THE SACRAMENTS IN THE *COMPILATIO QUESTIONUM THEOLOGIE* OF MAGISTER MARTINUS:
CRITICAL EDITION WITH COMMENTARY

A Dissertation

Submitted To the Graduate School
of the University of Notre Dame
in Partial Fulfillment of the Requirements
for the Degree of
Doctor of Philosophy

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November 2010
Scholarship has frequently cited a Magister Martinus who wrote a theological text around 1200. Hitherto, however, the most valuable aspects of this text have not been recognized, and at the same time many misunderstandings about it have prevailed. Both result in part from the fact that no edition of the text is available. This dissertation partially alleviates these problems. It includes an edition from all manuscripts of Martinus’ section on the sacraments. It also addresses certain misunderstandings about Martinus to present a new interpretation of this text. This dissertation corrects a longstanding assumption that Martinus belonged to the school of Gilbert of Poitiers and complicates an incompatible but equally venerable assumption that he was a follower of Peter of Poitiers. It points out Martinus’ extensive use of canon law and the practical and casuistic nature of Martinus’ text, features which have almost escaped notice. Although Martinus’ text unmistakably fits the genre of a theological summa, in these features Martinus’ text is exceptional relative to contemporary works in that genre. This
dissertation therefore claims that Martinus’ identification with canon law makes his text a valuable witness to the relationship between theology and canon law in the schools in the early period of scholasticism. This dissertation further suggests that because of its practical concerns, Martinus’ text resembles contemporary works which scholars have identified as belonging to a literature of pastoral care. It will therefore be useful to scholars who try to refine the scholarly conception of this literature of pastoral care in the late twelfth century. This dissertation provides new access to and a new interpretation of Magister Martinus’ *Compilatio questionum theologie*.
For Rebecca Hall and Prof. Dr. Thomas Prügl, who supported me when I was in the
deepest distress, and for

William Hall, who nearly ruined the whole thing through no fault of his own
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Throughout the English text of this dissertation, I have referred to the Latin text edited at the back by chapter and line number, separated by a comma. Thus chapter one, line 45 will be written: 1,45. A series of line numbers within a chapter will be separated by a period; so chapter one, lines 45, 97, and 104 will be written: 1,45.97.104. Below is a list of bibliographic abbreviations which I have employed in both the English and Latin portions of the dissertation.

<table>
<thead>
<tr>
<th>Abbreviation</th>
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<tbody>
<tr>
<td>AMN</td>
<td><em>Analecta mediaevalia namurcensia</em></td>
</tr>
<tr>
<td>CCCM</td>
<td>Corpus christianorum continuatio medievalis</td>
</tr>
<tr>
<td>CCSL</td>
<td>Corpus christianorum series latina</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CIC</td>
<td>Corpus Iuris Civilis</td>
</tr>
<tr>
<td>CSEL</td>
<td>Corpus scriptorum ecclesiasticorum latinorum</td>
</tr>
<tr>
<td>Garv. (Udo)</td>
<td>Magister Udo, <em>Sententiae, Liber IV</em>, Joseph N. Garvin Papers (GRV), University of Notre Dame Archives (UNDA), Notre Dame, IN 46556. Text transcribed from Città del Vaticano, biblioteca Apostolica Vaticana, Cod. Pal. lat. 328. Collated against Salzburg, Stiftsbibliothek St. Peter (Erzabtei), Cod. a.V.35 (=S) Wein, Österreichische Nationalbibliothek, Cod. 1050 (=V), and Wien, Österreichische Nationalbibliothek, Cod. 1564 (=Vienna).</td>
</tr>
<tr>
<td>JTS</td>
<td><em>Journal of Theological Studies</em></td>
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*RTAM* *Recherches de théologie ancienne et médiévale*

*SC* Sources Chrétienennes

*Spic.Fr.* Spicilegium Friburgense


PART I:

COMMENTARY
CHAPTER 1:
THE STATE OF THE QUESTION

Over the last century, Magister Martinus has been discussed continuously by historians and historians of theology. Almost always, the study of Martinus has been undertaken as a part of research on some other topic, usually either a contemporary figure or the history of a doctrine. Consequently, the picture that has resulted is confusing if not contradictory. It is time that someone took a good look at Martinus’ text in itself in order to reconcile accurately the divergent understandings of Martinus which a century of scholarship on related topics has produced.

1.1 Research

Like many other authors of the scholastic period, Martinus owes his place in modern historiography primarily to Martin Grabmann, whose *Die Geschichte der scholastischen Methode*, initially published in 1911, first discussed and analyzed Martinus’ *Compilatio questionum theologie*. Martinus’ work first appeared in scholarly literature in an article by Heinrich Denifle, but this mention amounts to a comparison of the titles given to the *Compilatio* in two manuscripts to illustrate the interchangeability of
the terms *sententiae* and *questiones* in twelfth century usage.\(^1\) Grabmann’s work, however, includes a transcription of the prologue and selected chapter titles. More importantly, it evaluates the work as a whole, remarking particularly on the balance implied in how Martinus rails against the abuse of philosophy in theology and yet employs dialectic throughout his work. Grabmann commends Martinus to the attention of scholars as an important figure in late 12\(^{th}\) century theology.\(^2\) Perhaps taking up Grabmann’s suggestion, de Ghellinck consults Martinus’ text for *Le mouvement théologique de XIIe siècle*.\(^3\) Both Grabmann and de Ghellinck note Martinus’ interest in canon law, a point which has not been pursued much further.\(^4\)

After these two general introductions to scholastic thought, interest in Martinus’ text comes primarily from two types of works: studies of contemporary figures and narratives of the development of doctrine. Studies on contemporary figures which have discussed Martinus have made divergent claims about Martinus relationship to his contemporaries. The earliest such studies were on Stephen Langton. Interest in Martinus arises among people studying Stephen Langton because Martinus’ *Compilatio* appears repeatedly in manuscripts which contain Langton’s works, including the manuscript containing perhaps the most important copy of Langton’s *Questiones*, Cambridge, St. John’s College Library, Ms. C.7. Thus F.M. Powicke, writing in 1928, analyzes

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\(^2\) *Die Geschichte der scholastischen Methode* 2, Graz 1957, 524-30.

\(^3\) *Le mouvement théologique de XIIe siècle*, Bruges 1948, 408, 460.

Martinus’ work and, like Grabmann, is struck by his resistance to novelties in theology. He adds that Martinus belongs among a group of theologians including Peter Comestor, Peter the Chanter, and Stephen Langton who “were moral and pastoral, rather than systematic theologians.” Powicke sees the “systematic” theologians as constituting an opposing school, and he lists Peter of Poitiers as foremost among these. Since later scholarship correctly notes a very close relationship between Peter of Poitiers and Martinus, it is interesting that Powicke places them in opposing camps. I will argue that the relationship between these two figures is complicated, and Powicke is substantially though not entirely correct in his observation that Martinus and Peter are in opposed schools.

In the introduction to his edition of Simon of Tournai’s *Disputationes*, Joseph Warichez compares another work by Simon, the *Institutiones*, with Martinus’ text to help date Simon’s teaching in Paris. Later, Warichez, like Powicke, locates Martinus in a school opposed to the school of which Peter of Poitiers is the primary example. Perhaps on the strength of the similarity he noted between Martinus’ text and Simon’s, Warichez asserts that Martinus belonged to “un courant plutôt aristotélicien et porrétain,” which is opposed to the Augustinian and Lombardian tradition of which he claims Peter of Poitiers was the primary representative at the end of the 12th century. This is the first

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7 ibid., xxxix-xl.
identification of Martinus with the Porretan school, a claim which has been assumed in scholarship ever since.\textsuperscript{8}

The attribution of an abbreviation of Peter of Poitiers’ \textit{Sententiae} to a certain Magister Martinus de Fugeriis inspired interest in Martinus among scholars studying Peter of Poitiers. These two masters Martin might possibly be the same person, as Philip Moore argues in \textit{The Works of Peter of Poitiers}. Moore notes that Martinus’ \textit{Compilatio} shows almost complete textual dependency on Peter of Poitiers’ \textit{Sententiae}.\textsuperscript{9} This observation does not seem readily compatible with Powicke’s and Warichez’ conclusions, which placed Martinus and Peter of Poitiers in opposed schools of thought. Moore later compromises this claim in the introduction to his edition of the first book of Peter of Poitiers’ \textit{Sententiae}, in which he finds that whereas Martinus considers the Holy Spirit to be the efficient but not the formal cause of charity, Peter of Poitiers follows the Lombard in insisting that the Holy Spirit is in fact the only existing charity.\textsuperscript{10} Although Moore might wish to modify his earlier claim regarding the dependence of Martinus on Peter, there is no sign that he retracts it, and to a certain extent, Moore is correct.

John Baldwin discusses Martinus in his work on Martinus’ near contemporary, Peter the Chanter. Baldwin is alert to Martinus’ apparently contradictory allegiances, acknowledging that belonging to the Porretan school while depending heavily on Peter of

\textsuperscript{8} For other claims that Martinus belonged to the Porretan school, see below, p. 13-14 and in the chapter on sources, p. 37-41.

\textsuperscript{9} Moore, P.S., \textit{The Works of Peter of Poitiers} (Notre Dame Publications in Mediaeval Studies 1), Notre Dame, IN 1936, 38-39.

\textsuperscript{10} M. Dulong, and P.S. Moore, \textit{Sententiae Petri Pictaviensis} 1 (Notre Dame Publications in Mediaeval Studies 7), Notre Dame, IN 1943, xxxii-xxxvii.
Poitiers undermines the divisions between schools which historians employ.\textsuperscript{11} Baldwin considers Martinus’ primary relationship to be to the Porretan school, but acknowledges the significant influence of Peter of Poitiers. He also considers Martinus’ text to show some relationship to Peter the Chanter’s works.\textsuperscript{12} Baldwin views the Chanter as a theologian with primarily social and pastoral concerns; thus Baldwin is approaching the same conclusion regarding Martinus’ work which Powicke drew. Baldwin had the advantage of forty years’ tradition of commentary on Martinus which showed that Martinus related to all these schools of thought, but like everyone else who has introduced Martinus into a work on a contemporary figure, he has concluded that Martinus is similar to the figure he is studying. Who is Martinus, that he can be so similar to Stephen Langton, Simon of Tournai, Peter of Poitiers, and Peter the Chanter? An accurate picture of Martinus’ text and its purposes has eluded scholars to this day.

Martinus’ work has excited the greatest interest among historians of doctrine. The extensive published transcriptions from the \textit{Compilatio}, listed in this volume at the end of the introduction to the Latin text,\textsuperscript{13} occur primarily in publications on the history of doctrine. Surveys of this kind have the limitation that they deal with a list of authors and works as though they were all written in an identical genre and intended to accomplish the same purpose. Thus such an approach facilitates evaluation of a text primarily on one criterion: the originality or dependence of its treatment of a particular topic. This kind of research has made valuable contributions in this vein to the scholarly understanding of


\textsuperscript{13} see p. 206-12.
Martinus: it has discovered new sources and concluded that he did make original contributions. Few, however, have been able to transcend the normal limitations of such studies to draw conclusions about the purposes for which Martinus intended his work.

The earliest and most prolific of the scholars consulting Martinus in this kind of study were Odon Lottin and A.M. Landgraf. In a series of articles published in the 1930’s and -40’s, most of which were subsequently republished in their respective compilations, *Psychologie et Morale* and *Dogmengeschichte der Frühscholastik*, these two turned again and again to Martinus, and gradually a clearer picture of his work took shape. Lottin and Landgraf determined that Martinus borrowed extensively from Peter of Poitiers and Simon of Tournai and showed at least a certain debt to Udo.¹⁴ Although both of these authors agree that one of the most prominent features of Martinus’ work is its debt to other texts, both, and especially Landgraf, also find places in which Martinus’ treatment is original. Lottin finds the first use of the term “virtus theologica” to describes the virtues of faith, hope, and charity in Martinus and Stephen Langton, and he points out a possible forerunner to this term in Peter of Poitiers’ statement that these three virtues are singled out “praecipue secundum theologos.”¹⁵ Lottin also finds Martinus’ discussion of whether or not the spiritual gifts are virtues to be original in both its solution and in the arguments assembled for and against the solution. According to this solution, the seven spiritual gifts are virtues, although they are not identical with the seven famous virtues, but they introduce those virtues and precede them in nature, although not in act or time.

¹⁴ For a more detailed discussion of Landgraf’s and Lottin’s findings on Martinus’ sources, see the chapter on Martinus’ use of Sources.

¹⁵ *Psychologie et Morale* 3.2, Louvain 1949, 155.
Lottin considers the arguments which Martinus assembles for and against this proposition to be an excellent *status questionis*.\(^{16}\)

The extent to which Landgraf read and used Martinus’ text is unparalleled. He transcribed many passages from Martinus’ text. In much of his work, Landgraf portrays the gradual development of scholastic thought on a given topic, and Martinus contributes to this development in much the same way that his contemporaries do; that is to say that sometimes his text derives from sources, and sometimes it is original. Martinus’ contributions span a wide array of subjects: the unavoidability of mortal sin,\(^{17}\) the unofficial but real excommunication which results from any mortal sin,\(^{18}\) the kind of knowledge which Christ had when he was human,\(^{19}\) how to define baptism such that it includes both the sacred infusion of waters and the remaining effects,\(^{20}\) and many other topics. Finally, Landgraf’s *Einführung in die Geschichte der Theologischen Literatur der Frühscholastik* (1949) discusses the state of research on Martinus.\(^{21}\) Landgraf’s inclusion of Martinus in this important reference work ensured Martinus a place in subsequent studies of the history of doctrine in the early scholastic period.

Since Landgraf’s and Lottin’s contributions, the understanding of Martinus’ purposes and agenda has not substantially changed, although Martinus has raised the

\(^{16}\) *Psychologie et Morale* 3.2, Louvain 1949, 338-39.

\(^{17}\) *Dogmengeschichte der Frühscholastik* 1.1, Regensburg 1952, 112-13.

\(^{18}\) *Dogmengeschichte der Frühscholastik* 4.2, Regensburg 1956, 62-63.

\(^{19}\) *Dogmengeschichte der Frühscholastik* 2.2, Regensburg 1954, 74-77.

\(^{20}\) *Dogmengeschichte der Frühscholastik* 3.2, Regensburg 1955, 21-22.

\(^{21}\) *Einführung in die Geschichte der Theologischen Literatur der Frühscholastik*, Regensburg 1948, 89,108.
interest of many scholars. Works since Lottin’s and Landgraf’s have discovered a few new sources, as well as more original passages. This additional evidence has reinforced the picture of Martinus’ work that emerges from Lottin and Landgraf and has done a little to supplement and refine it.

