

1968

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Published Citation

Long, R. James (1968) "Utrum iurista vel theologus plus proficiat ad regimen ecclesie'; a Quaestio Disputata of Francis Caracciolo: Edition and Study," *Mediaeval Studies* 30 (1968) 134-62.

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An Offprint from

MEDIAEVAL STUDIES

Volume XXX

1968

“Utrum iurista vel theologus plus proficiat
ad regimen ecclesie”

A Quaestio Disputata of Francis Caraccioli
Edition and Study

By R. JAMES LONG



PONTIFICAL INSTITUTE OF MEDIAEVAL STUDIES
TORONTO, CANADA

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I. THE AUTHOR

FRANCIS Caraccioli, or Francis of Naples as he is sometimes called, is one of those obscure figures — with whom the Middle Ages is peopled — who only half emerges from the mist of time. Of his life we have a few dates, a few facts, a few entries in various necrologies. Of his writings we have two *quaestiones*, two letters, several excerpts, and a *Summa poenitentiae* whose attribution is very doubtful. Of the man himself, his personality, dreams, ambitions, failures we have only conjecture, only fragile hints gathered from his rather impersonal writings.

On his date of birth and earliest education we have no information. Hemeraeus conjectures that he belonged to the noble family of the Caraccioli, one of the most illustrious families of Naples;¹ Du Boulay accepts this as a fact beyond doubt.² The Caraccioli originated in Greece and immigrated to Naples in the tenth century. A “Franciscus” is, in fact, found in the geneological account of this house, belonging to the second branch, that of the counts of Pisciotta. Imhof gives as his father the Count Ligorio and as brothers the Counts Gautier and Bérard.³ Perhaps it was (as so

¹ “... forte is qui Carasoli appellatus est,” (italics mine), Claudius Hemeraeus, *De Academia Parisiensi, qualis primo fuit in insula et episcoporum scholis, liber* (Paris, 1637), 130. The name is variously spelled in the manuscripts: e.g. (de) carociis, (de) caraciis, (de) caracciis, carasolus, caraçolus, carazolus, caratius, caraculus, etc.

The reader's attention is called to the excellent article by P. Glorieux, “François Caracciolo chancelier de l'Université de Paris,” *RTAM* 33 (1966) 115-36. Unfortunately the present piece was already in press when the latter article appeared. Father Glorieux contributes much interesting data — especially on the Chancellor's works — although the *quaestio* edited here is mentioned only in passing (p. 127). Glorieux also includes an edition of Caraccioli's *quaestio* “Utrum Beata Virgo contraxerit peccatum originale” from *Vat. lat.* 932, fols. 251b-252c (pp. 129-36).

² César Égasse Du Boulay, *Historia Universitatis Parisiensis* (Paris, 1668), 4, 174, 955.

³ J. W. Imhof, *Historia Italiae et Hispaniae genealogica* (Nüremberg, 1701), 261 & 291; quoted in Barthelemy Hauréau, “Francis Caraccioli, Chancelier de l'Église de Paris,” *Histoire Littéraire de la France* (Paris, 1885), 30, 410.

often the case) that Francis, as a younger brother without title, was thus destined for ecclesiastical service.

In any event, Pietri, the historian of the Caraccioli, informs us that Francis was counselor to the king of Naples and also special ambassador of the queen to the court of Rome. To repay his services, moreover, the king promised him a rich abbey of which Cardinal Landolfo Brancaccio, deacon of S. Angelo in Pescharia, was at the time in possession.⁴ Since the latter died in October, 1312 (according to his epitaph), we must conclude that Francis was not actually invested with the benefice until after he had become chancellor of Paris.⁵

We next hear of Francis in Paris where in 1308 he is listed as *magister* in theology, having received his earlier education from a certain Peter of Narnia, Hermit of St. Augustine.⁶ In a letter to Robert, king of Sicily, dated 1309-1310, Francis pleads for the return to Paris of the above-mentioned Peter, who was then serving as the king's chaplain, and refers to him as "my spiritual teacher and father in Christ."⁷ The *Chartularium* of the University of Paris records Peter of Narnia as among those who "read" the *Sentences* in 1300;⁸ whether it was before or after this date that Francis came under his tutelage, we cannot be certain.⁹

Francis also held a canonicate at Rouen and is, in fact, twice mentioned in the necrology of this Church: on March 8, along with the other canons: and again on June 9, this time with the particular designation, "vir magnae scientiae Franciscus Carazoli, doctor in theologia."¹⁰ It is probable, as Hauréau points out, that he did not exercise this function but contented himself with collecting its fruits.¹¹

⁴ Francesco de Pietri, *Cronologia della famiglia Caracciolo* (Naples, 1605), 18; quoted in Hauréau, 411.

⁵ *Ibid.*

⁶ Pierre Glorieux, *Répertoire des Maîtres en théologie de Paris au XIII^e siècle* (Paris, 1933), 458. For corrections to Glorieux's work, see Amédée Teetaert, "Le Répertoire des Maîtres en théologie de Paris: Quelques Remarques et Corrections," *Ephemerides Theologicae Lovanienses*, 11 (1934) 17-24.

⁷ "Mei spiritualis in Christo educatoris et patris," *Chartularium Universitatis Parisiensis*, ed. H. Denifle (Paris, 1889-97), 2, 146, #686 (this work will henceforth be referred to simply as *Chartularium*). On April 30, 1321, the same Peter was appointed archbishop of Reggio in Calabria. He died before October, 1328. See Glorieux, *Répertoire*, 331.

⁸ *Chartularium*, 2, 85, #613.

⁹ It is probable that Francis first came under the influence of Peter of Narnia at the court of Naples, before the latter's sojourn at Paris; unfortunately, we possess none of Peter's writings, so that any doctrinal influence he may have had on his devoted protégé is impossible to trace.

¹⁰ *Recueil des Historiens de la France* (Paris, 1899), 360, 363; quoted in Hauréau, 410-11.

¹¹ Hauréau, 410. In fact, a rather large number of Italian clerics at this period had obtained such benefices in France from the Holy See; they were usually quite lucrative and seldom imposed any obligation. Cf. *ibid.*

In August, 1308, Pope Clement V conferred on Francis, "qui in facultate theologica laudabiliter profecisse," a new canonry and prebend at Paris, the pastoral obligations of which were waived lest they impede the further pursuit of his studies; the beneficiary, moreover, was bound neither to take Holy Orders nor to reside in his church. At the same time, the Pope allowed Francis to retain his other two benefices.¹² In the following year (after April 11 it seems) he succeeded Simon de Guiberville as chancellor of the Church of Paris, the office which was to give him his place on the stage of history.¹³

The office of "Cancellarius Parisiensis"¹⁴ by the fourteenth century had ceased to possess the rather imposing prerogatives that it had enjoyed a century earlier. The thirteenth century was, in fact, marked by a series of power struggles between the chancellor and the university, with the latter — owing mainly to papal intervention — gradually emerging the victor.¹⁵ From a position roughly analogous to that of the royal chancellor, the chancellor of the Church of Paris soon became — as the university evolved from the cathedral school — a sort of ecclesiastical superintendent of education. His was the power to grant (usually for a price) the *licentia docendi* to prospective masters, to deprive scholars of their status, and to pass judgment upon (and even excommunicate) any member of the academic community. Already in 1179, however, we find the Third Lateran Council not only forbidding the chancellor to accept a fee for the *licentia*, but also requiring him to grant such a licence to every properly qualified applicant.¹⁶ Gregory IX's Bull, *Parens Scientiarum* (1229), which Denifle calls

¹² "Obtentu Roberti, ducis Calabriae, contulit Francisco canonicatum ecclesiae Parisiensis et praebendam ibi vacantem vel vacaturam.... Obtentu vero Petri episcopi Penestrin. illi confert praebendam integram non sacerdotalem ibi vacantem vel vacaturam, non obstante quod in Rothomagen. et Belacen. [possibly Bellicen; Balley, France] ecclesiis canonicatus et praebendas obtineat, indulgetque, ut insistendo studio theologiae facultatis dimidiam praebendam valeat retinere, donec illam integram fuerit assecutus nec interim teneatur se ad sacerdotium facere promoveri neque ad residendum personaliter in eadem," *Regestum Clementis P. V.*, cap. 582; ed. O.S.B. (Rome, 1887), Annus II-III, 138-39, #2939 (Aug. 18, 1308); cf. *Chartularium*, 2, 147, #686, n. 1.

¹³ Glorieux, *Répertoire*, 458. Simon de Guiberville, it seems, petitioned the bishop of Paris for permission to resign the chancellorship. Cf. *Chartularium*, 2, 136-37, #673 (Dec. 10, 1308). Denifle adds: "Quo tempore officio cancellariae renuntiaverit, non omnino compertum habemus. Verisimiliter an. 1309. Successorem habuit Franciscum Caraccioli de Neapoli.... Simon obiit an. 1320, Jul. 15," *ibid.*, 137, n. 1.

¹⁴ Concerning the title itself, Rashdall claims that English writers, "in defiance of medieval usage," persist in speaking of the "Chancellor of the University." "In the Middle Ages he is always 'Cancellarius ecclesiae Parisiensis,'" Hastings Rashdall, *The Universities of Europe in the Middle Ages*, ed. F. M. Powicke & A. B. Emden (Oxford, 1936), 1, 341, n. 5.

¹⁵ *Ibid.*, 306-07. Cf. David Knowles, *The Evolution of Medieval Thought* (Toronto, 1962), 165.

¹⁶ Rashdall, 1, 280-82.

the Magna Charta of the University, forged still more shackles for the chancellor, effectively destroying his criminal jurisdiction.¹⁷ The year 1290 witnessed the last important skirmish between the chancellor, in the person of Bertrand of St. Denis, and the university faculty; this time the outcome was quite decisive. As Rashdall comments:

From this time... the strictly juridical authority of the chancellor fell into desuetude: he ceased to be, if he had ever been, the *iudex ordinarius* of scholars. He even ceased to have any real control over the grant or refusal of licences, except in so far as he retained the nomination of the examiners in arts. His position remained one of great dignity, though more and more overshadowed by the growing pretensions of the rector; but its substantial power was gone. Only his mysterious prerogative of conferring the licence was left him, and that remained henceforth almost as sacred and incommunicable as the bishop's power of conferring orders....¹⁸

The office that Francis assumed, therefore, was a rather hollow one, and his regime relatively uneventful.¹⁹ The *Chartularium* of the University records only the abovementioned letter to Robert of Anjou, king of Sicily, and an approbation of the works of Raymon Lull, the charismatic and apostolic *Doctor Illuminatus*.²⁰ This latter piece was issued apparently towards the end of Lull's last sojourn in Paris (1309-1311), where he had been allowed to teach his doctrine, even though he had never obtained a degree in theology.²¹ Alphonse, king of Aragon, later authorized the reading of the same works, vindicated (he said) by the approbation of the chancellor of Paris.²²

According to Du Boulay, Francis conferred the *licentia* on a certain

¹⁷ *Ibid.*, 338.

¹⁸ *Ibid.*, 400-01.

¹⁹ "The chancellorship of Paris," says Rashdall, "was in the gift of the bishop but was often 'reserved,'" *ibid.*, 401, n. 1. In fact, Boniface VIII reserved the office in 1295 (*Chartularium*, 2, 66, #592) and in June, 1296, installed his own candidate, Peter of Audomaro, as chancellor (*ibid.*, 69, #595). However, in the absence of evidence to the contrary, we may be safe in assuming that Francis was appointed to his post by the bishop of Paris, who at that time was William of Aurillac (Jan. 17, 1305 - Dec. 30, 1319).

