions statements against 
an accused party are to be believed or not. Hostiensis is cited for, *inter alia*, 
the principles "quod si [consciencia] deponi non potest modis omnibus est 
sequenda," and "quod in [in]differentibus potest unusquisque prout sibi pla-
cuerit suam conscientiam informare." Henricus continues: "hec omnia ex isto 
c. colligi possunt secundum Hosti. et Jo. An. post eum. Et Hieronimus dicit 
... [as quoted by Simon] ... quamdiu durat."

81 Hostiensis, *Commentaria* (Venice, 1581), on X 1. 40. 2; § 9: "Metus 
autem non excusat, nisi sit probabilis. ... Et dicitur probabilis quando talis 
est, qui caderet in constantem virum. ... Puta, dominus minatur captionem, 
status subversionem. ..." He goes on to give verses quoted more fully in *Gl. 
ord.* on X 1. 40. 6, *additio*: "Quis autem metus excusare possit, patet per 
hunc versum Hostiensis: 'Excusat carcer, status, et mors, verbera, stuprum. / 
Excusare metus hos posse puta, quia necis.'"

82 *Gl. ord.* on X 1. 40. 6, v. "metum mortis." The text of the canon 
disallows certain excuses: "Non obstante violentia ... cum neque metum 
mortis neque cruciament corporis contineret." The gloss notes: "Non solum 
in duobus istis, sed etiam in pluribus aliis casibus excusat metus, quandoque 
metus verborum, ... quandoque metus status, vel honoris. ... Et not. quod 
secundum canones, sive vi, sive metu, sive dolo aliquis renunciat rei suae, 
subvenitur ei contra omnem possessorem."

83 The paragraph up to this point seems to have been cobbled together 
rather badly. The main point is made twice, and the "cur ita facis" passage 
comes from the *Gl. ord.* on X 1. 7. 3, v. "veri dei vicem," not from *St papa*, 
which however does state that the pope "a nemine est iudicandus," which is 
also said in *Nemo* and in *Cuncta per mundum*. *Aliorum hominum* adds that 
the pope is judged only by God, while *Per principalem* asserts only the pope's 
jurisdiction over all clerics. The Archdeacon has nothing to the point on 
*Denique; Nunc autem* does say "prima sedes non iudicabitur a quoquam," and 
*Nulli fas* says no one may transgress the precepts of the apostolic see.

84 *Proposuit* (X 3. 8. 4) not only pronounces the principle "secundum 
plenitudinem potestatis de iure possimus supra ius dispensare," but applies 
it to the matter of collations: the pope (Innocent III) says he *could* confirm 
even an (illegal) investiture with a future vacancy, although in the canon he
merely confirms a papal conferral of an actually vacant benefice, against the will of the local canons.

Bohic, I, 37, on c. Significasti, is more restrictive than Simon says; thus: “Salva in omnibus authoritate papae, qui onus, quod non est contra legem naturalem, vel divinam, potest imponere, et exigere indistincte . . . pro libito voluntatis . . .” without incurring canonical simony. Henricus then cites Hostiensis, “infra, De simo.. cap. ult.”—no doubt the source of Simon’s reference. Hostiensis’s commentary here (X 5. 3. 46, v. “sufficit”) turns on the distinction between what is simoniacal because prohibited, and what is prohibited because simoniacal. In the former case, “papa potest dispensare, et declarare sicut placet constitutionem suam et ex ea dependentia.”

The exact words quoted by Simon appear in Hostiensis’s gloss on X 3. 39. 23 (c. Procurationes), § 8; cf. Innocent IV’s formulation, above, n. 63, and cf. Dig. 50. 17. 55: “Nullus videtur dolo facere, qui suo iure utitur.”

Clem. 2. 5. 1 (c. Si duobus), after a complex discussion of collationary rights: “Salva tamen in praemissionibus omnibus Romani pontificis potestate, ad quem ecclesiarum, personatum, dignitatum, aliorumque beneficiorum ecclesiasticorum plena et libera dispositio ex suae potestatis plenitudine noscitur pertinere.”

Innocent IV first argues (on X 2. 28. 19, c. Cum parati) that in certain cases, as when a bishop is summoned to council by his archbishop and by the king, he can give priority to the king as a matter of honorific deference. Nevertheless, Innocent goes on, “si archiepiscopus ei mandaret, non obstante praecreation regia debet obedire archiepiscopo, cum sit de eius iurisdictione, et non regis, et magis est obediendum spiritui quam carni.” And finally, “Papae autem semper est obediendum, nulla praecreatione obsolete, tam ratione honoris quam iurisdictionis.”

See above, n. 35. The present application of the canon presupposes that the king is inferior to the pope in the same sense that a prelate is.

Quae in ecclesiarum (X 1. 2. 7) nullifies a “constitutio” of the “cives” of Treviso, to the effect that in case of need they may alienate property which they hold from the church. Cf. Simon’s peculiar use of the canon via the glosses thereon, below, at n. 226. Bene quidem (Dist. 96, c. 1) is summed up by Gratian: “De rebus ecclesiasticis disponendis laicis nullas facultas relinquitur.”

Nonne states: “Quicunque clericorum ab episcopo suo ante sententiae tempus pro dubia suspicione discesserit, manifestam in eum manere censuram.” In Hinc etiam Theodoric sought to commit the case of Pope Symmachus to a council of bishops: “episcopi vero . . . dixerunt” that the pope was immune from human judgement (see n. 280 below). Both Sciendum and Si qui sunt invoke the biblical identification of disobedience with soothsaying and idolatry (1 Kings 15.22–23; including, “melior est . . . obediencia quam victime”), and so does Illud (X 1. 33. 5), cited in another version of this paragraph (below, line 698, apparatus). See also below, lines 1243 ff.

Dig. 48. 7. 7, where the phrase begins, “Non puto autem nec vere-
cundiae nec dignitati nec pietati tuae;" the emphasized words are omitted by Simon, as the last two of them are also by Hostiensis in his quotation of the passage (on X 3. 34. 7), also cited as "L. penult." Perhaps Simon took the reference from him.

93 "Iohannes de Bracho" was no doubt a mistake for Petrus de Braco, author of a repertorium iuris canonici in the middle of the fourteenth century; it was a reworking of a repertory by Johannes Calderinus: see Johann Friedrich von Schulte, Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart, 3 vols. (Stuttgart, 1875–80), 2:249 f., 262. A text of Petrus’s repertory in Vat. lat. 2362, reads (fol. 256v): "Papa. Quod papa non debet se vocare universalem: X[C]IX. Di., c. penultimo. Et secundum hoc non debet vocari dominus noster." It is hard to see why Simon chose to put the point here in his treatise; perhaps it was a marginal note mistakenly incorporated into the text (cf. line 387 above, in apparatus).

94 Clem. 1. 4. 1: "Cum illusio et variatio in personis ecclesiasticis maxime sint vitandae. . . ."

95 Sext 5. 12, De regulis iuris, No. 21: "Quod semel placuit amplius displicere non potest."

96 Codex 4. 30. 13: "Nimis enim indignum esse iudicamus, ut quod sua quisque voce dilucide protestatus est, id in eundem casum infirmare, testimonioque proprio resistere."

97 See Valois, 3:97.

98 Hostiensis, on X 1. 38. 2, defines causae graves (§ 8) and includes infamia, giving both the quoted phrase and the reference to the Codex (10. 32. 8): "Infamia . . . non etiam amissionis oculorum casus quaesitum adimit honorem."

99 Valois, 2:207–09; the switch was part of Portugal’s resistance to Castile, and was consummated with the Battle of Aljubarrota, August 1385.

100 Martinus Oppaviensis, Chronicon, p. 430, re Sergius III: "Hic Sergius diaconus per papam Formosum a papatu reprobatus, tandem papa factus ad Francos se contulit, quorum auxilio Christo forum invasorem papatus incarcerans Romam ingressus papatum optinuit." And p. 437, re Alexander III: "Hic, cum . . . patrimonium beati Petri . . . per imperium et scismaticos occupatum fuisse, in Franciam transit, . . . [et ad Urbem rediens] . . ., rex Guillelmus . . . eum debito honore prosequutus est."

101 Not found.

102 Not found.

103 Bohic, V, 238 (c. Deus qui), where there is in fact an enumeration of reserved cases, which need not be reproduced here. Cf. Brian Tierney, Origins of Papal Infallibility, 1150–1350: A Study on the Concepts of Infallibility, Sovereignty and Tradition in the Middle Ages (Leiden, 1972), p. 23 n. 2.

104 X 1. 30. 4, gl. ord., v. "reservata"—a long list of cases reserved to the pope.

105 Guillelmus Durantis, Speculum juris, 1:45–52 (De legato, § Nunc
videndum [recte: Nunc ostendendum]), enumerates 89 attributes or powers belonging uniquely to the pope and therefore not to be comprised in a general delegation of power to a legate; they would have to be delegated specifically (p. 51). Many of the 89 concern dispensations and absolutions.

106 Dig. 19. 2. 9. § 1; the quoted formulation is taken not from the law but from the gl. ord., v. “prospicere debuit.” The canon Alia quidem (X 1. 38. 1) exemplifies caution—the pope rejects the credentials of a procurator not mandated in due legal form; cf. the gl. ord., v. “praemonuit,” for a sharper formulation: “exempla praesentium nos cavere praemonent in futurum.”

107 Quod a praedecessore (X 5. 8. 1) was a decree of Alexander III in the Third Lateran Council (1179), directed against his rivals in the schism of his day: “ordinationes ab Octaviano et Guidone haeresarchis factas, et ab ordinatis ab eis, irritas esse censemus, adlicientes ut qui dignitates ecclesiasticas seu beneficia per dictos schismaticos acceperunt, careant imperatris.” Ordinationes (9. q. 1, c. 5), a decree of Urban II in the Council of Piacenza (1095), nullifies ordinations made by heresiarchs and those who have seized bishoprics. Those previously ordained by true bishops who became schismatic may keep their orders if they return to the church; “amodo vero quicunque a predictis scismaticis sanctae Romanae ecclesiae adversariis se ordinari permiserrit, nullamenus hac venia dignus habeatur.”

108 Dig. 37. 15. 2: “licet enim verbis edicti non habeantur infames ita condemnati, re tamen ipsa et opinione hominum non effugiunt infamiae notam.”

109 Hostiensis, on X 3. 5. 29 (§ 4): “sicut dicit beatus B. episcopus committit tali, scilicet nepotulo, duo milia animarum de facili, cui non libenter committeret duo pira.” Note that the context has to do with abuses by prelates, not by princes.

110 Sext 5. 12, De regulis iuris, No. 1: “Beneficium ecclesiasticum non potest licite sine institutione canonica obtineri.”

111 Bohie, I, 72 f. (c. Nisi cum pridem): Those without valid canonical title to their benefices should not make the revenues their own, but convert them to the utility of the church; if they do not, they are bound to make restitution.

112a Innocent IV’s commentary on In litteris (X 2. 13. 5), § 3: “Sed quaero quid facient subditi debitores . . . violenti possessoris? Respon. non respondeunt de iuribus pertinentibus ad dignitatem, quam violenter possidet, nec potest conqueri hic violentus praelatus de eis, qui spoliaverunt eum non reddendo sibi debitam obedientiam, . . . quia huiusmodi violenta possessio non extenditur, nisi ad ea, de quibus fuit in possessione.” But, and this is probably the passage Simon had in mind: “Alii . . . dicunt quod subditi et debitores dignitatis debent respondere malaeidei possessori dignitatis de omnibus debitis, non obstante exceptione de iniqua possessione praelati.” Innocent goes on to discuss the objections to this last view, and then the other side again.
The following passage, only in EHKL, disrupts both the syntax and the argument; it must have been incorporated from a note, without revision.

X 2. 23. 2. The story of the judgement of Solomon, 1 Kings 3.24–27.

See above, n. 76.


Bohic, III, 522 (c. Magnae): The question is what things are permitted to the pope; Henry cites Hostiensis (“omnia . . . dummodo non faciat contra fidem . . . et . . . non offendat deum per peccatum mortale”) and goes on to cite Johannes Andreae.

Pierre Bertrand, Apparatus (unabridged version) on Ne Romani, Clem. 1. 3. 2 (ms. 195, Catholic University, Washington, D.C.; fol. 152va): “Unde si papa vellet totum thesaurum ecclesie dare parentibus suis, aut ecclesiam Sancti Petri destruere et facere palacium parentibus suis, aut eis dare patrimonium beati Petri, quod non licet, vel aliquid huissusmodi—non esset permittendum, sed esset ei resistendum et non obediendum, sine omni ipsius depositione.” The mention of Paul’s resisting Peter comes a few lines earlier.

12. q. 2, c. 20: “Non liæat papæ preedium ecclesiæ alienare aliquo modo pro aliqua necessitate. . . . Liceat etiam quibuslibet ecclesiasticis personis contradicere, et cum fructibus alienata reposcere.”

Gl. ord. on Dist. 40, c. 6 (Si papa), v. “a fide devius.” The canon states that the pope “a nemine est iudicandus, nisiprehendatur a fide devius.” The gloss: “Sed quare non potest accusari de alio crimine? Ponamus quod notorium sit crimen eius . . . : quare non accusatur vel de crimine simoniae, vel adulterii: etiam cum admonetur, incorrigibilis est, et scandalizatur ecclesia per factum eius? Certe credo, quod si notorium est crimen eius, quandocumque, et inde scandalizatur ecclesia, et incorrigibilis sit: quod inde possit accusari. Nam contumacia dicitur haeresis, ut 81. dist., Si qui [sunt] presbyteri, et contumax dicitur infidelis, ut 38. dist., Nullus. . . .” See Tierney, Foundations, pp. 57 ff., for the background of these ideas, and pp. 251 f. for the full text of the gloss; cf. n. 246a below, and Introduction, n. 101, above.
180 Annotations

181 Innocent III's decretal *Per venerabilem* (X 4. 17. 13) had defined the sovereignty of the king of France vis-à-vis the emperor in the words, "rex superiorem in temporalibus minime recognoscit;" see below, at n. 351, for an explicit statement of the point. More interesting at this time is the recognition that some of the "domini temporales" were also practically sovereign; cf. M. H. Keen, *The Laws of War in the Late Middle Ages* (London, 1965), pp. 77, 108 f.


183 This remark appears only in the latest redaction of the treatise (mss. *EHKL*) and may reflect arguments actually advanced by opponents of subtractions which then came to the surface at the Third Paris Council in May and June of 1398, as reported by Pierre Plaoul in his speech of 7 June: "Dicunt enim, quod subtrahere obedientiam D. N. Papae, esset dare occasionem subditis, seu obediendae temporibus, non obedire Principibus, seu eorum Dominis temporalibus"—in *BduC*, p. 73. Plaoul's refutation begins with the texts adduced by Simon just above: Matt. 20 and St. Bernard.


186 Codex, 1. 3. *post* 19: L. *Eum* (19) grants priests the right to have their wives living with them to whom they were married before ordination, "neque enim clericis incompetenter adiunctae sunt, quae dignos sacerdotii viros sui conversatione fecerunt." The text from the *Authentica* which follows in the medieval Codex reads: "Multo magis ergo cessant eorum coniugia." Simon has cited this as an example of argument "a maiori"—the logic of "multo magis," or "all the more."

187 Dig. 28. 1. 15 (*De statu*): "De statu suo dubitantes . . . testamentum facere non possunt." *Gl. ord.*, v. "de statu," cites the example of L. i. *De legatis*, ii[i] (Dig. 32. 1. 1).

188 The passage quoted from 1 Cor. 10.27–28 is in Decretum 1. q. 4, §

All of these authorities come from the *gl. ord.* on X 1. 3. 24 (*Cum contingat*), v. “nihil omnino scivisti,” a long discussion of what sorts of information a judge can or must take into account. It includes: “Vel die, quod qualiscunque notificatio sufficit . . . ut iudex non debeat dici dubius. 1. q. 4. c. *Turbatur*, versi. ‘Si quis vobis dixerit hoc idolis’ etc. Infra. . . .” The Roman-law texts cited by Simon now follow.

The canon (X 1. 2. 5) begins by quoting “Ne innitaris prudentiae tuae”—not from the Apostle (but cf. Rom. 12.16), but from Prov. 3.5. It goes on: “Prudentiae suae innititur, qui ea quae sibi agenda vel dicenda videntur, patrum decretis praeponit.”

*Gl. ord.* on 24. q. 1, § *Quod autem* (i.e., the “summa”—Gratian’s introduction), v. “qui vero”: “omnis haereticus est excommunicatus, . . . et ideo non potest alios excommunicare . . ., quia nulla est sententia, quam tulit. . . . Eadem die et de schismatico, maxime cum schisma non potest esse sine haeresi, nisi forte in summo pontifice, ut si duo crearentur, et uterque crederet ecclesiam apud se esse.”

The canon (Dist. 63, c. 36) deals with episcopal elections: “Si forte . . . vota eligentium in duas se divisserint partes, is metropolitano iudicio alteri praefatur, qui maioribus et studiis iuvatur et meritis; tantum ut nullus invitis et non petentibus ordinetur, ne civitas episcopum non optatum aut contemnat, aut oderit.” The *gl. ord.*, v. “tantum ut nullus”: “Quasi dicat: Si timetur scandalum, tunc utriusque electio cassabitur, ut 79. di., *St duo.*”

*Si ecclesia* (23. q. 4, c. 42) speaks not so much of schism as of, in Gratian’s words, “Malos ecclesia iuste persequitur.” Cf. lines 1 ff., above, for another “Nunc reges” quote.

The whole passage, “Scribitur enim Prov. . . . eum occidit,” is taken from Bohic; see below, n. 137.

In Dist. 86, c. 21: “Quisquis enim pascendo hominem servare poteris, si non paveris, occidisti.”

I find nothing to the point in Johannes Monachus’s gloss on c. *Dilecto* (Paris, BN, *ms. lat.* 16901, fol. 109r). In his gloss on *Cum quis* (*ms. lat.* 16901, fol. 114r; also *ms. lat.* 4069, fol. 78r) he puts the issue, “ubi prohibere possum inieccionem et non prohibeo”—and pronounces the principle: “videtur participare criminose in crimen, factum eius nomine gestum approbando.” There is nothing more positive.

Bohic, V, 289 f. (c. *Quantae*), cites Hostiensis and others (but not Hastensis/Astesano); Simon’s summary of what he says is accurate; cf. below, at n. 147.

In *Solitae* (X 1. 33. 6) Innocent III states: “Ad firmamentum igitur coeli, hoc est, universalis ecclesiae, fecit deus duo magna luminaria, id est, duas instituit dignitates, quae sunt pontificalis auctoritas et regalis potestas.”
Autentica, Coll. 1, title 6, Preface (Novella 6): "Maxima quidem in hominibus sunt dona dei a superna collata dementia sacerdotium et imperium.... Ideoque nihil sic erit studiosum imperatoribus, sicut sacerdotum honestas.... Nos igitur maximam habemus sollicitudinem circa vera dei dogmata et circa sacerdotum honestatem, quam illis obtinentibus credimus quia per eam maxima nobis dona dabuntur a deo, et ea, quae sunt, firma habevimus, et quae nondum hactenus venerunt, adquirimus."

Postulasti (X 5. 12. 21) sanctions recourse by a bishop to the royal sword to force payment of tithes, and quotes the passage from 1 Pet. 2.14. Post miserabilem (X 5. 19. 12) orders that Jews be compelled by the secular powers to give back the interest that Christians have paid them.

See n. 50 above.

Dig. 1. 2. 2. § 13: "Parum est enim ius in civitate esse, nisi sint qui iura reddere possint." Cf. Sext 1. 6. 3: "quia parum est iura condere, nisi sit, qui eadem tugatur." In Quo iure (Dist. 8, c. 1) Augustine states: "ipsa iura humana per imperatores et reges saeculi Deus distribuit generi humano."