Edouard Dumoutet mentions Martinus in his study on the Eucharist in the late 12th century as one of a number of theologians of that era whose texts remain unedited, but does not discuss his theology. 22 Nikolaus Häring discusses Martinus’ use of the term sacrament, especially regarding baptism, in his 1948 article on Berengar’s influence on the medieval understanding of that term. 23 Paul Anciaux published his study on the theology of penance in 1949, which mentions Martinus and transcribes some texts. Like Lottin and Landgraf, Anciaux finds dependence on Simon of Tournai and Peter of Poitiers, as well as original passages. 24 Damien van den Eynde includes a few references to Martinus in his 1950 work on the definitions of sacraments; in this work Martinus appears primarily as a follower of Simon of Tournai. 25 In another work, van den Eynde contributed to dating Martinus’ work. 26 Also in 1950, A. Dondaine, in a study of the reception of Eriugena, notes that Martinus includes material on angelic orders and theophanies which derives from Eriugena, but that Simon of Tournai is the unmistakable


24 La théologie du sacrement de pénitence au XIIe siècle, Louvain 1949, esp. 96, see also the list of transcribed texts at the end of the intro to the text.


26 see below on date.
intermediary source. Shortly after the publication of these works, H.-F. Dondaine includes a transcription of another passage from Martinus’ *Summa questionum* in his article on the beatific vision. He transcribes the last chapter of the work and notes that Martinus derived this section from Alan of Lille with only minor changes. Two years later, Nikolaus Wicki includes many discussions of Martinus’ work in his study of scholastic debates on eternal beatitude. He also transcribes a number of brief passages from Martinus’ work.

The following decade produced many works in a similar genre which surveyed early scholastic literature and included Martinus’ work. Ludwig Hödl’s 1960 study of the power of the keys includes a transcription of a lengthy passage from Martinus’ section on penance. In his 1961 study on the doctrine of the Trinity in the Lombard school, Johannes Schneider finds that although Martinus shows extreme dependence on Peter of Poitiers, he does not belong to the Lombard school. Throughout this book, Schneider finds that Martinus adapts the texts of Simon of Tournai and Alan of Lille to make his points. Gilles Couvreur includes an extended comparison of the treatments of Peter of Poitiers and Martinus in his 1961 study on the rights of the poor. He notes that, although

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28 “L’objet et le ‘medium’ de la vision béatifique chez les théologiens du XIIIe siècle”, in *RTAM* 19 (1952), 60-130.


Martinus borrows extensively from Peter of Poitiers, Peter seeks to establish whether a good intention can legitimize a bad action, whereas in Martinus’ text the particular examples, e.g. whether it is permissible to feed one’s parents by theft and whether it is permissible to give alms from substance that is badly acquired, are thrust to the fore. As Couvreur puts it, “tant l’arbre a grandi qu’il cache presque la forêt.”32 This is a rare instance in which analysis of Martinus’ text goes beyond discussing its originality or lack of it. Couvreur also points out Martinus’ references to both Justinian and Gratian.33 In 1963 Johannes Gründel published *Die Lehre von den Umständen der menschlichen Handlung im Mittelalter*, which includes both a discussion of Martinus’ opinion on several questions about the gravity of sins and a passage transcribed from Martinus’ *Compilatio*.34 Surprisingly, Gründel no more than mentions Martinus in his later book on Radulfus Ardens, Martinus’ contemporary who also copied material from Simon of Tournai.35 In 1963, James Megivern published *Concomitance and Communion*, in which he discusses Martinus’ knowledge of the Comestor-Chanter theory of transubstantiation and his views on the presence of the concomitant substance.36 In the same year, Walter Principe reviews some of Martinus’ treatment of certain topics regarding the Incarnation


33 Ibid., 40, 42.


35 *Die Lehre des Radulfus Ardens von den Verstandestugenden* (Münchener universitäts-Schriften 27), Munich 1976.

in his work on William of Auxerre’s theology of the Hypostatic Union.  

Richard Heinzmann transcribes two long passages in his 1965 compilation of teachings on the immortality of the soul and the resurrection of the body.  

Heinrich Reinhardt employs Martinus as a point of comparison in his 1969 article on the Sententiae of Magister A. jean Châtillon includes a brief reference to Martinus’ treatment of the distinction of persons in the Trinity in a 1974 article on the origins of the Thomistic theory of appropriations. 

In his 1982 article on Robert Grosseteste’s treatise De dotibus, Joseph Goering reviews the history of treatises in the de dotibus genre, which discuss the endowments of bodies and souls after the resurrection, comparing them to marriage gifts (dotes) given by Christ to his bride. Martinus’ treatise on this topic, which is printed in Heinzmann’s Die Unsterblichkeit der Seele und die Auferstehung des Leibes, is among the earliest that Goering knows. 

Gary Macy’s 1984 study on the Eucharist in the early scholastic period discusses Martinus’ argument that reception of the sacrament is necessary because church law demands it, and spiritual communion suffices only in necessity. Sten Ebbesen’s 1997 study on the use of sophistries in theology finds a

37 William of Auxerre’s Theology of the Hypostatic Union (Studies and Texts 7), Toronto 1963

38 Die Unsterblichkeit der Seele und die Auferstehung des Leibes (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 40.3), Münster i.W. 1965, 43-50.


protestation in defense of the use of *sophismata* in the theology in the *Compilatio questionum theologie*.  

Finally, Alistair McGrath quotes Martinus as representative of the Porretan school’s concept of grace in claiming that when God rewards merit he is rewarding what he himself has given.  

These are the two major classes of scholarship which have treated Martinus. Two other varieties of works which constitute a small number of studies have discussed him: works on the Porretan School, and studies devoted to Martinus’ work. Studies of the Porretan school have discussed Martinus to a certain extent because he is often considered to be a member of that school. The claim that Martinus was a Porretan seems to have originated with Warichez’ 1932 work on Simon of Tournai’s *Disputationes*.  

Citing him, Marie-Humbert Vicaire in his 1937 article on the Porretan school classifies Martinus among theologians “qui portent très profondément la marque de Gilbert,” and goes on to declare this group “vrais porrétais.” Landgraf’s *Einführung in die Geschichte der Theologischen Literatur der Frühscholastik* was crucial to disseminating this claim, as was an article on the Porretan school published the year after Landgraf’s *Einführung*, Ermenegildo Bertola’s “La scuola di Gilberto de la Porrée.” Both works expressed some reservations regarding the degree to which Martinus followed Gilbert,  

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but nevertheless a number of later authors, citing them, have continued to include Martinus in discussions of the Porretan school, including Giuseppe Angelini, 47 Riccardo Quinto, 48 and Luigi Catalani. 49 Johannes Schneider, in his work on the Trinity in the school of Peter Lombard mentioned above, presents the strongest argument that Martinus was a Porretan thinker, but interestingly the influence of his claim seems to have been quite limited. 50 These claims that Martinus belongs to the Porretan school will be discussed in chapter 2. 51

Two works have been devoted to Martinus’ text in itself. Richard Heinzmann, author of the above-mentioned work on the immortality of the soul and the resurrection of the body, published an edition of the titles and first few words of each division of text in the _Compilatio questionum_. 52 This work is a valuable guide to the contents of the _Compilatio_, and it is the only modern study that treats the whole work. Although it gives important information about the topics Martinus treats and the order in which he treats them, it adds little to the understanding of Martinus’ purposes and methods, since this edition includes only titles and has very little prefatory material. The only full-length


49 _I Porretani: Una scuola di pensiero, tra alto e basso Medioevo_, Turnhout 2008, 120.

50 J. Schneider, _Die Lehre vom dreieinigen Gott in der Schule des Petrus Lombardus_ (Münchener Theologische Studien ab. 2, bd. 22), München 1961. Of later works which classify Martinus as a Porretan, only Angelini cites Schneider.

51 see p. 37-41.

52 _Die “Compilatio quaestiorum theologiae secundum Magistrum Martinum”_ (Mitteilungen des Grabmann-Instituts der Universität München 9), München 1964.
study on Martinus is an unpublished dissertation completed in 2002 at Boston College under Stephen Brown by Nathan Munsch. This dissertation discusses the Christology of Martinus, a particularly interesting topic in the wake of the condemnation by Alexander III in 1177 of propositions fundamental to the view of the Porretan school on this topic. This dissertation includes an edition of the sections on Christology in Martinus’ work and credits Martinus with innovative use of his sources.\footnote{The Treatise on the Incarnation of Master Martin: Christology in the Late Twelfth Century, unpublished Ph.D. dissertation, Boston College, 2002.}

With the exception of these two studies, work on Martinus has always been interested in only an aspect of Martinus’ text that relates to some other topic. Such a piecemeal approach to the \textit{Compilatio} does little to contribute to understanding the work as a whole. The effort to locate Martinus’ teaching on particular topics of theology does facilitate locating sources and identifying original passages. Consequently, evaluation of Martinus’ work as a whole comes predominantly in the single dimension of assessment of his originality or lack thereof. Gilles Couvrreur is the one exception in that his analysis of Martinus’ use of Peter of Poitiers led him to the observation that Martinus was more interested in the practical applications than in the problem to which they were applied. Most assessments, however, resemble the one offered by Nikolaus Wicki: Martinus’ text, he says, “mit dem ‘compilata’ ihres Titels als Zusammenstellung aus Werken Anderer ausgibt.”\footnote{Die Lehre von der himmlischen Seligkeit in der mittelalterlichen Scholastik von Petrus Lombardus bis Thomas von Aquin, Freiburg, Schweiz 1954, 27.}

Although such evaluations do nothing to explain the concerns and agenda that prompt the act of compiling, they are not entirely unhelpful. The emphasis on Martinus’
approach as a compiler has correctly pointed out that understanding Martinus’ use of sources is crucial to understanding the agenda in the text. What sources he cites and the ways in which he uses them constitute important evidence about the benefits which Martinus saw in theology.

1.2 Date of Composition

The date of composition of the *Compilatio questionum theologie* has been difficult to pin down. The effort has not advanced since Damien van den Eynde’s 1954 article on dating various late 12th century masters. This article points out three sources which Martinus employed which were written later than the sources previously identified.55 Of these, the *Compilatio I* of Bernard of Pavia, written 1188-1192,56 was the latest, and therefore van den Eynde dates Martinus’ work to some time after the publication of that text. He also points out that Peter of Roissy’s *Manuale de mysteriis ecclesiae*, written 1208-1213, cites Martinus’ text, which provides a terminus ante quem for the composition of the latter. Van den Eynde suggests that Martinus’ text probably dates before the close of the twelfth century because he sees no influence of Praepositinus, Robert Courçon, or Stephen Langton and concludes that Martinus’ work was written around 1195.57


The *terminus ante quem* prior to Peter of Roissy’s *Manuale* seems certain. Besides van den Eynde, V.L. Kennedy affirms that Peter of Roissy cites Martinus by name,\(^{58}\) and Paul Anciaux has also noted Peter of Roissy’s dependence on Martinus.\(^{59}\) The approximate date is furthermore confirmed by Martinus’ evident unawareness of the decrees of the fourth Lateran council and by another text which allegedly cites Martinus’ work, the summa of Godfry of Poitiers, dating from almost the same time.\(^{60}\) The argument for an earlier date is less persuasive. Dating Martinus’ work around 1195 because Martinus shows no knowledge of the eminent figures of the last years of the 12th century is not a strong one; it is an *argumentum ex silentio*. It is probable, on the other hand, that Martinus’ summa cites a text published in 1201. While discussing simony, Martinus cites the decree of the “presens Apostolicus” regarding redeeming tithes from

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\(^{59}\) *La théologie du sacrement de pénitence au XIIe siècle*, Louvain 1949, 537 n.1, 585 n.2.

lay people. Although a number of decretals treat this problem, the only one known to have received circulation found its way into a collection of decretals published by Rainer of Pomposa in 1201. The decretal itself dates from 1200. The only other real possibilities among surviving decretals are two which were sent by Clement III. These, however, were sent to monasteries in Stendal and Tagliacozzo and were never published. There is no reason to think that Martinus would have known of them and, even if he did, Clement III’s pontificate ended in 1191. If Clement was still “presens Apostolicus” when Martinus was near the end of his work, Martinus would not have had much time to consult the Complatio Prima, which was published some time between 1188-1192. Since Martinus does not quote any text from the statement of the “presens Apostolicus,” it is impossible to be certain that the decretal published by Rainer is the one Martinus had in mind, but I know of no other possibility. I discuss this question in more depth in chapter 2.61

1.3 The Identity of Magister Martinus

Nothing is known for certain about the biography of Magister Martinus. There are, however, a number of people of that name who might possibly be identical with the author of the Complatio questionum theologie. The authenticity of the attribution of this text to a Magister Martinus seems beyond doubt. Four of the five manuscripts attribute the text to Martinus; the fifth is currently anonymous, although this may be due to the fact that the first folio is trimmed to the very top of the ruling: the initial capital C is

61 see p. 51-53.
missing its upper curve, and perhaps a title and attribution went with it.\textsuperscript{62} There is no contesting attribution of this text.

Who was this Magister Martinus? It is a question to which there is no certain answer. Martinus quotes from a number of masters teaching theology in Paris, so he likely received his training in that city. Baldwin cites his mention of the Seine as evidence that he wrote his work in that city as well, which is quite possible, although the passage in question derives from Peter of Poitiers.\textsuperscript{63} Martinus also had legal training and in fact identified as “magister meus” a person who gave determinationes on legal questions.\textsuperscript{64} The site of this training may have been Paris as well, but there are other possibilities.

The origin of the manuscripts adds evidence which is difficult to interpret: three of the manuscripts are copied in a Parisian style, but the earliest manuscript appears to be English.\textsuperscript{65} Martinus’ text often is bound with Stephen Langton’s works, particularly collections of Stephen’s Questiones, which may result simply from these two masters being near contemporaries with similar concerns. Taken together with the English origin of one of the manuscripts, their being bound together may indicate that Martinus, like

\begin{flushleft}
\begin{enumerate}
\item Toulouse, BM, Ms. 209, 1r.
\item see the chapter on sources 55-56, and 6.129-30, 183-84.
\item see p. 178.
\end{enumerate}
\end{flushleft}
Stephen, moved back and forth between Paris and the Angevin empire, in spite of the difficulties of the times.  

This possibility adds some attractiveness to the identification mentioned above of Magister Martinus with Magister Martinus de Fugeriis, to whom Paris, BNF, Ms. lat. 3116 attributes an abbreviation of Peter of Poitiers’ *Sententiae*. Fougéres is in modern day Brittany, well within the Plantagenet holdings in the late 12th century. Grabmann was the first to entertain the possibility that the two were in fact the same, but says of the *Compilatio questionum theologiae*, “Wir haben hier ein von der Summa des Magisters Martinus de Fugeriis verschiedenes Werk vor uns und dürfen auch in dem Verfasser einen von Martinus de Fugeriis verschiedenen Martinus erblicken.”  