²⁰ "...testamur, nihil nos invenisse in illis, quod bonis moribus obviet, et sacre doctrine theologice sit adversum. Quin potius in dictorum serie et tenore pro humani fragilitate iudicii scribentis zelum fervidum et intentionis rectitudinem pro fidei christiane promotione notantes,..." *Chartularium*, 2, 148-49, #691. On Lull, see Etienne Gilson, *History of Christian Philosophy in the Middle Ages* (New York, 1954), 350-53.

²¹ *Ibid.*, 700, n. 57. As Denifle asks, however, why was such an approbation issued at this time, when (to the best of our knowledge) no one had called Lull's orthodoxy into doubt? *Chartularium*, 2, 149, note.

²² Hauréau, 409.

Landolf Caraccioli, Franciscan, under the pontificate of John XXII,²³ and later on John of Naples, a Dominican.²⁴ Du Boulay, however, is either mistaken in his chronology, or the licences were granted by Thomas of Bailli, the successor of Francis, since the latter is reported to have died on May 31, 1316 (that is, before the accession of Pope John). This date is confirmed by a nomenclature of the dignitaries of the Church of Paris, which is preserved in the National Archives.²⁵ In addition, an obituary of the Church of Paris, found in the Bibliothèque Nationale, Lat. 15439, contains the following entry under the date of May 31:

Item obiit Franciscus Carasolus [*sic*], Neapolitanus, cancellarius et concanonicus noster, qui, anno 1316, legavit nobis ad opus anniversarii 90 libras Parisienses.²⁶

Apparently, then, Francis died in office without having seen his homeland again.

Besides the letters, Glorieux mentions certain *Quaestiones in aula*, which occupy eight folios in the only extant manuscript,²⁷ and the *Quaestio disputata* which is edited below (VI). There is, further, a *Summa poenitentiae*, which in one manuscript — Paris, Bibl. Nat. Lat. 3568 — is entitled as follows:

Incipit Summa poenitentiae, edita a magistro Francisco, quondam cancellario Parisiensi.²⁸

Since there is only one Francis who was chancellor of Paris, the reference is obviously to Caraccioli.

However, the same treatise (which begins "Quoniam circa confessionem") — or approximations of it — exists in at least 50 other manuscripts,²⁹ and has been attributed variously to Raymond of Pennafort,

²³ John XXII was elected on August 7, 1316 and was consecrated on September 5 of the same year. On Landolf, see *New Catholic Encyclopedia* (New York, 1967), 3, 96-97.

²⁴ Du Boulay, 4, 955. The dating of John of Naples' licence is given by two different manuscripts of Bernard Gui, both indicating the month of November, 1316; Hauréau wants to read "1315" for 1316; *op. cit.*, 410. Cf. *ibid.*, 177.

²⁵ LL 189, fol. 24v; quoted in Hauréau, 411.

²⁶ *Ibid.*

²⁷ Vat. lat. 1086, fols. 154-55v ("Utrum ad beatitudinem supernaturalem necessario requiritur habitus"); fols. 159-64 ("Utrum finis hominis supernaturalis sit[bis] equalis perfectionis in se"); in A. Pelzer, "Prosper de Reggio Emilia, Des Ermites de Saint-Augustin, et la manuscrit latin 1086 de la bibliothèque vaticane," *Revue Néo-Scholastique* (1928) 338. Cf. P. Glorieux, "A propos de 'Vat. lat. 1086'; Le personnel enseignant de Paris vers 1311-14," *Recherches de théol. anc. et méd.*, 5 (1933) 23-39.

²⁸ Hauréau, 411; cf. Heinrich Weisweiler, "Handschriftliches zur Summa de penitentia des Magister Paulus von Sankt Nikolaus," *Scholastik*, 5 (1930) 248-60. Weisweiler incorrectly gives Caraccioli's date of death as 1326.

²⁹ Glorieux, *Répertoire*, 458-59. Weisweiler adds a large number of manuscripts that had been overlooked by the latter; 249-51. Cf. Pierre Mandonnet, "La 'Summa de Poenitentia Magistri

Cardinal Bérengar of Fré dol († 1323), and a certain Paulus Sancti Nicolai, sometimes called *magister*, sometimes *praedicator*.³⁰ Since, in fact, we are already acquainted with *Summae* written by Raymond and Bérengar,³¹ their authorship of the above-mentioned work has been rejected by Hauréau. The latter does suggest, on the other hand, that the treatise may have been written by the aforesaid Paul and later abridged by Francis — or better yet, that the chancellor had first drafted a summary manual which Paul later amplified.³² The first conjecture is quite plausible; the second, on the other hand, is impossible simply in terms of chronology. Magister Paulus or Paulus Sancti Nicolai has been identified by Mandonnet as Paul of Hungary, Dominican, who completed his *Summa* in 1221.³³ The final resolution of the authorship problem, however, will have to await further study or the discovery of new manuscripts.

II. OCCASION OF THE QUESTION

The full import of the question whether the Church would be better ruled by a "jurist"¹ or a theologian cannot be understood except in the context out of which it arose. Indeed, the very fact that the question was posed reflects in no small way the growing rift between the sciences of theology and canon law in the thirteenth century. The reasons for the uncordial, at times acerbic, relations between practitioners of the two disciplines are several and complex — too complex for even a summary

Pauli presbyteri S. Nicolai," *Beiträge zur Geschichte der Phil. & Theo. des M.A.*, Suppl. 3, 1, 525-44, esp. 527.

³⁰ Weisweiler, 248-50.

³¹ Cf. A. Teetaert, "La 'Summa de Poenitentia de S. Raymond de Peñafort,'" *Ephemerides* 5 (1928) 49-72, and *La confession aux laïques dans l'Église latine* (Paris, 1926), 351 ff.; also by the same author, "La 'Summa de poenitentia: Quoniam circa confessiones' du cardinal Bérengar Fré dol," *Miscellanea A. Janssen* (Louvain, 1948), 567-600.

³² Hauréau, 413-15.

³³ Mandonnet, 525 ff. This *Summa* was first printed in the *Bibliotheca Casinensis*, 4 (Monte Cas-sino, 1880), 191-215. Cf. A. Teetaert, "Le Répertoire des Maîtres," 624.

¹ "Jurist" (*iurista*) is a generic term denoting one versed in either canon or civil law. Cf. Du Cange: "Jurista — Qui Juri Civili vel Canonico dat operam, Jurisconsultus,..." in *Glossarium Mediae et Infimae Latinitatis*, ed. Favre (Paris, 1938), 4, 467. Indeed, the Middle Ages did not draw the sharp distinction between the two professions that we are wont to do today; the two laws constituted one faculty in the university, and from the middle of the thirteenth century, the *professores utrisque iuris* grew in number and prominence. On the canon law as an outgrowth of the civil, see Rashdall, 1, 132-34. The term "civilista" to distinguish the civil lawyer from the canonist is a rather late coinage (i.e. fifteenth century). In the present context, however, we are safe in assuming that *iurista* refers *primarily* to the canon lawyer; hence, to avoid ambiguity, it will generally be translated as "canonist" or "canon lawyer."

treatment here.³ For our present purposes, it is sufficient merely that the phenomenon be noted.

As far as we know, Godfrey of Fontaines († 1306) was the first theologian to treat the question explicitly;³ this treatment took the form of a *disputatio quodlibetalis* debated and "determined" at the University of Paris in 1293.⁴ The occasion of the question (a *quodlibet* very often bore reference to some contemporary event)⁵ seems to have been the synod held at Paris three years earlier (Nov. 11, 1290), at which Cardinal Benedict Caetani, the future Pope Boniface VIII, harshly rebuked the theologians of the University for interfering in the Mendicant controversy.⁶ The governing of the Church and the care of souls, the cardinal said in effect, were not the concern of the theologians — in spite of pretensions to the contrary: "Sedetis in cathedris et putatis, quod vestris rationibus regatur Christus... Non sic, fratres mei, non sic!"⁷

² This topic will provide the subject of a future article. The reader in the meantime is referred to the following works: Walter Ullmann, *Medieval Papalism, the Political Theories of the Medieval Canonists* (London, 1949), *passim*; Stephan Kuttner, *Harmony from Dissonance* (Latrobe, Pa., 1960), *passim*; Friedrich Oediger, *Über die Bildung der Geistlichen im Späten Mittelalter* (Leiden, 1953), *passim*; Michele Maccarrone, "Teologia e diritto canonico nella *Monarchia* III, 3," *Rivista di Storia della Chiesa in Italia* 5 (1951) 7-42; and Martin Grabmann, "Die Erörterung der Frage ob die Kirche besser durch einer guten Juristen oder durch einen Theologen regiert werde, bei Gottfried von Fontaines und Augustinus Triumphus von Ancona," in *Festschrift Eduard Eichmann z. 70. Geburtstag* (Paderborn, 1940), *passim*.

³ Cf. Glorieux, *Répertoire*, #198, for biography and bibliography. John Peckham posed the question (c. 1269): "Utrum theologia sit prae ceteris scientiis necessaria praelatis ecclesia," ed. Leclercq, in "Le Magistère du Prédicateur au XIII^e siècle," *Archives d'histoire doctrinale et littéraire*, 15 (1946) 139-41. The question, says Leclercq, did not refer specifically to law. Nevertheless, "dans sa réponse, il passe sous silence la philosophie et les arts libéraux pour s'attaquer exclusivement au droit," *ibid.*, 139. Earlier still (c. 1240), Humbert de Romanis, Master-General of the Dominicans, was writing: "Alii sunt, qui tantum extollunt scientiam [eorum], quod venerunt ad hanc stultitiam, ut dicerent, quod melius regitur Ecclesia Dei per ista iura quam per theologiam," *De eruditione praedicatorum*, cap. ad studentes in iure canonico; in *Maxima Bibliotheca Veterum Patrum* (Lyons, 1677), 25, 490b.

⁴ *Quodlibet* X, 18, in *Quodlibet VIII-X* (text inédit), ed. J. Hoffmans, *Les Philosophes belges* (Louvain, 1924), 4, 395-98; dating in P. Glorieux, *La Littérature Quodlibétique, 1260 à 1320* (Kain, 1925), 1, 150. *Quodlibets* were generally held twice a year — in the second week of Advent and fourth or fifth week of Lent; cf. *ibid.*

⁵ *Ibid.*, 78.

⁶ Fortunately, we have a vivid account of the proceedings by a Dominican historian, Jacobus of Soest. This unique transcript has been preserved in Codex 28 of the National Archives of Soest and printed by H. Finke in *Aus den Tagen Bonifaz VIII* (Münster-i-W., 1902), iii-vii.

⁷ "Vos, magistri Parysienses, stultam fecistis et facitis doctrinam sciencie vestre, turbantes orbem terrarum, quod nullo modo faceretis, si sciretis statum universalis ecclesie. Sedetis in cathedris et putatis, quod vestris rationibus regatur Christus. Nam consciencia plurimorum vestris frivolis rationibus sauciatur. Non sic, fratres mei, non sic! Set quia nobis commissus est mundus,

The University was irrevocably alienated by the incident; the masters were to be constant in their support of the French crown against the Caetani pope, and certain of them were even to question the legitimacy of Boniface's election.⁸ Nor was it lost sight of that Boniface was above all a lawyer — indeed, the "iurista permaximus."⁹ Godfrey at least seems not to have forgotten it: three years after the humiliating episode at the synod of Ste. Geneviève, *sede vacante*,¹⁰ he posed his question of whether the Church would be better ruled by a theologian or a jurist and decided in favor of the former. Since Benedict Caetani, the lawyer, was one of the more obvious *papabile*, it is not too fanciful to suppose that it was he whom Godfrey had primarily in mind. And the sting of 1290 can without too much difficulty be read into his concluding remark: "Quae autem et quanta bona eveniant in Ecclesia cum a iuristis reguntur satis patet."¹¹

The next recorded discussion of the question was conducted by Francis Caraccioli approximately twenty years later under the title, "Utrum iurista vel theologus plus proficiat ad regimen ecclesie." Its appearance in the form of a *quaestio disputata* means that it was presented in the arena of public debate.¹² As a master of theology himself and also as chancellor of Paris, the seat par excellence of theology, it is not surprising to discover Francis opting in favor of the theologian.