Si quis cum clerico, an imperial law, provides that a civil action against a cleric should be brought first before the bishop; "sin autem noluerit episcopus litem dirimere, tune ad civiles iudices disceptatio causae pervenirat." Filiiis, a canon of the Fourth Council of Toledo (633), states: "Filiiis, vel nepotibus, ac honestioribus propinquis eius, qui construxit vel ditavit ecclesiam, licitum sit hanc habere sollertiam, ut, si sacerdotem aliquam ex collatis rebus defraudare previderint, ... episcopo vel iudicii corrigenda denunciet." And, "Si autem metropolitanus talia gerat, regis hec auribus intimare non differant." Qualiter et quando requires prelates to satisfy lay demands that clerics be brought to justice, "ne pro defectu iustitiae, clericis trahantur a laicis ad iudicium saeculare: quod omnino fieri prohibemus." The gl. ord., v. "prohibemus": "Puto illud verum ... licet iura antiqua contrarium innuere videantur."

Gl. ord. on 23. q. 5, c. 20 (Principes), v. "intra ecclesiam": "Laici habent iurisdictionem multiplicant intra ecclesiam. Quandoque in personis ipsis, cum sint incorrigibles. ... Item cum schisma faciunt clericis. ... Item et ubicunque ecclesiastica potestas deficit." The text of the canon follows below.

Cf. lines 7-14, above.

In the canon (23. q. 5, c. 43) Pope Pelagius I writes to the imperial officer Narses: "De Liguribus ... episcopis quid dicam? quos ydonea est excellenta vestra ... reprimere. ... Nolite ergo dubitare huiuscemodi homines principali vel iudiciali auctoritate conprimere, quia regulae patrum hoc specialiter constituerunt, ut, si qua ecclesiastici officii persona cui subiecutus est restiterit, vel seorsum collectorit, aut aliud altare ereret, seu scisma fecerit, iste excommunicetur atque damnetur. Quod si forte et hoc contemperet ... per potestates publicas obprimatur...." And, "agnoscitur, ut facientes scissuras in sancta ecclesia non solum exilii, sed etiam proscriptione
rerum et dura custodia per publicas potestates debeant coherceri.” Later on, in his glosses against the Toulouse letter, 1402 (AN, J 518, fol. 549v), Simon did much more with this text.

147 Bohic, V, 147 (c. Sicut dignum, di. 2), is the source for all these canonistic references, including Bernardus and Hostiensis.

148 In both canons Augustine insists on the duty of the authorities to punish evil.

149 Dig. 19. 1. 1: “neque certiorari debuit, qui non ignoravit”; the actual words Simon quotes are from a gloss here by Bartolus. Sext 5. 12, De regulis iuris, No. 31: “Eum qui certus est certiorari ulterius non oportet.”

150 In Volumus Gregory the Great tells a subdeacon, that if the latter’s bishop does not appoint a vicedominus and a maior domus, the clergy should take counsel and elect men to the posts. It is the gl. ord., v. “clerus,” that makes Simon’s point: “Quod si praepalatus non vult vel negligit facere ea, quae debet, debent suppleri per subditos, ... et videtur quod in talibus non sit necessaria admonitio.”

151 Bohic, II, fol. 86v (edit, of 1520), § 1 (c. Cum non ab homine), is the source for all these authorities: “Si queris utrum clerici malefactores possint per clericos seu laycos pro suis maleficiis capi sine pena excommunicationis ... , sine mandato sui iudicis ecclesiastic: ... tunc dicit hic Bernardus quod clerici comprehensi in ipso facinore possunt detineri per xx. horas ad hoc ut notorium fiat crimen ipsorum; et idem notat Johannes, 81. dist., Presbyter, glossa penultima; ... et frater Johannes in Summa confessorum, titulo de sentencia excommunicationis, q. 35 post hec, versu 11 in fine. Item possunt detineri si timeatur de fuga ipsorum ... , secundum Innocentium, infra, De sententia excommunicationis, Ut fame, ... et Joannem Andree....”

152 The canon states: “Si quis suadente diabolo ... in clericum ... vio- lentas manus iniecerit, anathematis vinculo subiaceat.” Simon is careful to note that it does not apply to his program, because Bohic’s commentary on c. Cum non ab homine, which he knew (see above, n. 151, and below, n. 157), argues in the opposite sense on the main point, following Hostiensis and citing Si quis suadente (II, 182 f.) “credo ... quod nullus clericus non superior, vel laicus ... potest sine mandato sive authoritate sui iudicis eccles. in clericum manus inijicere quoquo modo, et stabo illi regulae 17. q. 4. Si quis suadente, nisi inveniam eam per alium canonem authoritatis similis revocatam.”

153 X 5. 39. 54: “excommunicationis sententiam non incurrir, qui excommunicato, in his quae ... ad salutem animae pertinent, in locutione participat.”

154 X 5. 12. 6, § Illi etiam: “qui potuit hominem liberare a morte, et non liberavit, eum occidit, ... nec caret scrupulo societatis occultae, qui manifesto facinori desinit obviare.” The last clauses come from Error, cited just above.

155 Archdeacon, Rosarium, fol. 23v (Dist. 20, c. 3, v. “apostolorum”), is in fact the source for the whole passage above, from “primo recurrere” to
"dominus revelabit," almost verbally. It is the Archdeacon who notes that the whole list (cf. the canon) is "secundum Huguccionem"; cf. Tierney, Papal Infallibility (cited above, n. 103), p. 25.

156 Dig. 2. 1. 2: "Cui iurisdiction data est, ea quoque concessa esse videntur, sine quibus iurisdiction explicari non potuit." The gl. ord., v. "non potuit," cites many other texts to support the principle, including L. Ad rem and L. Ad legatum (Dig. 3. 3. 56, 62). It also discusses the converse—a prohibition of something implies prohibition of what will cause it—and cites several texts, ending with L. Oracio.

157 All of this—"quod notant doctores"—is taken from Bohic, II, 182 (c. Cum non ab homine). After citing the opinion of "quidam ... magister meus," that a criminous cleric could be seized and restrained by a secular judge even without the church's request, Henricus comments: "Sed securius est tenere glossam quam etiam sequitur Hostiensis hic: si pena incipit a contumacia, tunc primo debet suspendi; postmodum crescente contumacia excommunicari debet; deinde deponi; et ultimo tradi curie seculari—ut 23. q. 4, Si forte [recte: Forte], et 34. di. Quorundam, 74. di., Honoratus; de quo vide ibi per Johamnem, et 81. di., c. 1, glossa finali, et in d. c. Si forte, et per Archidiaconum, 2. q. 5, Presbyter si a plebe." The gloss followed here by Hostiensis and Henricus de Bohic is the gl. ord. on Honoratus, v. "adhuc," which contains the order of sanctions as given and also some of the cited authorities. But neither the gl. ord. nor Henricus supports Simon's argument for secular action without authorization or request by the church; note too the shift from the correct "contumacia" to "malicia" in Simon's redactions (see apparatus).

158 In canonics (Dist. 19, c. 6) is in fact the passage referred to from Augustine, who is discussing how to discriminate between the values of canonical decretals: those accepted by all churches are to be preferred to those accepted only by some, and likewise as between more and weightier churches vs. fewer and less authoritative ones. "Si autem alias invenerit a pluribus, alias a gravioribus haberi, ... equalis ... auctoritatis eas habendas puto."

159 Since this canon is central in Simon's argument it will be useful to quote it: "Si duo forte contra fas temeritate concertantium fuerint ordinati, nullum ex eis futurum sacerdotem permittimus, sed illum solum in sede apostolica permansurum censemus, quem ex numero clericorum nova ordinacione divinum iudicium et universitatis consensus eligerit." It was a decree of the emperor Honorius, not of the "sanctorum patrum"—see the following text and apparatus here, and see below, at n. 337.

160 Decretales Pseudo-Isidorianae, ed. P. Hinschius (Leipzig, 1863), pp. 554 f. There is a letter from Pope Boniface asking the emperor Honorius for a regulation of disputed papal elections, and then Honorius's rescript containing the "Si duo forte" passage that Gratian took up into his Decretum.

161 See above, n. 132.

162 In Patet (after 3. q. 1, c. 6) Gratian states that a bishop, etc. who has been despoiled of his see is to be reinstated before the question of rightful
title may be brought before a court. But there are authorities to the contrary, namely those stating that anyone ejected on the grounds that his election was *viciosa* cannot insist on restitution before judgement. Thus Dist. 79, c. 9, commands that one who has acquired the papal see illegally be simply expelled. Gratian explains: “Sed hoc in eo tantum casu intelligitur, quo apostolica sedes per violentiam occupatur, quo casu iudex non inventur, cuius officio ille apostaticus possit excludi.” *Licet* (X 1. 6. 6) prescribes the two-thirds majority needed to elect a pope, with automatic excommunication for violators, and concludes by noting that this rule does not touch the rules of other churches, “in quibus debet maioris et sanioris partis sententia praevalevere, quia quod in eis dubium venerit superioris poterit iudicio diffiniri.” In Romana vero ecclesia speciale aliquid constituitur, quia non poterit ad superiorum recursus haberi.”

153 Dig. 34. 5. 10 (*Si fuerit*): “in ambiguis rebus humaniorem sententiam sequi oportet.” But cf. Dig. 34. 5. 27 (*Si quis*): “Si quis de pluribus unum manumitti voluerit nec appareat, de quo manumittendo testator sensit, nulli eorum fideicommissa competit libertas.” And Dig. 26. 2. 30 (*Duo sunt Titii*): If there is doubt about which of two men named Titius has been named tutor by a testator, then “neuter est tutor.”


155 The text (Sext 1. 6. 2) states: “in electionibus . . . vota conditionalia, alternativa, vel incerta penitus reprobamus.” Johannes Monachus notes, v. “conditionalia” (BN, *ms. lat.* 16901, fol. 10v; 4069, fol. 8v): “unde propter perplexitatem non valet,” and, “votum debet esse certum.”

156 See above, n. 74.

157 Decretum Dist. 79, c. 8; followed by: “Gratian. Hoc autem capitulum non de eo intelligendum est, qui, uno per apostasiam ordinato, a cardinalibus et religiosis clericis apostolicae sedis intronizatur, etiamsi ille apostaticus ita cathedram B. Petri violenter tuerit, ut canonica electio intra Urbem fieri non valeat.”

158 Gratian’s dictum is that quoted in the preceding note; it introduces *St quis pecunia* (Dist. 79, c. 9), which states: “Si quis pecunia, vel gratia humana, vel populari, seu militari tumultu sine concordi et canonica electione . . . fuerit apostolicae sedi inthronizatus, non apostolicus sed apostaticus habeatur.”

159 X 3. 5. 18: “Cum multa per patientiam tolerentur, quae si deducta fuerint in iudicium, exigente iustitia non debeant tolerari.” Simon’s paraphrase, avoiding the words “iudicium” and “iustitia,” seems tendentious rather than casual.

160 X 4. 14. 8: “Non debet reprehensibile iudicari, si secundum varietatem temporum, statuta quandoque varietur humana, praesertim cum urgens necessitas vel evidens utilitas id exposcit.”
In *Barbarius Philippus* (Dig. 1. 14. 3) it is said that the official acts of a praetor who was subsequently found to have been a slave remained valid. *Consultationibus* (X 3. 38. 19) considers the case of a cleric who had been presented to a church by one who possessed the right of patronage but afterwards lost it by judicial decree: the cleric is not to be removed. But: “Si vero non possidebat, sed tantum credebatur esse patronus, cum non esset, poterit ab eadem ecclesia [clericus] removeri.” This last explains why Simon has written “forsitan.” Hostiensis’s comment on this canon cites *Barbarius*.

172 Not found; cf. below, at n. 420.

173 *Nisi cum pridem* (X 1. 9. 10) defines the conditions under which a bishop may resign; among them (§ 5): “Propter malitiam autem plebis co-gitur interdum praebens ab ipsius regimine declinare, quando plebs adeo durae cervicis existit, ut proficere nequeat apud ipsam.” And (§ 6): “Pro gravi quoque scandalo evitando” (see above, n. 68). *Sunt quidem* (see n. 116 above for its use by the decretalists) asserts the pope’s right to make new laws, except: “ubi vero aperte dominus, vel eius apostoli, et eos sequentes sancti patres sententialiter aliquid diffinierunt, ibi non novam legem Romana pontifex dare, sed potius quod praedicatum est usque ad animam et sanguinem confirmare debet. Si enim quod docuerunt apostoli et prophetæ destruere . . . niteretur, non sententiam dare, sed magis errare convincere-tur.”

174 *Contra Cresconium Grammaticum* 2. 11. 13, in *Sancti Aurelii Augustini scripta contra Donatistas*, 2, ed. M. Petschenig (Corpus Scriptorum ecclesiasticorum Latinorum, 52; Vienna, 1909), 371. It may be significant that this and the following texts of Augustine were cited together in Cardinal Giffoni’s anti-cessionist treatise of early 1395, to establish Boniface’s obligation to resign. Simon would probably have read this work. See Clément Schmitt, “La position du cardinal Léonard de Giffoni, O.F.M., dans le conflit du Grand Schisme d’Occident,” *Archivum Franciscanum historicum*, 50 (1957), 315.

175 All but the first of the quotations are in a letter to the tribune Marcellinus, inserted in *Gesta cum Emerito Donatistarum Episcopo*, § 5, *Aug. Scr. contra Don.*, 3, ed. Petschenig (CSEL, 53; Vienna, 1910), 185–90; the first quotation is from Augustine’s comment.

176 *Gl. ord.* on 18. q. 2, c. 5 (*Quam sit*), v. “ad ordinandum”: “Sed quid si monachus sit factus papa invito abbate, debetne redire? Sic, et ipsemet compellet se redire: quia cum teneatur de aliis iustitiam facere, multo fortius de se ipso, FF. *Si ser. vendic., L. Altius.*”


178 *Sancti Aurelii Augustini Ennarrationes in Psalmos* (Corpus Chris-
Simon’s “maiorum” replaces the original’s “malorum montium, quoniam videntur excellere.”

Sancti Thomae Aquinatis ... Summa theologica, II, ii, in Opera omnia, 3 (Parma, 1853; repr. New York, 1948), 161–67: “Quaestio 43, De scandalo,” in 8 articles. Thomas speaks not of scandalum datum/acceptum, as Simon does, but of activum/passivum. In art. 4 he writes that scandalum activum is a peccatum mortale in certain cases: “sive quia committit actum peccati mortalis, sive quia contemnit salutem proximi; ut si pro ea conservanda non praetermittat aliquis facere quod sibi libuerit.” In art. 7, “Utrum bona spiritualia sint propter scandalum dimittenda,” he notes that the question does not apply to scandalum activum: “quia cum scandalum activum sit dictum vel factum minus rectum, nihil est cum scandaló activo faciendum.” See Buisson, pp. 174 ff.; also n. 180, below.

Bohic, V, 205 (c. Cum ex iniuncto), does have the definition of scandal just as Simon quotes it; Henricus notes that he takes it from the gl. ord. on Matt. 18, and cites Jerome and Thomas (Summa theol., II, ii, q. 43, art. 1; cf. n. 179 above). See also below, at n. 244.

Not found.

The Pharisees are scandalized in Matt. 15.12 by Jesus’ saying, “Non quod intrat in os coinquinat hominem.” Jesus then replies, “Sinite eos.” Bede’s reference to this in his comment on Mark 9.41 is taken as a regula iuris, X 5. 41. 3: “Qui scandalizaverit: Utilius ...” etc., as in Simon’s quote. (The same “utilius” passage is quoted as Gregory’s, in the University of Paris’s letter of 26 August 1395—AN, J 518, fol. 33r.) As for Simon’s “in his que sunt fidei,” cf. gl. ord. v. “veritas,” which defines it as “bonae vitae; haec nunquam omittenda est propter scandalum”—as opposed to the veritas testamentiæ et disciplinae, which may sometimes be given up.

These canons applied to prelates whose abdication in the public interest was permissible or could be imposed by superior ecclesiastical authority (see above, notes 68, 173, and below, notes 223, 382, 398); Simon simply applied them to the pope.

Cf. above, n. 180, and below, n. 244. Thomas’s doctrine in its integrity is not so simple as Simon makes it out. In arts. 7 & 8 Thomas argues that neither spiritual bona necessary to salvation, nor temporal bona of the church or respublica, are to be given up because of scandal. Even private property need not always be given up: edit. cit. (above, n. 179), p. 167.
No. 16 of the sermons once grouped as "de verbis domini" is No. lxxxii in Migne's edition, *MPL*, 38:506 ff. Although it deals with the duty of fraternal correction, I do not find the passages quoted by Simon—neither in it, nor in the old Nos. 15 & 17, nor at the end of the last item in the group (col. 713).

The reference is to the University of Paris's letter of 6 June 1394, drafted by Nicholas de Clamanges and representing the ideas of him, Pierre d'Ailly, Gilles Deschamps, and others. See *SdeC*, pp. 58 f. In giving arguments for the *via cessionis* the letter notes that it avoids scandal, and goes on: "domini voce quicquid fratrem scandalizat a nobis expellimur, eciam si pes fuerit, manus, aut oculus." This is not in context an argument for subtraction of obedience, as Simon would have it. (I use the text in AN, J 518, fol. 2v.) The "aliqui ut fertur" were Clamanges and d'Ailly, who became supporters of Benedict XIII and opposed the Paris *via cessionis* and subtraction of obedience.

Innocent IV, on the title *De consuetudine* (X 1. 4), § 9: "Item nonne peccatum est violare statuta, et decre. 25. q. 1. Violatores. et in multis eiusdem q. fator peccatum esse, ubi venio contra ius cupiditate, vel sine causa, vel in casu non concesso, sed ubi venio contra legem vel canonem authoritate consuetudinis legitime introductae, secus."


Johannes Andreae, *Commentaria*, VI, 26v (c. Generali, v. "percipere"): "qui non facit quod debet videtur facere quod non debet, . . . negligentia voluntati comparatur, de hoc 11. q. 3, c. ult. in fine; iustum est igitur tales punire saevere, 23. q. 3, Iustum, 25. q. 1, Violatores. Et qui resistere tenetur et id non facit, punitur ut faciens."


Gl. ord. on 2. q. 7, c. 8 (Sacerdotes), v. "agant": "Si praelati sunt haeretici, vel excommunicati, vel non servant canones, vel simoniaci, vel notorii fornicatores, tunc potest recedt ab eis ante sententiam, 19. di. *Nulli*; 16. q. ult., *Sane*; 32. di. *Nullus."

Huguccio's gloss has not been available.

*Sane* has two parts; the second reads: "Cum Dioscorus manus imposicionem accepisset, recesserunt multitudines populorum, dicentes, quia nisi
secundum quod sanctorum continent apostolorum canones fiat, non recipi
tur episcopus. Principes enim inthronizaverant eum."

194 Archdeacon, Rosarium, fol. 302v (23. q. 1, c. Quid culpatur, v. "le-
gitimo"): "arguitur quod non sit obediendum ei qui non est legitime conse-
cutus imperium."

195 I find nothing to the point in Dudum or in the comment thereon by
Bohic, I, 45 ff. The reference may be directly to the gl. ord. on X 1. 14. 7,
c. Ad aures, v. "consilio." The canon is a papal letter to a physician, some
of whose patients have died: "Verum quia ad sacros ordines desideras pro-
moveri, super eo nos consulere voluisti. Tibi breviter respondemus, quod si
super praemissis conscientia tua te remordeat, ad maiores ordines de nostro
consilio non ascendas." The gloss: "hoc est consilium reverentiae, cui obe-
diendum est... Secus in consilio perfectionis."

196 Quoted in the preceding paragraph.

197 Nuper (X 5. 39. 29) does remark, "cum facientem et consentientem
par poena constringat"; its own argument, that a layman who imprisons a
cleric is to be excommunicated, goes against Simon's. St concubinae (X 5.
39. 55) makes the point about participation, as Simon states it.

198 Bohic (edit. 1520) V, 27v, c. Stitum dignum, § 2: "In... casu... au-
toritatibus seu auctoritatem, magis peccat consentiens defendendo et aucto-
ritatem prestando quam faciens et magis puniendas est. 24. q. 3, Qui ali-
orem, et 11. q. 3, Qui consentit. secundum Bernardum ibi, quod verum
secundum Hostiensem ibi in gravioribus, puta heresi et similibus: si in civi-
libus sive minoribus criminius habet locum par pena."