De Ghellinck does not disallow completely the identity of the two masters, but points out that Martinus de Fugeriis followed Peter of Poitiers in not venturing into canon law topics, whereas Martinus is highly dependent on the canonists in his treatment of those topics.  

Identifying these two masters with each other has had its supporters, however. In his *Répertoire des maîtres en théologie*, Glorieux actually lists the treatise attributed to Martinus de Fugeriis as a treatise falsely attributed to Martinus.  

Philip Moore endorses this theory of false attribution. He points out that the text attributed to Martinus de Fugeriis is in fact an abbreviation of Peter of Poitiers’ *Sententiae*, and argues vehemently

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66 Gary Macy interprets the rubric of Cambridge, St. John’s College Library, Ms. C.7 (57), 1r: “Summa magistri Martini et questiones theologiae a Cantuariensi disputate” to refer to two works by Martinus, and thus interprets “a Cantuariensi” to indicate “a period spent by Magister Martinus at Canterbury.” Macy, G., *Theologies of the Eucharist in the Early Scholastic Period*, Oxford 1984, 215. Unfortunately, I do not believe the evidence supports such a reading.

67 *Die Geschichte der scholastischen Methode* 2, Graz 1957, 524.

68 *Le mouvement théologique de XIIe siècle*, Bruges 1948, 460.

69 *Répertoire des maîtres en théologie de Paris au XIIIe siècle* 1, Paris 1933, 269, no. 110.
for the identity of the two masters on the grounds that the similarity of the two texts caused the rubricator of the text now in BNF, lat. 3116 to mistake that text for the *Compilatio* of Magister Martinus.\(^{70}\)

This claim is difficult to believe, because the two texts are not very similar. The *Compilatio* does depend heavily on Peter of Poitiers’ *Sententiae*, but far less in the first few folios than in general. In fact, there is only one passage on the first page of the manuscripts of the *Compilatio* which derives from Peter of Poitiers. If the rubricator, however, mistook the text in BNF, lat. 3116 for Martinus’, he would presumably be misled by something early in the text. There is no similarity in the incipits of the two texts, and there is nothing in the beginning of the summa attributed to Martinus de Fugeriis which remotely resembles the elaborate prologue which begins the *Compilatio*.

Heinrich Weisweiler also does not like Moore’s argument. He spends much of his review of Moore’s book discussing it. Weisweiler sees no reason to assume that the attribution of the abbreviation of Peter of Poitiers’ text in BNF, lat. 3116 is a false one, since Martinus de Fugeriis might in fact be the name of the abbreviator. He does not reject completely the possibility that the author of this abbreviation might be identical with the author of the *Compilatio*, but says that the identity of the two can be taken as a working hypothesis only.\(^{71}\)

The good sense of this suggestion is undeniable. There is no reason to doubt the attribution of that abbreviation of Peter’s *Sententiae* to Magister Martinus de Fugeriis. There are no contesting attributions because BNF, lat. 3116 contains the only surviving

\(^{70}\) *The Works of Peter of Poitiers* (Notre Dame Publications in Mediaeval Studies 1), Notre Dame, IN 1936, 38-39.

copy. Moore perhaps would argue that it is a false attribution on the grounds that the abbreviation in BNF, lat. 3116 is not sufficiently abbreviated to count as a distinct text. Although I do not want to argue about where exactly to draw the line between an abbreviation and an imperfect copy, it must be noted that this manuscript not only omits the prologues of Peter’s work, as Moore acknowledges, but it also consistently abridges throughout the work, particularly passages describing the structure and layout of the work. The text appears to have been prepared by someone interested in the substance of the work but not concerned about its structure. Because a different authorial voice is evident, it is credible that this voice could be considered grounds for ascribing the text to the abbreviator.

Weisweiler’s “working hypothesis” that the Magister Martinus de Fugeriis responsible for abbreviating Peter of Poitiers Sententiae might be the same Magister Martinus who wrote the Compilatio questionum theologie is certainly an intriguing possibility. The Compilatio owes more to Peter of Poitiers than to any other author. If the attribution of the abbreviation in BNF, lat. 3116 is correct, then either there are two Magistri Martinus who were very close to Peter of Poitiers, or those two are the same.

Unfortunately, either of these possibilities is plausible. Martinus was a common name, especially in France. On the other hand, the lack of interest that Martinus de

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72 Glorieux lists three more anonymous copies, Répertoire des maîtres en théologie de Paris au XIIIe siècle 1, Paris 1933, 269, no. 110, but these are in fact copies of a different abbreviation of Peter of Poitiers’ Sententiae. See M. Dulong and P.S. Moore, Sententiae Petri Pictaviensis 1 (Notre Dame Publications in Mediaeval Studies 7), Notre Dame, IN 1943, lii-liii.

73 Moore comes close to making such a claim when he says “this Summa was in reality the Sentences of our author.” The Works of Peter of Poitiers (Notre Dame Publications in Mediaeval Studies 1), Notre Dame, IN 1936, 38.

74 The Works of Peter of Poitiers (Notre Dame Publications in Mediaeval Studies 1), Notre Dame, IN 1936, 38.
Fugeriis shows in passages which explain the structure of Peter’s work is consistent with the *modus agendi* of the *Compilatio*, which conspicuously lacks any explanation of the order in which questions are be treated. This is poor evidence, however. If it could be shown that the texts in the *Compilatio* which are dependent on Peter of Poitiers derived from the abbreviation attributed to Martinus de Fugeriis, that would suggest an identity, although it would not constitute conclusive evidence. On the other hand, even if it could be shown that Martinus did consult a full version for his *Compilatio*, it would not prove that he did not also prepare an abbreviation at some point in his career.

Collation of Martinus’ *Compilatio* against various versions of Peter’s *Sententiae* does not yield even such provisional evidence. I have collated many of the sections from the *Compilatio* which are dependent on Peter against this abbreviation, against the text of Peter of Poitiers edited by Joseph Garvin and Marthe Dulong now housed in the archives of the University of Notre Dame, and against the edition of the same text in the *Patrologia Latina*. By far the most frequent pattern of common variation is that the three texts of Peter of Poitiers agree against Martinus. The second most common pattern is that Martinus agrees with Martinus de Fugeriis and the Garvin-Dulong edition against the PL. Agreement of the *Compilatio* with Martinus de Fugeriis’ text against the Garvin-Dulong text, however, is not any more common than the reverse. I conclude, therefore, that Martinus was working from a copy of Peter’s text which was textually distant from the manuscript on which the PL edition of Peter of Poitiers’ *Sententiae* is based, but also was not identical with the text in BNF, lat. 3116. Martinus’ source was therefore either

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75 Peter of Poitiers, *Sentences—Book V*, Typescript by Marthe Dulong, Joseph N. Garvin Papers (GRV), University of Notre Dame Archives (UNDA), Notre Dame, IN 46556.
another copy of Peter of Poitier’s *Sententiae* or another copy of Martinus de Fugeriis’ abbreviation. The available evidence therefore provides no indication that Martinus worked from this abbreviation to prepare the *Compilatio*.

It might seem surprising that if Martinus had worked from the full version of Peter’s *Sententiae*, he did not include some parts which Martinus de Fugeriis abbreviated out of his version; thus the fact that every text which Martinus quotes from Peter of Poitiers appears in Martinus de Fugeriis’ abbreviation might be taken as evidence that Martinus worked from this abbreviation. Because Martinus de Fugeriis’ practice in abbreviating, however, was to remove introductory and transitional material but leave the substance of the text nearly unaltered, it is unlikely that the *Compilatio* or any other text dependent on Peter of Poitiers’ *Sententiae* would include material which Martinus de Fugeriis left out.

Although the possibility of attributing another text to Magister Martinus in addition to the *Compilatio questionum theologie* is highly attractive, the summa of Magister Martinus de Fugeriis provides little grounds on which to make that attribution. The strongest evidence is that both treatises are closely related to Peter of Poitiers and each is attributed to a Magister Martinus. On the face of it, this makes the identity of these two authors somewhat probable, but as Weisweiler points out, at best it can be taken as a working hypothesis.

Since the *Compilatio* demonstrates that Magister Martinus had legal training, it is worth considering a possible identity of the author of this text with a Magister of the same name who was active during the period in which the *Compilatio* was written. The Magister Martinus who left a historical record practiced and taught law at Oxford.
1192 a Magister Martinus witnessed a judgment delivered by papal judges delegate John of Cornwall and Robert of Melun at Oxford.\textsuperscript{76} Gerald of Wales mentions a Magister Martinus engaged as a jurist for a case presided by Hubert Walter, Archbishop of Canterbury.\textsuperscript{77} In the preface to his \textit{Speculum ecclesiae}, Gerald of Wales mentions Magister Martinus engaged in an academic disputation on law.\textsuperscript{78} Both stories date from about 1195.\textsuperscript{79} Modern scholarship has assumed that these three mentions of Martinus all refer to the same master.\textsuperscript{80} This master may be identical with others mentioned at about the same time: in a deed dating to around 1200, the cartulary of Osney abbey mentions a Magister Martinus who held land in the parish of St. Mary in Oxford.\textsuperscript{81} In a grant recorded in the cartulary of Missenden Abbey dating between 1215-1223, a woman and her daughters confirm giving a piece of land in the parish of St. Mary’s in Oxford which had been given to them by Magister Martinus.\textsuperscript{82} A Magister Martinus de Blechesduna is recorded in the same cartulary as renting a piece of land in 1180, but this charter makes


\textsuperscript{78} R.W. Hunt “The Preface to the \textit{Speculum ecclesiae} of Geraldus Cambrensis”, in \textit{Viator} 8 (1977) 189-213, esp. 205


\textsuperscript{80} For the most recent, see L.E. Boyle, “The Beginnings of Legal Studies at Oxford”, in \textit{Viator} 14 (1983), 107-31. See also S. Kuttner and E. Rathbore, “Anglo-Norman Canonists of the Twelfth Century”, in \textit{Traditio} 7 (1949-51), 279-358, esp. 323.

\textsuperscript{81} H.E. Salter, \textit{The Cartulary of Oseney Abbey} 2 (Oxford Historical Society 90), Oxford 1929, 558. The same cartulary also has two charters recording a donation by a Magister Martinus de Blechesdone in 1225, who may or may not be the lawyer, H.E. Salter, \textit{The Cartulary of Oseney Abbey} 6 (Oxford Historical Society 101), Oxford 1936, 64.

\textsuperscript{82} J.G. Jenkins, \textit{The Cartulary of Missenden Abbey} 3, London 1962, 196.
no reference to the location of this land.\(^{83}\) A Magister Martinus also witnessed a judgment given in response to a papal mandate dated April 25, 1212. This judgment is recorded in the cartulary of St. Frideswide in Oxford.\(^{84}\) If the Magister Martinus active in Oxford in the late twelfth and early thirteenth centuries is from Blechingdon and is identical with the author of the *Compilatio*, this would complicate but not preclude the further identity with Magister Martinus de Fugeriis.

The identity of this Magister Martinus with the author of the *Compilatio questionum theologie* must remain in the realm of possibility rather than probability. It has a few points in its favor, however. First, both were lawyers. The assumption that the author of the *Compilatio* was not a lawyer has prevented any thought of identity in the past, but as I will argue in chapter 2, Martinus’ legal training is at least as extensive as his theological training. It is also a real possibility that the author of the *Compilatio* might have been in England. The earliest manuscript of the *Compilatio* originated in England. That manuscript also preserves what is subjectively the best text, although it is not the archetype.

Additionally, the *Compilatio* is a very practical text. In the late twelfth and into the thirteenth century there was a significant body of literature for this purpose instruction in pastoral care, which resembles Martinus text in significant ways. The early works which scholars identify with this literature derive from both France and England,

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\(^{83}\) ibid., 195-96.

but the later ones were predominantly English, though often with French influence.\textsuperscript{85}

Finally, if Martinus was in fact from Fougéres, there are many reasons that he might end up practicing in Oxford. A Breton lawyer would find his services very much in demand throughout the empire, and at that date the Norman kings still made a practice of appointing clerks from the French fiefs to positions in England. During the wars of Phillip Augustus against Richard I and John, a Breton also might not have found himself welcome in Paris, supposing that is where he would prefer to be. As I have pointed out above, although it has been assumed in modern scholarship that Martinus lived and worked in Paris, England is also a possibility.

Finally, the personality of the Oxford lawyer matches with the personality behind the \textit{Compilatio}. The stories about Master Martinus told by Gerald of Wales both depict a quick witted man who thought highly of his own learning. In one story which Gerald recounts twice in his corpus, Martinus mocks the archbishop’s Latin during a trial. The archbishop made a Latin blunder, and someone murmured a correction. The archbishop attempted to incorporate the suggestion, but only made matters worse, provoking more murmuring. Martinus exclaimed, “Quid murmuratis inter vos? Antiqua grammatica est,” after which the laughter, which the clerics had hitherto suppressed, burst out.\textsuperscript{86} One of the versions concludes: “unde et Martinum illum ab hac hora semper archiepiscopus exosum


habuit.”

The other story in Gerald of Wales shows Martinus again swaggering about his education. In an academic disputation, his opponents accuse him of jumping from one law to the next like a monkey. Martinus, who, Gerald informs us, studied law at Bologna and before that was advanced in the study of letters, retorts that his jumping is nothing to the jump that his opponents made from the Distichs of Cato all the way to the Institutes of Justinian. In other words, he thinks that they have very little education in the arts and perhaps lack other preparations for reading Justinian as well.

The author of the *Compilatio* seems to think rather highly of his own education. His prologue is woven together from passages excerpted from some of the more rhetorical works of Augustine and Jerome; he closes the *Compilatio* with some verses from various classical poems, especially the works of Ovid, and he peppers the whole theological treatise with Ovid and Juvenal. In places where law is relevant, the *Compilatio* certainly swings from one canon to the next like a monkey, although such citations are not unusual in canon law texts. The author of the *Compilatio* displays a certain pride in his learning and flamboyance, as for instance in this claim for the superiority of his own text to others: “Sane etsi Zoiulus secus esse asseueret, hec compilatio ceteris longe est utilior.”

Martinus invokes Zoilus, a fourth century grammarian remembered in antiquity for his criticism of Homer, to bolster his claim to have written a compilation far better than “the others”. This claim and the mode of

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89 Cambridge, St. John’s College Library, C.7 (57), 9ra.
making it accords well with the presumption which the Oxford lawyer shows in Gerald’s accounts of him.