For reasons politic, the question may tentatively be dated after the death of Clement V (on May 20, 1314), a canonist of no small repute. In addition, there would have been a spontaneous interest in such matters during a

cogitare debemus, non quid expediat vobis clericis pro vestro libito, set quid expediat orbi universo. Et sic in vobis impletur, quod dicitur: 'Dicentes se esse sapientes stulti facti sunt' *Romans* 1: 22, " *ibid.*, vi.

⁸ "Quidam magistri in theologica facultate Parisiensi determinant Bonifacium VIII illegitime ad papatum ingressum esse," (1297, ante Jun. 15), *Chartularium*, 2, 77, #604. Who these masters were, we do not know, since the text is not extant.

⁹ *Chron. S. Bertin.*, in MGH, *Scriptores*, 25, 866.

¹⁰ The Chair of Peter was vacant from April 4, 1292, until July 5, 1294, when St. Celestine V was elected.

¹¹ Godfrey of Fontaines, ed. Hoffmans, 4, 397. There is another curious *quodlibet* which appears under Godfrey's name two years later (1295) — i.e. after Boniface VIII was elected pope: "Utrum liceat doctori, praecipue theologico, recusare quaestionem sibi propositam cuius veritas manifesta per determinationem doctoris offenderet aliquos divites et potentes," *Quodl.* XII, 6; in Glorieux, *Lit. Quodl.*, 1, 164. Would it be altogether unreasonable to see in this question a reference to *Quodl.* X, 18, which might well have offended the rich and powerful Caetani?

¹² Glorieux calls it such; *Répertoire*, 458. Cf. also *Codices Burghesiani Bibliothecae Vaticanae*, recensuit Anneliese Maier (Vatican City, 1952), 220. A good sketch of the physiognomy of a medieval *disputatio* is given by Mandonnet, "Chronologie des Questions disputées," *Revue Thomiste*, 23 (1918, 267-69).

papal conclave, especially one of considerable duration.¹³ Nor was the chancellor's interest in the episcopate purely academic. The Register of Clement V records him petitioning (unsuccessfully) for the archbishopric of Salerno in 1310; he is also mentioned as a nominee for the see of Capua.¹⁴

Francis, moreover, brought an added perspective to his treatment of the question: he had witnessed — more as a participant than a spectator — the reign of four popes since 1293, two of whom were eminent canonists.¹⁵ A third, however, was the ascetic and eccentric Peter del Murone,¹⁶ the very anti-type of the worldly, efficient lawyer. The hermit-pope had recently been canonized (May 5, 1313), partly as a slight to the memory of the late Pope Boniface, feelings against whom were still running high in France. What precisely it was, however, that prompted the chancellor to raise the question is unknown. Moreover, to impute motives — especially when so many historical facts are lost to us — is in the end a very tenuous business.

III. CARACCIOLI'S TREATMENT OF THE QUESTION

Francis formulates his question in terms of whether the jurist or the theologian would more *effectively* govern the Church: "Utrum iurista vel theologus plus proficiat ad regimen ecclesie."¹ He opens his treatise by attempting to remove any equivocation concerning the word *ecclesia*. By *ecclesia* the author does not intend the material building, that is, "a house made by hand or a temple constructed of stones and beams." It was just such a materialistic conception of *ecclesia*, says Francis, that led the Jews to misconstrue the prediction of Christ, "Destroy this temple and in three days I will raise it up again" (*John* 2: 19-22).

¹³ This particular conclave lasted from May, 1314 until after Francis' death in May, 1316.

¹⁴ *Regestum Clementis V*, Annus V, 123, #5445; & 213, #5675; *ibid.*, Annus VII, 153-54, #8245.

¹⁵ Boniface VIII, promulgator of the *Liber Sextus*, and Clement V, author of the *Constitutiones* (promulgated by John XXII in 1317).

¹⁶ St. Celestine V, elected July 5, 1294, resigned the papacy on December 13 of the same year. The exact details and reasons for the resignation have been clouded by the process against Boniface VIII, in which Celestine was made into a veritable martyr.

¹ The title given in the index (fol. 33v) is worded somewhat differently: "... an magis expediat bonus iurista ad regendam ecclesiam quam bonus theologus"; cf. IV, 12. Since the first title is in the corrector's hand, we cannot be certain that it was, in fact, the one originally proposed by the chancellor himself. Indeed, medieval writers as a rule felt no compulsion to entitle their works, and quite often it was left to a copyist (or an editor) to affix some designation. Note: "jurist" here refers primarily to the canonist; see II, n. 1.

Nor does Francis understand by *ecclesia* the temporal goods by which the ministers of the Church are supported. Such goods, he argues, are common to good and bad alike, as Augustine says², common likewise to the faithful of the true Church and the unfaithful of the synagogue. To that extent they must not be regarded as true "goods," nor indeed do they make men good. Worldly possessions, in fact, follow no law but the whim of fate or, as Francis puts it, the *nutum fortune*.

Ecclesia, on the contrary, designates for him the *multitudo fidelium*, the believers themselves.³ And to support this interpretation, Francis finds a number of Scripture texts, as well as passages in Hilary and Augustine. This exegesis of *ecclesia*, moreover, so closely parallels the introductory remarks of Godfrey's *quodlibet* that it seems almost a paraphrase:

Dicendum quod per Ecclesiam possumus intelligere primo: domum materialem, scilicet templum lapideum vel ligneum in quo principaliter Deus extrinsecus colitur corporaliter; secundo: domum spiritualem, scilicet fideles in quibus Deus colitur spiritualiter per virtutes theologicas, scilicet per fidem, spem et caritatem.... Ita bona exteriora temporalia, scilicet redditus et possessiones et huiusmodi, quibus ministri Ecclesiae corporaliter sustentantur.⁴

According as the Church is conceived of in any of the above-mentioned senses, it is seen as administered either by artisans and stone-cutters,⁵ by stewards (*oeconomi*),⁶ or by the "learned and virtuous." Having already opted for the third meaning, Francis proceeds to elaborate upon it. Taking his cue from Huguccio, Caraccioli translates *ecclesia* (ἐκκλησία from ἐκκαλέω) by *convocatio*, a "calling-together," while *synagoga* (συναγωγή from συνάγω)

² *De Civitate Dei* I, 8; Augustine says that Providence willed temporal goods and evils to be distributed indiscriminately between the just and the unjust, so that the former should not seek such goods too avariciously — seeing that evil men also possess them — nor should they dishonorably avoid evils, with which good men are often inflicted. Temporal goods, therefore, cannot be ultimate goods.

³ Caraccioli employs the same expression in his letter to Robert of Anjou, king of Jerusalem and Sicily: "... debent singuli mundi rectores et principes, debet et universa fidelium multitudo tanto fortius vestros regnicolas," *Chartularium*, 2, 146, #686.

⁴ Godfrey of Fontaines, ed. Hoffmans, 4, 395.

⁵ Indeed, the casual visitor to thirteenth-century France might easily have come away with this impression — i.e. that the "Church" was being presided over by the masons' and builders' union; cf. Henry Adams, *Mont-Saint-Michel and Chartres* (New York, 1905), 100-01.

⁶ Cf. Aristotle: "Seeing then that the state is made up of households, before speaking of the state we must speak of the management of the household," *Politics* I, 3. 1253b1-2 (Jowett tr.). Francis also cites book VII of the *Politics*; this book treats among other things of the need that the virtuous life has for external goods as *instruments*. For the canonists, "iconomia" was a branch of "civilis sapientia," dealing with the study of the administration of estates and other resources of society — the "regimen familiae" as it was rather loosely called. Cf. Ullmann, 26-27.

is translated as *congregatio*.⁷ Now there is as much difference between the Church and the Synagogue as there is between a calling-together (*convocatio*) and a gathering-together (*congregatio*). Properly speaking, one "gathers" sheep (*greges*); one "calls" only those who have the use of reason. The infidelity of the Jews is indicated, claims the chancellor, by the fact that their assembly is termed a *synagoga*, "id est congregacio quasi pecorum et indiscretorum." The *ecclesia*, on the other hand, is made up of rational and prudent beings.

Quite abruptly Caraccioli introduces another threefold division ("fient ergo tria"). He will discuss, he says, first those to whom ruling properly belongs and secondly those who are qualified not only to rule but also to retain the rule. Finally, he will draw conclusions and applications from the above. The government belongs by nature to those possessed of a powerful intellect. This is the clear doctrine of Aristotle in his *Politics*.⁸ "And because prudence is the perfection of the practical intellect, it is truly the right plan which should guide man in his actions. And wisdom is the principal perfection of reason; as it belongs to the wise man to dispose and not to be disposed, so also to rule and not to be ruled."⁹ Therefore, concludes the chancellor, it belongs to the wise and prudent man to rule: wise with respect to contemplating truth, prudent with respect to doing good.

To rule, however, means to order things to an end; and the more important the end, the better the *regimen* must be. Prudence, moreover, designates that moral virtue which executes the desire of true wisdom.¹⁰ Wisdom, the chancellor feels constrained to point out, derives from *sapor*

⁷ Cf. A. Ernout & A. Meillet, *Dictionnaire étymologique de la langue latine*, 4th ed. (Paris, 1959), 191, 671.

⁸ E.g. "...that which can foresee by the exercise of mind is by nature intended to be lord and master, and that which can with its body give effect to such foresight is a subject, and by nature a slave," Aristotle, *Politics* I, 2. 1252a32-34 (tr. Jowett); and in another chapter: "Where then there is such a difference as that between souls and body, or between men and animals (as in the case of those whose business is to use their body, and who can do nothing better), the lower sort are by nature slaves, and it is better for them as for all inferiors that they should be under the rule of a master. For he who can be, and therefore is, another's, and he who participates in rational principle enough to apprehend, but not to have such a principle, is a slave by nature," *ibid.*, I, 5. 1254b15-22. For Aristotle the natural slave is very near to a brute in capacity, use, and bodily make, although he is willing to concede a certain difference.

⁹ Caraccioli, fol. 33ra 42-44.

¹⁰ Cf. Aristotle: "We credit men with practical wisdom in some particular respect when they have calculated well with a view to some good end which is one of those that are not the object of any art," *Nic. Ethics* VI, 5. 1140a28 (tr. Ross). And Aquinas: "Prudentiae autem proprium est.. ordinare alia in finem," *ST* I, 22, 1c.

(taste, sense of taste, etc.),¹¹ the point being that wisdom also embraces the *affective* side of man. Thus the conclusion is reached that the prospective ruler must be not only a man of profound understanding but also "rectum in affectu," of upright desire. This is the man described by Gregory in his *Pastoral Rule*,¹² and the type of the Christian emperor eulogized by Augustine in the *City of God*.¹³

Having determined, with the help of the Aristotelian *Ethics* and *Politics*, the qualities requisite for the ruler, Francis is now ready to apply his conclusions to the government of the Church. If the good theologian is one who knows theology well (which embraces both speculative and practical knowledge about things divine and human),¹⁴ it follows that the good theologian is also proficient in the Sacred Scriptures (in *divinis scripturis profecit*). This proficiency, says Augustine, consists not in having read and memorized much, but in understanding and investigating the deeper (spiritual) meanings of the Holy Writings.¹⁵

That Sacred Scripture was the text-book of the faculty of theology, moreover, was a commonplace argument for the superiority of the latter over the canonists. Thirteenth-century theologians customarily titled themselves *magistri sacrae paginae* or *magistri sacrae scripturae*.¹⁶ Sacred Scripture was the basis of their teaching; theology was, in fact, the science of Sacred Scripture.¹⁷ The canonists, on the other hand, could adduce as

¹¹ Cf. Isidore's *Etymologies* X, n. 240. Aquinas treats the argument that if *sapientia* is derived from *sapor*, then it belongs more to the affective part of man than to the intellective, and cites the same Scripture text quoted by Caraccioli (*Ecclesiasticus* 6: 23). The Angelic Doctor's reply contains a curative for the type of etymological speculation that Francis (and others) indulged in so freely: "Si tamen iste sit intellectus illius auctoritatis. Quod non videtur: quia talis expositio non convenit nisi secundum nomen quod habet sapientia in latina lingua. In graeco autem non competit; et forte nec in aliis linguis. Unde potius videtur *nomen sapientiae* ibi accipi pro eius fama, qua a cunctis commendatur," *ST* II-II, 45, 2, ad 2.