199 Innocent IV's commentary on Super eo (X 5. 39. 1) lists the cases in
which maior excommunicatio is inflicted by the law itself; the third case:
"schismatici, scil. qui divisi sunt ab unitate ecclesiae ipsiusque constitutiones
non servavit."

200 Huguccio's gloss has not been available.

201 The canon (Dist. 40, c. 12) states: "Quicumque desideraverat prima-
tum in terra, inveniet confusionem in celo." Simon modified the passage
from Goffredus, Summa... super titulis Decretalium (Lyons, 1519), fol.
208r (on X 5. 13), by replacing his "discessio" with "dissencio"; Goffredus
goes on: "vel scisma est illicitus ab unitate vel universitate discessus."

202 Saepe contingit (X 2. 13. 18) states: "non multum intersit quod pe-
riculum animae, inuste detinere, ac invadere alienum"—and this "non ob-
stante iuris civilis rigore," which might not provide a remedy against one
who has bought an unjustly acquired property. Indigne (12. q. 2, c. 21) states:
"Indigne ad altare dei properare permittitur, qui res ecclesiasticas audet
invadere, aut inuste possidere, aut iniqua vel injusta defensione in eis per-
durat."

203 Above, at notes 145, 146, 162.

204 Such evidence as we have for Simon's feelings about Benedict XIII
goes contrary to what he says here; see also below, lines 1286-88.

205 Nisi cum pridem (X 1. 9. 10) discusses the permissible grounds for a
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bishop's resignation; among them are conscientia criminis, grave scandalum, irregularitas personae (cf. the other references to it in this treatise). Simon is arguing that these are compulsory grounds: Nist is not a consilium but a preceptum. Gratian writes in § Hec etsi legibus, after c. Denique, "Decretum [alias: praeceptum] . . . necessitatem facit, exhortatio autem liberam voluntatem excitat." The Archdeacon, Rosarium, fol. 7v, comments: "tune tantum de consilio loquitur, quando id in ea [scriptura] exprimitur, vel cum alia ratio evidens non cogit sic intelligere. non enim que sic exhortentur etc." (He also makes the equation: "decretum, id est praeceptum.") Simon's understanding of this text seems to transpose its application, but not to distort its sense.

206 See above, n. 131.


208 See above, n. 120.

209 The text of Violatores (25. q. 1, c. 5) states: "Violatores canonum voluntarii . . . a sancto spiritu, instinctu cuius ac dono dictati sunt, damnantur, quoniam blasphemare . . . videntur" (cf. n. 187, above, and below, at n. 342). The gl. ord., v. "blasphemare," notes: "Immo eo ipso videtur excommunicatus et haereticus, ut 19. dist., Nulli." The significance of "sedi apostolice: id est canonibus," which may be Simon's own gloss, is implicit in the gl. ord. on Nulli, for which see above, n. 36.

210 See above, n. 207; cf. apparatus here.

211 Significasti (X 5. 12. 18) deals with the case of a priest who may have inflicted a mortal blow in defending his church; if it is not clear that his blow was the mortal one, "in hoc dubio tamquam homicida debet haberi sacerdos; et si forte homicida non sit, a sacerdotali officio abstinere debet, cum in hoc casu cessare sit tutius quam temere celebrare." The gl. ord., v. "in dubio," notes: "in dubiis etiam viam debemus eligere tutiorem, ut hic dicitur, et infra De regulis iuris, c. 2." This last refers to X 5. 41. 2: "Dubia in meliorem partem interpretari debent."

212 That is, the canon (X 5. 7. 9) excommunicates heretics as such.

213 Gl. ord. on 24. q. 1, c. 1 (Achatius), v. "in haeresim." In the text of the canon, Pope Gelasius stated that he could condemn Achatius without synodal authority because Achatius's error was old, and already condemned by law: "Factus sum itaque executor veteris constituiti, non promulgator novi. Quicumque enim in haeresim semel damnatam labitur, eius damnatione
seipsum involvit.” The gloss: “hic est casus, in quo papa papam potest ligare, in quo papa in canonem latee sententiae incidit; ne huic obviat regula illa: quia par parem solvere vel ligare non potest, extra De electione, Innotuit. Quia si papa haereticus est, in eo quod haereticus est, est minor quolibet catholico, 12. q. 1, Scimus. Quia lex factum notat etiam sine sententia, FF. De ritu nuptiarum, L. Palam, § ultimo.” For the gloss on 24. q. 1, “in summa,” see above, n. 131.


215 The University of Paris’s program of “partial” subtraction exposed members of the university to papal reprisals, which the university sought to nullify by an appeal to a future pope (perhaps in late 1395, certainly by 21 March 1396). Benedict XIII declared the appeal null (30 May), and the university renewed it (3 August). Simon’s justification of total subtraction was that a schismatic-heretical pope had lost his capacity to exercise the papal office; hence the university need not worry. This passage appears only in the later redactions and points to Simon’s alliance with the university in 1398; see the Introduction, above, pp. 16-18.

216 See below, n. 235.

217 Bohic, V, 130 ff. (c. Ad abolendam), §§ 19 ff., is the source for the whole preceding passage: the modes of pena, the quotation from John 15.6, and the reference to Hostiensis, in whose Summa aurea the list of penalties does appear, at the point noted by Simon (col. 1537).

218 Johannes de Moravia is identified by Valois, 2:422 (cf. 3:297, 386, 521), as a master from Moravia who was with Cardinal Pedro de Luna in Paris (from March 1393). In 1394 he was elected procurator of the English-German Nation at the University of Paris, where he was a senior master of arts, studying theology: Auctarium chartularii Universitatis Parisiensis, 1, ed. H. Denifle et al. (Paris, 1894), 616, 686, 687. His savage opinion, for which Simon is the only source, changed when Pedro de Luna became Benedict XIII and Johannes followed him in opposing cession. Along with Pierre d’Ailly he appears on a “rotulus principalis familiarium domini nostri papae Benedicti,” of 13 October 1394: CUP 4:2. On 5 November 1395 a meeting of the English Nation decided (Auctarium, 1:712 f.) not to let him proceed to the licence in theology, “quia ipse suspectus erat ab universitate in facto unionis ecclesie, et eciam quod laborasset contra intencionem universitatis in eodem facto, scilicet contra viam cessionis utriusque parcium contendencium.” In fact he was not allowed to profess until after the first subtraction of obedience had been ended (Auctarium, 1:864 n. 2).

219 The canon (Dist. 8, c. 1) is from Augustine: “Quo iure defendis villas ecclesiae, divino, an humano? . . . Nonne iure humano? . . . manifeste preceperunt imperatores, eos, qui . . . usurpant nomen Christianum, nec vo-
lunt in pace colere pacis auctorem, nihil nomine ecclesiae audeant posside-
re... Noli dicere, quid mihi et regi? Quid tibi ergo et possessioni? Per iura regum possidentur possessiones.”

220 Rather to Count Boniface of Africa.

221 The canon, by Boniface VIII (Sext 1. 16. 9), is of course more general: “prohibemus... ne episcopi, [etc.]... vacantibus... ecclesiis [etc.]... sibi subjiciat... erundem bona... in ipsis inventa, sive vacationis ipsorum tempore obvenientia, quae in utilitatem erundem expendi, vel futuris debent successoribus fideliter reservari, occupare... praesumant.” For “iura communia” see below, n. 428.

222 Bernard of Clairvaux, De consideratione (above, n. 122); but the quoted passage is simply lifted by Simon from the Archdeacon’s commentary on Non decet, cited below.

223 This sentence is quoted from the Archdeacon on Non decet (below). It refers to the opening passage of c. Mutationes: “Mutationes episcoporum scitote communi utilitate atque necessitate fieri licere, sed non propria cuiusquam voluntate aut dominatione.”

224 A quote from the Archdeacon’s commentary (below), which the printed text gives in a different form: “Multa... ipse Bartholomeus Brixiensis dicit de potestate.” The reference would thus be to the glossa ordinaria on the Decretum, in its revision by Bartholomeus.

225 Archdeacon, Rosarium, fol. 15r (Dist. 12, c. 1): “Unde dicebat Thomas quod papa potest incurrere vitium simoniae sicut alius homo... Quamvis enim res ecclesiae sint eius, ut principalis dispensator: non tamen sunt eius, ut domini et possessoris [the authorities here are Innocent and Hostiensis, not Thomas; see below, n. 226]. Et ideo, si receperit pro aliqua re spirituali pecuniam de redditibus alicuius ecclesiae, non careret vitio simoniae: et similiter posset simoniam committere recipiendo pecuniam ab aliquo laico, non de bonis ecclesiae, secundum Thomam.”

226 Archdeacon, Rosarium, fol. 5r (Dist. 1, c. 8: Ius civile): the doctors are Hostiensis and, especially, Innocent IV. Cf. below, nn. 227, 228, and above, n. 90.

227 Bohic, I, 110 (c. Ex parte, ii): “Si rescriptum sit concessum contra ius naturale vel gentium: ut quia princeps mandat mihi auferri rem meam... [et si] conceditur sine causa rationabili, ... tunc non valet ut tollat ipsum ius naturale vel gentium. Sed tamen quantum ad observantiam debet servari [according to cited authorities].... Sed ego Henricus credo, quod tale rescriptum non valet etiam quantum ad observantiam: ut supra. de rescriptis, Si quando, et in d. L. Rescripta: ut notant Accursius et Odo, C. de precibus imperatoris offerendis, L. Quoties. Et Innocentius et Compostellanus supra De constitutionibus, Quae in ecclesiarum. Et Archidiaconus. 50. di...” The canon Nec damnosa is taken from the Codex: “Nec damnosa fisco, nec iuri contraria postulari oportet.” In Imperiali Gregory the Great refers ap-

The maxim “ut paciatur . . .” is quoted by Innocent III in *Cum omnes, De constitutionibus* (X 1. 2. 6): “Patere legem quam tu ipse tuleris.” *Pro- curationes* (X 3. 39. 23) is Innocent III’s decree that anyone exacting a procuration in excess of what was due, “et quod accepit reddat, et ecclesiae, quam taliter aggravavit, tantundem impendat.” In *Quia plerique* (X 3. 49. 8) Innocent III, prohibiting excessive exactions by prelates, decrees that anyone who has violated the canon “et sic extorta restituat, et tantundem cogatur pauperibus elargiri.” Hostiensis, *gl. in v.* “pauperibus,” notes the discrepancy between these two penalties: “Contra, quia debet dari ecclesiae laesae, supra, *De censibus, Procurationes*, in fine.”

The canon (11. q. 3, c. 1): “Sententia pastoris, sive iusta, sive iniusta fuerit, timenda est.” *Gl. ord.*, v. “timenda est”: “Nisi in duobus casibus, scilicet cum sententia est post appellationem lata, et cum continet intolerabilem errorem. . . . Tertium casum apponunt quidam, cum pro indebitis exactionibus aliquis excommunicatur. . . .” *Omnes leges* (Dist. 1, c. 1) states that divine law may permit what human law prohibits.

For the same idea in similar words, see John of Paris, *Tractatus de regia potestate et papali*, ed. Fritz Bleienstein in Johannes Quidort von Paris, *Über königliche und päpstliche Gewalt* (Stuttgart, 1969), pp. 92 f. (cap. VI). If this derivation is valid, then Simon’s “dominus principalis” may be understood according to John of Paris’s location of “dominium verum” over church property in the ecclesiastical “communitas” (p. 94). This was also the view of most canonists by John’s time. See the discussions by Tierney, *Foundations*, pp. 118 f., 137, 142, 167 ff., and by Wilks, *Problem of Sovereignty*, passim, esp. p. 480 n. 4, where the affinity is noted between this doctrine of dominion and the idea of deposing a pope.

Bohic, III, 527 (*Cum ad monasterium*, iv), makes the cited statement in a discussion of the pope’s power to dispense.


In 24. q. 1, c. 32: “Qui contra pacem ecclesiae sunt, si dignitatem aut cingulum militiae [alias: aut militiam] habent, nudentur eis. Si autem . . . nobiles sunt, suarum substantiarum proscriptionem patiantur.”

Johannes Monachus, *Apparatus*, BN, *ms. lat.* 16901, fol. 46r, has the quoted passage exactly, except for the “rectum” before “ordinem.”

Bohic, V, 136 f. (c. *Excommunicamus*), includes the references to Hostiensis and c. *Gravem*.

Bohic, V, 192–95, esp. § 9 (*Si celebrat*).

X 5. 7. 16: “Absolutos se noverint a debito fidelitatis hominii, et totius obsequii, quicunque lapsis manifeste in haeresim . . . tenebantur astricti.”
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239 Bohic, II, 251 f. (c. In omni), is the source for virtually everything in this paragraph. It is a discussion of whether the evangelical “Si peccaverit . . .” pertains to all Christians, and whether it is a counsel or a precept. After citing canonists who argued that it was a precept only for prelates, a counsel for others, he continues: “Sed contrarium, scilicet quod sit praeceptum omnibus, videtur tenere Hostiensis hic dicens, quod correctio charitativa . . . et denuntiatio ecclesiae facienda ad quemlibet pertinet Christianum, coercito vero ad ecclesiasticum, id est ad illum tantum, qui iurisdictionem habet.” He follows this with: “Hoc etiam tenet Huguccio in c. alleg. Si peccaverit. arg. 2. q. 7. Quapropter 24. q. 3. Tam sacerdotes. Ubi dicitur quod tam sacerdotes . . .” etc. as in Simon’s text, below, up to “separantur ab ecclesia.” Simon’s subsequent passage, “Et probatur . . . aliquem peccare,” is also in Bohic, attributed to Astensis. Finally, the citation of Ecclus. 17 is in Bohic, p. 252, § 7. On p. 252, § 6, Bohic himself states: “et hoc, scilicet quod est praeceptum omnibus, credo verius.”


240 Sext 1. 6. 17: the passage on the cardinals includes: “qui sibi [scil., pape] in executione officii sacerdotis coadjutores assistunt.” Simon has substituted “in regimine ecclesie,” but this was not an arbitrary change; see Tierney, Foundations, pp. 187 ff.

241 This objection comes from Bohic, II, 251. § 4 (In omni); see also the next note.

242 Ibid., p. 251, § 5, for the “illa sex . . .” Bohic states that when the six conditions are all present, then correction is a “praeceptum affirmativum, quod obligat ad executionem sui tempore necessitatis.”

243 Not found.

244 Bohic, V, 206, § 3 (Cum ex iniuncto), quotes Thomas Aquinas, Summa theol. (II, ii), q. 43, art. 2, on the duty to resign; cf. above, n. 180. For the rest see above, nn. 182, 185.

245 The canon, from St. Jerome (2. q. 7, c. 33): “Paulus Petrum reprehendit, quod non auderet, nisi se non inparem sciret.” Gratian comments: “Hoc non de officio ecclesiasticae dignitatis, sed de puritate vitae et sanctitate conversationis intelligitur.” Gratian does however allow elsewhere for collateral accusation of superiors, in Sed aliud, after c. 54.


For the first part of the gl. ord. on Si papa, v. “a fide devius,” see n. 120 above. The gloss continues (after “nullus”): “Hic tamen specialiter fit mentio de haeresi, ideo quia et si occulta esset haeresis, de illa potest accusari, sed de alio occulto crime non posset. Item nunquam potest denuntiari crimen Papae secundum regulam istam, Si peccaverit in te frater tuus? . . . dico quod non potest denuntiari crimen de ipso, nisi inde potest accusari, nam inutilis esset denuntiatio.”

Martinus, Chronicon, p. 422, on Gregory I: “Hic primus pontificum servus servorum Dei se scripsit.”

Bohic, II, 251 f. (In omni; cf. above, nn. 238, 241, 242), § 1, gives these glosses of Innocentius and Cardinalis (i.e., Johannes Monachus) as authorities for the view that caritative correction is a counsel for non-prelates, a precept for prelates. Simon can use these authorities because he has just argued, on the basis of the Isidorean canon Principes seculi, that kings have power within the church—i.e., they are indeed prelates. Henricus subsequently, § 10, discusses correction as an act of justice: it too is a precept for prelates. (The canons 23. q. 4, cc. 6, 35, which Simon cites just below, are also from Bohic, § 1.) Note that Novit (X 2. 1. 13) was Innocent III’s claim of right to judge the King of France’s behavior to the King of England, ratione peccati; for the doctrine and the later canonistic restriction of it, which Simon exploits to make a point opposite to Innocent III’s, see John A. Watt, The Theory of Papal Monarchy in the Thirteenth Century (New York, 1965), index, v. “Novit.”

The canon reads: “Nos in quemquam sententiam ferre non possumus, nisi aut convictum, aut sponte confessum.”

The canon (X 5. 1. 9): “Evidentia patrati sceleris non indiget clamore accusationis.” Both the rubric and the gl. ord. refer to such a scelus as “notorium.” Bohic, V, 86 (Evidentia): “Si queritur utrum notorium relevet ab onere accusandi, inquirendi et denuntiandi, proponendi seu probandi . . .” —the answer is yes, in most cases when the scelus “est notorium in loco ubi agitur, et judici coram quo agitur.” The canon De [or In] manifesta (2. q.
1, c. 17) says witnesses are not needed when the crime is manifest to many; the title is more general: "Ordinem iudiciarium manifesta non desiderat causa."

251 See above, n. 162.

252 Dig. 1. 3. 12, & gl. ord. thereon.

253 The canon (X 1. 31. 13) has a section, "si canonici absque manifesta et rationabili causa (maxime in contemptu episcopi) cessaverint a divinis, episcopus, si voluerit, nihilominus celebret." The gl. ord., v. "cessaverint a divinis," notes: "Videtur quod soli canonici possunt subiicere ecclesiam interdicto cum subest causa," and, "credo, si capitulum de consuetudine hoc habet, bene potest ecclesiam supponere interdicto." Earlier the canon refers to "excessus ... canonicorum ... qui consueverunt corrigi per capitulum," and the gl. ord., v. "per capitulum," emphasizes that this may be a right derived from local custom. Simon has squeezed all this into a right of the canons to coerce their bishop. (Note that the citation has had to be corrected; as it stands it would refer to Sext 1. 16. 2, and L has so identified it.)

254 Sext 1. 6. 8: "talibus" refers to the cardinals.

255 Gl. ord. on 23. q. 4, c. 24, v. "sed quare": Augustine had written, in the canon, that heretics and schismatics who were "compelled to enter" (Luke 14.23) the church should not complain: "non quia coguntur, reprehendunt, sed quo coguntur, attendant." The gloss reads: "quasi dicercet non est considerandum, quod fiat: sed qua de causa fiat"; it cites L. Verum (Dig. 47. 2. 99), which states: "Verum est, si meretricem alienam ancillam rapuit quis vel celavit, furtum non esse, nec enim factum quaeritur, sed causa faciendi. Causa autem faciendi libido fuit, non furtum."

256 This equation of a general council with a council of bishops, for canonistic purposes, may be contrasted with Simon's later political definition of a general council as also including abbots, canons, and princes (in June 1398; see Valois, 3:163 n. 3). Cf. his argument for the "general" quality of the First Paris Council, February 1395, in which bishops were a minority: below, lines 1588-1746.

257 For the gloss see above, n. 75, and cf. the marginal comment in ms. C at this point, in Appendix II. For the canonistic equivalence between "status ecclesie" and "statuta conciliorum" see Tierney, Foundations, pp. 50-53, and cf. n. 116 above.

258 Gratum (X 1. 5. 2): "ut intelligens eos ... eligendi privilegium amisisse, quia ... abuterentur temere postestate, ac ideo ad alios licet pauciores numero, quantum tamen ad hoc pertinet, consilio saniores, eligendi vel postulandi devolutam esse licentiam." Bonae (X 1. 6. 23): "frustra legis auxilium invocat, qui committit in legem: unde nec ab eis posse obiici videbatur, quod idem esset a paucioribus ... electus, cum ipsi ... reddiderint se indignos."

ii. et iii. Primum tamen est levius et commodius, et ideo amplectendum est propter periculum more. . . . De ista materia plenius vide quod notatur in dicto capitulo *Ubi*, Pe. Ber.” This gloss closely follows Hostiensis; see the quotation in Tierney, *Foundations*, p. 152. Cf. above, n. 239.