The identification of this lawyer with the author of the *Compilatio* is far from certain. Magister Martinus was a common name at his time. Others who went by it include a 13\textsuperscript{th} century logician, Magister Martinus of Dacia, author of a treatise *De modis significandi*.\textsuperscript{90} He may or may not be identical with a Magister Martinus who taught at the University of Naples in its early days.\textsuperscript{91} There was a Magister Martinus who was a rapacious papal legate to England in 1244\textsuperscript{92} and a Spanish sculptor of the late 12\textsuperscript{th} century to whom an inscription on the typanum of San Cristobo de Novelúa attributes the construction of that church.\textsuperscript{93} A medical doctor named Magister Martinus witnessed the foundation charter of the Scottish Abbey of Aberbrothicke (Arbroath) in 1178.\textsuperscript{94} These, however, either can be safely precluded from identity with Magister Martinus or there is so little to suggest an identity that it is not worth pursuing without some further indication. The Oxford lawyer, on the other hand, is an intriguing possibility that merits attention.

\textsuperscript{90} H. Roos, “Martinus de Dacia und seine Schrift *De modis significandi*,” *Classica et Mediaevalia* 8 (1946), 87-115.

\textsuperscript{91} M. Grabmann, *Mittelalterliches Geistesleben* 2, München 1936, 124.

\textsuperscript{92} Matthew Paris, *Chronica Majora* 4 (Rolls Series 57) ed. H.R. Luard, 284-85.


Chapter 2: Texts Related to the Compilatio Questionum Theologie

Scholarship on the development of doctrine, which dominated the twentieth century study of twelfth century theology, has discovered that Martinus employed a number of source texts quite extensively. In this respect Martinus is hardly unusual in the late twelfth century, but unusual or not, studying his use of sources constitutes a necessary starting point in understanding his purpose for writing his text for a number of reasons. For one thing, it is necessary to establish whether or not a text is original to him before its value as evidence of Martinus’ training and interests can be determined. For another, the sources which Martinus employs in themselves say something about his interests and concerns.

Martinus’ use of sources is also one of the major factors influencing the composition of this text. Within the larger topics of the Compilatio, Martinus’ organizational system seems to feel the pull of two different principles, namely arrangement by topic and arrangement by source. The material in Martinus’ summa is arranged under certain topics, but sometimes material that is more relevant to one topic appears somewhere else, grouped with material from the same source, rather than material on the same topic. More will be said about this at relevant points.

Texts which are not sources for the Compilatio but which nevertheless bear strong resemblances to Martinus’ text also indicate something about Martinus’ working environment. Often the resemblances seem to indicate a similar purpose for writing. This
chapter will therefore also discuss texts which show unmistakable similarities to the
*Compilatio*, but on which its dependence cannot be verified.

The significant presence of other authors’ texts makes Martinus’ use of sources central to interpreting him. In this chapter I will clarify the relationship between Martinus’ text and its sources, as well as its relationship to other texts to which it bears striking resemblance without apparent textual dependence. Because sources are so important to Martinus’ composition, Martinus’ use of sources reveals his purpose and agenda in this text. I will discuss theological sources first, then canon law, and I will proceed from the more frequently cited to the less.

2.1 Peter of Poitiers

Martinus owes the most to Peter of Poitiers, yet to his influence I will devote the least text, because Peter’s influence is so extensive that it is best understood as the background against which to see the other influences. Martinus regularly employs Peter of Poitiers’ text, but often disagrees with it. He employs Peter’s structure, but rejects some of its most distinctive aspects. Therefore, the use to which Martinus puts Peter of Poitiers’ *Sententiae* is best understood by seeing how Martinus uses other texts.

Martinus’ use of other texts is extensive. The influence of Peter of Poitiers is pervasive in Martinus’ text, but nevertheless Philip Moore, in his book on Peter of Poitiers, significantly exaggerates them when he says that Martinus “copied verbatim
column after column” from Peter’s text,¹ and only in rare instances can one apply Lottin’s claim that Martinus “reproduit servilement l’exposé de Pierre de Poitiers.”²

Peter’s Sententiae were clearly the strongest influence on Martinus’ structure of the Compilatio. In most matters of layout, Peter of Poitiers follows Peter Lombard, but Peter of Poitiers has a couple of distinctive features. He places his treatment of penance not with the other sacraments but in the treatment of sin and justification, and he includes a treatment of the virtues in this section as well, rather than after the treatment of Christ. In both respects Martinus follows Peter of Poitiers against the prevailing pattern, although a few virtues sneak into Martinus’ treatment of Christ (probably an indication of Martinus dependence on sources following the Lombard’s order). As I show in the following chapter, Martinus’ observance of Peter’s order is also unmistakable within the treatment of the sacraments.³

Textual influence from Peter’s Sententiae is apparent in nearly every question in the work; a few noteworthy exceptions to this rule are discussed in detail in the following chapter. Nevertheless, there is much that does not derive from Peter of Poitiers, and although it seems that Martinus began his work with Peter of Poitiers, he spread out from there.

¹ The Works of Peter of Poitiers (Notre Dame Publications in Mediaeval Studies 1), Notre Dame, IN 1936, 39.

² Psychologie et Morale 2, Louvain 1948, 110.

³ see p. 67-72. P. Anciaux also notes Martinus following of Peters plan and often his treatments, La théologie du sacrement de pénitence au XIIe siècle, Louvain 1949, 96.
2.2 Simon of Tournai

Martinus seems to have been impressed with Simon of Tournai. Although Martinus does not employ Simon’s texts as extensively as he does Peter of Poitier’s, borrowings from Simon are frequent. Text appropriated verbatim from Simon of Tournai’s work seems to appear throughout Martinus’ *Compilatio*. Odon Lottin in particular locates passages in Martin’s summa which originated from Simon of Tournai, but a number of other scholars have as well.4

Martinus employs two of Simon of Tournai’s works and borrows extensively from each: the *Institutiones in sacram paginam* and the *Disputationes*. Martinus employs selections from Simon’s *Institutiones* extensively in the first chapter of his treatise on the sacraments. The entire treatise on signs, which is all Martinus has for a treatise *de sacramentis in genere*, comes directly from early in book 8 of Simon’s *Institutiones*.5 Later in the first chapter, Martinus compiles a 38 line chunk of text discussing the nature of the Eucharistic change from three different selections of Simon’s *Institutes*.6 The first of those three selections covers the first 28 of these lines.


5 1,1-26, discussed below, p. 73-79.

6 1,144-81, discussed below, p. 88-90.
In both the treatise on signs and in the discussion of the Eucharistic change, Martinus has selected parts of Simon’s work in which the latter produces some original and sweeping categorization. In the section on signs, Martinus chooses a section from the *Institutiones* which begins with Augustine’s distinction between natural and given signs and goes on to categorize all sacraments as given signs of a sacred thing, of which sacraments of the New Testament are sacred signs of sacred things, whereas the sacraments of the Old Testament are signs of sacred things, but the signs themselves are not sacred. This was an innovative method of distinguishing the sacraments of the Old and New Testaments, and it attracted a lot of attention.\(^7\)

The discussion of Eucharistic change which Martinus borrows from Simon takes a similar approach, and is equally novel, if less popular. It distinguishes three varieties of change: *commutatio*, *mutatio*, and *transubstantiatio*, which between the three of them cover all varieties of change. In commutation, the subject remains unchanged but only the accidents change. In mutation, the subject changes but that change occurs to a single continuous subject. In transubstantiation, one subject is simply replaced by another. Martinus seems to have been very much attracted by these sweeping categorizations which Simon was so good at originating.

Although Martinus does not use any other lengthy passages from the *Institutiones*, he employs Simon’s *Disputationes* extensively. In the remaining chapters on the Eucharist, Martinus quotes at considerable length from disputations 2, 20, and 90. He

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\(^7\) for the reception of this text, see D. van den Eynde, *Les définitions des sacrements pendant la première période de la théologie scolastique (1050-1240)*, Rome 1950, 63-67.
returns to each more than once as he deals with topics covered in the various questiones within each Disputatio.\(^8\)

Martinus shows a strong preference for Simon’s treatments and solutions over Peter’s. Although, as I have said, Peter of Poitiers is clearly the foundational influence on Martinus’ text, Martinus chooses Simon’s treatment of the sacraments in general and omits Peter’s entirely. Martinus includes discussions of the different types of change from both sources, but intersperses Peter’s with material from other sources, including Simon’s Disputationes, while he imports Simon’s intact. Martinus seems to have had no less respect for Simon’s Disputationes. He imported Disputatio 2 on Christ giving the sacrament to Judas, almost intact, which goes a long ways towards explaining Martinus’ choice to devote so much text to that topic.\(^9\) Martinus also imports questions in order from Disputatio 98 into his treatment of marriage, filling them out with other material, including a summary of Simon’s reply from Disputatio 25.\(^10\) Martinus additionally imports parts of Simon’s text which are only tangentially related to his discussion. Every time in the treatment of the Eucharist that Martinus discusses a topic which is also discussed in Simon’s Disputationes, Martinus borrows from Simon’s treatment, with six exceptions. Each of these six is the topic of one of six of the eight questions in Disputatio 71. Martinus seems to go out of his way to include material from the disputations of which he shows knowledge. He quotes from every disputation which deals with the Eucharist except 71. It is a striking contrast with his use of the three other Disputationes


\(^9\) 3,1-43

\(^10\) 12,182-238
on the Eucharist. The only other *Disputatio* which deals with sacraments which Martinus does not use is 38 which discusses baptism. Its omission is less striking, however, because it does not treat any topic which appears in Martinus’ treatment of baptism. One wonders whether Martinus’ copy of Simon’s disputations was incomplete, or whether he did not notice *Disputatio 71*.  

The fact that Martinus used nearly every relevant text from Simon of Tournai’s *Disputationes* by itself suggests that Martinus thought very highly of Simon’s treatments. Martinus’ use of the *Institutiones*, furthermore, is pervasive throughout the *Compilatio*, as attested by extensive scholarly findings. Although in most respects, Simon’s works are not as important as Peter’s in the construction of this text, Martinus’ use of Simon’s texts seems to indicate that he thought at least as well of them.

2.3 Alan of Lille

Scholarly literature agrees that Martinus used portions of text from Alan of Lille’s *Summa “Quoniam homines”* in at least a few instances.Unfortunately, the section which treats the sacraments in Alan’s *Summa “Quoniam homines”* does not survive, or perhaps was never written. It is likely that Martinus used Alan’s summa in compiling

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11 Simon’s disputations, like most, circulated in various collections. On the circulation of the *Disputationes*, see J. Warichez, *Les Disputationes de Simon de Tournai*, Louvain 1932, lv-lvi, lviii-lx. Warichez does not know of a manuscript which omits *Disputatio 71*, however.


his work on the sacraments, but until further evidence appears, there is no way to verify the dependence which likely exists. Martinus shows unmistakable dependence on Alan of Lille in his question on whether the virtues are conferred to children in baptism. This question derives largely from a question of the same title in Alan’s *Tractatus de uirtutibus et uitiis*, although Martinus has supplemented it with material from other sources, particularly Peter of Poitiers and Peter Lombard’s commentary on the Pauline epistles.

2.4 The Porretan School

Modern scholarly literature often identifies Martinus as a member of the Porretan school, a school of theological thought deriving from Gilbert of Poitiers which includes Simon of Tournai and Alan of Lille, but not Peter of Poitiers. According to my researches on the treatise on the sacraments, Peter of Poitiers seems to influence Martinus far more heavily than any Porretan both in structure and in the amount of text quoted. Why, then, has Martinus been considered to be a Porretan?


Some scholarly literature acknowledges some reservations in classifying Martinus as a Porretan. Although Landgraf includes Martinus in his chapter “Die Schule Gilberts de la Porrée,” he qualifies this classification: “Diese Summa questionum is nicht bloß ein Exponent des Porretanismus.”\textsuperscript{16} Paul Anciaux finds that Martinus belongs to the Porretan school “dans certaines questions,”\textsuperscript{17} while Ermenegildo Bertola lists other Porretan thinkers and then adds: “A questi possiamo ancora aggiungere, se non come puri seguaci di Gilberto, certo come sostenitori e divulgatori di idee sue, il Magister Martinus....”\textsuperscript{18} John Baldwin lists Martinus among theologians who represented the major doctrines of Gilbert de la Porrée, but he proceeds with a concession: “To illustrate the complexity of the situation, Master Martin borrowed liberally from Peter of Poitiers of the Lombard school as well as from Simon of Tournai of Gilbert’s tradition.”\textsuperscript{19} Nathan Munsch, in an unpublished dissertation on Martinus’ Christology, notes that while Martinus supports the second Christological position in Peter Lombard’s \textit{Sententiae}, which is thought to be the Porretan position, Martinus does not employ any of the terminology of Gilbert of Poitier’s Christology.\textsuperscript{20} Recently, Luigi Catalani listed Martinus’ summa among works which show in one area a pronounced but not exclusive influence of Porretan doctrine.\textsuperscript{21}


\textsuperscript{17} \textit{La Théologie du Sacrement de Pénitence au XIIe siècle}, Louvain 1949, 90.


\textsuperscript{19} \textit{Masters, Princes, and Merchants}, Princeton 1970, 48.


Even scholars who do not betray dissatisfaction with classifying Martinus as a Porretan do not posit direct influence from Gilbert, but rather indirect through Simon and Alan. I cannot find any claim that Martinus knew the text of any earlier Gilbertine thinker, nor have I found any evidence of it myself. Martinus’ text certainly contains echoes of the *Sententiae divinitatis*, but in all but one case I have found obvious common or intermediate sources.\(^{22}\)

I also can find no evidence that Martinus was in any sense a Gilbertine thinker; that is to say that he does not seem to regularly employ Gilbert’s distinctive terms and categories. Johannes Schneider is the only scholar who argues that Martinus belongs to the Gilbertine school because he follows Gilbert, rather than one of Gilbert’s followers. In his work on the Trinity in the school of Peter Lombard, Schneider finds that Martinus follows Gilbert in discussing how Aristotle’s *predicamenta* can be applied to God.\(^{23}\) Martinus’ version of this passage, however, comes verbatim from Simon of Tournai.\(^{24}\) The only passage in the section on the sacraments which seems to show that Martinus thinks in Gilbertine terms occurs when he discusses the three varieties of change in the passage mentioned in the section on Simon of Tournai. In this passage, Martinus discusses substances and accidents not with those nouns, but as substantial and accidental forms. Gilbert insisted that both substances and accidents occur as forms.\(^{25}\) Even this

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\(^{22}\) The one exceptions comes in 3,188-89, which corresponds to *Sententiae divinitatis* (Beiträge zur Geschichte der Philosophie des Mittelalters 7.2-3), ed. B. Geyer, Münster 1909, 141*.