¹² PL 77, 26-27.

¹³ *De Civitate Dei* V, 24.

¹⁴ Cf. Aquinas, *ST* I, 1, 4.

¹⁵ *De Doctrina Christiana* IV, 5.

¹⁶ Maccarrone, 22.

¹⁷ This doctrine was especially dear to the Franciscan school. Thus St. Anthony calls theology "divinae scripturae scientia," *Sermones*, In dom. II post Pascha; ed. Padua (1895), 1, 149a. Olivi identifies the one with the other: "Sacra scriptura... dicitur theologia vel scientia divina," *In Sent. Libros*, proem., (unedited). Matthew of Aquasparta says: "Doctor istius scientiae... docere debet novum et vetus Testamentum," *Tractatus de excellentia sacrae scripturae* 4, 14, in *Quaestiones disputatae selectae*, ed. Quaracchi (1903), 1, 18. And Scotus, who died in 1308, so delimited the field of theology that it became practically coterminous with Scripture: "Theologia nostra de facto non est nisi de his quae continentur in scriptura, et de his quae possunt elici ex eis," *Ordinatio*, Prologus, 3, 3; in *Opera Omnia*, ed. Vat. (1950), 1, 132, n. 195. Cf. also Oediger, 7 ff.

auctoritates only their glosses, that is, only human authorities.¹⁸ Thus, for the theologians their science was as superior to canon law as divine authority was superior to human.¹⁹

Given such a definition of theology and the *theologus*, Francis states his thesis: through the help of the good jurist who knows well the positive laws, the good theologian is more suited to rule the Church. This is supported by a three-fold evidence: (1) on the part of the Church-to-be-ruled; (2) on the part of the end to which it is to be directed; (3) on the part of the nature of the rulers themselves.

The preference for a theologian as ruler becomes evident first from the viewpoint of the *ecclesia regenda*, the Church to be ruled. Since it is a *convocatio* of the faithful, argues Francis, the Church must be guided in matters of faith and instructed in moral conduct:

Ex parte quidem ecclesie regende quia ecclesia, cum sit convocacio fidelium, dirigenda in credibilibus, informanda moribus.²⁰

But this falls under the competency of the theologian rather than the canonist. For since theology is the same as faith, or at least about faith (*de fide*), it belongs to the theologian to teach what must be believed. Theology is, moreover, involved in a special way in the formation of the moral life, says Francis, because it propounds principally the life of Christ — which is, as Augustine says, the “*disciplina morum*.”²¹ Scripture like-

¹⁸ The canonists were by no means disposed to concede this argument. Hence, Henry of Cremona (†1312), an eminent *doctor decretorum* and supporter of Boniface VIII, insisted that the canons were no less divinely inspired: “...ipsi canones sunt per spiritum sanctum dictati, ergo qui hoc contempnunt et non credunt, sunt blasphematores spiritus sancti, xxv, q. c. I. violatores quoque, et qui blasphemant spiritum, non dimittitur eis in hoc seculo nec in futuro,” *De potestate papae*, ed. R. Scholz, in *Die Publizistik zur Zeit Phillips des Schönen und Bonifaz VIII* (Stuttgart, 1903), 459 ff.

¹⁹ In the words of Caraccioli: “... quantum distat regimen Dei ab hominis regimine, tantum regimen per theologiam, que a Sancto Spiritu inspirata est a regimine iuristarum que sunt ab homine compilata,” fol. 33rb 67-33va 2.

²⁰ Cf. Godfrey of Fontaines: “Haec patent si considerentur ea quae ad bonum talis ecclesiae pertinent, scilicet instructio in fide et moribus per praedicationem veritatis in fide et exhortationem in moribus. Sed per theologiam, non per iura secundum quod huiusmodi, scit quis quae debeat praedicare; scit etiam errantes in talibus revocare et derigere, etc.,” ed. Hoffmans, 4, 396. This is also the argument of Humbert de Romanis: “Alii sunt, qui tantum extollunt scientiam [eorum], quod venerunt, ad hanc stultitiam, ut dicerent, quod melius regitur Ecclesia Dei per ista iura, quam per theologiam. Ad quod respondit quidam dicens, quod istud verum esset, si Ecclesia Dei esset campi et vineae, et huiusmodi possessiones, sed si Ecclesia Dei sunt animae melius regitur Ecclesia per theologiam, quae docet fidem et mores ad animarum salutem pertinentia, quam per ista iura,” ad studentes in iure canonico, 490b. Cf. also John Peckham, ed. Leclercq, 140.

²¹ *De Vera Religione* I, 16.

wise has a part to play in our moral formation, serving, according to Gregory,²² as a kind of mirror, held before our mind's eye, in which our innermost face, with all its blemishes, may be viewed.

Secondly, the theologian-prelate, says Caraccioli, is preferable from the viewpoint of the end to which the Church is guided and directed. That end is eternal life for all. Now life eternal is belief in Christ Jesus, and it was to this end that the Scriptures were written: "These things have been written that you may believe that Jesus is the Christ, the Son of God, and that believing you may have life in his name" (*John* 20:31). Furthermore, Gregory says that Sacred Scripture is like a sea upon which we are borne to the land of the living on the wood of the cross.²³ A knowledge of the end, however, is necessary. Such knowledge likewise gives new energy and direction to our life — just as archers, says Aristotle, who have a mark to aim at will more surely hit upon what is right.²⁴ None, moreover, spurs us more truly toward our end than the knowledge of man's beatitude.

Lastly, from the viewpoint of the qualities demanded of the rulers themselves, the theologian is found to be more suited than the canonist. This is true in general insofar as ruling, as we have seen, belongs to the wise and prudent man. But the *habitus* possessed of wisdom and prudence, says the chancellor, is theology.²⁵ In particular, it is the theologian who better fits the description of the good *rector* sketched by Gregory: that is, pure in thought, exemplary in conduct, discreet in keeping silence, profitable in speech, a sympathetic neighbor to everyone, in contemplation exalted above all the others, a humble companion to those who lead good lives, upright in his zeal for righteousness, etc.

Briefly, Francis summarizes, as distant as the rule of God is from the rule of man, so far is the *regimen* through theology — *which is inspired by the Holy Spirit* — from the rule of the canonists, which is by laws compiled by man.²⁶ Indeed, the law is for fearful servants, etc. This argument we have already met: theology is "inspired by the Holy Spirit" precisely because it is eminently the science of Sacred Scripture which is divinely inspired.²⁷

²² *Moralium* II, 1.

²³ *Homiliarum in Ezechielem* I, hom. 6. As we have seen, of course, the study of Sacred Scripture is the vocation of the theologian; this premiss is implicit in this whole argumentation.

²⁴ "Will not the knowledge of it [i.e. the end], then, have a great influence on life? Shall we not, like archers who have a mark to aim at, be more likely to hit upon what is right?" Aristotle, *Nic. Ethics* I, 1. 1094a22-24 (tr. Ross).

²⁵ Cf. Aquinas, *ST* I, 1, 6: "Utrum haec doctrina [theologia] sit sapientia"; note that Thomas quotes the same texts from the *Ethics* and *Metaphysics* as well as the text from *Deuteronomy*.

²⁶ Cf. n. 70 to the edition (VI), below.

²⁷ Cf. above, pp. 14-15.

The chancellor next cites two texts which at first glance appear to be somewhat irrelevant. The first, Augustine's letter to Marcellinus, is an apology for the Christian State: specifically, that Christianity and good citizenship are not in the least incompatible. The second, Bernard's letter to his disciple, Pope Eugene III, is a polemic against Roman law rather than canon law. The point Francis seems to be making here, however, is that the superiority of the *regimen per theologiam* extends to all things "que per se ad ecclesiam pertinent."²⁸ Thus, the Church — when governed by a theologian — will make its influence felt in every stratum of society and will replace the law of Justinian (i.e. Roman law) with the *lex Domini*.²⁹

As for purely temporal affairs such as civil lawsuits, Francis adopts St. Bernard's position in deeming them unworthy of the prelate's attention. Such at least was the gist of the latter's exhortation to Pope Eugene.³⁰ The unbecoming nature of temporal authority is furthermore deduced from Paul's first letter to the Corinthians: "If, therefore, you have cases about worldly matters to be judged, appoint those who are rated as nothing in the Church to judge" (I Cor. 6: 4). We should not, however, conclude, as Ullman seems to do, that these "contemptibles" were necessarily the laity.³¹ At least Caraccioli says nothing to indicate such an interpretation.

A policy of permitting the *gladius materialis*³² to do what was useful for

²⁸ Caraccioli, fol. 33va3.

²⁹ Theology was sometimes called the "science of the divine law," as opposed to the civil and canonical sciences; e.g. Humbert de Romanis: "Si ergo tolerabile sit studere in legibus illis [i.e. saecularibus], quibus non est interdictum, et si utile est studere in iure canonico, tamen super omnia alia laudabile est studere in scientia legis divinae [i.e. theologia], quae omnes alias scientias excedit," cap. 70, ad studentes in theologia, 490b. Cf. Ullmann, 27.

³⁰ "What wonder is it if they pass judgment on such matters, they to whom judgment in greater matters has been entrusted; therefore, you are not unworthy, but it is unworthy for you, to judge such matters, as being occupied with more important matters," *De Consideratione* I, 6. Cf. Pierre Dubois' vehement condemnation of prelates who involve themselves in civil affairs: "Prelati... videat qualiter controversiis rerum temporalium vacant; qualiter, deserta cura animarum, pro modico parlamenta, scalaria, et alia principum auditoria frequentant; qualiter student et laborant, ecclesiarum bona que sunt pauperum Jhesu Christi consument in his litibus, patronis et ministris earum.... Nonne frequenter plus impendunt prelati per annum propter modice rei temporalis defensionem, plus in hoc et ob hoc de se laborant, quam ob salutem omnium sibi commissarum animarum? Quando canonicus qui presbyter erat fit episcopus, quantum videmus ipsum litibus temporalium intendentem, plus in salute animarum laborare quam ante?" *De recuperatione terre sancte*, ed. C. V. Langlois (Paris, 1891), cap. 15, 29, 22-23.

³¹ "Now those least esteemed — the Latin has in fact 'contemptibles' — were of course the laymen. The term 'contemptibles,' after the fashion of Gratian was invariably interpreted: 'id est laici,'" Ullmann, 88. Cf. Stickler's highly critical review of Ullmann's book in *Traditio* 7 (1949-51) 460. The passage in Gratian is C. XI, 1, 47; ed. Friedberg (Leipzig, 1879), 641.