A reference to the First Paris Council of the French church, February 1395, and the Castilian *cortes* of Segovia, called by King Henry III in August 1396. See above, n. 13; below, n. 265.

Dig. 6. 1. 68: “Qui restituere iussus, iudici non paret . . ., manu militari officio iudicis ab eo possessio transfertur.”

See Valois, 3:20 ff., and the Introduction, § 1, above, for what follows about the First Paris Council.

Simon reports the First Paris Council’s decision which he himself drew up: Appendix V, 1b.

Valois, 3:44–51, 58, for the embassy of the royal dukes to Avignon, and their pressure on the cardinals. The one cardinal who refused to accept the French program was Martin de Salva.


The certification to Aragon and Navarre was accomplished by Simon’s embassy in 1396; that to Scotland is unknown to me.

King Martin of Aragon never accepted the French program, but remained loyal to his countryman and in-law Benedict XIII. Both Navarre and Scotland accepted the *via cessionis* by the autumn of 1397 (Valois, 3:123; Lehoux, 2:377), evidently after Simon had completed this treatise, and indeed after he had sent a copy of it (ms. G) to Navarre: the note about their acceptance was first added in the margin of the *EHKL* exemplar.

*Ubi maius* (Sext 1. 6. 3) provides that if any cardinals do not enter the conclave, or leave it too soon, without good excuse, the rest can make the election without them. Simon’s reference to “duas partes” (i.e., two thirds) just below pursues the analogy.

Dig. 4. 8. 17. § 7: “Celsus . . . scribit, Si in tres fuerit compromissum sufficere quidem duorum consensum, si praesens fuerit et tertius; alioquin . . . non valere, quia . . . potuit praesentia eius trahere eos in eius sententiam.”

For the full import of this phrase see below, at n. 351.

For the principle assumed here, see Tierney, *Foundations*, pp. 48 ff.: statutes of the pope alone were not as authoritative as those of the pope in council. The *iura communia* were the canons (see n. 428 below).

See n. 14 above.
Valois, 3:125, refers this passage to a mission resulting from French efforts at the Frankfurt Diet of May 1397; in that case the date of this treatise would have to be set back to late 1397 (the passage appears even in the mss. of the earliest redactions). But cf. Valois, 3:80–82: the electors in question could have been the archbishops of Mainz, Cologne, and Trier, and their action would have been the result of the French embassy that worked in the Empire and Hungary from April to August 1396. This seems more likely, even though the text neither of their request to Boniface nor of his response is known to survive. The language of this passage—the subjunctives of the “et quid ipse” clauses, and the form of the “et ego”—suggests that Simon first wrote before he knew the Roman pope’s response, then added his own comment after he had learned of it.

Bobic, V, 86 (Evidencia); the point is not made as simply as in Simon’s argument. Cf. n. 250 above.

Valois, 3:44 ff., 109 ff., 58, for the requests, respectively, by the kings of France and Castile (“Spain”) and by the cardinals. For Benedict’s successive responses to the dukes see ibid., pp. 47 f. and the Introduction, § 1, above. See also below, n. 392.

Institutes 1. 21: “Si autem inter tutorem pupillumve iudicium agendum sit, quia ipse tutor in rem suam auctor esse non potest, . . . curator in locum eius datur.” The gloss on Codex 6. 60. 11 (Cum non solum), v. “necessitate,” discusses the conditions under which a father’s consent may be compelled or dispensed with, in cases where a son wishes to claim property against his father’s will.

Codex 3. 5; the quoted phrase is the title or rubric (in rubro et nigro) of title 5.

After Dist. 17, c. 6: “Hinc etiam cum auctoritas Theodorici regis . . . sacerdotes convenire praecipisset, ut sanctum concilium iudicaret de iis, quae . . . papae Symmachi . . . dicebantur impingi, Liguriae, et Aemiliae, seu Venetiarum episcopi suggestionem ipsum, qui dicebatur impetus, debere synodum convocare, scientes quia eius sedi . . . conciliorum . . . auctoritas singularum in ecclesiis tradidit potestatem.”

See above, at n. 257.

The canon (Dist. 15, c. 1) summarizes the work of the big four councils (Nicaea, Constantinople, Ephesus, Chalcedon) and in each case notes the emperor under whom it was held; there is no mention of a pope one way or another.

Cf. Martinus, Chronicon, p. 434, on the schism between Alexander II and Cadulus: “Deinde Alexander papa ad rogatum Henrici imperatoris descendit in Lombardiam, et in Mantua sollemniter celebrato concilio, pacificatis omnibus ad urbem est reversus.” The actual date was 1064, the entry in the chronicle begins with 1063; one comes close by correcting “octingentesimo” to “millesimo.” For this and the following episodes, see Johannes


285 Ibid., p. 433: “duobus de papatu altercantibus . . ., Henricus imperator contra duos Romam accedit et eis canonica et imperiali censura depositis, Syndigerum . . ., qui et Clemens II. est dictus, in papatum per vim substituit.” The events took place in Sutri, 20 December 1046, and three days later in Rome. Clement II had been Bishop Swidger of Bamberg. Martin’s chronicle here and above fully covers what Simon writes; Bernard’s *Flores chronicorum* has not been available.

286 The reference cannot be to St. Jerome’s chronicle, which ends in 378, before any Honorius. But Jerome’s name was sometimes attached to the *Liber pontificalis* (see, e.g., Duchesne’s edition, 2:xxvii), and perhaps to other chronicles using but going beyond his own work. Thus the story in question may be that of the Emperor Honorius’s action of February/March 419, when he summoned councils of Italian bishops to settle the contest between two papal claimants, Boniface and Eulalius: *Lib. pont.*, 1:227 f.

287 *Gl. ord.* on § *Hinc etiam*, Dist. 17, after c. 6, v. “immunis”: “sed cum appareret calumnia accusantis . . .”

288 Simon conflates the episode noted above, n. 284, with that in the part of § *Hinc etiam*; from which the quoted words are taken.

289 The argument and quoted authorities come directly from Bohic, I, 6 ff. (*Cum omnes*), §§ 8, 9: “Si queris . . . quando aliquid est commune pluribus ut universis vel ut collegio, tune aut quiser de iis que sunt facienda de necessitate vel utilitate . . . aut de alis. Si primo modo, valet quod fit per partem ad necessitatem. vel utilitatem ecclesie, vel collegii.” The authorities follow. Bohic, however, continues: “Hic secus si pars faceret contra id quod esset necessarium vel utile ecclesiae vel collegio, ut si deliberaret sine causa rationabili non eligere infra tempus iuris.” Cf. below, n. 361.

290 Not found.
291 Not found.
292 Not found.
293 Not found.
294 Not found.

295 The canon (2. q. 1, c. 21): “Scelus, quod Lotharius rex (si tamen rex veraciter dici possit, qui nullo salubri regimine corporis appetitus refranet) . . .”

296 Bohic, III, 522 (*Magnae*), § 7: “Semper salva perverseone iustitiae, dummodo id liceat, minori utilitati maior est praeferenda, ut ex significatione huius verbi expedit ex praeclitis turibus colligi potest . . . [etc.] secundum Hostiensem cuius est ista distinctio in effectu. Et idem Ioannes Andreae post eum.” The emphasized words are an exact quotation of Hostiensis
on this same canon, a discussion of the question "Cum igitur secundum praedictum modum omnia sic liceant papae et sic deceant, nunquid et omnia fieri expediunt? ... In hoc membro talem trado regulam, quod ... semper salva ..."—etc. as in Bohic.

297 Bohic, I, 35 (Bonae, i), § 7, applies the principle of public utility to the question of remedying defect of a judge.

298 Archdeacon, Rosarium, fol. 28r: "Prudentia: secundum Senecam ... qui prudens est praesentia ordinat, futura praevidet, praeterita recordatur." 

299 I have not found the source of this story. It is not in the Liber pontificalis, which was sometimes referred to as the "gesta Romanorum pontificum." An analogous story, however, is related by Thomas of Tuscany—Thomae Tuscæ gesta imperatorum et pontificum, ed. E. Ehrenfeuchter (MGH, SS, 22; Hannover, 1872), 498. The Arabs at first had no law, but "invento, ... ut ... quidam ferunt, quodam clericó, qui ab ecclesia turbatus abscesserat, eo quod in ea non fuerat assecutus honoré, quo dignum se esse credebat, ... ab ipso [Maumet] edoctus est de novo et vēteri testamento." This is a variant of the common legend that a monk named Sergius taught Mohammed the Christian religion; usually identified as a Nestorian, he was also sometimes called a Nicholaite, and given the name Nicholas: James Kritzeck, Peter the Venerable and Islam (Princeton, 1964), pp. 129 f.; cf. Appendix III below. The legend does not call Sergius-Nicholas a cardinal elected to the papacy.

300 See above, n. 54.

301 Dig. 2. 1. 1: "Ius dicentis officium latissimum est, nam et honorum possessionem dare potest, et in possessionem mittere, pupillis non habentibus tutores constituere, iudices litigantibus dare."

302 Archdeacon, Rosarium, fol. 213r (Quia res): "[quando] agitur de beneficio, in hoc casu non habet locum missio in possessionem; ... si vero est causa in qua posset procedi ad missionem in possessionem, tunc cum illa sit via ordinaria, ... illa regulariter est servanda ... ; intuitu tamen religionis, vel alia iusta causa, iūdex potest ad sequestrationem procedere, Extra De dolo et contumacia, c. 2." And: "tam missio quam sequestratio fit ut reus tedio affectus cogatur stare iuri." The cited canon (X 2. 14. 2) relates a case in which this was done.

303 Rosarium, fol. 212r: "si praeses videat aliquos ad arma vel rixam venire, quos potest sua iurisdicione compescere—FF. De usufr. L. Aequissimūm—debet dicere, recipio rem contentiosam in manu mea, et rem custodiri faciam, et coram me veniatis ius vestrum prosecuturi."

304 Ibid., fol. 212v, col. 2: the quotations are more or less exact, but in the last clause "futuro" replaces "victori."

305 Ibid., fol. 213r, col. 1: "debet fieri sequestratio, ... et hoc credo indubitatum in beneficiā causa, ubi ante possessionem illius pacificam, appareat controversia."

306 Clem. 2. 6. 1: "diffinimus ut una contra possessorem diffinitiva sententia ... apud sedem apostolicam ... promulgata, beneficicum ipsum ...
(dum tamen triennio pacifice antea ab eo possessum non fuerit) per loci ordinarium . . . sequestretur.” Note Simon’s play with “sententia” and his following reference to *pacifica possessio* in its technical sense as a three-year term, after which one’s right in a benefice was incontestable.

307 See above, at n. 252.

308 Archdeacon, *Rosarium*, fol. 213r (foot of col. 1, top of col. 2).

309 *Duo mala* (Dist. 18, c. 1) is a decree of the eighth Council of Toledo, 653.

310 *Nervi* (Dist. 13, c. 2) has, after “constringitur,” “si omnino nullus sine peccato aditus patet.”

310a *Cum beatus* (Dist. 45, c. 8) cites 2 Tim. 4.2 and goes on to argue that prelates should not use harsh punishments against men of rank. In *Forte* (23. q. 4, c. 11) Augustine distinguishes between Christian tolerance and the duty of a church magistrate: “si iudex es, . . . coherece, corripe, excommunica, degrada.” The *gl. ord.* has, “Coercere. admonendo, suspendendo,” on which the Archdeacon (*Rosarium*, fol. 305r) comments: “alii verbi utitur Apostolus dicens, argue, increpa, obseca . . ., sed hoc locum habet in occultis peccatis et judicio divino . . . et quod dicit intellige . . . de tali crimine quod semel commissum non sufficit ad depositionem: alioquin pro crimine probato statim deponi posset, 81. di. *Dictum*.” And cf. his comment (*ibid.*, fol. 58rv) on *Cum beatus*. The removal of these references from the later redactions of the treatise perhaps attests to Simon’s effort to improve this rather ambivalent paragraph, in which partial subtraction is patched into the argument for total; cf. L’s variants just below.

311 See the Introduction, § 1, above, for the relationship between partial and total subtraction. And cf. below, at n. 332.

312 Bohic, II, 182 f. (*Cum non ab homine*), § 4: “Unde ex quo quo apparat corrigibilis non procedetur contra ipsum, ultra poenam a iure introductam; imo . . . ibi statitur, . . . secundum Bernardum et Hostiensem.” He is not talking about a pope.

313 Johannes de Moravia (n. 218 above) was one such; another was Pierre d’Ailly, to whom Clement had given a canonry and whom Benedict XIII had made his “familiaris” in October 1394. Benedict gave him more, including the bishopric of Cambrai, in early 1397. D’Ailly had favored the *via cessionis* but refused to accept it in Simon’s coercive form. Simon refers to the change in a work of ca. 1400 (Appendix V, 11) BN, *ms. lat.* 1475, fol. 36v, where he sets forth the view that the action of the cardinals in 1378 gave scandal to the church, and then comments: “et in ista opinione erat fortiter firmatus tempore Clementis Magister Petrus de Alliaco, magister in theologia tunc, et nunc episcopus Cameracensis.” See Valois, 3:25 f., 131. Note (against Valois, 3:32) that d’Ailly at one point spoke against a coercive *via cessionis* at the First Paris Council, February 1395: see the texts in Ehrle, *Alpartil*, pp. 470–74, and Ehrle’s comments, pp. 469 f. And see the Introduction at n. 26, above.

314 Dig. 9. 2. 51: “Multa autem iure civili contra rationem disputandi pro
202 Annotations

utilitate communi recepta esse ... probari potest." The gl. ord., v. "disputandi": "id est contra rigorem iuris."

315 Sed illud says that priests should denounce sinful acts; Simon adapts it by replacing "sacerdotes" with "illi" (qui populo presunt), and by omitting what deals with specifically priestly duties. Cf. ms. C's recourse to the original, in the apparatus.

316 Hostiensis on X 1. 10. 3 quotes the phrase as Seneca's.

317 The phrase about "negligencia" is Simon's inference from c. 21, Indignæ, § Debet tamen, and the gl. ord., v. "admonitio" (below, n. 320). For the added sentence in mss. AJ (apparatus), see above, n. 202; cf. below, n. 325.

318 The "argumentum" preceding Dig. 6. 1. 76 is ascribed to Bartolus; it states: "Quod iuris est de toto, quo ad totum, idem de parte quo ad partem."

319 See above, n. 205.

320 Gl. ord. on 12. q. 2, c. 2, v. "admonitio": "arguitur quod admonitio semper praeecedat vindictam, ... sed ubicumque agetur ad depositionem, non praeecedat admonitio, extra De accu., Qualiter. Ad quid enim admente-retur tunc, cum sufficit ad depositionem quod homo semel deliquerit."

321 See above, n. 310a.

322 See above, n. 242.

323 "Homo Christianus fortiter cadit in peccatum ... aut propter magnitudinem peccati, aut propter altitudinem dignitatis." For the present relevance of this, see above, at n. 232 (Johannes Monachus), and cf. gl. ord., v. "cadit": some say circumstances of dignity etc. aggravate a sin, others say only contempt aggravates.

324 See above, n. 65.

325 In the early redactions there followed here the same paragraph already given above, lines 1946–52, plus a sentence given in the apparatus thereto; see the apparatus there and here. Thus the arguments about "negligencia" there applied to the kings were here repeated for the popes, with a special applicability to Benedict—perhaps in order to counter the point made in his favor immediately above. Still surviving in J, with fragments in AB, the repetition was dropped in the exemplar of C"GEHKL.

326 Bohic, III, 408 (Nulla), § 20: the glossator Martinus ("doctor iuris civilis antiquus") had held that a "morosus"—someone who did not act as required within a set time—was not responsible for losses or damages resulting from his inaction. Henricus goes on: "sed Johannes et alii doctores iuris civilis communiter reprehendunt Martinum, dicentes quod imo indistincte de interitu tenetur morosus, ut FF. De leg. i., L. Cum res. § ultimo; De vi et vi armata, L. i, § Rectissime; et Si cer. pet., L. Quod te; ubi est glossa ipsorum quae potissime hoc dicit. Petrus vero de Bella Pertica et Cinus post eum sic distinguunt. Et credo quod bene...." "FF. De usuris, L. Mora," mentioned here by Henricus, states (§ 5): "si fideiussor solus moras fecerit, non tenetur, sicuti si Stichum promissum occiderit"; the gl. ord. by Accursius, v. "non tenetur": "sed utiliter sic, scilicet de interitu."
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327 Sext 1. 5. 1 (Perpetuo) prohibits vague formulas of choosing bishops that leave it uncertain whether an election or a postulation has taken place. Codex 7. 14. 5 (Defamari): Someone has requested action against a defamer who refuses to make his accusation in court; “unde constat merito rectorem provinciae ... sententiam dedisse, ne de cetero inquietudinem sustineres.”

328 Gl. ord. on De pen., Dist. 3, c. 25, v. “conscientiam”: “conscientia dupliciter accipitur: quandoque enim dicitur conscientia delicti, ... quandoque dicitur morsus peccati, ut hic, et secundum quod dicit Horatius: ‘Nihil conscire sibi, nulla pallescere culpa.’” Note the shift in context from the internal “morsus” to Simon’s “quoad deum et homines,” “in contagio.”

329 Dig. 16. 1. 13; the quoted phrase seems to come from a comment by Bartolus added to the text (col. 1595 in the 1612 Lyons edition): “Frustra expectatur conditio, cuius eventus nihil operatur.”

330 Dig. 6. 1. 38, “Neque malitiis indulgendum est”; the context has to do with compensation for buildings put up on property bought from someone who had not had title to it.

331 See below, at n. 481.

332 The sentence means that one who accepts the argument of Part 2 must reply to the contrary arguments in Part 1; Simon often uses the conditional qui-construction (e.g., above, lines 2087–88). His reason for saying this at all was probably that he wanted to preserve the form of a disputation without an overt determination; see the Introduction, at n. 28.

333 See above, n. 118.

334 See above, n. 120.

335 The case of Pope John XII, deposed in 963, appears in Martinus, Chronicon, p. 481, “Hic erat venator et totus lubricus, adeo quod etiam publice feminas tenebat. ... Hic cum frequentier per imperatorem et clerum de sua correctione fuisset monitus, non correctus, presente imperatore de papatu destitutus” (my emphasis). Cf. Haller, Das Papsttum (cited above, n. 283), 2:155 ff.

336 For William of Ockham’s theory about the legal right of the emperor to punish all criminals, including the pope, and his reference to Otto I’s deposition of John XII, see Georges de Lagarde, La naissance de l’esprit laïque au déclin du moyen âge, rev. ed., 5 (Paris, 1963), 233.

337 See above, notes 159, 160.

338 Above, at n. 133.

339 Above, lines 688–90.

340 I.e., even though Si duo was a letter of the Emperor Honorius, and Nisi cum pridem was a letter of Innocent III.

341 Codex 7. 39. 9. The law suspends the period of prescription in certain cases to allow parties to recover their rights; it implies the supreme legislative authority of the prince, but does not formulate the principle “iura per ora principum. . . .”

342 See above, n. 209.

343 De quibus prescribes that when a question cannot be answered from
scripture and other usual sources of authority "seniores provinciae congrega." For In canonicis see above, n. 158: it does not in fact accept the maior pars without qualifications. L. Quod maior says, "Quod maior pars curiae effecit, pro eo habetur, ac si omnes egerint." Cf. above, at n. 289.

344 For the Oxford letter of 17 March 1396 see above, n. 64. For the University of Paris letter of 26 August 1395 see Valois, 3:70, and Swanson, p. 95 (he dates it the 25th).

345 A reference to the practica cessionis sanctioned by the First Paris Council (Valois, 3:40 f.) and included in the official account of the Council's decisions which Simon formulated; see Appendix V, 1c, below. He may also have been the author of a later version of the practica (Thes. nov., 2:1150 f.), the gist of which he had incorporated in the royal ordinance of 27 July 1398 proclaiming subtraction of obedience: Ordonnances, 8:258 ff. His summary in the present treatise is closer in wording to these later texts than to the original one, but there are minor differences even so.