\(^{24}\) This text occurs in Martinus on Cambridge, St. John’s C.7(57), 10rb; and Paris, BNF, lat. 14559, 268ra. In Simon, *Institutiones in sacram paginam*, Paris, Bibl. de l’Arsenal, lat. 519, 4v.

limited use of Gilbertine terminology does not show that Gilbertine thought made a
significant impression on Martinus, because this passage in Martinus is one of the places
where Martinus borrowed almost literally from Simon of Tournai, and the choice of
words shows more about Simon than about Martinus.

Martinus’ reputed attachment to the Porretan school seems to result primarily
from his preference for Simon’s arguments. As I mention above, although the amount of
text in the *Compilatio* which derives from Simon of Tournai does not compare in quantity
with that which derives from Peter of Poitiers, Martinus seems to have been particularly
impressed with a number of Simon’s arguments. The respect in which Martinus held
Simon’s arguments might reasonably lead one to the conclusion that Martinus was a
Porretan, but it seems more exact to say that he was a follower of Simon of Tournai, and
to a certain extent, Martinus was a follower of Simon of Tournai.

Scholarly literature agrees that among the Porretan influences on Martinus, Simon
of Tournai was preeminent. Alan receives relatively little attention. Landgraf mentions a
number of sources employed by Martinus, only one of which did he classify in the school
of Gilbert of La Porrée, namely Simon of Tournai.26 Principe lists Martinus among
“theologians who followed the general metaphysical outlook of Gilbert of Poitiers,”27 but
backs up this claim in his note by saying that Martinus “copies others such as Simon of
Tournai.”28 Lottin never classifies Martinus as a Porretan, but is greatly impressed by

26 A.M. Landgraf, *Einführung in die Geschichte der theologischen Literatur der Frühscholastik*,
Regensburg 1948, 89. J.J. Megivern follows Landgraf almost word for word in *Concomitance and
Communion* (Studia Friburgensia, new series 33), New York 1963, 155.

27 W.H. Principe, *William of Auxerre's Theology of the Hypostatic Union* (Studies and Texts 7),
Toronto 1963, 68.

28 Ibid., 202.
Martinus’ debt to Simon of Tournai, as when he notes that Martinus reproduces the texts of Peter of Poitiers and Simon of Tournai particularly frequently and exactly.\textsuperscript{29} As I mentioned earlier in this section, Baldwin illustrates the complexity of Martinus’ textual dependence by acknowledging that he copied both Peter of Poitiers and Simon. He mentions no Porretan sources besides Simon.

Martinus’ reputation as an adherent to the Porretan school results primarily from his debt to Simon of Tournai. Although a few instances of debt to Alan of Lille have been found, if Martinus hadn’t copied from Simon of Tournai, nobody would ever have classified him as a Porretan, and I think it is time to discard this classification. Martinus is an admirer of Simon’s work, but Simon’s influence, which is neither pervasive nor determinative, does not make Martinus a Porretan.

2.5 Peter Lombard and Magister Udo

Martinus’ use of Peter Lombard and Magister Udo must be discussed together, because in almost every case in which Martinus may be quoting from the Lombard’s \textit{Sententiae}, it is also possible that he is quoting from Udo’s \textit{Sententiae}, and the passages which Martinus clearly quotes from Udo are extremely similar to passages in the Lombard’s \textit{Sententiae}. Martinus fairly frequently quotes relatively short selections from Peter Lombard’s \textit{Collectanea in omnes Pauli epistolae},\textsuperscript{30} but whether he employed the Lombard’s \textit{Sententiae in quattuor libris distinctae} is uncertain, largely because, although many passages which Martinus employs derive ultimately from the \textit{Sententiae}, nearly all

\textsuperscript{29} \textit{Psychologie et Morale} 2, Louvain 1948, 110 and note.

\textsuperscript{30} 6,26-29.76-77; 9,59.63.70.71-73.
could also have derived either from intermediary sources, including Simon of Tournai, Peter of Poitiers, and Magister Udo, or from a common source in Gratian’s *Decretum*.

These intermediary or common sources present a complex problem. In the common sources department, there are several quotations which Martinus may have derived either from the *Sententiae* or from the *Collectanea*. Additionally, although Martinus clearly knew Gratian’s *Decretum* first hand, there are a number of places, especially in the section the Eucharist, where Martinus may have derived text that originated in Gratian from the Lombard, or possibly others. In another passage, Martinus employs a quotation from Ambrose that appears in Peter Lombard and not in texts that are more certainly sources for Martinus. Peter Lombard and Martinus both follow Ambrose’s original text very closely, however, so it is difficult to determine whether Martinus is quoting from the Lombard or whether the two share a common source in Ambrose.

There are a number of intermediary sources through which Martinus received material from Peter Lombard. Peter of Poitiers’ *Sententiae* and Simon of Tournai’s *Institutiones* both derive considerable material from Peter Lombard, and some of that material makes it into Martinus’ summa. Although in most cases the intermediate source

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31 16,70,74-75,118-126.

32 From Gratian, possibly via the Lombard: 1,32-34, 2,248, 3,286-87; From Gratian, possibly via Lombard or Udo: 1,287-90, 2,180-81, 2,221-22, 3,115-17, 3,290-92; From Gratian, possibly via Lombard or Simon: 3,169-70.

33 7,29-31.
is unmistakable, in a few passages it is possible that Martinus is quoting either from the Lombard or one of these two.\textsuperscript{34}

The most important intermediary source by which Martinus derived the Lombard’s treatments at second hand is Magister Udo. Martinus’ debt to Udo was first discovered by Artur Landgraf, whose note on the topic remains the most frequently cited to prove a relationship between Udo and Magister Martinus.\textsuperscript{35} Landgraf finds a passage in Martinus that condenses a selection from Udo’s treatment of penance. Johannes Schneider also noted a text in which Martinus borrowed from Udo.\textsuperscript{36} My findings considerably augment these. I have found a number of instances in which Martinus’ text is both clearly related to Udo’s, and in which Peter Lombard is certainly not the common source for both Martinus and Udo.

Udo’s \textit{Sententiae} are a commentary and expansion on the Lombard’s \textit{Sententiae} in which Udo quotes freely and frequently from his master’s text. Consequently every quotation from Udo looks very similar to a section from the Lombard. Nevertheless, there are six texts in Martinus’ treatise on the sacraments which clearly derive from Udo.\textsuperscript{37} Additionally, there are four other texts which may derive either from the Lombard’s \textit{Sententiae} or from Udo’s. Two of these are passages of considerable length which Martinus seems with equal probability to have excerpted from either Udo or Peter

\begin{footnotes}
\item[34] passages in which Martinus is quoting from either the Lombard or Simon: 1,89-91. Passages which derive from the Lombard or Simon or Udo: 2,221-26; 5,3-11. From either the Lombard or Simon or Peter of Poitiers: 1,100-2.
\item[35] “Udo und Magister Martinus”, in \textit{RTAM} 11 (1939), 62-64.
\item[36] \textit{Die Lehre vom dreieinigen Gott in der Schule des Petrus Lombardus} (Münchener Theologische Studien ab. 2, bd. 22), München 1961, 20.
\end{footnotes}
Lombard. The place most strongly suggestive of dependence on Peter Lombard is a misattribution of a quotation to Augustine. The two possible sources for this quotation seem to be Udo and Peter Lombard. Although neither of these authors attributes the quotation in question to Augustine, Peter Lombard attributes a preceding paragraph to Augustine. If there were other evidence that Martinus used the Lombard’s text, I would conclude that Martinus derived this authority and the entire surrounding discussion (lines 76-83) from the Lombard’s Sententiae. As it is, however, although Martinus’ misattribution is suggestive, I do not regard it as conclusive evidence that the text in question derived from the Lombard, since all of it besides the misattribution could just as easily have derived from Udo. It is likely that Martinus consulted Peter Lombard’s sentences in composing his work, but the evidence is not conclusive. Whether or not Martinus used Peter Lombard’s Sententiae, that text has a prominent indirect presence, thanks in no small degree to Magister Udo, since all of the citations of Udo which Martinus employs retain a number of features from the Lombard’s text.

Martinus certainly knew and used Magister Udo’s Sententiae and Peter Lombard’s Collectanea in omnes Pauli epistulas. He may additionally have used the Sententiae in quattuor libris distinctae, but even if he did not use it, it looms large in the background. It proves the prominence of Peter Lombard already at this early period that even someone who may not have used or even read his work is nevertheless unmistakably influenced by it.

38 1,281-90; 3,204-7.
39 1,80.
2.6 Peter the Chanter

Martinus’ text bears striking resemblances to Peter the Chanter’s *Summa de sacramentis et animae consiliis*. Nevertheless, these resemblances do not seem to indicate any textual dependence. The evident relationship between these two texts is therefore mysterious. The relationship is at least one of near contemporaneity: according to Jean-Albert Dugauquier, the editor of the *Summa de sacramentis*, that text dates from the early 1190’s, which means that it was written within a decade of Martinus’ text, and nearer to the time of composition than any other theological text from which Martinus quotes.⁴⁰ John Baldwin thought Martinus similar enough to Peter to describe him as being one of the theologians who “form an outer circle or context in which Peter operated.”⁴¹ My findings agree with Baldwin’s statement, but they also elaborate on it.

There are a number of striking similarities between Peter the Chanter’s work and Martinus’. They have gone almost entirely unnoticed by modern scholarship, except that Landgraf noticed that they both cited words from the Mass, “sicut placuit sacrificium Abel” to argue that the sacrifices of the Old Law merited.⁴² The most prominent of the distinctive commonalities between Peter and Martinus is the inclusion of a section on simony in a treatise on the sacraments.⁴³ The two treatises on simony show no textual

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⁴³ Compare cap. 7 and particularly *Summa de sacramentis et animae consiliis* 3.2a (Analecta Mediaevalia Namurcensia 16) Louvain 1961, 3-118. Peter also discusses simony within his treatise on baptism, *Summa de sacramentis et animae consiliis* 1 (AMN 4) Louvain 1954, 34.
dependency, but these are the only two instances of such a treatise in such a location that I know of.

Martinus is also one of a very few theologians to give careful consideration to the “Comestor-Chanter” theory of transubstantiation. According to this account, the transubstantiation of bread does not occur until the transubstantiation of wine is completed. Thus nothing happens with the “hoc est corpus meum,” but that both elements are transubstantiated with the words “hic est calix”.\textsuperscript{44} This idea, according to tradition introduced by Peter Comestor, is in fact among surviving documents most strongly supported by Peter the Chanter.\textsuperscript{45} Again, there is no sign of textual dependency, but it suggests that the two authors were exposed to the same ideas.

One of the most distinctive passages in Martinus’ treatment of the Eucharist comes when he suggests that when Christ gave his mortal body at the last supper, it was able to fit in such a small place (like the mouth of Peter) because the body of Christ was during life capable of demonstrating the properties which the bodies of the elect will all have in the resurrection.\textsuperscript{46} The relevant property to the feat of fitting into small spaces is subtlety; the others are glory, impassibility, and agility. The only other discussion of these four properties that occurs in a treatment of the Eucharist occurs in Peter the Chanter’s \textit{Summa de sacramentis}. Peter works it into a discussion of the accidents of the bread visible in the consecrated host. He suggests that although Christ appeared as glorified at the transfiguration, the accidents at that transfiguration, namely the splendor,

\textsuperscript{44} 1,226-337.

\textsuperscript{45} see \textit{Summa de sacramentis et animae consiliis} 1 (AMN 4) Louvain 1954, 151 and J.J. Megivern, \textit{Concomitance and Communion}, Fribourg, Schweiz 1963, 141-42.

\textsuperscript{46} 2,92-103.
did not inhere in the body of Christ as in a subject (since the body of Christ was in fact at
that point still corruptible and mortal) any more than the accidents of bread inhere in the
body of Christ as a subject in the consecrated host.⁴⁷ Martinus and Peter the Chanter
employ the properties of resurrected bodies which Christ displayed in his life in different
contexts, but in comparing them to the Eucharist at all, Martinus and the Chanter have
something notable in common.

There are also a number of details and turns of phrase which the two texts share
and which are rather unusual. In the first chapter, Martinus states that Christ is seen under
the species of bread in the same way that a hand in a glove or a foot in a shoe can be said
to be seen.⁴⁸ Martinus’ principle source for this and the surrounding material is clearly
Peter of Poitiers, but Peter compares seeing Christ in the Eucharist to seeing a hand under
a cloth.⁴⁹ Similar comparisons abound; Simon, for instance, compares it to seeing a
knight when he is in armor,⁵⁰ but the glove (cirotheca), to the best of my knowledge, is
exclusive to Martinus and Peter the Chanter. Since Martinus is clearly quoting from Peter
of Poitiers in this section, it is doubtful that this common usage of one word indicates a
textual commonality with Peter the Chanter, but this kind of thing happens repeatedly.

In Martinus’ discussion of whether the Eucharist is one sacrament or two,
Martinus adduces a certain instans: “hec uox albus est nomen, et hec uox alba est nomen.

⁴⁷ Summa de sacramentis et animae consiliis 1 (AMN 4) Louvain 1954, 169.
⁴⁸ 1,71-73.
⁴⁹ Petrus Pictaviensis, Sententiae 5 cap.12, Garv (Peter), 43 (PL 211, 1249D-1250A).
⁵⁰ Disp. 71 q.7, 203.
Alia est hec uox albus et alia hec uox alba; ergo sunt duo nomina.”

Compare this with the Chanter’s statement on the same topic: “legitur ibi quod sint duo sacramenta, sed sciendum utrumque posse concedi sub quodam loquendi tropo sicut iste uoces albus, alba, dicuntur unum siue idem nomen…” The ideas are clearly similar, although there is no sign that either is quoting the other.

There are a few other instances in which Martinus’ text resembles Peter the Chanter’s, but these are not nearly as suggestive. The similarities between Peter the Chanter and Martinus are interesting because there is no obvious explanation for them. They may indicate some unknown intermediary source. Since these two texts are nearly contemporary, their similarities may reflect a common oral rather than written source. That source could be discussions occurring in the schools in the 1190s, which would assume that Martinus was in Paris at that time, which is likely but not certain. The oral source may also have been discussions heard when they were both students, or even when Martinus heard lectures by Peter, rather than the time at which the works were written.