³² The *gladius materialis* should not be unreservedly identified with the jurisdiction of the State. Such an identification is a "great mistake common to many medievalists, Dr. Ullmann among them," according to Stickler, 463.

the spiritual power had the advantage of thereby freeing the latter from the tedious and burdensome tasks which could only serve to impede its chief function. Thus Aristotle observed in his *Politics*:

Those who are in a position which places them above toil have stewards who attend to their households while they occupy themselves with philosophy or with politics.³³

It has been argued *in oppositum* that the canonists can better defend the laws of the Church.³⁴ This is not true, insists Francis, for ecclesiastical law deals primarily with the sacraments and their administration, and in crimes and their examination. As Bernard had said: "Your power lies not in possessions but in *criminibus*; it was because of the latter, not the former, that you received the keys of the kingdom of heaven...."³⁵ Besides, the more important consideration of any regimen is to lead its subjects to the intended end and to turn aside anything which may stand in the way—rather than simply to defend the regime against the attacks of its enemies. But this, Francis concludes, lies more within the competence of theology than canon law.

From the very similarity of their titles, one would expect to find certain similarities in Godfrey's and Francis' treatment of the question. The latter's work, however, does present several novel arguments not touched on by Godfrey. For one thing, Francis quotes Aristotle (although freely at times) a total of eight times, while Godfrey completely neglects the Stagirite. Moreover, the chancellor seems more preoccupied with the theoretical aspects of the problem, with what it means to rule and the qualities demanded of a ruler, whereas Godfrey is more concerned with practical problems, with how *in praxi* the theologian-prelate would cope with the everyday demands of Church administration. Indeed, Godfrey is willing to admit that the prelate who is distinguished in both sciences is superior to either the theologian or the canonist alone;³⁶ Francis makes no

³³ *Politics* I, 7. 1255b35-38. William Durandus, who wrote in 1311, offered the same advice: "... omnes ecclesiae habentes episcopos, habeant etiam oeconomos de proprio clero, per quos res ecclesiasticae cum arbitrio episcopi gubernentur.... Videretur esse utile... quod etiam episcopi habeant advocatos, per quos eorum lites ducantur, ne ipsi ex hoc a laude Dei, et ab actionibus spiritualibus retrahantur," *Troctatus de modo generalis concillii celebrandi*, 2, 24; ed. Paris (1671), 115.

³⁴ This argument is also found in Godfrey: "Quantum ad secundum modum autem verum est quod melius valet iurista quam theologus; ut scilicet contra tales iniuratores sciat quis defendere bona et libertates Ecclesiae et ab iniuriantibus talibus etiam recuperare. Quia etiam aliquando subditi praelatorum inter se habent lites in quibus etiam oportet quod via iuris procedatur, quas oportet auctoritate praelati terminari, quantum ad hoc etiam plus valet iurista quam theologus," ed. Hoffmans, 4, 396.

³⁵ *De Consideratione* I, 6.

³⁶ "Si enim perfectus esset in utraque [scientia], melius valeret quam quilibet seorsum," Godfrey of Fontaines, ed. Hoffmans, 4, 396.

such concession, although he appears to admit that the theologian needs the assistance of the lawyer for temporal duties.

Mention might be made in concluding of a question in the same tradition which was written approximately a decade later (1326) by Augustinus Triumphus.³⁷ In his *Summa de potestate ecclesiastica*, composed at the behest of John XXII, the Augustinian friar poses the following question: "Utrum teneatur collegium cardinalium magis eligere iuristam quam theologum."³⁸ As might be expected, the theologian Augustinus opts in favor of the theologian, but in another question in the same work he decides that an incepting theologian is bound (*tenetur*) to acquire a knowledge of canon law.³⁹ The reason is, says Augustinus, that both sciences to a great extent deal with the same matters; they differ only in the viewpoint (*modus considerandi*) under which these matters are considered.⁴⁰

It should be noted that the Church to this day has not resolved the question. The present Code of Canon Law (promulgated in 1917) places theology and canon law side by side under the academic requisites for the episcopate without indicating which of the two disciplines deserves priority for the governing of the Church:

Laurea doctoris vel saltem licentia in sacra theologia aut iure canonico potitus in athenaeo aliquo vel in Instituto studiorum a Sancta Sede probatis, vel saltem earundem disciplinarum vere peritus; quod si ad religionem aliquam pertineat, a suis Superioribus maioribus vel similem titulum vel saltem verae peritiae testimonium habeat.⁴¹

IV. THE MANUSCRIPT

The present edition has been prepared from the only known copy of Francis Caraccioli's *quaestio*, found on fols. 33^r-33^v of MS. Vat. Borghes. 171, which for the rest contains the *quaestiones* of Henry of Harclay, "quondam cancellarii Oxoniensis" (fol. 1^r). The manuscript is in Gothic script

³⁷ The date is gauged from John XXII's letter of thanks (Ep. 104; *Reg. Vat.* 114, fol. 19v). Cf. Michael Wilks, *The Problem of Sovereignty in the Middle Ages* (Cambridge, 1963), 6. See also Grabmann, 14-18. For a biography, see Blasius Ministeri, *De Vita et Operibus Augustini de Ancona* (Rome, 1953).

³⁸ Augustinus Triumphus, 3, 5 [no pagination in the Augsburg ed.].

³⁹ "Utrum dignus magistrati in theologia teneatur scire ius canonicum," *ibid.*, 108, 3. See Appendix I and II.

⁴⁰ *Ibid.*

⁴¹ *Codex Iuris Canonici*, Pii X Pont. Max. iussu digestus, Benedicti Papae XV auctoritate promulgatus (Vatican City, 1961), can. 331, § 1, 5.

with very cursive tendencies and dates from the early fourteenth century; it contains 36 folios pages, measuring 298 × 214 mm., in two columns.¹

At the top of f. 33^r there appears in the copyist's hand the following notation: "a francisco Cancellario parisiensi". On the *verso* side of the same folio is inscribed in a different hand the title, "Utrum iurista vel theologus plus proficiat ad regimen ecclesie". The latter hand, however, is identical with that which annotates folio 1^r: "quelibet bone memorie Henrici de Harclay quondam cancellarii Oxoniensis".² The title of the question with which we are here concerned also appears at the bottom of the index on folio 33^v: "In fine questio cancellarii an magis expediat bonus iurista ad regendum ecclesiam quam bonus theologus".

The manuscript is the product of a number of copyists. At least three distinct hands are in evidence on fols. 33^r-33^v with corrections by a fourth. Annotations and divisions have been added both by the copyists and by the corrector. Unfortunately, however, part of the marginalia has been cut away by a careless binder.

Father Pelster, in his study of the codex, considered Caraccioli's question to be an autograph on account of the many corrections and deletions ("wegen der vielen Streichungen und Änderungen").³ Because of the distinctly different hands in the body of the manuscript, however, such an opinion is clearly untenable. On the other hand, there are a number of indications which point to a *reportatio* — that is, an unofficial version of the question taken down probably by students. The work as a whole seems to be in a rather unpolished state; the truncated sentences, the character of the orthography and grammar, and the somewhat imprecise line of argumentation all add to such an impression. Furthermore, the numerous corrections — especially of quoted texts — suggest that the original version was unauthorized. It is, however, entirely possible that the corrector was Caraccioli himself.⁴

Of the manuscript as a whole we possess a very ancient account; already in the year 1369 it was to be found in the papal library at Avignon.⁵ In the *Recensio librorum Palatii Avenionensis*, compiled under Bl. Urban V (1362-1370), there is the following entry: "Item quodlibet magistri Henrici de Archilay, coopertum pergamenno, quod incipit in secundo folio: quod

¹ Cf. *Codices Burghesiani*, 219, & Franz Pelster, "Heinrich von Harclay, Kanzler von Oxford, und seine Quästionen," in *Miscellanea Francesco Ehrle* (Vatican City, 1924), 1, 323-24.

² Pelster, 323.

³ *Ibid.*

⁴ Since, however, Caraccioli's autograph was not readily available, this opinion could not be verified.

⁵ "Codex memoratur in Catal. Avin. anni 1369, num. 782 et in Catal. anni 1375, num. 650," *Cod. Burghes.*, 220.

a [MS reads *autem*] et finit in penultimo folio: perfectum".⁶ The opening words of the second folio, "quod autem," prove that our MS Vat. Borghes. 171 is identical with the Avignon manuscript. Since, however, the concluding word "perfectum" is not found in our codex, Pelster concludes that one or more pages must be missing at the end.⁷

V. THE EDITION

In preparing the present text, the editor has attempted to follow the orthography of the manuscript throughout. While such a procedure admittedly does not add to the facility of reading the text, it is felt that a unique manuscript deserves a faithful transcription of the original spelling.¹ The frequent corrections have been read for the most part without their being noted as such; indeed, in many cases what was written before correction is simply illegible. Where the original text, however, seemed to shed some light on the meaning, it has been reproduced in the *apparatus criticus*. The following critical signs have also been employed: < > = editor's addition; [] = editor's deletion.

The editor has tried to use enough punctuation and paragraph divisions to aid the reader of modern English.² In attempting to present a readable text, moreover, it has been found necessary to make a number of emendations, and where the manuscript was occasionally illegible, to suggest a reading. Some attempt has been made to find all the sources quoted by Caraccioli. The foliation has been indicated by parentheses within the text.

VI. THE TEXT

Utrum iurista vel theologus plus proficiat ad regimen ecclesie

Assit principio sancta Maria meo. Amen, amen, amen. A Francisco Cancellario Parisiensi.

Hic exclusa equivocacione nominis ecclesie quia non intelligo per ecclesiam domum manufactam seu templum ex lapidibus et lingnis constructum sicut intellexerunt Iudei, *Ioanne* 2°, et male Christo dicente: *Solvite templum hoc et in tribus diebus excitabo illud; dixerunt ergo ei Iudei: 4<0> et 6 annis edificatum est templum et in tribus diebus excitabis illud; ille autem dicebat de templo corporis sui;*¹ quo modo accipitur ec-

⁶ F. Ehrle, *Historia Bibliothecae Romanorum Pontificum tum Bonifatianae tum Avencionensis* (Rome, 1890), 347.

⁷ Pelster, 324.

¹ Cf. the criteria set down by Ludwig Bieler, "The Grammarian's Craft: A Professional Talk," *Folia*, 10, #2 (1958) 28-29.

² *Ibid.*, 29.

¹ *Iohannes* 2: 19-22.

clesia in scriptura frequenter, et maxime *Iudith VI*^o: *Omnis populus per totam noctem intra ecclesiam oraverunt petens auxilium a Deo Israel.*² Nec intelligo etiam per ecclesiam bona temporalia quibus ministri ecclesie sustentantur. Hec enim minima bona sunt bonis et malis secundum Augustinum, primo *de civitate*,³ fidelibus et <in>fidelibus ecclesie vere et synagoge. Et pro tanto bona non putanda nec bonos facienda, sed sunt fortune nutum sequencia. Sed intelligo per ecclesiam fidelium multitudinem:⁴ *Ecclesiastici 3*^o: *Filii sapientie ecclesia iustorum*;⁵ et *44*^o: *Laudes eorum nunciet ecclesia*;⁶ prima *Timothei* tercio: *Scias quomodo oporteat te in domo Dei conversari que est ecclesia Dei vivi columpna et firmamentum veritatis.*⁷ De qua Hyllarius, *7*^o *de trinitate*: Hoc <enim> ecclesie proprium ut tunc vincat⁸ cum leditur, tunc intelligat<ur> cum arguitur, tunc optineat cum deseritur.⁹ Et Augustinus, *4*^o *de trinitate*: Contra ecclesiam nemo pacificus senserit¹⁰ (et *contra epistulam Fundamenti*: *Evangelio non crederem...*).¹¹

Si ecclesie non crederem,¹² primum est regimen manuartificum et latthomorum¹³; secundum yconomorum, secundum doctrinam Aristotelis, primo *Politice* et *7*^o;¹⁴ tertium vero est sciencium et virtuosorum. Ecclesia enim, secundum Hugucionem, convocacio interpretatur quia omnes ad se advocat et est proprie fidelium. Et synagoga congregacio interpretatur et est proprie Iudeorum. Inter quarum utramque tantum distat sicut inter convocacionem et congregacionem. Congregacio pecorum est quorum et greges dicitur. Convocari autem est magis utencium racione; quales sunt homines. Ut ergo notaretur Iudeorum infidelitas, dicta est eorum synagoga, id est congregacio quasi pecorum et indiscretorum. Et ut fidelitas nostra ipso vocabulo notaretur vel innueretur, dicta est nostra ecclesia, id est convocacio racionabilium et discretorum.¹⁵

² *Iudith* 6: 21. The text reads "petens" (for "petentes"), probably in psychological agreement with "populus."