345a C. 1 de Parochitis is St episcopus (X 3. 29. 1), which discusses in detail the division of an episcopatus to accommodate a bishop converted from Donatism and returning to share his subjects with the Catholic incumbent. The canon, cited only in L, may have been brought to Simon's attention in Benedict XIII's practica, which mentioned it; the text was made known in Paris at Easter of 1397 (see Thes. nov., 2:1141).

346 Martinus, Chronicon, p. 407—a detailed list.

347 See above, n. 182.

348 See above, n. 14 and n. 273. The concession referred to here ("ipsi fatentur . . .") appears on pp. 65 f. of the edition by Ouy, cited above, n. 64.

349 The gist of these canons (Dist. 17, cc. 5, 4, 1) is given by their titles: "Absque Romani pontificis auctoritate congregari sinodus non debet" (c. 1), and "Non est concilium, sed conventiculum, quod sine sedis apostolicae auctoritate celebratur" (c. 5, in which "conciliabulum" also appears).

350 See Valois, 3:82, for King Wenceslas's resistance to the French embassy in the summer of 1396; for the cardinales antiqui see below, n. 366; for Wenceslas's refusal to consider their justification, see Valois, 1:268.

351 Simon here pronounces the usual formulas of the sovereign status of the French realm and its kings. For "rex imperator in regno suo" and "nullo recognoscens superiorem" see e.g. Jean Rivière, Le problème de l'église et de l'état au temps de Philippe le Bel (Paris, 1926), pp. 424–30; cf. n. 121 above. Insofar as Simon had anything more specific in mind when he wrote "scissum est imperium," it would have been the origin of France by an "equal division" of the Carolingian empire. Thus, e.g., the Disputacio inter clericum et militem, ed. Norma Erickson, Proceedings of the American Philosophical Society, 111 (1967), 300: according to the "register" of Charlemagne, "regnum Francorum . . . imperii portio est, pari divisione ab eo disiecta, et equali dignitate et auctoritate." Thus France was born sovereign.

352 The desolation of Hungary was current news—the disaster suffered by Western chivalry, led by King Sigismund of Hungary, at the Battle of
Nicopolis, 25 September 1396. The “multi notabiles prelati” may be a recollection of Simon’s own trip to Hungary as a royal ambassador in 1385; see the Introduction, § 2.

353 See below, n. 374.

354 Johannes Monachus, Apparatus, BN, ms. lat. 16901, fol. 56v, has the quoted words exactly; the preceding part of the sentence summarizes the canon itself.

355 The canon gives the four causes of perversion as timor, cupiditas, odium, and amor.

356 See n. 107 above.

357 See n. 108 above.


359 See n. 279 above.

360 Gl. ord. on Dist. 40, c. 12 (Multi sacerdotes), v. “in honore.” The canon states: “non qui maior fuerit in honore, ille est iustior: sed qui fuerit iustior, ille maior.” The gloss: “Et est hie argumentum quod illa pars, quae iustiori rationi innititur, maior dicitur, licet sit minor.” The gloss then cites Nicena, In canonics, In nostra. Of the others, Sana is only generally relevant: “Sana quippe ratio etiam exemplis anteponenda est.” But Nullus invitis (Dist. 61, c. 13), while not itself to the point, has an important gloss. The canon states that before a bishop is elected from outside, the clergy of the city must all have been disqualified. Gl. ord., v. “civitatis,” says: “Sed quid si maior pars eligit extraneum, et minor eligit de gremio suo? Videtur quod hic praevalebit electio paucorum.” It goes on to question the arguments for this solution, but then states: “Dico tenere electionem minoris partis, cum eligunt secundum formam canonum de suo gremio.” See also n. 158 above; cf. Henricus de Bohic for other canonists’ views on this interesting matter (on c. In nostra: II, 261).

361 Bohic, I, 6 ff. (Cum omnes), presents the arguments pro and con, as noted above, n. 289, where Simon uses Bohic for the opposite purpose.

362 X 5. 39. 28 (Innocent III): “respondemus, quod iudicium Dei veritati, quae non fallit nec fallitur, semper innititur: iudicium autem ecclesiae nonnunquam opinionem sequitur, quam et fallere saepe contingit, et falli.”

363 Sext 1. 2. 1, in which Boniface VIII writes that when the pope makes a new decree it is understood as revoking prior ones, but not necessarily as derogating from special or local customs and statutes, which, “quum sint facti et in facto consistant, potest [papa] probabiliter ignorare.”

364 The cardinals’ declaration on 9 August 1878 that Urban VI’s election had been invalid (Ampl. coll., 7:434) was based on the assertion of “impressio,” which theme appeared in all subsequent Avignon propaganda. The
formal depositions of the cardinals regarding the election are printed in L. Gayet’s *Le grand schisme d’Occident*, 2 vols. (Florence, 1889).

According to Valois, 1:21–35, these Urbanist claims were probably true, the divisions among the cardinals (especially “Limousin” vs. “French”) preventing agreement on a French candidate; but Trexler (see above, Introduction, n. 2), p. 508, observes that the circumstances of intimidation may well have had an effect here too.

Sixteen cardinals, including four Italians, had been in the conclave where Urban VI was elected. Subsequently one Italian was removed by failing health, and the French cardinal Jean de Lagrange returned to join his colleagues; hence at the election of Clement VII there were also sixteen cardinals. Thus there were in effect seventeen cardinales antiqui—for the six cardinals who had stayed in Avignon had no special knowledge of the events. Seven of the seventeen were alive in 1396: Pedro de Luna (now Benedict XIII), Jean de Lagrange, Guillaume d’Aigrefeuille, Pierre Gerard du Puy, Pierre de Vergne, Guy de Malesset, Pietro Corsini.

L. Consensu (Codex 5. 17. 8) permits a wife in certain cases to terminate the marriage by giving a writ of divorce (*libellus repudii*) and establishing her grounds at law—“et causas dissidii legibus comprobare.” Hence, evidently, she can testify in the case to which she is a party.

For the Avignonese *instrumenta* see Valois, 2:360, 426. Since none of the cardinales antiqui renounced Clement, it is not clear what the Roman *instrumenta* could have been; perhaps mere assertions by cardinals appointed after the Schism had begun.

See Valois, indices, s.v., and for Poncius’s deposition, corresponding to what follows, *ibid.*, 1:13, 34 (the text in Gayet, *op. cit.*).

Scriptum est (X 1. 6. 40) provides that in a disputed election the parties may by mutual consent set up a new electoral body consisting not only of the ordinary electors (the canons) but also of other clerics, “per se ipsos sive per alios.” The majority of this body would then prevail. Innocent IV’s commentary, *v.* “praepositi,” defines the authority of such co-opted clerics: “Isti enim etsi alias ius non haberent in electione, quia utraque pars consensit quod admitterentur, suffragium praestabunt voces eorum.” Also, *v.* “per alios”: the “others” would not have functioned as arbiters (*compromissarii*), “sed procuratores fuerunt, quibus aliqui vota sua commiserant, quod licet, quando ex iusta causa aliquis electioni interesse non potest.” Furthermore, “unus si loco plurium admittitur, tantum potest vox eius, quam si omnes voces suas dedissent.”

Reference is to Stephen III (who in modern lists appears as the 95th pope, not the 89th as stated here) and the Easter synod of 769 at Rome, which acted against the deposed Pope Constantine II. The account in the *Liber pontificalis*, 1:476, may have been Simon’s source, although his summary, while exact, does not repeat the wording of this text. The account in Mansi, 12:719 f., does not contain enough to have been Simon’s source.
Sext 2. 14. 1: “Cum aeterni tribunal iudicis illum reum non habeat, quem iniuste iudex condemnat, testante propheta, ‘Nec damnabit eum cum iudicabitur illi’ [Ps. 36.33].”

Sext 3. 23. 3; cf. 2. q. 7, cc. 5, 14; see above, line 584.

Here and above, line 2282, apparatus, some mss. give the duration of the Schism as eighteen years, others as nineteen; elsewhere in the treatise it is always nineteen. Cf. n. 3 above.

See Valois, 3:102 f.: the proxy marriage between Richard II and Isabel of France was celebrated 12 March 1396 by Simon de Cramaud in Paris, on the basis of a dispensation by the bishop of Paris, empowered thereto by Benedict XIII’s chief penitentiary. But the marriage in person, celebrated 4 November 1396, was authorized by a dispensation from Boniface IX (Valois, 3:108, n. 5).

The quoted words come from Gratian’s comment “Quod de arbitris,” just after the canon A iudicibus (2. q. 6, c. 33).

Neither of these laws seems relevant to Simon’s argument.

Nist essent (X 3. 5. 21) deals with a disputed election to the office of prior; both contenders and the chapter agreed to an arbitration. The eventual installation of the winner was, according to Innocent IV’s commentary, “cum esset canonice electus. Per arbitrium enim non posset habere canonicam institutionem. inf. de instit., c. 3, sup. de transact., Super eo. Nec posset ius unius in alium transferre.”

Sane (X 1. 43. 1) provides for an odd number of arbiters; the gl. ord., v. “unus eligatur aut tres,” quotes the Digest as here.

See nn. 71–73 above.

See above, at n. 272.

X 1. 9. 10, Nist cum pridem: § Propter maliciam plebis “cogitetur interdum praelatus ab ipsius regimine declinare”; § Non autem: “cum oves convertuntur in lupos . . . sunt tamen pro tempore utiliter tolerandi, quia sanguinem elicit qui nimis emungit.”

Hoc tunc [alias Hoc etiam] comes after 7. q. 1, c. 48: prelates are not to resign under adversity “quando nec specialiter praelatus quaeritur, nec per alios tuta potest esse ecclesiae salus”; cf. § 3. Cum autem, ibid.: “quando vero omnium subditorum est obstinata malitia, nec prodest eis praelatorum praesentia, tunc etiam corpore licet ab eis recedere.”

Hoc tune [alias Hoc etiam] comes after 7. q. 1, c. 48: prelates are not to resign under adversity “quando nec specialiter praelatus quaeritur, nec per alios tuta potest esse ecclesiae salus”; cf. § 3. Cum autem, ibid.: “quando vero omnium subditorum est obstinata malitia, nec prodest eis praelatorum praesentia, tunc etiam corpore licet ab eis recedere.”

X 5. 12. 10: “expediebat potius post tunicam relinquere pallium, . . . quam . . . tam acriter in alios exardescere,” the last words referring to deeds of violence and homicide by clerics in defense of property against robbers. The “pallium” metaphor refers to Matt. 5.40.

See n. 68 above.

Dig. 50. 16. 125: a promise to give a dowry “cum commodum erit” is interpreted as equivalent to “cum salva dignitate mea potero” or “cum sine incommodo meo potero.”

Dig. 4. 2. 2: “Vis autem est maioris rei impetus, qui repelli non potest.”
The gl. ord. (Accursius), v. "non potest": "Et not. quod non definitur hie vis prout hoc titulo accipitur: ut pro compulsiva: quia resisti potest, licet cum periculo... Vel subaudiri, commode."

Innocent IV on Accedens (X 3. 8. 14): a promise to provide a cleric with a benefice when possible must be understood as limited—for example, if the cleric is not a priest and the vacancy in question requires a priest. "Nam cum dicat, 'cum potero,' intelligitur recte, et de iure, et honeste, et commode: FF. De ver. sig., Nepos Proculo."

The text (Sext 1. 6. 16. § Caeterum) imposes penalties on electors of bishops, etc., who do not present the election to the elect "infra octo dies postquam commode poterunt." Johannes Monachus, Apparatus, BN, ms. lat. 16901, fol. 25r (ms. lat. 4069, fol. 21v compared): "commode: et ita olim debebant presentare postquam commode possunt, hodie adduntur [alias admitterit] infra [ultra] isti octo dies."

In his gloss on Sext 1. 6. 16, v. "a gratia," Johannes Monachus, Apparatus, BN, ms. lat. 16901, fol. 28r (& ms. lat. 4069, fol. 24v), imagines the case of someone seeking to have actions against him revoked: "hoc casu agens habebit duas vias, sicut viam directe peticionis in libello, et viam implo randi iudiciis officium. Et ingressa via una, non videtur recursus ad aliam, prima pendente." He notes the opinions pro and con and makes distinctions; in the case of two ways to the same end, one "principalis" and the other "subsidaria": "aut pinguius non subvenitur per subsidiariam beneficio iuris datam, et tune ordinarium remedium habet locum...; aut pinguius subvenitur per subsidiariam, et hoc dupliciter: aut ambe principales, et tune eciam subsidia potest primo proponi...; aut una principalis et alia non, et tune ambe possunt concurrere et in processu una potest premitti, et hoc casu pinguius subvenitur preveniendo in tempore... Constat enim quod in revocacione attemptatorium est via ordinaria per peticionem in libello... et est via extraordinaria per iudiciis officium."

In his first written response to the dukes, 20 June 1395 (n. 276 above), Benedict wrote that "dicta via cessionis pro sedandis schismatibus nee a iure statuta, nec a sanctis patribus in dei ecclesia in simili casu practicata: quinimo... ut non conveniens aliquando repulsa"—the text in Bulaeus, 4:748v. Later in the same bull (p. 749) he promised that if the meeting and arbitration between the two contenders did not end the Schism, then before the meeting broke up, "offerimus nos eo casu aperire et prosequi cum effectu viam seu vias rationabiles, honestas et juridicas, per... quas... finis... imponatur schismati."

Dig. 45. 1. 137. § 2, concludes with "in eo quod... finitum est, nullus est coniecturae locus"; Bartolus summarizes: "ubi est certum, coniecturae non est locus."

In the original (23. q. 4, c. 39) the last sentence reads: "Nam videte, qualia faciunt, et qualia patiuntur: occidunt animas, affliguntur in corpore:
sempiternas mortes faciunt et temporales se perpeti conqueruntur." Augustine’s reference was to the “heretics” and “schismatics” of his day.

398 See n. 80 above; immediately after the passage quoted there, Henricus de Bohic writes: “Et si velis scire utrum conscientia erronea liget ad errorem deponendum vel ad faciendum quod dictat utrum peccatum excuset: et utrum plus liget quam preceptum divinum vel preceptum prelati dictans contrarium: vide per Astensem il libro ii, titulo De bonitate et malicia interioris actus, ar. v, vi, et vii.”

399 For Nisi cum pridem (X 1. 9. 10) see above, nn. 173, 382; cf. n. 68. Innocent IV writes in his commentary, § 4: “Nos dicimus, quod si solus episcopus quaeritur [scil., by anticlerical persecutors], vel alius praelatus, vel praedicator, vel etiam socius: si autem est alius per quem esse possit tuta salus ecclesiae vel populi, cedat, si vult, et etiam si nollet, si periculum est destructionis ecclesiae, vel magni scandali et periculi, et in temporalibus et in spiritualibus, assignabit ei superior bonum concambium suae praelaturae et dignitatis, . . . et argu. ad hoc: quia publica utilitas praefertur privatae.”

400 See above, n. 398.

401 Dig. 6. 1. 15. § 2: “Item si forte ager fuit, qui petitus est, et militibus adsignatus est, modico honoris gratia possessori dato: an hoc restituere debat?” I find no § Ubi.

402 Cf. the text, 23. q. 6, c. 3: “Mea primitus sententia erat, neminem ad unitatem Christi esse cogendum. . . . Sed haec opinio mea non contradicentiam verbis, sed demonstrantiam superabatur exemplis” (my emphasis). After giving the example of his city, converted from Donatism “timore legum imperialium,” he alludes to others and notes the aptness of the passage “Da sapienti” etc.—which in context applies as well to him as to the former heretics.

403 This passage, appearing only in ms. E, seems designed either to exploit a text only now recalled, or to counter a new anti-subtractionist argument citing Sicut quamvis (Dist. 96, c. 15), which states: “Nam quaescumque pontifices sint, eti error humanitas accidente, non tamen contra religionem ullatenus excedentes, nullatenus videantur a saeculari potestate posse percelli.” The gl. ord. on “non tamen . . .”: “Nam in eo casu posset a quocunque redargui. 40. dist. Si papa vel etiam si schisma faceret. 23. q. 5. De Liguribus. Et plures casus, in quibus laici habent iurisdictionem super clericos, dixi 23. q. 5. Principes.” See notes 115, 144, above.

404 Above, nn. 117, 177.

405 Above, n. 119.
All but one of Benedict's cardinals had declared for the French program during the ducal embassy of May–June 1395 (Valois, 3:49 f.). I know of no such stand by Boniface's cardinals at this time (cf. ibid., p. 122).

Johannes Monachus, Apparatus, BN, ms. lat. 16901, fol. 92r (and ms. lat. 4069, fol. 64r) on Sext 5. 2. 4, v. "de fratrum nostrorum consilio": "Quero an hec sint verba voluntatis, congruencie, decencie, vel necessitatis. Scio quod Celestinus papa V multas abbacias, episcopatus, et superiores dignitates contulit sine fratrum consilio, et coram successore fuit iste articulus in dubium revocatus. Et dixi tunc decere ut quod papa mandat in suo canone ab aliis observari, illud non negligat. Mandat enim quod episcopi, abbates, et superiores saltem ardua suarum ecclesiarum ordinent de consilio fratrum suorum, alias non teneat quod agitur. . . . Scio quod dicte collaciones fuerunt cassate presentim quia cetus cardinalium erat in [hac] possessione, quod ardua negociarum erant de eorum consilio tractanda et terminanda. . . . Et licet princeps solutus sit legibus, secundum legem ipsum vivere deceat." This passage is quoted and discussed in Tierney, Foundations, pp. 181, 186 ff.

Bohic, V, 217 (Antiqua), does discuss the fact that the cardinals do not as cardinals swear an oath to the pope, for they are his limbs; the cardinal bishops swear but only as bishops. He goes on: "Et est efficax argumentum quod papa parum aut nihil decent [sic] facere sine consilio fratrum suorum." He cites the three canons given here, including Pervenit, left out by Simon or his secretary.

The Archdeacon's gloss on Sext 1. 16. 8 (Quamvis) has not been available.

See n. 22 above.

The canonist Pierre d'Ameilh, cardinal of Embrun and one of those who elected Clement VII, wrote his treatise, Contra petentes concilium generate, in the second half of 1379; the text is edited by Bliemetzrieder, Literarische Polemik (cited above, Introduction, n. 7), pp. 91–111. One of the manuscript copies is that in AN, J 518, a codex that Simon seems to have had made (see the recension of E, Introduction § 4, above). The passage from Ameilh's treatise referred to here is part of a section asserting the special authority of the cardinalate (pp. 108–11): "Plus dico quod papa et domini cardinales ita sunt in Romana ecclesia, quod quiem ipsi sunt eadem Romana ecclesia que claves accepit . . . Immo quodam modo appellacione ecclesie communius intelligitur collegium quam prelatus." He goes on to quote Ego N. and other canons, and cites Hostiensis as support.

See above, n. 34, and the text there and at n. 28. V. Martin, Les origines du Gallicanisme, 1 (Paris, 1939), 343 ff., discusses the movement of ideas in Paris among both canonists and theologians rejecting the thesis of c. Nemo, that the pope was not subject to judgement on earth.

The text above, n. 119; note that it was promulgated in a council.

The canon comes from Pseudo-Chrysostom's Opus imperfectum in Mattheum; cf. above, nn. 201, 360.

John of Salisbury, Polieraticus, bk. 8, ch. 23 (ed. Webb, 2:403) cf.
above, n. 59. The context of bk. 8 is a discussion of tyranny and the permis-
sibility of tyrannicide. Those who fight for church offices and use the powers
of their office for their own profit are tyrants (p. 401), and their contests
create schism, which is not clearly distinct from heresy (p. 403). John’s words
link the civil and ecclesiastical phenomena: “Quid perniciosius . . . bello ci-
vili? Nichil plane, praeter rabiem scismaticorum aut hereticam pestem.”
Hence he can recommend the drastic consilium Bruti—not to take sides and
thereby contribute to civil war, but to let the contenders fight it out in person.
“Conveniant ergo . . . in Licaonia insula . . . et sine orbis et urbis periculo
vincat alteruter duillorum.” The loser would be either drowned or confined
for life in the monastery of La Cava (used indeed for such a purpose in 1100
and 1121), at the pleasure of the victor, who himself, however, as the more
violent one, would be shipped off to a lifetime in the quarries or
mines. If these details are not given by Simon at this point (or below, lines
2886–90), it is hardly “causa brevitatis,” but probably because his purpose
did not yet call for much detail about the escalation of coercion after sub-
traction. Although Simon had a correct knowledge of this “consilium Bru-
ti”—he gave it correctly in letters of 1401 (Thes. nov., 2:1239; ASV, Arm.
54, t. 21, fol. 257v)—his mind tended to cut through its delicacy and focus
on its practical brutality: in a work of 1400, BN, ms. lat. 1475, fol. 36v, he
summed up the plan as providing that the loser be killed, the winner drowned;
in 1406 he said much the same (BduC, p. 217’). If this was his own working
idea of the plan, his reticence here is understandable.