There is a lot that Martinus and Peter the Chanter have in common that is not anywhere else. This is complicated by the fact that there is no sign of textual dependency

51 2.20-22.
52 Summa de sacramentis et animae consiliis 1 (AMN 4) Louvain 1954, 139.
53 see 2,47-57; 4,85-106 and apparatus.
54 It is unlikely to have been the other way around. Baldwin thinks that Peter was most likely already a master by 1173 (John Baldwin, Masters, Princes, and Merchants, Princeton 1970, 6). The dates of Martinus’ schooling in theology are uncertain, but the texts which he cites all date from the 1160s or - 70s, none earlier except Gratian and Peter Lombard (if he does cite Peter Lombard), and none later except canon law works. The narrow dates which for the theology in which Martinus was current suggest that he can’t have been in school long enough to have become a master in theology in time to teach Peter the Chanter, if the latter was a master by 1173. The opposite, however, is possible.
between them. How to explain these similarities is a problem for the future. A few things can be said regarding what the similarities indicate about Martinus’ purposes. Many of these similarities do not seem to indicate any kinship of ideas any more than they indicate textual dependency, but the interest in simony suggests a very distinctive concern. As I will show, Martinus’ summa differs from its theological sources in showing a strong interest in practical questions. Martinus’ interest in simony is one example of how this practical interest draws him into topics which are not usually found in a theological summa. Peter the Chanter’s work also shows interest in practical questions, and his treatise on simony is similarly an example of this. The fact that both texts include a treatise on simony therefore seems to be an indication of a similarity that is further attested elsewhere.

2.7 Law

This practical interest is also evident in that Martinus makes extensive use of canon law. Martinus’ debt to canon law has been observed before. Damien van den Enyde has pointed out Martinus’ debt to two canon law sources, namely the Summa monacensis and the Compilatio prima of Bernard of Pavia. Nikolaus Häring, Johannes Gründel, and John Baldwin have all noted similarities between Martinus’ teaching and Huguccio’s. Häring finds Martinus’ claim that baptism is in the *persona* rather than in the

55 This is one of the principal arguments of Baldwin’s work on Peter the Chanter. See, for instance, Masters, Princes, and Merchants, Princeton 1970, xi-xii.

body or the soul to be similar to Huguccio’s teaching.\textsuperscript{57} Gründel points out that like Huguccio and others, Martinus considers the affectus with which a sin is committed to determine the gravity of the sin.\textsuperscript{58} Baldwin noticed that Martinus follows “the canonists,” particularly Huguccio, rather than Peter the Chanter and Robert of Courson in his treatment of the perdurance of the bond of fidelity of a servant to a master who was under excommunication.\textsuperscript{59} According to my findings, however, canon law plays a much larger role in Martinus’ formation and in his work than has been noticed in the past.

Martinus’ use of canon law sources is extensive. Although Martinus quotes frequently from a number of sources, the vast majority of quotations, at least in the section on the sacraments, derive from Gratian’s \textit{decretum}. Although some of these also occur in Peter Lombard and Simon of Tournai, most of them Martinus has found for himself. In fact, the only full scholastic question in the entire treatise which Martinus constructs for himself derives all of its authorities from Gratian.\textsuperscript{60} In addition to Gratian, Martinus also knows the \textit{Compilatio prima} of Bernard of Pavia, which Martinus cites as \textit{Extravagans}, followed by the incipit of the chapter. This work is primarily a collection of decretals. Martinus cites it in the sections on ordination and marriage, as well as in his discussion of excommunication.\textsuperscript{61} Martinus additionally makes use of civil law, and he

\begin{itemize}
  \item \textsuperscript{57} N.M. Häring, “Berengar’s Definitions of \textit{Sacramentum} and their Influence on Mediaeval Sacramentology,” in \textit{Mediaeval Studies} 10 (1948), 109-146, esp. 132.
  \item \textsuperscript{58} Gründel, J., \textit{Die Lehre von den Umständen der menschlichen Handlung im Mittelalter} (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 39.5) Münster i.W. 1963, 202.
  \item \textsuperscript{59} Masters, \textit{Princes, and Merchants}, Princeton 1970, 213.
  \item \textsuperscript{60} 3,166-227. See p. 119-20.
  \item \textsuperscript{61} D. van den Eynde, “Notices sur quelques ‘Magistri’ du XIIe siècle”, in \textit{Antonianum} 29 (1954), 129-42, 139 cites three instances in which Martinus cites the \textit{Compilatio prima} in his treatment of excommunication, as well as a number of the citations from orders and matrimony.
\end{itemize}
cites by name the *Institutes*, the *Digest*, the *Code*, and the *Authenticae*. Citations of these texts occur only in the section on marriage.

Martinus also apparently cites another decretal in his section on simony, when he claims that “presens apostolicus sustinet decimas de manu laicorum redimi, et quoque titulo liberari.” Identifying the decretal to which Martinus refers here is an ungrateful task for several reasons, chief among them being that there is always a strong possibility that the decretal Martinus has in mind might not have survived. Indulging ecclesiastical institutions’ petitions for the right to redeem their tithes seems to have been a fairly common thing for a pope to do. I have found several decretals in which the pope permits such a thing, and I do not doubt that there were more. There is a clear leading candidate among surviving decretals, however: it was sent from Innocent III to monastery of Lehnin, and dates from 1200. It appears in the *Prima collectio decretalium* which was collected by Rainier of Pomposa and probably published late in 1201. It is not the same as the famous *Collectio decretalium* from Innocent III which came to be known as the *Compilatio tertia*, but this collection received some circulation and survives now in two

\[\text{References}\]

62 12,58-62; 17,75; 18,117; 24.21.
64 8,62; 13,59; 14,246-47; 17,115-19. Referred to but not cited by name in 13,169-70.248-49; 20,77-80.
65 13,175.251; 21,9
66 7,127-28
67 PL 216, 1209A. for the date, see A. Potthast, *Regesta pontificum romanorum* I, Berlin 1957, 97. I follow Potthast in assuming that the monastery to which is was sent should read *Leninensi* (not *Leumensi*, as the PL following E. Baluze, ed. *Epistolae Innocentii III p.m. libri undecim*, Paris 1682).
manuscripts in France. The fact that it is known to have circulated makes this decretal more likely than the other possible ones. The others include one from the register of Lucius III (pontificate 1181-1185) in 1182 to the cathedral of Osnabrück; two from the register of Clement III (pontificate 1187-1191) one in 1189 to the monastery of St. Nicholas in Stendal, and one in 1191 to the monastery of St. Cosmas in Tagliacozzo. There are also two on this subject in the register of Innocent III, one in 1213 to the Chapter of Soissons (PL 216, 793D), and one to monastery of Saint Denis in Paris in 1216 (PL 217, 260C). The two decretals known from Innocent’s register are almost certainly too late for either to be the one Martinus has in mind. None of the earlier three seems to have circulated by inclusion in a collection, and moreover they were all sent to places (Osnabrück, Stendal, and Tagliacozzo) remote from anywhere Martinus is known to have been.

Although the decretal from Innocent III in Rainier of Pomposa’s Collectio is the leading possibility among surviving decretals to be the one to which Martinus refers, I have several reasons for holding open the possibility that he is referring to an unknown decretal. Martinus’ paraphrases of his sources usually preserve the vocabulary of the original, even where the particular choice of words is not essential to the sense. In all six of the decretals I mention, “decimas” is the object of a form of “redo”. These seem to have been the termini technici for discussing this problem. Of the decretals which I have

69 Paris, BNF, Ms. lat. 3922A; Reims, BM, Ms. 692. See W. Holtzmann, Studies in the Collections of Twelfth-Century Decretals, ed. and trans. C. Cheney and M. Cheney, Città del Vaticano 1979, 140-41.
70 PL 201, 1120D.
71 PL 204, 1449B.
72 PL 204, 1459B.
found, however, only the three earlier decretals discuss redeeming them “de manu laicorum” (Clement employs the plural form, “de manibus laicorum”). Since this is the expression Martinus employed, and since its usage is attested in these three decretals, there is a strong possibility that Martinus’ source employed this form. Moreover, none of the decretals employ an expression discussing a “titulus” or tithes being freed from it (liberari). Because of the remoteness of the texts from one another, it is with reservations that I say that this decretal from Rainier of Pomposa’s *Prima collectio decretalium* is probably the decretal of the “presens apostolicus” which Martinus mentions.

Besides the primary law sources, namely Gratian’s *Decretum*, decretals, and Justinian’s corpus, Martinus knows at least a few legal commentaries. Van den Eynde points out that Martins knew the *Summa monacensis*, although he finds only a brief passage which is dependent on that text.\(^73\) Additionally, Baldwin finds a similarity with Huguccio.\(^74\) Although I have searched a number of printed texts for further source material, I have not succeeded in locating any.

Martinus’ use of canon law contrasts completely with Peter of Poitiers’ approach to canon law. This fact did not escape the first scholar to directly compare Martinus’ summa to Peter of Poitiers’ *Sententiae*, Joseph de Ghellinck.\(^75\) This diversion from his principle model shows a conscious choice on the part of Martinus, and therefore reveals something of his agenda in this text. Peter of Poitiers’ *Sententiae* avoid all use of canon law. In this respect Peter’s work differs from most sentence collections of this time,

\(^{73}\) “Notices sur quelques ‘Magistri’ du XIIe siècle”, in *Antonianum* 29 (1954), 129-42, esp. 137.


\(^{75}\) *Le mouvement théologique de XIIe siècle*, Bruges 1948, 460.
including its own principal source, which is Peter Lombard’s *Sententiae*. The prologue to Peter of Poitiers’ *Sententiae* states that his work is a collection of *disputabilia* intended for studying *sacra pagina*. Consistent with this claim, Peter does not treat a number of important topics because, he says, they contain no disputed points that pertain to *sacra pagina*. Thus Peter does not treat ordination, for, as he says, disputation about it is more subject to decretists than to theologians. At the beginning of his treatise on marriage, Peter of Poitiers states that he will not study everything relating to marriage, since many questions pertaining to it belong to the inquiry of decretists rather than of theologians.

Martinus is evidently doing something different. He has a long section on ordination. He does not, however, dispute Peter’s claim that disputed questions on that topic belong to the province of canon law; on the contrary, he includes little besides canon law. Martinus’ treatment of marriage is far more extensive than Peter’s, and includes much material from canon law. Martinus also includes a section on simony between his treatment of baptism and that of orders. This section also draws heavily on canon law.

The textual parallels between Peter’s *Sententiae* and Martinus’ *Compilatio* allow for ready comparison, but Martinus’ use of canon law is outstanding in comparison with other texts as well. Use of canon law in a theological summa is far from unprecedented,

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76 Petrus Pictaviensis, *Sententiae* 1 (Notre Dame Publications in Mediaeval Studies 7), ed. Marthe Dulong, Philip Moore, Notre Dame, IN 1943, 1: ”ut rudimentis ad eam accedentium consulamus.”

77 Petrus Pictaviensis, *Sententiae* 5 cap.14, Garv (Peter), 56 (corresponds to PL 211, 1257B): “De quinto, id est de ordinibus, nichil hic dicendum, eo quod decretistis disputatio de his potius quam theologis deservit.”

78 Petrus Pictaviensis, *Sententiae* 5 cap.14, Garv (Peter), 56-57 (corresponds to PL 211, 1257B): “Que circa sextum, id est conjugium a theologis solent inquiri, sub compendio sunt perstringenda. Nec enim animus nobis est complecti omnia que circa conjugium inquiri possunt, cum pleraque decretistarum potius quam theologorum famulentur inquisitioni.”
but Martinus’ use is unequalled, to my knowledge, in any theological sentence collection. Simon of Tournai incorporated canon law into his Institutiones in sacram paginam, a text which Martinus used in his Compilatio. Simon also structured the treatise on the sacraments at the end of his Institutiones according to the fourfold distinction of sacraments preferred among decretists, instead of the list of seven sacraments standard in theological texts since Peter Lombard.79 Peter Lombard also employed canon law in his Sententiae. He cites Gratian’s Decretum regularly.

Martinus’ use of canon law is independent of these two predecessors and exceeds theirs considerably, both in the texts employed and in the scope of problems to which they are applied. Many of the citations of Gratian found in Peter Lombard also occur in Martinus, but in many of these cases it is clear that, wherever Martinus got the idea of employing these texts in his work, he retrieved them from Gratian or at least some text independent of the Lombard. The canon law citations common to Martinus and Peter Lombard make up a small percentage of the canon law in the Compilatio. Martinus introduces canon law into his text in many original ways. I have already mentioned the treatise on simony which he inserts between baptism and ordination. Martinus also discusses sanctuary at the end of his treatise on the Eucharist.80 His treatment of baptism includes extensive discussions of spiritual kinship.81 He uses contract law as an analogy to explain the “Comestor-Chanter” theory of transubstantiation,82 and cites Gratian as an

80 3,374-400.
81 5,71-101
82 1,239-45.
authority on the mode of Christ’s presence in the Eucharist.\textsuperscript{83} Citations of canon law come thick and fast throughout the treatise on the sacraments, and in other parts of Martinus’ work as well.

Although the \textit{Compilatio} is arranged in the form of a theological work, Martinus considers both theology and law to be contributors to it. Martinus shows that he considers these to be two contributors by indicating in several places which of the two he is drawing from in a certain section. Thus Martinus introduces his discussion of the Eucharist in this way:

\begin{quote}
\textit{De uirtute eius non hesitat catholicus, de eo tamen dignum et utile disputare ducit theologus, ut sit paratior elidere hereticorum importunos assultus.}\textsuperscript{84}
\end{quote}

No Catholic hesitates about its power; nevertheless the theologian leads in disputing worthily and beneficially, so that he may be better prepared to shatter the monstrous charges of heretics.

The theologian can be said to “lead” in this topic in the sense that most of the points pertaining to the Eucharist are topics which belong to theology. When Martinus indicates that “the theologian leads” in the topic of the Eucharist, it is because most of his discussion of that sacrament has sources and parallels in the contemporary theological tradition. Martinus employs the term “theologus” again to signal the introduction of a theological topic, when he introduces the last topic in his discussion of baptism this way:

\begin{quote}
\textit{Querit theologus an paruulo conferantur uirtutes in baptismo}\textsuperscript{85}
\end{quote}

The theologian asks whether the virtues are conferred to a child in baptism.

\textsuperscript{83} 1,91-92.
\textsuperscript{84} 1,28-31.
\textsuperscript{85} 6,3-4.
This statement introduces a new question near the end of Martinus’ treatment of baptism. The questions immediately preceding this one, on spiritual kinship contracted in baptism, derive from canon law, and Martinus introduces the new topic with “querit theologus,” to indicate a transition from a canon law topic to a theological one. On the other hand, Martinus introduces a question about how marriage impedes progress in holy orders this way:

Querit peritus iuris canonici si possit ad sacros ordines promoueri qui a se defloratam postea duxit in uxorem.\textsuperscript{86}

The one learned in canon law asks if he can be promoted to holy orders who marries someone whom he had earlier dishonored.