³ Aug., *De Civitate Dei* I, 8; ed. Welldon (London, 1924), 1, 15.

⁴ Cf. Hugh of St. Victor: "Quid est ergo ecclesia nisi multitudo fidelium, universitas christianorum. Universitas autem haec duos ordines complectitur, laicos et clericos," *De Sacramentis Christianae Fidei* II, 2, 2-4; PL 176, 416 ff. In contrast, a contemporary of Caraccioli's was writing as follows: "Summus pontifex, qui tenet apicem Ecclesiae et qui potest dici Ecclesia,..." Giles of Rome, *De Ecclesiastica Potestate* III, 21; ed. Richard Scholz (Weimar, 1929), 209.

⁵ *Ecclesiasticus* 3: 1.

⁶ *Ibid.*, 44: 15.

⁷ *I Tim.* 3: 15.

⁸ Corrected from "vinat."

⁹ Hilary, *De Trinitate* VII (contra Arianos); PL 10, 202.

¹⁰ Augustine, *De Trinitate* IV, 6; PL 42: 895.

¹¹ "Ego vero Evangelio non crederem, nisi me catholicae Ecclesiae commoverit auctoritas," Augustine, *Contra epistulam Manichaei quam vocant Fundamenti*, cap. 5; PL 42, 176.

¹² Corrected from "audierunt."

¹³ From *λατομός* = a stone-cutter. Cf. Aristotle, *Politica* I, ll. 1258b31. Variants: latamus, latimus, latomus, lauthamus; cf. *Medieval Latin Word-List from British and Irish Sources*, ed. Baxter & Johnson (London, 1962), 242.

¹⁴ "Quoniam autem manifestum ex quibus partibus civitas constat, necessarium primum de yconomia dicere. Omnis enim componitui civitas ex domibus," Aristotle, *Politica* I, 3. 1253b1-2; ed. P. Michaud-Quantin (Bruges, 1961), 6. Probably Francis had no specific text in mind in citing Book VII.

¹⁵ Huguccio, *Derivationes* (Cambridge: Gonville & Caius MS 459/718), fol. 63v. Cf. Isidore, *Etymologiarum* VIII, 1; 1 ed. W. M. Lindsay (Oxford, 1957).

Fient ergo tria. Primo ostendetur quorum proprie sit regere, ex quo apparebit qui sunt idonei regere, et illud tenere. Secundo ex hoc veritatem quam concipio concludere. Propter primum est advertendum quod regere est intelligendum et intellectu vigencium. Est enim actus principantis. Principari autem est intellectu et mente vigentis. Primo *Politice*: Quod quidem potest mente providere,¹⁶ hoc principans natura et dominans natura; quod autem subiectum et natura servum.¹⁷ Et in alio capitulo: Iterum autem est aliis, et cetera... quorumcumque est opus corporis usus et hoc est ab ipsis optimum; isti quidem sunt natura servi quibus melius est regi.¹⁸ Seneca: Multos reges si ratio te rexerit.¹⁹ *Proverbiorum* primo: *intelligens gubernacula possidebit.*²⁰ Et quia prudentia est perfectio intellectus practici, est enim recta ratio agibilium.²¹ Et sapientia est potissima perfectio rationis; sicut ordinare et non ordinari sapientis est, sic et regere, non autem regi.²² *Ieremias* 23: *Regnabit rex et sapiens erit.*²³ Histeron proteron,²⁴ qui[a] sapiens vere erit, regnabit. Sic ergo sapientis et prudentis est regere: sapientis quoad speculationem veri; prudentis quoad actionem boni. *Diligite lumen sapientie, omnes qui preestis populis, Sapientie VI*^o.²⁵ Et quanto sapientiores vel prudentiores, tanto magis idonei ad regendum. Regere iterum est ordinare quod regitur in finem.²⁶ Et quanto finis potior, tanto regimen melius. Et quia prudentia annuitur²⁷ virtus moralis que perficit appetitum sapientie vere que a sapore dicta²⁸ est.²⁹ *Sapientia enim doctrine*³⁰ *secundum nomen eius, Ecclesiasti-*

¹⁶ Moerbeke's translation reads "providere."

¹⁷ Aristotle, *Politica* I, 1. 1252a30-34; ed. Michaud-Quantin, 4.

¹⁸ *Ibid.* I, 5. 1254b10-20; 9.

¹⁹ Seneca, Ep. 37 (Lucilio), 4; ed. Capps, Page & Rouse (New York, 1925), 1, 254.

²⁰ *Prov.* 1: 5.

²¹ Cf. Aquinas: "Cum enim prudentia sit 'recta ratio agibilium,' requiritur ad prudentiam quod homo se bene habeat ad principia huius rationis agendorum, quae sunt fines ad quos bene se habet homo per rectitudinem voluntatis, sicut ad principia speculabilium per naturale lumen intellectus agentis," *ST* I-II, 56, 3c.

²² Aristotle, *Nich. Eth.* VI, 5. 1140b20. Aquinas also raises the question (*ST* II-II, 47, 12c), "utrum prudentia sit in subditis a solum in principibus," and concludes: "...ideo prudentia non est virtus servi in quantum est servus, nec subditi in quantum est subditus. Sed quia quilibet homo, in quantum est rationalis, participat aliquid de regimine secundum arbitrium rationis, in tantum convenit ei prudentiam habere."

²³ *Ieremias* 23: 5.

²⁴ "Late Latin (Servius), a Gr. *ὑστερον πρότερον*... 1. *Gram. & Rhet.* A figure of speech in which the word or phrase that should properly come last is put first.... 2. Inversion of the natural or logical order; as by placing the conclusion before the premisses, etc.," *OED* 5, 516.

²⁵ *Sap.* 6: 23. Misquoted in Leclercq (p. 139) in favor of law.

²⁶ Cf. Aquinas: "Prudentiae autem proprium est, sec. Philosophum in VI *Ethic.* [5. 1140a28], ordinare alia in finem," *ST* I, 22, 1c.

²⁷ Corrected from "annuetur."

²⁸ Emended from "dicto."

²⁹ "Sapiens dictus est a sapore; quia sicut gustus aptus est ad discretionem saporis ciborum, sic sapiens ad dinoscentiam rerum atque causarum; quod unumquodque dinoscat, atque sensu veritatis discernat," Isidore, *Etymologiarum* X, no. 240; ed. Lindsay. Cf. Huguccio, *Derivationes*, fol. 192r. Cf. also Humbert de Romanis, cap. 70, ad studentes in theologia; 491a.

³⁰ Emended from "doctrina."

ci 6.³¹ Agnoscitur veritas³² in affectu et spes. Tria enim hec sunt, quibus propheta omnis et sciencia militat, fides, spes, caritas, primo *de doctrina christiana*.³³ Ydoneum regere oportet esse profundum in intellectu et rectum in affectu ut sit talis qualem eum describit Gregorius, prima epistularum, epistula 23,³⁴ et idem repetit in *pastorali*.³⁵ Omni cura vigilandum est ut rector noster cogitatione sit mundus, operatione precipuus, discretus in silencio, utilis in verbo, singulis compassione proximus, pro cunctis contemplatione suspensus, bene agentibus per humilitatem socius, contra delinquentium vicia per zelum iusticie erectus. Item secundum Gregorium: inesse rectoribus, et cetera.³⁶ Et quales felicitat Augustinus, 5 *de civitate*: Felices eos dicimus si iuste imperant, si inter linguas sublimeret honorancium et obsequia nimis humiliter salutancium non extolluntur, sed se homines esse meminerunt; si suam potestatem ad Dei cultum maxime dilatandum maiestati eius famulam faciunt; si Deum timent, di-(33rb)ligunt, colunt; si plus amant illud regnum ubi non timent habere consortes; si tardius vindicant, facile ignoscunt; si eandem vindictam pro necessitate tuende, regende, curandeque rei publice, non pro saturandis inimicium odius exerunt; si eiusdem veniam non ad impunitatem iniquitatis, sed ad spem correctionis indulgent; si quod as<pere> coguntur plerumque discernere, misericordie lenitate, et beneficorum largitate compensant; si luxuria tanto est eis castigacior, quanto posset esse liberior; si malunt cupiditatibus pravis quam quibus libet gentibus imperare et si hec omnia faciunt non propter ardorem inanis glorie, sed propter caritatem felicitatis eterne; si pro suis peccatis humilitatis et miseracionis et oracionis sacrificium Deo suo vero immolare non negligunt. Tales christianos imperatores dicimus esse felices in spe, postea reipsa futuros, cum id quod expectabimus advenit.³⁷ Incomiis³⁸ ergo visis dicendum quod si bonus theologus est qui theologiam bene novit, que est speculativa et practica de divinis et humanis,³⁹ activam et contemplativam complectens, at per hoc bonus theologus est qui in divinis scripturis profecit; non dico <in eis> multum legendis memorieque mandandis, sed intelligendis et spiritualiter earum sensibus investigandis, secundum Augustinum, 4^o *de doctrina christiana*.⁴⁰ Per bonum iuristam qui scit bene iura positiva, prescindendo quod pertinet ad theologum, ad regendum ecclesiam magis ydoneus est bonus theologus quam iurista. Quod patet primo ex parte ecclesie regende, secundo ex parte finis, tercio ex parte condicionum regencium in universali et particulari. Ex parte quidem ecclesie regende quia ecclesia, cum sit convocacio fidelium, dirigenda in credibilibus, informanda moribus. Hoc autem potest maxime theologus melius quam iurista. Cum enim theologia vel sit idem quod fides vel de fide, ad eam spectat maxime docere quid credendum. Huic enim sciencie tribuitur illud tantum-

³¹ *Eccl.* 6: 23. See *The Holy Bible*, tr. Knox (London, 1955), 593; also *La Sainte Bible*, tr. Duesberg & Auvray (Paris, 1957), 5, 45.

³² Corrected from "caritas."

³³ Augustine, *De Doctrina Christiana* I, 37; PL 34, 35.

³⁴ Gregory I, *Epistolarum* I, ep. 25; PL 77, 469b.

³⁵ *Ibid.*, *Regulae Pastoralis Liber* II, 1; PL 77, 26-27.

³⁶ The editor was unable to find the source of this quote.

³⁷ Augustine, *De Civ. Dei* 5, 24; 1, 240.

³⁸ i.e. "encomiis."

³⁹ Cf. Cicero's definition of *sapientia*: "... sapientia... rerum est divinarum et humanarum scientia," *De Officiis* I, 153.