415 See above, lines 1355 ff., 1902 ff., 2110 ff.

416 Above, n. 119.

417 In the canon Augustine writes of the duty to resist improper orders:
“Ipsos humanarum legum gradus adverte. . . . Nec hinc debet minor irasci,
si maior prelatus est. . . . Si aliquid ipse consul iubeat et aliiud iubeat impe-
rator, si vel aliiud imperator et aliiud deus, quid iudicatis? Maior potestas
deus.”

418 Hinc eciam in particular is taken care of at lines 1712 ff., above.

419 Novellae, 22, Praefatio: “Non enim erubescimus, si quid melius etiam
horum quae ipsi prius diximus adveniamus, hoc sancire et competentem
prioribus imponere correctionem nec ab aliis expectare corrigi legem.”

420 Not found.

421 See n. 255 above.

422 Gl. ord. on 24. q. 1, c. 6, v. “facit ecclesia.” The text of the canon
discusses the Petrine privilege, “Quodcunque ligaveris super terram erit li-
gatum et in coelo. Si hoc Petro tantum dictum est, non hoc facit ecclesia.”
The gloss: “Sed nonne prius erat ligatus apud deum? . . . Et ita videtur quod
nulla potestas Petro collata sit, vel ecclesiae per hoc ‘Quodcunque’ etc., nam
nullius potestatis vim exercet, . . . sed tantum ostendit ligatum esse, vel so-
lutum. . . . Die quod quoad ecclesiam triumphantem nullius potestatis vim
exercet, . . . sed tamen habet aliam potestatem, qua ligat quoad ecclesiam
militantem: unde quandoque eum ligat, quamvis in iustue.” Cf. gl. ord. on 24.
q. 1, c. 5 (Manet), v. “aequitate”: “Argum. quod sententia iniuste lata non tenet. . . . Sed hoc dicitur de sententia, qua quis ligatur quoad deum, non quoad ecclesiam.”

423 Archdeacon, Rosarium, fol. 153v (Si quis erga): “Contemtor dicitur ex contemptu quis facere contra canones quando sine causa facit contra, ut notatur infra, e. q. 7. c. Metropolitanum.”

424 Ibid., fol. 158r: “Trias sunt quibus episcopi specialiter praeeminent, praeceptum, iudicium, sacramentum. Ab his tribus quandoque absolvuntur subiecti, . . . : a iudicio, ut quando deponitur: solvitur etiam a iudicio eius, qui eum accusat et qui appellat, quia accusatus inimicus et suspectus habe- tur” (my emphasis).

425 Consilium provides that those requiring permission to eat meat during a fast because of illness should be indulged, “cum non subiaceat legi necessitas.” It is Gratian’s § Sed notandum, after Remissionem, which provides that sacraments performed by unworthy priests can be regarded as valid in the case of sacraments necessary to salvation, “quia . . . necessitas non habet legem.”

426 The title of De cetero (X 5. 39. 11) reads: “Excommunicatam pro percussione clericis absolvit episcopus, si sine periculo papam adire nequit; debet tamen sibi mandare, quod adeat papam impedimento cessante.”

427 Clem. 1. 3. 2: “Eo tamen proviso, quod si eiusdem [Romanae] ecclesiae camerarium, aut maiorem, vel aliquos alios ex poenitentiariis (quorum officium per obitum eiusdem pontificis nolumus expirare) . . .”

428 The “iura antiqua” here applied to provisions to benefices were evidently identical to the “iura communia” applied above (at n. 221) to the matter of procurations, annates, etc. In general the ius commune of the church was canon law, in distinction to privileges or to particular uses of papal plenitude of power: see Francis Oakley, The Political Thought of Pierre d’Ailly (New Haven, 1964), p. 173; also Wilks, Problem of Sovereignty, index, s. v. “Law, Common.” But as used in fourteenth-century Paris the two phrases had a sharper, Gallican import: they referred to the canon law as it had been before the papal usurpations of recent times, i.e., before Boniface VIII and his Avignon successors. Thus we read that the Paris Council of February 1399 decreed “quod . . . ecclesie istius regni remaneant in pristina libertate, in qua erant ante Bonifacium [VIII] vel in primitiva ecclesia”—ALKG, 7:42 f. The idea is developed by Pierre Leroy in his speech of 31 May 1398 at the Third Paris Council (ASV, Arm. 54, t. 21, fol. 198r): “Eleccio episcoporum in primitiva ecclesia spectabat collegiis et capitulis, confirmacio archiepiscopis et patriarchis, institucio in aliis beneficiis episcopis et prelatis aliis et suis patronis. Et hoc habetur a Christo et fuit servatum per mille et ccc. annos; sed postmodum summi pontificis usurpaverunt . . . ; postmodum totum usurpaverunt, sicut videmus in procuracionibus et decimis.” The conceptualization in terms of law appears, e.g., in the ballot cast by the bishop of Viviers at the Third Paris Council (AN, J 518, fol. 478rv): “attento
statu ecclesiarum istius regni et modo regendi hactenus observato per Romanos pontifices a modico tempore citra, . . . necessarium esse videtur . . . quod circa provisionem ecclesiarum cathedralium et monasteriorum, et collacionem beneficiarum, visitaciones et procuraciones . . . [etc.], servaretur dispositio iuris communis et antiqua ecclesiarum consuetudo.”

For the political background of this whole paragraph, which offers mutually contradictory solutions to the problem—one Gallican, the other based on a continuation of papal governance sede vacante—see SdeC, pp. 213 ff.

See n. 427 above.

Although Albert of Bavaria, regent of Hainaut, at first recognized Clement VII, he and his land later switched to neutrality: see Valois, 2:291, n. 4.

The “nunquam” covers only the pontificate of Benedict XIII, and this passage seems to be the only explicit source for the university’s refusal to submit a roll; see Valois, 3:23, n. 5.

This provision for “a good order” modifies the reliance on the iura antiqua above, which provided for elections or collations by the ordinary electors or collators. For the scheme in practice see Valois, 3:305 ff.; and cf. Kaminsky, “The Politics of France’s Subtraction,” (cited above, Introduction, n. 30), pp. 385 ff.

X 3. 5. 35: “Cum autem illi sint in ecclesiis idonei reputandi, qui servire possunt et volunt in ipsis . . .”

Dig. 6. 1. 15 (for which see above, n. 401). The gl. ord., v. “assignatus,” refers to L. Lucitus, De evicc. (Dig. 21. 2. 11), which deals with such a case: the heir of a man who had paid part of the price for lands subsequently “ex praeecepto principali partim distractas, partim veteranis in praemia assignatas” is still liable to pay the balance.

A holder of an expectative grace had only ius ad rem, a right to have his claim legally considered; actual right in the benefice (ius in re) was acquired only by collation and institution. See SdeC, pp. 238–41.

A papal grace of provision made motu proprio included the formula “decernentes prout est irritum et inane si secus super hec a quoquam quavis auctoritate . . . temptatum forsan est hactenus, vel contigerit impostерum attemptari” (e.g., ASV, Reg. Aven. 198, fol. 188v), along with other formulas canceling in advance any action that would interfere with the effect of the grace.

The last clauses cast the matter into legal language—cf. e.g., gl. ord. on X 3. 38. 19, v. “removeri”: “licet ad eum casum deveniat, a quo incipere non potuit.” For the regula Catoniana see Dig. 34. 7. 1; it provided that a legacy that would have been invalid if the testator had died right after making it would still be invalid no matter when he died. Thus, in the present context, the expectative graces, with their inhibitory clauses, would have been invalid if the pope had been deprived of his power right after issuing them;
therefore they would be invalidated retroactively as soon as subtraction was decreed. See *SdeC*, pp. 238–42, for the complications in practice when the subtraction was being arranged.

439 *Si Petrus* merely states that Peter made Clement his successor. It is the *gl. ord.*, *v.* “aut ligandi,” which Simon has in mind: “Videns autem Clemens, quod hoc esset perniciosum exemplo, quod aliquis sibi eligeret successorem, renuntiavit papeiui,” and was later re-elected.

440 The insertion seems never to have been made; hence the “sed . . . omisi” added in the final redaction; see n. 414 above.

441 Dig. 40. 5. 20: “Nam ego [scil. Pomponius] discendi cupiditate, quam solam vivendi rationem optimam in octavum et septuagesimum annum aetatis duxi: memor sum eius sententiae, qui dixisse fertur: . . . Etsi alterum pedem in tumulo haberem, non pigeret aliquid addiscere.” Simon was about 52 years old when he invoked this example.
Appendix I

The Marginalia in A

In ms. A, the first part of the treatise, giving arguments against subtraction, is accompanied by marginal refutations of considerable bulk, written in Simon's style and reproducing for the most part authorities and arguments found in Parts 2 and 3. It is clear from the disposition of the material on the pages that the marginalia existed in A's exemplar, which may well have been one of Simon de Cramaud's working copies, perhaps the one he used for his speeches and responses at the Third Paris Council, May–July 1398, and for propaganda immediately after. The marginalia themselves refer to the Council and mention that the Schism has lasted twenty years (as vs. the figures of nineteen or even eighteen in the treatise). A's exemplar, moreover, was in a codex that also contained a copy of the letter sent by King Henry III of Castile to King Martin of Aragon, 10 September 1397, refuting Benedict XIII's via compromissi (see apparatus to line 2465); the text of A alone refers to this letter, which was also made much of by Simon at the Third Paris Council (his speech in BduC, Preuves, p. 28; Mansi, 26, col. 858; ASV, Arm. 54, t. 21, fols. 191v, 196r). The discussion of A in the Introduction, § 4, also bears on its political importance. All in all, then, A and its marginalia represent an important moment in the history of the De substraccion: its use by Simon de Cramaud as a guide, program, and theoretical justification in connection with the Third Paris Council, which in fact led to the subtraction of obedience advocated in the treatise.

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fol. 84r, to lines 164–70: Solummodo non recedit a capite qui Cristo vero capiti obediendo non obedit pape precipienti quid inuestum, nec negatur quin papa sit capud ecclesie licet secundarium (c. ii. [i.i], xxii. di.), quod morte vel heresi vel cessione, etc. deficit cotidie. Cristus autem capud est primarium et indeficiens, iuxta illud "Ego vobiscum sum" etc., et illud "Non relinquam vos orphanos" etc. Unde pape volenti alienare patrimonium ecclesie resistendum esset (xi. q. ii., Non liceat); notat Petrus Bertrandi in Clem. Ne Romanit, De eleccione, et glosa c. Si papa, xl. di. Unde si papa precipit aliquid unde turbetur status ecclesie, vel dubitatur ne turbetur, non est obediendum, secundum Innocencium, De inquisicione [Inquisicioni!], De sentencia excommunicacionis; nam contra statum ecclesie non potest. Notat idem Innocencius, c. Quanto, De consuetudine; not. glosa c. ii., xxv. q. i.;
facit c. *Si ea*, xxv. q. ii. Modo ad propositum, non est obedire pape qui sic faciendo scisma facit et nutrit, est obedire deo et tollere occasionem nutriendi scisma et destruendi statum ecclesie; quare etc. Facit viii. di., *Que contra*; xi. q. iii., *Si dominus* et c. *Qui resistit*, cum similibus [?]. Preterea faciendo substraccionem non querimus recessum a capite secundario quod est papa: ymo, sit ad hoc ut habeatur hoc capud, quod quando sic stamus qualibet parte obstinati habere non possimus; quare etc.

*fol. 84r, to lines 180-83: Hoc verum ubi non pendet status fidei vel universalis ecclesie. Vel dic, hoc verum ubi propter bonum ecclesie fit aliquid, scilicet lex vel constitucio que tamen esset alicui vel aliquibus onerosa, quia tunc ferendum est ab eo vel ab eis quamvis durum. Secus si a me voluntarie vult tollere rem meam sine causa, quia non teneor obedire. Nota. c. *Quo in ecclesiarum, De constitucionibus; De immunitate ecclesiarum*, c. *Quia plerique*. Quia contra ius et equitatem naturalem esset. Si enim precipet regi quod filiam suam darent uni aut alteri, non oporteret obedire. Talia enim sunt extra officium pape; ideo non oportet ea ferre vel tolerare. Sic igitur non probat quod per hoc oporteat tolerare istud scisma, quod prejudicat neudi bonis temporalibus sed anime et saluti. Facit quod notat Archidiaconus, vii. q. i., *Quia frater*, ubi notat quod clerici non tenentur obedire suo prelato nisi in duobus casibus, scilicet quantum tangit cultum divinum vel utilitatem ecclesie, dicens ibi quod clerici deberent semper illud capitulum habere in bursa sua. Facit eciam quod idem notat, c. *Preceptis*, xii. di., super verbo "salubriter"; notat gloria, xi. q. iii., in summa, circa finem. Et quo ad illam differenciam de qua supra, si papa aliquid prohibet per constitutionem vel sine constitutione: facit nota Innocencii, c. *Quanto, De consuetudine*.


*fol. 84v, to lines 229-31: Ad hoc tendunt illi qui laborant pro unione, quod non auferetur sed reformetur et reparetur hoc privilegium. Sed hoc impedient huiusmodi contendentes et viam cessionis impedientes per quam certissime potest hec unio et hoc privilegium reparari et conservari. Ideo sic impedientes pocius labuntur in heresim qui propter propria commoda hoc facere pretermittunt.

*fol. 84v, to lines 252-53: Hunc articulum videntur offendere de papatu contendentes, qui tam diu et tam obstinate, et tociens moniti, unitatem sancte*
apostolice ecclesie procurare non curant, vel pocius dare, cum per cessionem hoc sit in sua potestate. Divisionem tamen ecclesie sustinet obstinate, sed illi qui unionem ecclesie prosecuntur, amplectentes viam cessionis per quam clare et cito unio sancte et apostolice ecclesie potest obtineri, huic articulo devote obsecuntur, et devocione ac fervore fidei prosecuntur effectum huius vie, ut possit ille fidei articulus deduci ad effectum quo ad omnes.

fol. 85r, to lines 259-61: Ad hoc tendunt omnes qui viam cessionis prosecuntur, nam istis temporibus stare firmiter in obediencia alterius contendencium de papatu est impedire et retardare ne unicus superior habeatur, quod clare deducitur ex textu et racione c. Si duo contra fas, lxxix. di.

fol. 85r, to lines 276-77: Huiusmodi ierarchie reformacio et reparacio cum omni devocione et diligencia expetitur, sed nolunt qui viam cessionis impediunt. Unde si quelibet obediencia stet fixa in obediencia sui pape, scisma firmatur omnino, sicut de Grecia est visum. Sed per viam cessionis ad pacem omnia et debitum ordinem reducuntur indubie.

fol. 85r, to lines 301-02: Circa ista possent aliqua diffuse dici, sed in quantum tangit factum ecclesiastice unionis, non oportet respondere, quia de auctoritate pape vel potestate unici vicarii Ihesu Cristi non agitur, nec est cuius intencio contradicere eiusmod potestati, sed eam pocius fovere. Nam per scisma quod habemus, multipliciter contempturit hec potestas.

fol. 85v, to line 324: Ad tollendum hec duo capita tendunt, qui viam cessionis amplectuntur; sed ea fovent qui impediunt istam viam.

fol. 86r, to lines 357-58: Non debet obedire in eo in quo sunt discoli, sicut esset in casu nostro,quia scisma sobreter. Nam magis oportet obedire deo quam hominibus—xi. q. iii., c. Si dominus, cum similibus. Item quando hoc faciendo esset periculum vel gravamen status ecclesie, non oportet obedire, per illa que primo dixi. Item illa auctoritas primiti Petri, 2° c., loquitur de principibus qui erant infideles, quibus apostolus dicebat in temporalibus obediri licet discolis, etc., et sic non est ad propositum.

fol. 86r, to line 367: Quamdiu remanet tale dubium forte non liceret, sed advertendum est quod super hoc dubio servatum est illud quod dict canon, scilicet quod in dubio primo sunt congregandi seniores, etc.—c. De quibus, xx. di.; c. In canonics, xix. di. Et est repertum cum tali solemnitate sicut deus scit, et tociens, quod via cessionis est melior, ymo sola. Restat igitur quod a principibus post concilium sacerdotum exequenda, ut c. Nolite, xi. q. ili.: “Sicut sacerdos debitor est” etc., ut ibi. Item dici potest quod attenta involucione et difficultate dubii de iure alterutrius, de cuius decisione non habet aliquis fiduciam nec causam hoc sperandi, cessio est necessaria pro salubri remedio et pro tollendo scandalo, et hoc est ita notum et clarum, ymo satis notorium cuilibet bene intuenti, quod non debet hoc dubium reputari, et sic cessat argumentum.
fol. 86r, to lines 371-73: Scilicet sub certo modo et indubitato. Hic autem, licet aliqui credant certum, si queritur in obediencia alterutrius, remanerunt tamen, et ipsimet sciant quod habendo respectum ad ecclesiam universallem, est incertum, nec ipsimet hoc ignorant. Sic non obstat illa nota.

fol. 86r, to line 376: Dicitur ibi in effectu quod cessio amorum non sufficeret nisi alii diceretur. Et hoc est verum, nec est contra intensionem parisiensis universitatis de via cessionis; quod licet in epistola non intersit practica, tamen quicunque sane intelligens debuit supplere ut sit sensus, quod via cessionis practicata eo modo quo fuit alias advisatum, ut sic habeat ingressum, progressum, et egressum effectualum, quod importat provisionem unius indubitatii pastoris, est melior, etc. Et hoc sic intelligendo non impugnatur in epistola oxoniensi, nec per aliquem alium ut creditur possit racionabiliter impugnari impugnata de oxoniensi ad parisiensem. Vide infra, parte ultima tractatus G. Ornacensis prepositi.

fol. 86v, to lines 410-11: Ex allegatis pro substraccione appareat difficultas, ymo impossibilitas huius remedii quod ordinarium dicunt. Ex quibus appareat quod huic remedio, omnibus attentis, locus non est, et sic non obstat. Item quando pinguius providetur ecclesia per extraordinarium, sicut in casu nostro, rebus circumstacionatis ut sunt, tunc non est ordinarium remedium capiendum. Notat glosa c. Cupientes, § Denique, De eleccione, super verbo "a gracia," in fine.

fol. 86v, to lines 422-24: Non obstat, quia ad eius requestam pro parte regis nuncius seu legatus solemnissimis missis, eum de via cessionis requirentibus, hoc non dixit, nec eciam cuiquam bullam aut certificacionem competentem tradidit, sed sub bulla eam quasi non iuridicam refutavit. Et sic nulla erat spes quod per eam procederet. Preterea, sic loqui, "faciam pacem" etc., nimirum generale et confuse dictum est, et sophisma est ad papatum semper retinendum et ad differendum ecclesie unionem, et nos verbis pagare. Preterea quis princeps sub tali generalitate vellet exponere se et sua ad laborandum per hanc viam, de cuius effectum nichil bonum potest presumi?