The acknowledgement of two sources, theology and canon law, for his summa is interesting not only because it shows that he thought of his work as comprehending both, but also because it suggests that he thought of the two as separate fields. In this he differs from Simon of Tournai and Peter Lombard, who cite from the \textit{Decretum} regularly but seem to regard it as just another authority. Martinus follows Peter of Poitiers in being conscious of a distinction between theology and canon law, but whereas Peter avoided canon law, Martinus incorporated both in his work.\textsuperscript{87}

Buried in these canon law texts is a strong indication that, although Martinus followed the form of a theological treatise in composing his summa, he may have identified himself as a canon lawyer, rather than as a theologian. Martinus refers twice to

\textsuperscript{86} 11,3-4.

\textsuperscript{87} Sharp distinction between theology and canon law characterizes other works of the late 12\textsuperscript{th} century. Law is conspicuously absent from the works of Praepositinus of Cremona and K. Pennington, “Innocent III and Canon Law”, in \textit{Innocent III: Vicar of Christ or Lord of the World?} ed J.M. Powell, Washington, D.C. 1994, 105-10, esp. 108-9 points out that Innocent III’s theological works incorporate no canon law, although they easily could have.
a “magister meus.” In both places this master is addressing points of canon law, namely redeeming tithes and whether it is simony to pay someone not to do something. The master with whom Martinus identifies is clearly a canon lawyer. It is likely, then, that the pupil is also.

Martinus’ familiarity with canon law texts supports such a suggestion. His knowledge of canon law seems far more up-to-date, though perhaps not more extensive, than his knowledge of theology. The latest theological work which he can be shown to have consulted for this work is the Disputationes of Simon of Tournai. Dating these is problematic. They are later than the Institutiones of the same author, but not much more has been said. Other theological works consulted by Martinus date from the 1160’s. The most recent canon law text may be the Collectio Rainieri of 1201, or if he didn’t use that one, the Compilatio prima, prepared by Bernard of Pavia around 1190. Martinus seems to have kept more current with canon law literature than with theological literature.

Admittedly, the treatment of the sacraments always involves more canon law than any other part of a scholastic summa. Although Martinus’ legal bent is more vividly on display here, the rest of his text also employs legal texts. Martinus employs canon law wherever he can find an excuse. Thus the treatises on the virtues, the vices, and the Old Testament law all depend significantly on law, primarily canon law, but some Justinian as well.

88 7,129.
89 7,184-85.
Martinus displays his legal background from the first word of the work. It begins:

“Cautum est in sacris constitutionibus ut lex dei, cum legitur, non secundum propriam
ingenii uirtutem doceatur.” Cautum, a forbidden or protected area, had strong legal
overtones in the twelfth century. It appears rarely in theological texts, but fairly
frequently in legal ones, including Ivo of Chartres, Gratian, and Innocent III. One
theological text in which it does appear is Peter the Chanter’s Verbum adbreviatum. The
two usages in that text are the exceptions that prove the rule, for both discuss laws; the
first overtly: “Cautum est in legibus humanis ne aliquis plures tutelas susciperet."\(^\text{92}\) The
second points out how Joseph was not made a lord over Egypt until he had proved his
wisdom. The Chanter applies this biblical story: “Si ita cautum est in temporali
prelacione, quanto magis in spirituali fieri debet?” Here, although Peter does not refer to
a canon, he proposes a principle of church government. Of twelfth-century authors who
were not writing strictly legal texts, John of Salisbury used the term cautum the most.
Most of his usages are in explicitly legal contexts, as in “iure cautum est,"\(^\text{93}\) “iure romano
cautum est,"\(^\text{94}\) “sacrorum canonum institutis cautum sit,"\(^\text{95}\) and “canonibus cautum est."\(^\text{96}\)
There are exceptions however, such as “apud philosophos cautum est”\(^\text{97}\) and “in

\(^{92}\) Petrus Cantoris, Verbum adbreviatum I, cap. 27, ed. M. Boutry (CCCM 196), Turnhout 2004,
225.

\(^{93}\) Ep. 175 (PL 199, 168A); Poliraticus lib.3 cap.11 (CCCM 118), ed. K.S.B. Keats-Rohan,
Turnhout 1993, 208; Poliraticus lib.5 cap.12, ed. C.C.I. Webb, vol. 1, Oxford 1909, 334; Metalogicon
lib.3 cap.10 (CCCM 98), ed. J.B. Hall, Turnhout 1991, 137.

\(^{94}\) Poliraticus lib.4 cap.7 (CCCM 118, 257). Poliraticus lib.5 cap.10 (Webb 1, 328).

\(^{95}\) Poliraticus lib.3 cap.5 (CCCM 118, 185).

\(^{96}\) Poliraticus lib.7 cap.21 (Webb II, 198).

\(^{97}\) Poliraticus lib.2 cap.22 (CCCM 118, 133).
saecularibus litteris cautum est”\textsuperscript{98} Nevertheless it seems safe to conclude that even these uses depend on the dominantly legal meaning of the word. There does seem to be an entirely different usage of the term, as attested in another text of John of Salisbury: “Quod denique cautum esse poterit aut securum, si sanctitas incorrupta corrumpitur?”.\textsuperscript{99} This usage is marginal however; the term \textit{cautum} had a predominantly legal usage. Martinus begins his entire work with this incipit: “Cautum est”. As important as an incipit was for the identity of medieval texts, Martinus must have been consciously exploiting the legal overtones imported by this word. He seems to drive the point home when he follows up \textit{cautum} with two words for “law”: \textit{constitutio} and \textit{lex}. Although neither term is used so predominantly in the legal field as \textit{cautum}, they both would sustain the legal tone sounded by \textit{cautum}.

Nevertheless, the \textit{Compilatio} is unmistakably not a canon law text. There are many places in which the theologian takes the lead. The treatise on the Incarnation does not seem to contain any reference to canon law.\textsuperscript{100} The treatise on God has few such references, and the treatise on the angels none, as far as I know. It seems that topics which pertain exclusively to theology, Martinus treats from theological sources. For others, like the sacraments, which pertain to both theology and canon law, he uses sources from both fields. Sometimes, as in the treatise on the Decalogue, the additional material from canon law texts swells the section considerably compared with its size in other theological treatises. Finally, there are places where Martinus introduces topics

\textsuperscript{98} \textit{Policraticus} lib.3 cap.15 (CCCM 118, 230).

\textsuperscript{99} \textit{Policraticus} lib.7 cap.20 (Webb II, 184).

from canon law which do not usually appear in theological summas, like the section on simony in the sacraments, a section on excommunication attached to penance, and the section on sanctuary attached to the Eucharist. In these, obviously canon law predominates. In spite of all the canon law, Martinus writes a theological summa and discusses primarily theological topics, but it is one to which canon law is introduced as a conscious supplement to the theological material.

2.8 Compilations

Martinus’ work is evidently dependent on a number of sources, and it has this in common with contemporary works. No theological master working in the schools at this time undertook to write a summa de novo. All summas demonstrate considerable harvesting not only from the fathers and other authorities, but also from predecessors in the schools. Thus Simon of Tournai shows particular debt to Rufinus of Bologna, the Speculum ecclesiae,101 and Peter Lombard. Peter of Poitiers shows heavy dependence on Peter Lombard.102 Peter Lombard himself drew on many contemporary sources, and, like all of his contemporaries, often derived his authorities second hand.103 All scholastic authors articulate their Eigenlehre through a vast amount of derived material.

Medieval authors were well aware of the derivative nature of their compositions. This can be seen in the frequent use of the terms compilatio and compilare to describe


103 For a recent review of Peter Lombard’s use of sources in the Sentences see P. Rosemann, Peter Lombard, Oxford 2004, 55-57.
respectively the works produced and the work involved in authorship. Martinus himself described his work as a *compilatio*. The title which I have given to the text, *Compilatio questionum theologie*, reflects the way Martinus describes his own text as a *compilatio* in the prologue, claiming “hec compilatio ceteris longe est utilior….” As Martinus continues to describe his method of composition in his prologue, he makes it clear that collecting authoritative teachings is his goal. He attacks people who attempt to interpret Scripture according to their own genius, and compares such people to the sons of Aaron who offered foreign flame and other proverbially presumptuous people. He points out that theological disputations deceive about the nature of authorities to such an extent that participants end up venerating the Old and New Testaments no more devotedly than they do the “polluted philosophy of the gentiles.” These rantings have in the past been taken too much at face value. The highly conservative theological program they seem to suggest is not carried through in the work. One of Martinus’ principle sources was Simon of Tournai, a man whose originality in speculative theology, particularly in disputations, earned him such a reputation for intellectual presumption with the succeeding generation that the fact of Simon’s having spent his last three years in a vegetable state is interpreted

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104 For an explanation of my choice for the title, see the introduction to the text, p. 198-99.

105 Cambridge, St John’s College Library Ms. C.7 (57), 9ra.

106 “menstruatam hetnicorum philospohiam.” Cambridge, St John’s College Library Ms. C.7 (57), 9ra.

107 Powicke, F.M., *Stephen Langton*, Oxford 1928, 52-55, determines on the strength of this prologue that Martinus was a conservative theologian who avoids speculation and has more pastoral concerns. Other theologians with pastoral concerns, according to Powick, include Stephen Langton and Peter Comestor, people with whom Martinus has never been shown to have any textual connection. The opposing group, the speculative theologians, are headed by Peter of Poitiers! M. Grabmann, *Geschichte der scholastischen Methode* 2, Graz 1957, 524, also draws the conclusion from this prologue that Martinus is a very conservative thinker. He is, but not in the way this prologue might lead one to suppose.
by Matthew Paris as a divine judgment.\textsuperscript{108} A literal reading of Martinus’ railings against the effects of disputation on theology does not seem to be consistent with the text itself. His insistence on not relying on one’s own genius for the study of sacred Scripture, however, is completely consistent with a text composed largely of excerpts from other people’s work.

The term *compilatio* was applied to a broad range of texts. Prominent among the *compilationes* of this time are the *Quinque compilationes*, the collections of decretals published between about 1190 and 1226. Not all *compilationes* were legal texts, however. The so-called *Summa de confessione* of Peter of Poitiers, the canon of St. Victor begins by labeling itself a *compilatio*: “Compilatio praesens materiam habens confessionum nullum materiae profitetur auctorem, sed tot habet auctores quod continent auctoritates.”\textsuperscript{109} In the Middle Ages, the incipit was at least as important in identifying the text as its title (which usually varied between manuscripts), and so the text is known as the *Compilatio praesens*.\textsuperscript{110} This text is an interesting example because it, like a number of contemporary penitential manuals, draws on sources from different fields for practical purposes, like Martinus’ text. From these examples, it seems clear that the term *compilatio* had not been appropriated to any field or genre, but was employed across disciplines, to describe a text that brings together material from a number of sources. Furthermore, it seems to have been elastic in regard to the contribution by the author which it implies. The *compilationes* of decretals include almost none of the author’s


\textsuperscript{109} <*Summa de confessione*> *Compilatio praesens* (CCCM 51), ed. J. Longère, Turnhout 1980, 1.

\textsuperscript{110} <*Summa de confessione*> *Compilatio praesens* (CCCM 51), ed. J. Longère, Turnhout 1980, x.
original contribution. The work of Peter of Poitiers, canon of St. Victor, claims to have as many authors as authorities, but in fact it does have a significant authorial voice. Although authorities are of high importance to Martinus’ text, the hand of the author is constantly in evidence putting them together.

A half century after Martinus wrote his *Compilatio*, Bonaventure reflected on the nature of book writing, and he found it to be a highly derivative process. In the beginning of his sentences commentary, Bonaventure discusses four different people of whom it can be said that they made a book: *scriptor, compilator, commentator*, and *auctor*.\(^{111}\) These varieties of composers of books differ in the degree to which the composition is the original work of the writer. A *scriptor* or scribe “scribit aliena, nihil addendo vel mutando”. At the opposite extreme, an *auctor* “scribit et sua et aliena, sed sua tamquam principalia, aliena tamquam annexa ad confirmationem.” A scribe produces a book that has none of his own contributions, and everything originates from someone else. An author produces one which includes both his own words and others’, but with his own as principal, and includes others’ words to support his own. Bonaventure concludes that Peter Lombard is an author in this last sense, but all varieties of composition which Bonaventure lists, including this most independent kind, derive much of their material from other sources.

Martinus refers to his work as a *Compilatio*, but his work does not quite line of with the second of Bonaventure’s varieties of book makers, the *compilator*. This is not surprising, since Bonaventure wrote fifty years later and, in the case of this text, does not

\(^{111}\) *Commentaria in quatuor libros sententiarum*, Proemium q.4, in *Sancti Bonaventurae opera omnia* 1, ed. PP. Collegii a S. Bonavetura, Quarrachi 1882, 14-15.
appear to rely on a traditional distinction. Bonaventure describes a *compilator* as someone who “scribit aliena, addendo, sed non de suo.” In a reply to an objection, Bonaventure further explains how use of derived material does not disqualify one from being an author in the fullest sense of the term: “non ideo dicitur facere aliquis, supponente alio, quia ab alio didicit…sed si omnino scientia eius dependet ab alio, ita quod non habet habium intra….” One is not making a book with another supplying the material, as is the case of a *scriptor* and a *compilator,* unless he is merely repeating what he has heard without understanding it. Is this the case with Martinus? Rarely, if at all. On the contrary, Martinus’ compilation draws together sources which are not usually employed together to create a document that is original in its purpose and comprehensiveness.

2.9 Conclusion

Martinus’ use of sources is the best evidence of who he is and what his theological agenda was. This results from the fact that the outstanding feature of his method of composition was to compile from multiple sources. An examination of Martinus’ use of sources yields important information. Much of the evidence for dating the work relies on its use of sources, as discussed in a previous chapter. Martinus’ use of sources shows that Peter of Poitiers had a foundational influence on this text, but also that Peter’s influence was not determinative one. Martinus seems to have used Peter as his starting point, both an outline to structure his own work and a base text to alter and supplement when it was inadequate to Martinus’ own purposes. One respect in which Martinus shows independence from Peter of Poitiers is in his evident preference for
Simon of Tournai’s treatments. More fundamentally, however, Martinus shows his different agenda from Peter of Poitiers’ in his unmistakable practical concern, compared with Peter’s text. This greater practical concern compared with Peter of Poitiers is most evident in Martinus’ inclusion of canon law, compared with Peter’s exclusion of it.

Martinus also shows independence of his other important sources. Although he admired Simon of Tournai’s work, Martinus cannot be considered a Porretan. Martinus knew and used Peter Lombard, but derived most, if not all, of his knowledge of the Lombard’s most famous work through intermediaries, especially Udo. Martinus has certain things in common with Peter the Chanter’s text, and these commonalities need to be explained. These similarities seem to suggest common influence, but in that they show distinct approaches, they demonstrate independence of thought, as both show a practical concern which sets them apart from others.