⁴⁰ Augustine, *De Doctrina Christiana* IV, 5; ed. T. Sullivan (Wash., 1930), 58.

modo quo fides saluberrima, secundum Augustinum, 14 *de trinitate*.⁴¹ Informatio etiam morum maxime ad ipsam spectat, quia ipsa tradit principaliter Christi vitam, que disciplina morum fuit, secundum Augustinum, *de vera religione* XXIX.⁴² Dicente Gregorio, secundo *Moralium*: Scriptura sacra mentis oculis quasi quoddam speculum opponitur ut interna nostra facies in ipsa videatur. Ibi enim feda, ibi pulcra nostra cognoscimus. Ibi sentimus quantum proficimus, ibi a propectu quam longe distamus. Narrat gesta virorum, et ad imitationem corda provocat infirmorum. Dumque illorum victricia facta commemorat, contra viciorum prelia debilia nostra confirmat. Nonnumquam vero non solum nobis eorum virtutes asserit, sed etiam casus innotescit; ut et in victoria forcium quid imitando debeamus arripere, et rursus videamus in lapsibus quid debeamus timere.⁴³ Et ad idem Gregorius, omelia 15 *super Ezechiel*: Que edificant, omnia que erudiunt, scri<p>ta continentur in hoc volumine;⁴⁴ per tria: quia ostendit st<r>ucturam suam in edificacione morum, altitudinem in promissione premiorum, oribilem aspectum in terroribus suppliciorum. Recta est in preceptis, alta in promissionibus, terribilis in minis.⁴⁵

Secunda ratio ex parte finis ad quam regitur et dirigitur. Ille omni est⁴⁶ vita eterna, et⁴⁷ habitus verius quam theologia. *Hec scripta sunt ut credatis quia Iesus est... et ut credentes vitam habeatis*.⁴⁸ *Scrutamini scripturas in quibus vos putatis*, et cetera, *Iohanne* 5.⁴⁹ Inquit Gregorius, *super Ezechielem*, omelia 5, prime partis: Nobis qui ad eternam patriam tendimus scriptura sacra per 4 suas facies mare est quia crucem annunciat, quia nos ad terram vivencium ligno portat.⁵⁰ Cognicio finis necessaria est. Igitur et ad vitam cognicio eius magnum habet incrementum, quemadmodum sagittatores signum habentes facilius utique adipiscuntur quod oportet.⁵¹ Et nulla verius <quam>⁵² sit hominis beatitudo. *Hec est vita eterna*, et cetera.⁵³

Tercia ratio ex parte condicionis regencium in universali:⁵⁴ quidem primo quia si regere sapientis est et prudentis, igitur maxime secundum habitum qui est⁵⁵ sapientia et prudentia. Talis est theologia. *Hec est sapientia vestra et intellectus coram populis*,⁵⁶ et quemadmodum caput habens altissimorum est encium, 6 *Ethicorum*,⁵⁷ et primo *Metaphysicorum*: Si regere est etiam principantis, hic principor⁵⁸ omni-

⁴¹ *Ibid.*, *De Trinitate* XIV, 1; PL 42, 1037.

⁴² *Ibid.*, *De Vera Religione* I, 16; PL 34, 135.

⁴³ Gregory I, *Moralium* II, 1; PL 75, 554-55.

⁴⁴ *Ibid.*, *Homiliarum in Ezechielem* I, hom. 9; PL 76, 885-86.

⁴⁵ *Ibid.*, hom. 6; PL 76, 837.

⁴⁶ Corrected from "ex."

⁴⁷ Corrected from "et quis."

⁴⁸ *Iohannes* 20: 31.

⁴⁹ *Ibid.* 5: 39.

⁵⁰ Gregory I, *Homiliarum in Ezechielem* I, hom. 6; PL 76, 834-35.

⁵¹ Aristotle, *Eth. Nic.* I, 1. 1094a22-24 (antiqua tr.); in Th. Aq., *Omnia Opera*, ed. Vivès, 24, 235.

⁵² Emended from "quid"; it has possibly been corrected also in the MS.

⁵³ *Iohannes* 17: 3.

⁵⁴ Corrected from "aliis."

⁵⁵ "Secundum" deleted.

⁵⁶ *Deut.* 4: 6.

⁵⁷ "Et quemadmodum caput habens scientia honorabilissimorum," Aristotle, *Eth. Nic.* VI, 7. 1141a20; in Th. Aq., ed. Vivès, 24, 497.

⁵⁸ Corrected from "pincipatur."

bus;⁵⁹ super omnes enim gentium litteras, XI^o, et cetera.⁶⁰ Si in particulari: ut cogitatione sit mundus, operatione precipuus (*Lavamini, mundi estote auferte malum, et cetera*).⁶¹ *Operemur bonum ad omnes*⁶², discretus in silencio (*Dixi custodiam, et cetera*)⁶³, utilis in verbo (*Ephesios 4: Omnis sermo malus, et cetera*);⁶⁴ *Sermo vester semper sit in gracia, Colossenses 4*⁶⁵, singulis compassione proximus (*Ysaiae 58: Frange erusienti, et cetera*);⁶⁶ *estote misericordes, <et> cetera*⁶⁷, pre cunctis contemplacione suspensus (*Que sursum sunt querite, et cetera, Colossenses 3*);⁶⁸ *Abacuch 2: Contemplabor quid dicetur mihi*⁶⁹). Et breviter, quantum distat regimen Dei ab hominis regimine, tantum regimen per theologiam, que a Sancto Spiritu [inspir] (33^{va}) inspirata est a regimine iuristarum⁷⁰ que sunt ab homine compilata. Timentibus servis lex est,⁷¹ transmissa per servum, et cetera.⁷² Et hec dico quantum ad regendum in omnibus que per se ad ecclesiam pertinent. Unde Augustinus, *prima epistola ad Marcellinum*: Proinde⁷³ qui doctrinam Christi adversam dicunt⁷⁴ esse rei publice, dent exercitus tales quales doctrina Christi esse milites iussit; dent tales⁷⁵ provinciales, tales maritos, tales coniuges, tales parentes, tales filios,⁷⁶ tales dominos, tales servos, tales reges, tales iudices, tales denique debitorum fisci creditores et exactores,⁷⁷ quales esse precipit doctrina Christiana, et audeant eam dicere adversum rei publice;⁷⁸ immo vero confiteri non dubitent magnam, si ei obtemperetur salutem esse rei publice. Et Bernardus, primo *de consideracione ad Eugenium*: Denique quando oramus? Quando docemus populos? Quando edificamus⁷⁹ ecclesiam? Quando meditamur in lege? Et quidem cotidie perstrepunt in palacio leges, sed Iustiniani, non Domini. Iustene est istud? Tu

⁵⁹ "Sapientis est ordinare, et non ordinari," Aristotle, *Meta*, I, 2.982a18; in Th. Aq., ed. Vivès, 24, 343.

⁶⁰ The editor has been unable to find the source of this quote.

⁶¹ *Isaias* 1: 16.

⁶² *Gal.* 6: 10.

⁶³ *Ps.* 38: 2.

⁶⁴ *Eph.* 4: 29.

⁶⁵ *Colos.* 4: 6.

⁶⁶ *Isaias* 58: 7.

⁶⁷ *Luca* 6: 36.

⁶⁸ *Colos.* 3: 1.

⁶⁹ *Hab.* 2: 1.

⁷⁰ The author (or scribe) possibly intended to write (or thought he had written) "iurium" or "per iura," following which "que sunt... compilata" would make sense. As it stands, the clause is both ungrammatical and illogical. Possibly also this is an occurrence of a homoeoteleuton on the part of the scribe, the original reading being: "... regimine iuristarum *que est per iura* que sunt ab homine compilata."

⁷¹ "da" deleted in MS.

⁷² The editor was unable to find the source of this quote. Cf. *Iohannes* 1: 17: "... lex per Moysen data est, gratia et veritas per Iesum Christum facta est."

⁷³ "Dicunt esse rei publice" deleted in MS.

⁷⁴ Corrected in MS.

⁷⁵ Corrected in MS.

⁷⁶ Dittography in MS.

⁷⁷ Corrected from "debitores et exanones."

⁷⁸ Augustine, *Epistola ad Marcellinum* (ep. 138), cap. 2; PL 33, 532.

⁷⁹ Dittography in MS.

videris. Nam lex Domini immaculata, hec autem non tam leges quam lites sunt, et cavillationes subvertentes iudicium. Tu ergo, pastor et episcopus animarum, quamente, obsecro, sustines coram te semper silere illam, garrere istas? Fallor si non [tibi] movet tibi scrupulum perversitas hec. Puto quod interdum compellat clamare cum propheta: *Narraverunt mihi*, et cetera.⁸⁰ Et tamen quantumcumque iudicare <d>e istis minoribus non debent, sed per minores, sicut docet Apostolus, *I Corinthios* 6: *Secularia iudicia si habueritis, contemptibiles, qui sunt in ecclesia, illos constituite ad iudicandum*.⁸¹ Bernardus, *I de consideratione*, hec certans: Quid mirum si de talibus iudicent, quibus datum est iudicium in maiora; non ergo indigni vos, sed indignum vobis talia iudicare, utpote potioribus occupatis.⁸² Propter quod Aristoteles primo *Politice*: Quibus potestas est ut ipsi non talia paciantur, procurator accipit hunc honorem, ipsi vero civiliter vivunt, aut filosofantur.⁸³

Et cum arguitur in oppositum quod iurista magis potest defendere iura ecclesie, <di>endum quod non; quia illa principaliter in sacramentis et eorum administratione, in criminibus et eorum discussione. In criminibus, non in possessionibus potestas vestra est, secundum Bernardum.⁸⁴ Et preter defensio quantum ad impugnantes, principalior consideratio regiminis est inducere ad finem per se intentum, et prohibere plus impediencia: quod magis facit theologia.⁸⁵

APPENDIX I

Augustinus Triumphus, *Summa de potestate ecclesiastica*, q. 3, art. 5: "Utrum teneatur (collegium cardinalium) magis eligere iuristam quam theologum."

"Ad quintum sic proceditur. Videtur enim quod collegium magis teneatur eligere iuristam quam theologum in papam; quia papa potissime eligitur ad questiones et iurgiorum litigia determinanda quae tot quotidie insurgunt ut nisi iusticia conatus eius sua virtute repriment ius humani federis litigatorum abusus extingueret; et dato libello repudii concordia extra mundi terminos exularet ut scribitur extra de electione, *rex pacificus*. Sed in questionibus terminandis et imponendo finem litibus plus valent iuriste quam theologi. Scribitur enim xx. di. c. *decretales*: quod in sacrarum scripturarum expositionibus sacre scripture tractatores pontificibus preponantur. Sed in negociis diffiniendis et in causis determinandis sedis apostolice eius locum merentur tenere. Videtur ergo quod magis iuristam quam theologum collegium tenetur eligere.

Preterea super illo verbo prophete: *Canes sunt non volentes*, dicit Augustinus: quod baculo et manu arcendi sunt lupi. Et super illo verbo *Ezechiel* xiii: *Hec dicit Dominus de prophetis insipientibus non ascendistis ex adverso nec posuistis vos ut murum pro domo Israel ut*

⁸⁰ Bernard, *De Consideratione* I, 4; ed. Leclercq & Rochais (Rome, 1963), 3, 399.

⁸¹ *I Cor.* 6: 4.

⁸² Bernard, *De Consolatione* I, 6; 3, 402.

⁸³ Aristotle, *Politica* I, 7. 1255b33-37; ed. Michaud-Quantin, 12.

⁸⁴ Bernard, *De Consolatione* I, 6; 3, 402.

⁸⁵ Cf. Iohannes Andreae († 1348), an eminent canonist, who had written in his *Quaestiones mercuriales*, ad reg. 2 *Possessor non praescribit*: "... ius canonicum... intendit terminare litigia propter conservandam iustitiam, nam suus finis principalis est ordinare in Deum et in legem evangelicam, ut homo gloriam assequatur," fol. 60vb in ed. Venice (1581); quoted in Kuttner, 60, n. 29.

staretis in prelio in die Domini, dicit Gregorius in *pastorali*: quod ex adverso quippe ascendere est pro defensione veritatis libera voce huius mundi potestatibus contraire; sed hec omnia ut videtur melius potest homo facere per iura quam per theologiam. Magis ergo collegium tenetur eligere iuristam quam theologum.

Preterea quanto oppositum alicuius est magis periculosum, tanto illud est magis necessarium. Sed oppositum iuris et iusticie est iniusticia de qua dicit Philosophus, v. *ethice*: quod est crudelissima et sevissima habens arma, quia sicut homo lege et iusticia est pessimum hominum. Cui concordat illud quod scribitur *ecclesiastici x*: *Regnum a gente in gentem transfertur propter iniusticias et iniurias et contumelias adversus dolus*. Sed papa debet esse optimus inter homines quantum ad omnia ista. Videtur ergo quod plus expediat ecclesie Dei quod papa sit iurista quam theologus.