fol. 86v, to lines 436-39: Hec racio non obstat, quia stat quod aliquis singularis habet conscientiam de aliquo, et tamen iudex ad quem spectat in illo caso providere ad illud compellat eundem, et tamen sancte et iuste, iuxta c. Inquisicioni, De sentencia excommunicacionis; De restitucione spoliotorum, Litteras. Sed est verum ibi quod in hoc casu nostro non debent aliqui singulares ita esse obstinati quin ad dictum sapientum deponent scrupulum si habeant, quia in facto alieno non possunt esse ita certi quod debant in tali obstinacione permanere. Et si qui essent, non debet propter eos obmitti quin hoc fiat. Et bona intencione fit, scilicet ad finem pacis habendae; debent igitur remorum deponere si habeant. Facit 2ο ad Cor. 4ο: "Captivantes omnem intellectum in obsequium Cristi," sicut notat Astensis, libro iiο, titulo De bonitate et malicia interioris actus. Quod autem maxime hoc tempore in
defectu ecclesie et in casu tante necessitatis spectet [!] providere, alibi plenissime est probatum.


fol. 87r, to lines 459 ff.: Hoc non procedit ubi notorie offendit ecclesiam vel statum ecclesie; ymo eciam in alienacione rei ecclesie posset sibi dici, "Cur ita facis?"—ut c. Cum non liceat, sepius allegatum. Item hoc non procedit ubi contra consilium fratrum, scilicet cardinalium, aliquid facit voluntarie, maxime in arduis: notat glosa, c. Super eo, De hereticis, in Sexto; et Henricus, c. Antiqua, De privilegits, di. ii. Item si hoc procederet in papa indubitato unico, tamen alius est in papa dubitato, quando scilicet duo volunt sic retinere papatum, de quorum qualibet est dubium probabile toti mundo, et circa illa que faciunt ad tollendum hoc dubium. Quia hoc econtra [?] potest dici, prius esse declarandum an sit papa. Item illud quod dicitur, "Cur ita facis?" etc., non repetitur dictum de papa sed de deo, lob ix° c., § Quamvis, De penitencia, di. iii., licet aliquociens similitudinarie per aliquos doctores inductur in papa. Sed non artat talis argumentacio quod oporteat habere locum in persona pape, qui sepe fallit et fallitur, per iura supradicta.

fol. 87r, to lines 489-92: Ymo dicendum est contrarium, quia in hoc pape non esset obediendum, ut supra dictum fuit. Quod autem in ista racione dicitur procedit in duobus (precipientibus) aliquia de se licta [ms.: -tis] et que spectant ad officium precipientis: tunc magis pape obediendum esset quam regi; sed non tangit casum nostrum, quia unus licitum, alter illicitum preciperet, quare etc.

fol. 87r, to lines 501-02 (?): Sibi opponeretur, ultra hic scripta, quod non licet in hoc declaracionem facere, quia tangit papam, de quo nullus debet iudicare, ix. q. iii., Nemo; lxix. di., Eieccionem, cum similibus videtur obstare. Quia alius est se informare ad sui certificacionem et avisamentum, quid agendum in aliquo negocio pro salute sua et pro consciencia, et illud sequi
quod per consilium reperitur esse faciendum, sibi ipsi consulendo—sicut est factum per regem et prelatis in istis conciliis, concludendo eciam pro substraccione, ne coquinenumur in scisme; et hoc licet, ar. De rescriptis, c. Cum contingat, in fine. Et aliiud per modum iurisdictionis et auctoritatis decernere papam esse privandum et similia; quia non licet, ut c. Nemo allegato. Sed maxime procedit hoc in caso scismatis: ar. illius quod notat glosa c. Cum non liceat, De prescriptionibus, in principio.

fol. 87r, to lines 501-03: Verum potest esse de unico; hic autem de origine agitur et sic vicious ortus occidit obedienciam ubi fovemus eum in scisme et status retencione, cum scandalo ecclesie et ad impedimentum et tardacionem unionis optate. Item aliiud est recedere ab obediencia aliqua prelati tanquam indigni propter aliquid peccatum non transcenden personam, ut homicidium et similia, ut generaliter quando per eum alii non coinquinatur. Ex illo sic procedit c. Nonne, et non licet ante sentenciam. Sed aliiud est quando continuando obedienciam faveo in scisme et sic in eo quod malus est, scilicet in retinendo papatum. Quia sic obediendo male facio. Ut in simili notat Hostiensis, c. Tua nobis, De decimis, § Pretextu, de illo qui solvit iura parrochialia curato suo quern scit symoniacum, quia non tenetur. Facit quia in scisme non habet locum c. Nonne, notat glosa, c. Cum non liceat, De prescriptionibus. Ideo tunc debo eum statim fugere sicut lupum. Item c. Nonne loquitur quando pro dubia suspicione aliquis recedit a prelato, ut ibi dicit textus. Secus si pro certa aut vehementi suspicione aut manifesta, sicut est in caso nostro, prout ex factis constitit et notorie constat, maxime in caso tangente heresim vel statum tocius ecclesie, sicut sumus. Item si ageretur hic de corolaris que possunt inferri contra damnum, ut quod bona sint confiscata et similia, hab(er)et locum contrarium; sed hic agitur de substraccione que fit ex causa respectu ad illum qui facit, scilicet quia sine prejudicio salutis anime non potest cum tali communicare, sicut dicimus quod heretic ci eciam ante sentenciam non est favendum—c. Adversus, De hereticis—quia cum eo inquinaremur et foveremus in malo, licet in aliis non habebo eum pro condemnato ante sentenciam—c. Cum secundum, De hereticis, in Sexto. Sed in caso nostro non possum obedire in aliquo ut pape quin faveam scismati in caso quo sumus, attenta diuturnitate scismatis et obstinatione contendencium; et sic in fide offenderem articulum “Unam sanctam” etc. Item licet de papa suspecto de aliqua heresi non liceat recedere ante sentenciam, etc., iuxta § Hinc eciam, alter verum est in aliis: sed in illo de quo suspectus est, non deboe favere aut communicare cum eo, iuxta c. Si adversus, allegato. Et sicut Paulus restitit, etc. In caso autem nostro, sibi obediendo in aliquo communicaremus cum eo in eo in quo suspectus est, scilicet in scisme fovendo. Item in contrario apparat quod quo ad ecclesiam et homines, ille Symachus papa repertus est immunit ab impositis; ideo soli deo, quia secretum, relinquebatur causa sua, ut ibi; nec debuerunt clerici ab eo recedere qui non apparebat culpabilis nec suspectus, sed solum erat accusatus. Hie autem secus,
quia suspectum et obstinatum se ostendit manifeste, quod ex relacione factorum declaratum fuit in concilio satis ad plenum.

fol. 87r, to “Ymo intruso . . .” (see apparatus to line 638): Hoc potest procedere ubi salva consciencia ei obedire potest, quia factum suum non contaminat sibi obedientes. Secus in casu nostro, attento scismate in quo sumus et eius duracione et aliiis considerandis, quia salva consciencia amplius obediere non possemus. Nec est voluntarie adinventum, sed cum bonis racionibus et pluribus communicatis consilliis prelatorum ecclesiae gallicane reperitur ita esse. Nec est simile quando aliqui privati vel sine tanto consilio voluntarie recederent a prelato tolerato, quod non licet secundum opinionem Innocencii hic allegatam. Facit c. De quibus, xx. di. Et quo ad personam privatam vel singularam, non est scandalum tale si obediret, nec ita fovetur scisma, sicut esset per obedienciam regni vel patrie.

fol. 87v, to lines 514 ff.: Licet autem a principio forsitan bene fuerit actum, attenta testificacione cardinalium, tamen ex quo nunc videmus per spaciun viginti [ms.: xx”] annorum non profuisse, nec spes est de reducione unius obediencie ad aliam, non est in hoc statu diuicius insistendum si caritatem aliquam habeamus. Nam et alma mater ecclesiae nonnulla racionabiliter ordinat, que postmodum revocat vel commutat in melius, etc.—c. Alma mater, De sentenda excommunicacionis, in Sexto. Et imperator eligit se pocius corrigi quam ab aliis corrigitur—Autentica De nupciis, § i., coll. iii.iii. Facit dictum Augustini, De civitate dei libro: Si propterea quisque male agentibus parcit, quia tempus opportunius inquirit, non est hec accio cupiditatis sed consilium caritatis.

fol. 87v, to line 533: Non obstat, quia rex hoc faciendo non recedit a tramite veritatis et procedit bono zelo. Ideo non curandum quid os loquatur loquentium iniqua—c. Magne, De voto.

fol. 87v, to lines 545-47: Sic eciam nunquam fuit scisma simile, ut quod haberet tale dubium et ita involutum. Et ultra in casu nostro iam sunt quasi omnes promoti prelati per alter(utr)um, et sic sunt pars formata. Quis de hoc iudicare inter partes? Multe sunt circumstancie quibus ostenditur scisma hoc esse aliis plurimum difficile [sic]. Item non oportet arguere exemplis sed legibus—l. Non exemplis, C. De probacionibus; l. Nemo, C. De sentencia et intellecto omnium iudicum.
Appendix' II

The Marginalia in C

As indicated above, p. 60, C contains marginal glosses that in some cases develop the argument in the text, in other cases refute it. A selection of the more interesting passages is offered here.

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fol. 102v, to lines 654–57: Prima racio pro substraccione: quia non est obediendum ubi est notorie scandalum ecclesie, periculum et subversio animarum. [then, added later:] Ergo nec Simoni de Cremaut, qui adhuc peior est quia [ms.: quam] hic falsa dicat contra papam.

fol. 103r, to lines 698–700: Illa glosa dicit sic ad contextum . . . [the gloss is quoted; see note 120, above]. Unde hec glosa tria requirit: criminis notorietalem, persone incorrigibilitatem, et ecclesie scandalum; et tunc dicit quid potest attemptari.


fol. 103v, to line 751 (“Preterea”): . . . et facit quod notatur in c. Cum contingat . . . in fine prime glose, ubi videtur dicere quod quelibet notificacio sufficit ut iudex dicatur dubius.

Ibid., line 756 (“dubium”): Contra tamen facit xi. q. iii., Non solum, ubi non solum reus est qui falsum de aliquo profert, sed qui aurem cito criminibus prebet. Quia non est malum facile credendum, lxxxvi. di., Si quid, maxime per iudicem, ut ibi notatur . . .


fol. 104v, to line 805 (“Quante”): Et ibi glosa bona que tenet quod prelati et judices etc. tenentur repellere iniuriam etc. si possunt etc. . . .

fol. 105r, to lines 812–17: Loquitur contra scismaticos ut patet ex principio illius, ubi dicit quando vult deus citare potestates et adversus hereticos et adversus scismaticos, adversus dissipatores ecclesie etc.

fol. 105r, to line 836 (“iura antiqua”): id est, secundum legem Iustiniani. [Then line 837, “delinquentes”] Nisi esset crimen ecclesiasticum, quia tune secundum canonem ab episcopo suo iudicantur, aliis iudicibus nullam communionem in his causis habentibus, ut ibi.


fol. 105v, to lines 861–79: [a number of glosses summing up or quoting in full the cited canons.]

fol. 107r, to lines 1064–67: Glosa ibi dicit sic ad contextum, super verbo “ad ordinandum”: “Sed quid si monachus factus sit papa invito abbate? Debet redire; sic et ipsumet compelleit se redire, quia cum teneatur de aliis etc.”

fol. 107r, to lines 1099–1102: Propter scandalum sunt prelati criminosi et infames removendi, quia scandalum est populo dei tales personas super se positas habere, quas ultramodum viciosas esse constat. 1. di., c. De his vero.

fol. 109r, to lines 1200–01 (“precepto”): Et satis probat verbum cogitur ibi positum.
fol. 109r, to line 1220 ("summa"): E. q. [24. q. i.], c. Non afferamus, ubi dictit "quod omne scisma habet heresim annexam, maxime ex quo perseverat. Unde non est differencia nisi sit circa principium" etc.

fol. 109r, to lines 1222–23 ("videatur"): Et ibi notat glosa quod non est differencia nisi sicut inter dispositionem et habitam. Primo enim dicitur scisma, sed cum post tempus pertinaciter adheserit secte sue, dicitur heresis. Vel aliter, quod omnis hereticus est scismaticus, sed non econtra, et sic est illa differencia que inter genus et speciem.


fol. 109v, to lines 1314–18: Licet male faciat in hoc, propter hoc non debet denegari prelato obediencia, sed debet prelatus cogi per superiorem: nota. glosa, 95. di., Esto subjectus, super verbo "deseratur."

fol. 109v, to ca. line 1335: Libertatem namque quam sibi maiores conservare desiderant, minoribus suis conservare debent, in c. Prohibemus, De censibus.

fol. 109v, to line 1372 ("illa"): Ubi dicitur, "illa prepositorum sollicitudo laudabilis est utilis [?; et?] illa custodia laudabilis, in qua totum racio agit et furor sibi nil vendicat; restringenda est sub racione potestas" etc.

fol. 108r, to lines 1411–12 ("unus . . . curatur"): Sed sentencia intrusi nullo modo ligat. Et sic propter illam non debet dici suspectus in fide, nec de hoc apud ipsum deum [?] et suam obedienciam est dubium, et si secus esset, nos essemus pariter suspecti, et maxime domini cardinales qui per processum intrusi sunt anathematizati etc. et sic heretici etc. Unde non militat dicta racio.

fol. 108r, to line 1422 ("omnibus"): Eciam in subditis, ut prelatos correccione caritatis corrigan, ut patet per sanctum Thomam, iia. iie. q. 33, et 2. q. 7, per totum [?], licet glosa videatur contra, 2. q. 1, SÌ peccaverit; Hug. tamen
The Marginalia in C


fol. 108v, to line 1495 ("papam"): Pro hac opinione videtur glosa 9. q. 3, c. Nemo, ibi: Item cum papa peccat etc.

Ibid., line 1499 ("in papa"): Hoc ecallm videtur innuere glosa c. Si papa.

fol. 108v, to line 1510 ("dispensator"): Et tamen multo facilius deponi debet et potest quilibet dominus temporalis quam papa, ut patet ex notatis per Ioannem Andree in c. i., De renunciacione, Libro sexto, super verbo "insufficientem," et supra dictum est.


fol. 110v, to lines 1576 ff.: Multum obstat quia nullum ratum est consilium aut erit unquam nisi fuerit auctoritate apostolice fulcitum, 17. di., Regula. Unde non consilium sed consiliabulum vel conventiculum dicitur, et cassatur quidquid etc., 17. di., Multis. Et licet aliqua consilia fuerint sine romani

fol. 110v, to line 1596 (“sibi”): Utrum hoc sufficiat ad firmandum auctoritatem consilii!

fol. 110v, to line 1622 (“Francie”): Ex hoc videtur quod non potest dici unum et idem consilium Francie et post Hispanie.

fol. 111r, to lines 1650–51: In consilio generali non attenditur numerus presencium sed quod omnes sint mandati vel moniti generaliter venire; licet non veniant, in presentibus resedit potestas ecclesie et dicitur ibi esse ecclesia universalis. Ar. c. Cum nobis olim, cum glosa, et c. Quod sicut, circa medium, et c. Ecclesia, lo i. in prin. De eleccione.

fol. 111r, to line 1659 (“Si quis”): Istud bene faceret si convocati in consilio Parisius non determinassent aliquid quousque audita opinione aliorum, sed per se diffiniverunt, et sic consilium eorum fuit in se perfectum etc.—pro quo finis dicti c. Si quis. Et securum fuit consilium Yspanie, et sic est aliud consilium. Non enim voces eorum tanquam plurium admititurur quos temporum diversitas simul interfuisse prohibuit, ut dicit textus 3. q. 9, Nichilominus, et ad hoc facit l. Si unus, C. De testamentis; nam diversitas temporis et personarum consistencium et presidencium et convocancium probant non esse unum et idem consilium, sed diversa. Sed alias: Ubi est idemptitas in persona quamvis diversitas in tempore censeatur idem consilium, ut nota 16. di., c. Habeo librum, in glosa finali. Et oportet dicere quod sunt duo consilia licet idem concluedencia, et neutrum fuit generale ecclesie sed solum unius regni, nec ex supervenientibus aliorum consensibus potest primum consilium dici generale ecclesie, nec nova species sibi daret nisi id quod prius.

fol. 111v, to line 1716 ("presentibus nuncius suis"): Hoc non sufficeret, quia requisitum quod habeant speciale mandatum ad hoc...
fol. 111v, to line 1719 ("necessarium"): Ymo videtur tunc plus necessarium ex natura cause, que ad sedem apostolicam debet deferri, 24. q. 1, Quociens. Alioquin esset durum et magnum periculum si in causa tangente universalem ecclesiam et salutem eciam, unum solum regnum posset diffinire.

fol. 111v, to line 1723 ("multa"): Et illa non videntur nisi prius confirmata per sedem.

fol. 111v, to line 1731: In hoc est advertendum quia valent quod si non prestiterunt eis obedienciam, licite poterunt convocare consilium.

fol. 111v, to line 1742 ("pape"): Ymo consilio.


fol. 116r, to line 1943 ("negligencia"): . . . nec est sine culpa qui desidem et negligentem obiurgare et cohercere differt, 84. di., Pervenit, circa medium; et propter negligenciam quis deponitur, 81. di. c. Dictum cum ibi nota. in glosa prima.

fol. 126v, to line 2614 ("cogi"): Pro hoc facit quia adicio hereditatis debet esse libera, alias non valet . . . [civil-law citations] . . . , et tamen recusans adire in dampnum alterius cogit adire . . . [more such citations, supporting the argument in the text]. . .
Appendix III
The Marginalia in F

Although evidently originating as a clear copy of G, to be sent abroad, 
ms. F has a few marginalia in what is otherwise a remarkably clean set of 
 margins. Apart from a few rubrics and corrections, there are four of these 
additions which deserve notice, since they support or fit in with the argument 
of the treatise, and may therefore be the work of Simon de Cramaud or 
someone in his secretariat. The hand seems to be the same as that of the 
rubricator, different from that of the text and corrector—but these are the 
impressions of a non-expert, working with a microfilm. There are defects 
due to trimming.

* * *

p. 64 (of F), to lines 1801-04: Septa [sic] Machameti fuit introducta tempore 
pape Honorii primi, anno domini deli°, et Eraclii imperatoris circa finem vite 
sue. Et causa istius erroris fuit tirannia dicti imperatoris, quia habita victoria 
de Persis, nimis premebat eos et regiones vicinas ut Arabes, Caldeos, et alios 
confines Persis; quod fuit materia scismatis inter Latinos et Grecos, et eccle-
siam romanam et constantinopolitanam. Assumpta _____ occasione rebellandi, 
asuumruptunt occasionem divini cultus di(VER)s, ad nunquam obediendum. 
Idem(f)ecerunt Greci ad nunquam obediendum (rom)ane ecclesia, quia div-
ersum ritum (in)ceperunt in ecclesia ministrandii et (in) diversos prolapsi 
sunt errores. (Unde) ex turbacione [?] cum imperio inchoata (est) et ista secta 
Machometi, et _____ rebellio perseveraret, fecerunt (sc)isma, ut non solum 
recederent (ab) imperio sed a cristianismo. Et quidam Sergius monachus 
estorianus fuit acceptus multum Machometo—et illius secte Nestorii habent 
multa monasteria Sarraceni. Tirannicus autem principatus Eraclii fuit causa 
huius erroris et secte. Machometus autem de Arabia dedit eis legem (et?) 
Alchoranum; ipsi vero devastando Siriam, post Egiptum, deinde Affricam, 
post (His)paniam, omnes neci dabant qui (re)cusabant legem Macho-
meti. Et sic introducta fuit di(csta) secta, secundum Tholomeum de 
Leuca post alios, libro xii°, c. i., ii., et iii.

p. 68 (of F), to lines 1997 ff.: Item quod pro iusta causa posset clerus se 
subtrahere a pape obediencia et communione, facit c. Anastasius, xix. di., 
ubi clerus—scilicet episcopi, presbiteri, diaconi, et alii clerici—tempore 
Theodorici regis Gothorum se separaverunt ab Anastasio papa secundo, qui 
communicavit Fotino diacono thessalonicensi sine consilio eorum. Cum ergo 
impresenciarum sit eadem vel maior causa, videtur quod liceat ecclesie se 
subtrahere ab obediencia domini Benedicti.
p. 80 (of F), to lines 2332–36: (Secundum) beatum Bernardum in materia scis(ma)tis inter Innocencium II. et Petrum (Leon)is, in epistola ad Gerar-dum (eng)olismensem et ceteros episcopos (Aqui)tanie, convocacio consilii — debuit fieri a principio, — alias magis fieret ad (disce)ptandum quam ad concor(dan)dum.

p. 81 (of F), to line 2342 (after “audivi”): Et ad vincendum Greco(s) per maiorem numerum.
Appendix IV
Simon de Cramaud: Pro via cessionis

[Statement in preliminary debate of the First Paris Council, ca. 1 February 1395; the only known copy of the report is in ASV Arm. 54, t. 21, fol. 61rv.]