Preterea super illo verbo *exodi xxviii*: *apostolica quoque tibi Aaron fratrem tuum dictum est Moysi*. Dicit Gregorius: quod qui ad summum sacerdotium assumuntur tanto studio et amore debent eligi et iusticie adherere ut germana videantur cognatione coniungi; videtur ergo quod papa magis debeat esse iurista quam theologus. In contrarium est Hieronymus in quadam epistola ubi fortiter reprehendit clericos et prelatos ecclesie qui potius in manibus portant codices imperatorum quam evangelistarum.

Preterea scribitur xxxvi. di. quod ad summum sacerdotium non aspiret qui divinis stipendiis et disciplinis non est eruditus.

Responsio: Dicendum quod papa quantum ad presens quatuor modis considerari potest primo ex parte ecclesie cui perficitur. Secundo ex parte status in quo constituitur. Tercio ex parte scientie quo perficitur. Quarto ex parte iudicii quod per ipsum fertur. Omnibus autem istis modis liquide potest apparere quod collegium magis tenetur eligere bonum theologum quam bonum iuristam in summum pontificem. Primo quidem ex parte ecclesie cui perficitur. Nomine nanque ecclesie principaliter non intelliguntur muri oliveta et bona temporalia de quibus insurgunt omni die lites et discordie ad quarum terminationem valent iura et leges sed magis intelliguntur anime ipsorum fidelium ad quarum informationem ut Christo sponso ecclesie coniungantur non est necessaria nisi sacra theologia; pro ecclesia enim ut nominat muros castra civitates et alia temporalia bona Christus mortuus non fuit nec passus imo omnia talia in tantum contempsit ut diceret nolenti (leg. volenti) sequi ipsum propter temporale subsidium: *Vulpes foveas habent et volucres celi nidos; Filius autem hominis non habet ubi caput reclinet*. Sed pro ecclesia et nomine ecclesie intelliguntur anime fidelium Christus mortuus est et sanguinem suum effudit. Unde dicit Chrysostom in quadam omelia de pentacosta: Magna cura est Deo de ecclesia sua non muro circumdata, sed fide circumsepta. Et Apostolus *ad Corinthios xiii* (12: 15) Christi vestigia sequens dicit: *Ego autem libentissime impendam et superimpendam ipse pro animabus vestris*. Secundo hoc patet ex parte status in quo papa constituitur. Nam papa idem sonat quod pater patrum ita quod debet esse medius inter Deum et alios pastores et prelatos ecclesie. Nam super illo verbo quod dictum est Moysi *exodi iiii*: *Tu eris in his que ad Deum pertinent et Aaron frater tuus loquetur pro te ad populum*. Dicit Augustinus, Quod summus pontifex cuius figuram gerebat Moyses medius debet esse inter Deum et Aaron qui gessit figuram aliorum prelatorum. Nam cum ipse Moyses vellet terminare questiones et iurgia in populo audiverit a Iethro cognato suo, *exodi xviii*: *Stulto labore consumeris. Esto tu in populo in his que ad Deum pertinent et ostendas populo cerimonias et ritum colendi Deum. Ad lites vero et questiones determinandas provide de omni plebe viros timentes Deum in quibus sit veritas et qui oderint avariciam*. Tercio istud patet ex parte scientie qua summus pontifex perficitur. Sicut enim ipse papa preferitur omnibus aliis prelatibus et pontificibus, ita scientia qua ipse perficitur et qua

debet esse perfectus preferenda est omnibus aliis scientiis, ut sicut scientia profertur scientie ita professor preferatur professoribus. Constat autem quod sacra scriptura est illa que profertur omnibus legibus et scientiis. Ergo theologus in electione pape preferendus est omnibus iuristis et aliarum scientiarum professoribus. Quarto hoc patet ex parte iudicii quod per ipsum papam profertur. Est enim ipse papa universalis iudex totius orbis et omnium questionum insurgentium. Constat autem quod iura civilia non corrigunt omnia mala et multa impunita relinquunt que per divinam legem et sacram theologiam iudicantur. Et. x. di. scribitur quod legibus imperatorum non in omnibus ecclesiasticis contraversiis utendum est, presertim cum inveniantur evangelice ac canonicæ sanctioni aliquotiens obviare.

Ad primum ergo est dicendum: quod ad lites et questiones terminandas papa assumere debet contemptibiles de ecclesia puta seculares iudices sicut dicit Apostolus non autem ipse per seipsum. Unde et *apostoli vii (Actus 6: 2 ff.)*, dyacones elegerunt qui temporalibus insisterent quatinus ipsi orationi et ministerio verbi Dei quietius possent insistere nec bonus theologus nudus est a legibus quantum ad illud quod veritatis et iusticie est in eis; aliter leges dicende non sunt, si non sunt iuste et vere ut dicit Augustinus: quod lex ut michi videtur dicenda non est quo iusta non est. Quicquid enim veritatis et iusticie est in omnibus scientiis et in sacra scriptura perfectius invenitur. Quicquid autem falsum et noxium est in ea damnatur secundum Augustinum. Nam ipsa de semetipsa loquitur *proverbiis viii: Per me reges regnant et legum conditores iusta decernunt.*

Ad secundum est dicendum quod latrare contra lupos ne animas fidelium rapiant et stare ex adverso contra volentes invadere dominicum gregem melius est per sacras scripturas quam per leges et iura facere, quia finis eius est caritas. Iuxta illud Apostoli finis precepta est caritas, que ut scribitur in *cantico (canticorum 4: 4)*, est *omnis armatura fortium* qua expoliatus Petrus, una enim mulieris voce percussus dum mori timuit vitam negavit. Et qua vestitus dixit obedire oportet Deo magis quam hominibus.

Ad tertium est dicendum: quod summus pontifex debet esse perfectus principaliter lege divina de qua scriptum est, *Lex Domini immaculata convertens animas*; legem autem humanam aliquando assumere potest non ad intentum principale, sed ad aliquod adiutorium temporale et corporale. Unde dicit Augustinus et ponitur x. di. Si in adiutorium vestrum terreni imperii leges assumendas putatis non reprehendimus nam fecit hoc Paulus: cum adversus iniuriosos Cesarem appellavit et civem romanum se esse protestatus est.

Ad iiii est dicendum: quod illud verbum Gregorii de lege divina intelligitur. Si vero intelligatur de lege humana quod summus pontifex lege humana germana cognatione debeat esse coniunctus. Intelligendum est sicut dicit Cyprianus et ponitur x. di. Quod Christiani imperatores pro eterna vita pontificibus indigent et pontifices pro cursu temporalium tantummodo imperialibus uti debent quatinus spiritualis homo negociis secularibus se non implicet".

APPENDIX II

Augustinus Triumphus, q. 108, art. 3: "Utrum dignus magistrari in theologia teneatur scire ius canonicum".

"Ad iii sic proceditur: videtur enim quod dignus magistrari in theologia non teneatur scire ius canonicum. Scientia enim iuris canonici videtur esse quedam

practica theologica. Sed dignus magistrari in theologia non tenetur scire theologiam practicam cum finis eius non sit praxis sed contemplatio veritatis ut dicit Augustinus, i. *de trinitate*. Preterea sciens scientiam subalternantem non tenetur scire scientiam subalternatam alias philosophus naturalis teneretur scire scientiam medicine et alias scientias que subalternantur ei. Sed ius canonicum subalternatur theologie. Dignus ergo magistrari in theologia non tenetur ipsum scire. Preterea in iure canonico multe questiones determinantur per leges et iura civilia. Scribitur enim x. di. Si in adiutorium nostrum terreni imperii leges assumendas putatis non reprehendimus. Sed dignus magistrari in theologia non tenetur scire leges et iura civilia. In contrarium est qui eiusdem scientie est considerare finem et ordinem ministrorum subservientium illi fini sicut eadem lex mosaica que determinavit de ordine multorum servientium in cultu illo. Sed tota scientia iuris canonici est de ordine ministrorum et ecclesiasticorum negotiorum prout pertinet ad cultum Dei; ergo theologus qui considerat de Deo tanquam de fine precipue habet de talibus considerare. Responsio. Dicendum quod distinctio unius scientie ab alia non accipitur penes rem que cognoscitur sed penes diversum modum sciendi; unde penes diversum modum considerandi Philosophus, vi. *metaphysice*, posuit distinctionem scientiarum. Illa ergo eadem que tractantur in theologia tractantur in iure canonico et illi idem canones qui recipiuntur in theologia recipiuntur in iure canonico; et que respuuntur ibi respuuntur hic. Scribitur enim auctoritate Augustini, xii. di. Omnia que neque in sanctorum auctoritatibus continentur nec in conciliis sanctorum patrum inveniuntur nec consuetudine universalis ecclesie roborata sunt sine ulla dubitatione resecanda estimo. Differunt tamen in modo considerandi quantum ad quinque. Primo quidem quia a theologo determinantur modo subtili et quasi propter quid et modo quo propter quid in theologia assignari potest. In iure vero canonico modo grosso et solum. Secunda quia a theologo terminantur principaliter propter veritatis contemplationem; a canonistis vero magis principaliter propter actionem et questionum occurrentium solutionem. Tercio quia a theologo determinantur (?) principaliter de cultu Dei et de his que spectant ad integritatem fidei unius Dei. A canonistis vero magis de ordine ministrorum et ecclesiasticorum negotiorum spectantium ad talem cultum. Quarto quia a theologo determinantur canones qualiter piis opitulentur et contra impios defendantur. In iure vero canonico taxatur modus quo opitulentur piis et defendantur contra impios. Quinto quia a theologo determinantur magis universaliter et in foro conscientie in quo agitur causa inter hominem et Deum. A canonistis vero magis particulariter applicando ad particularia negocia in foro exterioris iudicii in quo agitur causa inter hominem et hominem. Et quia sermones universales in materia morali parum sunt utiles ut dicitur i. *ethice*; ideo puto quod provida ordinatio esset ut dignus magistrari in theologia post lectionem libri sententiarum teneretur legere librum decretorum quatinus magis tritus et expertus assumeretur in his que sunt necessaria ad consulendum saluti animarum fidelium.

Ad primum ergo est dicendum quod praxis non subterfugit determinationem theologie imo aliqui ponunt eam principaliter speculativam et specialiter practicam pro eo quod contemplatio Dei ad quam ordinatur theologia tanquam ad finem acquiri non potest nisi per caritatem et opera virtuosa et observationem mandatorum Dei. Ad secundum est dicendum quod scientia subalternans tradit principia scientie subalternate ideo eadem considerantur in utraque scientia non tamen eodem modo sed ibi universaliter et scientificè, hic autem particulariter et modo grosso. Sic illos canones tenentur scire theologi quos tradunt canoniste et secundum veritatem illorum questiones debent determinare non quidem modo iuristarum in foro exterioris iudicii

ubi agitur causa inter hominem et hominem. Sed magis modo theologico et in foro conscientie in quo agitur causa inter hominem et Deum. Ad tertium est dicendum quod sicut theologia non respuit scientias philosophorum que pluribus erroribus sunt admixte quam leges imperatorum ita nec in iure canonico sibi subalternato respuit leges terreni impii quia ubicumque et unacumque insonuerunt veritas ab illo est qui dicit. Ego sum via veritas et vita ut dicit Augustinus. Unde sicut dignus magistrari in theologia tenetur scire primitivas (?) scientias humanas ut clarius et subtilius possit sacram scripturam intelligere. Sic multo magis tenetur scire sanctorum canones ut melius et fructuosius possit saluti animarum consulere."

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