Ista sunt tacta per Patriarcham

Primo, c. Si duo, 79. di.,¹ induco modo quo sequitur; et si dicatur quod non contra fas dominus noster est electus, maior pars cristianitatis tenet contra, ex quo quilibet pro rebus debet habere dubium quia non debet inniti prudencie sue; et per consequens debet eligere viam cessionis in qua nullum est periculum anime, et in retinendo est maximum, per c. Significasti, De homicidio.² Confirmatur quia si vellet ecclesiam dei sic divid, deberet ab ipso auferri, per c. Afferte, De presumpcionibus.³

Item, supposito periculo animarum quod imminet hominibus propter scisma, sequitur quod secundum debitum caritatis per quod quis tenetur diligere proximum sicut se ipsum, si non faciat ad sedandum scisma quod potest, facit contra debitum caritatis, iuxta dictum Augustini qui ponit quod "qui desinit obviare cum potest, consentit," 23. q. 3, c. finali [Ostendit], cum multis similibus.⁴ Et alibi Augustinus: Ubi non est caritas non est iusticia, quam si scismatici haberent, ecclesiam que corpus Cristi est non dilaniarent—24. q. 1, Ubi.⁵ Et inde Beda super Marcum: "qui precepta caritatis spernit, deum qui caritas est ut Iudas prodit," 11. q. 3, Abiit.⁶

Item episcopus propter obstinanciam subditorum compellitur cedere, per

[Since almost all the canonistic authorities do duty again in Simon’s treatise De substracciōne, the indices to that work can serve here as well, to locate references to and quotations from a given authority. The following footnotes are chiefly cross-references to the treatise and its notes, as a matter of convenience. See SdeC, pp. 116 ff., for the context.]

¹ Annotations, n. 159, above. Since Si duo is not given much play here, the “modo quo sequitur” may refer to an unreported segment of the speech.
² Annotations, n. 211, above.
³ Annotations, n. 113, above.
⁴ Treatise, lines 794 ff., above.
⁵ Not in the treatise; 24. q. 1, c. 29, where the syntax shows that “quam” refers to “caritas”/“dilectio”; Simon’s “scismatici” replaces “heretici”—or, in the Editio romana, nothing.
⁶ Not in the treatise; 11. q. 3, c. 83. Simon’s quote is free but just.

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c. Mutaciones, 7. q. 1.7 Faciunt que notantur in c. Nisi cum pridem.8 Et racio: quia utilitas publica prefertur private; et debet fieri episcopus non ut presit sed ut prosit, ut ait Augustinus in c. Qui episcopatum, 8. q. 1.9 Ergo idem de episcopo romano, licet non sit subjectus iuri positivo, quia preceptum iuris divini habet: “Patere legem quam ipse tuleris,” ut ponit Archidiaconus in c. 1. [Omnis leges]. 1. di.10 Quod si non faceret videretur esse procedendum, quia no habet superiorem, contra ipsum de facto tanquam contra illum qui se intrudit in pappatum, videlicet per viam resistencie, per c. Si quis pecunia et c. In nomine domini, et notata Innocencii in c. Licet de vitanda, et c. Patet, 3. q. 1.11 Maxime quia papamet fatetur, ubi facit contra iura se esse erroris magistrum non veritatis disciplulum, ideo se alias submisso iudicio legatorum regis Franciae—in c. Nos si incompetent, 2. q. 7.12 Ymo principes catholici qui ecclesiam tuendam a domino receperunt etc. deberent ipsum compellere, per c. Principes, 23. q. 5, quod fuit Ysidori13—attento quod ista parificatur: male incoare et male retinere, in c. Sepe contingit, De restitucione spoliatorum.14

Item debet cedere cedula, si videatur regi et consilio melius expedire, quia videtur iurasse,15 et “os cum mentitur occidit animam,” 22. q. 1. Iura.16 Et tenetur rex eum ad hoc compellere quia ut ait Gregorius, “Consentire videtur erranti qui ad ea que corrigi possunt debite non occurrit,” et “Negligere quippe cum possis disturbare perversos nichil aliud est quam fovere, nec caret scrupulo societatis occulte qui manifesto facinori desinit obviare”—83. di., c. 1., 2., et 3. [Si quis episcopus, Nemo quippe, Error].17 Et quamvis in modo compellendi non sit insistendum, per motiva magistri Egidii, tamen per nos attenta materia est regi publice consulendum, et per regem domino nostro insinuandum; quia ut ait Augustinus, “Qui veritatem celat iram dei
super se provocat, quia magis timet hominem quam deum,” etc.—11. q. 3., *Quisquis*;\(^{18}\) et scribitur, “Clama ne cesses et quasi tuba exalta vocem tuam,” 43. di., *Si* [t] *rector*.\(^{19}\) Ex quibus videtur dominum nostrum cedere debere et nos eciam debere consulere, maxime quia via cessionis est habilior et conveniencior, ut per raciones per universitatem et alios dominos tactas apparet manifeste.

\(^{18}\) Cf. treatise, lines 112–13, above; the quoted passage is not used in the treatise.

\(^{19}\) Treatise, lines 75–77, above.
Appendix V

The Works of Simon de Cramaud

1. Statements in connection with the First Paris Council
   a. Preliminary speech Pro via cessionis: “Ista sunt tacta per Patriarcham”
      DATE ca. 1 February 1395. ATTRIBUTION in ms. & evident from text. MS. ASV, Arm. 54, t. 21, fol. 61rv. PUBLISHED here.
      DATE between 2 February and 15 February 1395 (see AN, J 518, fol. 127r). ATTRIBUTION clear from substance, and rubric 2 has a notation at “prelati” in the hand of Martin de Salva, “creditur quod Patriarcha.” MSS. (1) AN, J 518, fols. 131r–133v, 125r–127r, (2) ASV, Arm. 54, t. 21, fols. 51r–54r. PUBLISHED in RSD, 2:226–44, probably from an exemplar of ms. 1, with variants. ABRIDGED by Jean Canart at the Council for voting purposes, the text in J 518, fols. 99v–100v, cf. 125r, and published in Ampl. coll., 7:462–63.
   c. Instructions for ducal embassy to Avignon: “L'instruccion baillee par le roy”
      DATE between 18 February 1395, the end of the Council, and the departure of the embassy in the latter part of April. ATTRIBUTION—it is an amplified translation of item b above. MS. J 518, fols. 83r–98r. PUBLISHED in Ampl. coll., 7:437–58.

2. Treatise, De substraccione obedientiæ, “Nunc reges intelligite”
   DATE 1396/97. PUBLISHED here—see the Introduction.

3. Letter to the magistrates of Frankfurt, 21 July 1397
   PUBLISHED by J. Weizsäcker, Deutsche Reichstagsakten, 2 (Munich, 1874), 466–67, with date and attribution; also in Auctarium chartularii Universitatis Parisiensis (cited above, Annotations, n. 218), 1:743 n. 1. GIST—Simon requests lodging, etc. as a royal envoy to the Frankfurt Diet of July 1397; cf. Valois, 3:126.

4. Letter to King Richard II of England, “Potens et inclite rex!”
   DATE 1397, from content and context. ATTRIBUTION—the language, authorities, and autobiographical passages are typical for Simon; the letter transmits a “libellus” whose description fits No. 2 above: “Et ego . . . pro parte regis patris vestri regna diversa peragrando circa modum prosequendi ad unionem ecclesie, diverse oppinantes audivi, . . . et audita in libello quod de mandato regis sicut melius potui recollexi, que
vestre maiestati . . . mittere disposui." He admitted favoring the subtractionist opinion: "dubius et anxius, ad partem . . . affirmativam . . . de presenti magis inclinatus." Cf. Simon's description of his treatise in the text. MS. J 518, fols. 303r–304r, with an incorrect rubric ("domino nostro regi").

5. Letter from King Charles VI to King Wenceslas IV of Bohemia and the Empire, "Serenissimo ac illustriissimo principi Winceslao"  
   DATE 1397, before September, for the Schism has been going on "per decem et novem annos" (fol. 289r). "Nos et reges ceteri catholici via regia incedentes" (fol. 289r) may refer to the Anglo-French-Castilian embassy of 1397 to the two popes. It was brought to Prague by a French embassy, probably in August 1397, and Wenceslas sent a copy to the Elector Palatine Ruprecht in December 1397 to justify the former's meeting with Charles VI the following March—all this from F. M. Bartoš, Čechy v době Husově (Prague, 1947), pp. 151, 153. ATTRIBUTION—most of the text is composed of material obviously taken from Simon's treatise (No. 2 above); MS. J 518, fols. 289r–290v. PUBLISHED in Ampl. coll., 7:622–25.

6. Glosses on "Fundamenta vie iusticie"  
   DATE in autumn 1397. The "Fundamenta" was written in the summer of 1397 (Valois, 3:118 n. 1). There is a reference to the letter of the King of Castile to the King of Aragon, 10 September 1397 (see Valois, 3:137), and the terminus ante quem appears from the statement (fol. 341v) that Boniface IX "is not yet known" to have rejected the via cessionis—he did reject it in September 1397 when the Anglo-French-Castilian embassy offered it to him, and this would have been known in Paris in October. References to the Schism's having lasted "per xx. annos" (fols. 341v, 343r) mean only that the twentieth year was still going on (i.e., until September 1398). ATTRIBUTION—phrasing and arguments seem unmistakably Simon's. MS. J 518, fols. 339r–344r. GIST—the glosses refute the via iusticie favored by Benedict XIII.

7. Speeches at Third Paris Council  
   a. Speech of 22 May 1398 opening the Council  
      The first part survives in ASV, Arm. 54, t. 21, fols. 190r–191v; this corresponds to the text printed in Ampl. coll., 7:712–14C, from another ms.; ibid.: 714–17 contain added material perhaps introduced at various points in the speech. Cf. the independent brief summary in ALKG, 6:276 f. There are no problems of dating or attribution.
   
   b. Speech of 30 May 1398 replying to opponents  
      Included in the main report of the Council's proceedings, BN, ms. lat. 14644, fols. 58r–61r, and published thence in BduC, pp. 20–28 (and thence in Mansi, 26:855–63); another report in ASV, Arm. 54, t. 21, fols. 192r–196r, part of which Ampl. coll., 7:717–19 pub-
lishes a fuller text from another ms. Cf. the brief notice in ALKG, 6:284.

8. Letter to Cardinal Bertrand de Chanlac, 28 October 1398
   **DATE & ATTRIBUTION** given in text. **MS. ASV, Arm. 54, t. 33, fol. 49v. PUBLISHED** in ALKG, 6:287 f. **GIST**—urges the cardinals to begin working with Paris to implement the subtraction.

9. Letter from King Charles VI to the magistrates of Florence, 2 January 1399
   **DATE**—the letter is dated 2 January; Valois, 3:290 gives the year, which is clear enough from the content. **ATTRIBUTION** evident from style and content. **MS. J 518, fols. 304v–305v. PUBLISHED** in Ampl. coll., 7:627–29. **GIST**—a request that Florence join France's effort to get all major powers to subtract their obediences and attend an inter-obedience council.

10. Treatise *Ad ostendendum clare*
    **DATE** 1399/1400—marginal glosses are dated "Cologne, 25 May 1400" (ms. 396, fol. 10r) and there is a reference in the text to 22 years of schism (ibid., fol. 1r), which would give a terminus a quo of ca. September 1399. **ATTRIBUTION**—the work consists mostly of portions of *De substr.* (No. 2 above). **MSS.** (1) Erfurt, Wissenschaftliche Bibliothek, Amplonianum 59, fols. 198r–220v, (2) ibid., fols. 221r–229v, (3) Ampl. 396, 10 fols. The second contains the whole work, the third has the whole work with long hostile glosses, the first is a clear copy of most of the third.

11. Glosses on the *Allegaciones* of Martin de Salva
    **DATE** 1400—while the *Allegaciones*, justifying Benedict XIII's rejection of the *via cessionis* in 1395, was written 1395/96 (Valois, 3:50; n. 70 to the present edition of *De substr.*), the glosses refer to 22 years of schism (ibid., fol. 1r), also to Richard II of England as "recently dead" (fol. 45r; the news was known in France by the end of January 1400), and the subtraction of obedience by Liège of June 1399 (fol. 47v); see Valois, 3:76, 283–89. **ATTRIBUTION** unmistakable; ideas, language, arguments, authorities, and biographical details are all Simon's. **MS. BN, ms. lat. 1475, fols. 33r–53r. GIST**—a refutation of every argument for a *via iusticie* and against the *via cessionis*.

12. Letter to the Archbishop of Canterbury
    **DATE** about February 1401; see Valois, 3:298 n. 3. **ATTRIBUTION**—Simon identifies himself in the text. **MSS.** (1) Rouen, ms. 1555, fols. 296r ff., (2) BN, nouv. acquis. lat. 1793, fols. 161r ff. **PUBLISHED** in Thes. nov., 2:1330–50 from ms. 1.

13. Letter to an English prelate (the Archbishop of Dublin?), "Excitemus nos frateres"
    **DATE** early 1401—this letter is related to No. 12; it asks the addressee to get Henry IV to send English representatives to the Metz Diet set for
late June 1401: “Metis in festo beati Iohannis . . . conveniamus, . . . Vos ergo pater, cum domino vestro quem deus multis virtutibus insignavit, quantum efficacius poteritis laborare, ut ad predictam convencionem veniant de Anglia prelati notabiles” (fol. 258v). There are also references to 23 years of schism (fols. 252v, 254r). **ATTRIBUTION** given in a rubric in the hand of Martin de Salva, “epistola patriarche nova seu sub eis nomine publicata.” The substance and language are characteristic too. *MS. ASV, Arm. 54, t. 21*, fols. 252r–258v.

14. Letter to a cardinal, 6 June 1401
**DATE** in the text. **ATTRIBUTION** assigned in the rubric, “copia littere misse per patriarcham uni domino cardinali,” and confirmed by the contents. *MS. ASV, Arm. 54, t. 27*, fol. 184rv. **PUBLISHED** in ALKG, 7: 155–58. **GIST**—information about various actions connected with the coming Diet of Metz; refers to items 12 & 13 above.

15. Glosses on the anti-subtractionist letter of the University of Toulouse
**DATE** April/May 1402. The Toulouse letter was presented to Parlement in mid-March 1402, and the glosses were written in the following month according to their author’s statement: “Ego inter doctores decretorum Parisius minimus, statim predicta epistola domino nostro regi presentata, posui manum ad calamum, et infra mensem a die presentacionis ipsam sic glosatam sue magestati presentavi” (BN, *ms. lat.* 1573, fol. 37r; see Valois, 3:260, 266—where however this item and the following one are treated as anonymous). References to 24 years of schism (ms. 1, fol. 502r, e. g.) fit in with this. **ATTRIBUTION** explicit in the superscription of ms. 5 and in the table of contents of ms. 1’s codex; obvious too from content, style, etc. **MSS.** (1) AN, J 518, fols. 500r–555v, (2) BN, *ms. lat.* 17585, 32 fols., (3) BN, *nouv. acquis. lat.* 1793, fols. 97r–159r, (4) Biblioteca Apostolica Vaticana, *Vat. lat.* 4117, fols. 223r–256v, (5) Bonn University, S 594, ii, fols. 42r–71r.

16. Letter to King Henry III of Castile, “Illustrissime princeps”
**DATE** mid-1402; the letter transmits a copy of the Toulouse letter with Simon’s glosses refuting it (No. 15 above), and exhorts the king to stay firm in subtraction. The *terminus ante quem* would be France’s restitution of obedience 19 July 1403, or Henry’s own restitution of 29 April 1403 (Valois, 3:334), but it seems more likely that Simon sent his work very soon after finishing it, since he knew Henry was waver ing. **ATTRIBUTION** certain from language, substance, tone, etc., and compare the “Ego . . . minimus” phrase quoted in No. 15 above with Simon’s self-identification in his treatise, at n. 17. *MS. BN, ms. lat.* 1573, fols. 32r–37v.

17. Letter from the Duke of Berry to Pope Innocent VII
**DATE** ca. 22 February 1405; the letter was sent with Berry’s envoy who went with a University of Paris delegation to the new pope in early 1405—see Valois, 3:423 n. 3. **ATTRIBUTION** clearly Simon’s work on
the basis of language, tone, authorities, and substance. PUBLISHED in *Ampl. coll.*, 7:695–702.

18. Letter from the Duke of Berry to Innocent VII (or Gregory XII)  
**DATE** late 1406 (or early 1408). The text refers to the earlier letter from Berry, evidently No. 17 above, and complains that the pope’s original promises of cession have been belied by procrastination “in annos”—this last either an exaggeration or an indication that the letter was written later and addressed to Gregory XII. Innocent died on 6 November 1406. See Valois, 3:599 n. 3, for the later date. **ATRIBUTION** as with No. 17 above. PUBLISHED in *Ampl. coll.*, 7:706–12.

19. Speeches at the Fourth Paris Council  
   a. Speech of 27 November 1406, PUBLISHED in BduC, pp. 118–24  
   b. Speech of 8 December 1406, PUBLISHED in BduC, pp. 211–18  

20. Speech to Gregory XII in Rome, 18 July 1407  

21. Speech at Council of Pisa, 8 May 1409  
   **DATE** given in other sources (see below). **ATRIBUTION** given in the ms. and evident from the substance and style. **MS.** Wolfenbüttel 2330, fols. 263r–268v. PUBLISHED by Johannes Vincke, *Schriftstücke zum Pisaner Konzil* (Bonn, 1942), pp. 165–77. **GIST**—it defends the Council against charges that it is illegitimate, and ends with official assurances on behalf of the King of France that he does not seek a French or Avignon papacy.

22. Depositions at Pisa, 1 June 1409  

23. Glosses on a letter of Giovanni Dominici to Emperor Sigismund  
   **DATE** perhaps autumn 1414, at any rate between Dominici’s letter (early 1414) and the opening of the Council of Constance in November 1414. **ATRIBUTION**—Simon identifies himself in the text. **MSS.** (1) Hannover Landesbibliothek, I 176, (2) Munich Staatsbibliothek 15183, fols. 128 ff., (3) Vienna Nationalbibliothek 5100, fols. 50 ff. PUBLISHED without citations by Heinrich Finke, *Acta Concilii Constanciensis*, 1 (Münster, 1896), 277–89. **GIST**—a refutation of Dominici’s argument that Gregory XII is true pope, and in general a plea that the Council of Pisa be accepted as valid.
24. Letter to Archbishop Conrad of Prague, 26 September 1414
DATE & ATTRIBUTION given in the text. MS. Třeboň A 11, fols. 138v–139r. PUBLISHED by František Palacký, Documenta Mag. Ioannis Hus vitam, doctrinam, causam ... illustrantia (Prague, 1869), pp. 529 f. GIST the letter acknowledges receipt of information about Hussit-ism and urges Conrad to be vigilant.

25. Treatise on the mode of electing a pope at Constance

26. Last will and testament, 11 March 1422
DATE & ATTRIBUTION given in the text. MSS. (1) AN, X 1A 8604, fols. 91(bis)r–92r, (2) Archives départementales de la Vienne, G 14, No. 1. Simon died 19 January 1423; both these texts are collated copies of the original will submitted to Parlement for execution on 1 February.
The indices include mistakenly cited canons and laws, as well as the correct titles supplied in brackets in the text by the author. All references are to line numbers.

Medieval spelling is used: c not t before soft i; t not j; e not ae or oe.

Abbreviations: “gl.” after a line number means that the reference is to the canon (or law) and/or some gloss on it; “app.” after a line number means that the reference is in the apparatus.

### Index I: Alphabetical List of Canons

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