Finally, an investigation of Martinus’ use of sources shows that it is more likely that Martinus is a lawyer who is doing theology, than that he is a theologian who incorporates some law into his text. His extensive knowledge and use of both canon and civil law and his references to a his master, who is evidently a lawyer confirm what is suggested by the fact that his knowledge of law seems far more up to date than does his theology. An investigation of Martinus’ sources reveals that this work resulted from a deliberate effort of compiling materials from all relevant sources.
3.1 Organization of the Work

Martinus’ treatment of the sacraments in his *Compilatio* has 24 chapters. The first part of chapter 1 is a short treatment of the sacraments *in genere*. The remainder of that chapter and the two succeeding chapters cover the Eucharist. Chapters 4-6 are on baptism, 7 is on simony, 8-11 are on ordination, and 12-24 are on marriage.\footnote{1} Several aspects of this layout require note.

First, the order is unusual in several respects. Although Peter Lombard did not dictate the order in which the sacraments were treated in the late twelfth century as he did for the thirteenth, there were nevertheless certain norms regarding the order in which the sacraments were treated which most summas generally observed. Martinus departs from those norms in several ways.

Scholastic summas usually treat the sacraments of initiation in the order of reception: baptism, confirmation, and the Eucharist. Peter of Poitiers, Simon of Tournai, and Peter Lombard arrange their works in this order; Magister Udo does also, although he omits confirmation. Martinus’ contemporaries, Peter the Chanter in his *Summa de sacramentis et animae consiliis* and Praepositinus in the *Summa ‘Qui producit ventos’*, \footnote{1 For editorial practices in determining chapter divisions, see p. 199-203.}
follow the usual order with respect to these three, though each inserts other topics. Peter the Chanter inserts a discussion of extreme unction and of the consecration of churches between confirmation and the Eucharist, and Praepositinus places penance in the same location. Radulfus Ardens reverses confirmation and the Eucharist in his *Speculum universale.* While it is clear that the order in which the sacraments were treated in theological summas had not been entirely fixed at this time, the particular innovation of placing the Eucharist before baptism seems to have been unique to Martinus. Martinus does not defend his ordering explicitly, but his introduction to the treatment of the Eucharist suggests an explanation. His treatment of the Eucharist begins in this way: “inter sacramenta autem noui testamenti sanctius est et dignius sacramentum altaris.” “Among the sacraments of the New Testament, the more holy and the more worthy is the sacrament of the altar.” This statement suggests that he placed the Eucharist first in the treatment of the sacraments to reflect its preeminence.

Martinus’ layout also omits confirmation. Martinus had the obvious precedent of Udo in doing so, but the precedent of Peter of Poitiers probably also served as an example for Martinus here. Both texts are important sources for Martinus’ work, but Peter of Poitiers’ justification for omitting this sacrament seems to suit Martinus’ interests better than Udo’s does. Udo’s reason for omitting a treatment of confirmation is that Peter Lombard had already treated it adequately: "Post tractatum baptismi consequenti ordine videtur esse agendum de catechismo et exorcismo et confirmatione. Sed quia de his plene habetur in libro Sentenciarum, ad sacramentum eucharistiae accedamus.”


Lombard’s *Sententiae*, and viewed his work as a supplement to Peter Lombard’s. Since Martinus shows no clear evidence of direct knowledge of the Lombard’s *Sententiae*, it is untenable to suppose that he similarly restricts his work to treating topics which the Lombard did not cover adequately.

Peter of Poitiers did include a section on confirmation, but it comprises only one short question, and is introduced with the following apology: “De confirmatione nichil aliud invenio dubitabile nisi quod queritur an dignius sit sacramentum quam baptismus?”

Martinus includes a similar discussion in the *Compilatio* comparing confirmation with the Eucharist and baptism. Having dealt elsewhere with the only question Peter found interesting, Martinus also seems to have nothing further to say about confirmation. The complete coincidence of their interests regarding questions about confirmation suggests that Martinus omitted all treatment of confirmation because of the influence of Peter of Poitiers, but although most other authors discussed confirmation, they show only limited interest in this sacrament. Simon of Tournai, another of Martinus’ major sources, included only a few questions on confirmation in the *Institutiones in sacram paginam* and none in his *Disputationes*. Martinus’ contemporaries such as Peter the Chanter and Praepositinus also afforded it scanty treatment. Thus Martinus’ omission of confirmation is indicative of a general trend, but particularly derives from Peter of Poitiers.

It is harder to generalize about the order of the sacraments after the three sacraments of initiation. Martinus is clearly unusual, however, in that he does not include penance in his treatment of the sacraments. Peter Lombard treats penance immediately after the Eucharist,

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4 Peter of Poitiers, *Sententiae* 5, cap.9, Garv. (Peter), 27 (PL 211, 1241B).

5 3,124-33.
and Udo follows him, as do Simon of Tournai, Peter the Chanter, and Radulfus Ardens. Praepositinus, as I have mentioned, treated penance before the Eucharist. Martinus and Peter of Poitiers, however, discuss penance far earlier in their summas, after sin and first grace, and before the virtues. This is another clear indication that Martinus followed Peter’s work closely as he prepared his own.

Although there certainly is some variation in where extreme unction is placed, it was common to treat it immediately after penance, as Peter Lombard does, along with Simon of Tournai and Radulfus Ardens. Peter the Chanter, as I mentioned previously, places his discussion of extreme unction before the Eucharist. Peter of Poitiers and Praepositinus place their discussions of extreme unction at the very end of their treatise on the sacraments, where it makes a logical connection to the section on eschatology. Martinus omits extreme unction entirely. Again, however, Martinus is closest to Peter of Poitiers in this choice, for Peter’s discussion of this sacrament included nothing more than his declining to treat it:

> De ultimo igitur septem sacramentorum, id est extrema unctione, ultimo loco esset agendum, nisi quia fere nulla disputabilia circa ipsum audivimus, et siqua sunt, alibi sufficienter scripta continentur. Ne ergo scripta scribentes nichil agentis opus agere videamur, ab his supersedendum esse censuimus.

Orders and marriage usually were treated consecutively and often were treated last of the sacraments. Peter Lombard places them in that position, and consequently Martinus’ placement of them there as well would seem unremarkable except for the strong similarity established between Martinus’ and Peter of Poitiers’ orderings. Peter declines to treat orders

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8 Peter of Poitiers, *Sententiae 5*, cap.17, Garv. (Peter), 70 (PL 211, 1264B).
at all, “eo quod decretistis disputatio de his potius quam theologis deservit.” Martinus has a treatment of considerable length. In agreement with Peter’s claim, much of Martinus’ treatment includes canon law. It is clear, therefore, that although Martinus followed Peter of Poitiers’ plan for a theological summa closely in many respects, he was not limited to topics which his source treated.

Perhaps the most remarkable feature of Martinus’ arrangement is his insertion of a treatise on simony between baptism and ordination. I know of only one other scholastic summa that includes a treatment of simony in a treatise on the sacraments, namely Peter the Chanter’s *Summa de sacramentis et animae consiliis*, in which a lengthy, independent section on simony follows all the sacraments but ordination and marriage, which are discussed among a number of brief treatments of miscellaneous topics. This is one of a number of similarities between Peter the Chanter’s work and Martinus’ *Compilatio* which I have discussed above. Peter the Chanter’s work contains shorter treatments of simony as well, one in his discussion of baptism and one in an independent section on prebends. The fact that Peter the Chanter found simony so relevant to baptism and ordination suggests another possible reason for Martinus’ choice to reverse baptism and the Eucharist from their usual order: since he was already treating penance elsewhere and omitting extreme unction, Martinus could place simony directly between baptism and ordination. Indeed, chapter 7, which is the treatise on simony, blends almost seamlessly with the surrounding

9 Peter of Poitiers, *Sententiae* 5, cap.14, Garv. (Peter), 56 (PL 211, 1257B).

10 See Pierre le Chantre, *Summa de sacramentis et animae consiliis* III, 2a (AMN 16) Louvain 1963, 3-118.

11 see p. 45-49.


chapters. The chapter begins discussing the licit and illicit ways of paying for baptism and ends discussing selling church offices. It is clear that Martinus, along with Peter the Chanter, recognized that simony had a particular relevance to the two sacraments of baptism and orders.

As shown above, the order in which Martinus treats the sacraments reveals much about his relationship to contemporary and preceding scholars and about his scholarly position on the various sacraments. The proportion of text devoted to each sacrament is also revealing. The numbers of chapters listed above suggest that the section on marriage is as long as the treatment of all the remaining sacraments combined. That is in fact the case. Long treatments of marriage were not unprecedented, though also not universal. Peter Lombard’s is quite extensive. Simon of Tournai’s is less lengthy, though it treats many of the same topics. Peter of Poitier’s treatment of marriage, however, is relatively short, and he explains the reason: “nec enim animus nobis est complectendi omnia quae circa conjugium possunt inquiri, cum pleraque decretistarum potius quam theologorum famulentur inquisitioni.” As in the case of ordination, Martinus does not follow Peter of Poitier in declining to venture into canon law. His treatment of marriage is also not something which Martinus has in common with Peter the Chanter. The Chanter’s treatment of marriage is scattered throughout a number of miscellaneous questions, but all of the material combined makes only a rather brief treatment. The peculiarities of the order in which Martinus treats the sacraments suggests a close relationship with Peter of Poitiers, but it also suggests considerable independence of thought.
3.2 De sacramentis in genere

The treatise on the sacraments in general in Martinus’ *Compilatio* does not receive a chapter of its own, but is the beginning of the chapter on the Eucharist.\(^\text{14}\) This is also one of the few places where Cambridge, St. John’s College Library, C.7 (57) and Paris, BNF lat., 14526 significantly disagree on a chapter title. The Cambridge manuscript reads “Hic incipit disputatio corporis et sanguinis Christi.” BNF lat. 14526 omits the title altogether, as does the Toulouse manuscript. The other Paris Manuscript, BNF lat. 14556, which often has titles for the chapters which are unique to itself, writes “De signis” here, while the Troyes manuscript, which usually does not have titles for the chapters at all, entitles this section “De sacramento altaris et de signis prius,” which is by far the most satisfactory title. The reason for confusion is evident. The main substance of this chapter is a discussion of the Eucharist, but the first part of it, less than half a column in most manuscripts, discusses “signs.”

Martinus’ treatment of the sacraments in general is strikingly brief, but he shares this with both of the predecessors whose texts he employed the most, namely Peter of Poitiers and Simon of Tournai. Peter the Chanter’s treatment is also relatively short. Martinus’ is the shortest of all, however. Other authors, both earlier and later, had much longer treatments. Peter Lombard’s treatment was fairly extensive, and Praepositinus’ treatment was comparable in length to his treatments of baptism and the Eucharist. Martinus, however, does not seem to have been very interested in the sacraments in general. Not only is his treatment considerably briefer than those of his contemporaries and sources, but the entire treatise on signs is copied from Simon of Tournai’s

\(^{14}\) 1,1-26.
Institutiones. If Martinus was not original, at least he was discriminating, for he has selected a passage expounding an idea which Damien van den Eynde identifies as one of Simon’s important contributions to the development of teaching on the sacrament. The value of this text was also evidently recognized by Martinus’ contemporaries, for Radulfus Ardens and Lothar of Segni (Innocent III) also copy it almost verbatim in their works.

Martinus’ treatise on sacraments begins by locating sacraments among all varieties of signs. Sign theory formed an important part of Simon of Tournai’s theology. Here the most basic distinction between signs is that between natural and conventional signs, signa naturalia and signa positiua (i.e., those established, posita, by convention). This distinction derives from the one Augustine establishes in the second book of De doctrina christiana between natural and given signs (signa naturalia and signa data). Augustine’s discussion of signa data primarily concerns how revelation is communicated, but Peter Lombard had already claimed that sacraments fall into this category and Peter of Poitiers follows him. Simon of Tournai substituted positiua for data, terminology which he apparently borrowed from the legal distinction between

16 Ibid. 66.
18 IV Sent. lib.4 d.1 cap.4 (746).
19 Peter of Poitiers, Sententiae 5, cap.1, Garv. (Peter), 3 (PL 211, 1229A).
positive and natural law.\textsuperscript{20} In the division presented here, there are natural signs, none of which is a sacrament, and there are positive signs, some of which are sacraments, but some of which are not. Martinus gives an example of positive signs which originates from the \textit{Summa sententiarum} and was commonly employed at this time: a circle is a sign of fresh wine.\textsuperscript{21} Sacraments are signs of sacred things. Of these there are two kinds: the ones which signify a sacred thing but are not sacred in themselves; and the ones which are sacred in themselves and are also signs of sacred things. The former are the sacraments of the Old Testament, the latter the sacraments of the New Testament:

\begin{quote}
Omne uero sacrum signum uel non sacrum, dum tamen rei sacre signum sit, sacramentum dicitur: non sacrum signum sacre rei ueteris testamenti, sacrum signum rei sacre noui testamenti sacramentum dicitur.\textsuperscript{22}
\end{quote}

The innovation which van den Eynde finds in Simon of Tournai’s work consists in distinguishing between the sacraments of the Old Testament and the New Testament by stating that the former are \textit{signa sacre rei} while the latter of \textit{sacra signa sacre rei}; he also points out that the idea of coupling the old definition of a sacrament, \textit{signum sacre rei}, with another definition, \textit{sacrum signum}, to create a new definition of a sacrament, \textit{sacrum signum sacre rei}, was found rarely, if at all, before Simon.\textsuperscript{23}


\textsuperscript{21} \textit{Summa sententiarum} tr.4 cap.1 (PL 176, 117C). Besides Simon of Tournai, Peter of Poitiers employs this example as well, \textit{Sententiae} 5, cap.1, Garv. (Peter), 3 (PL 211, 1229A).

\textsuperscript{22} 1,15-18.

\textsuperscript{23} D. van den Eynde, \textit{Définitions}, 63.
Martinus continues by saying that these signs which constitute the sacraments of the new law are sacred because they justify.\textsuperscript{24} The claim that the effect of New Testament sacraments is justification is another original contribution of Simon’s. The idea that sacraments of the New Testament are \textit{iustificantia} seems to derive from an earlier claim that they are \textit{sanctificantia}, which appears in many scholastic summas and derives ultimately from Augustine’s \textit{Ennaratio} on Psalm 73. Simon employs the claim that sacraments sanctify to support his claim that they justify. The idea appears in this form in Simon’s \textit{Institutiones}: “Non igitur significandi tantum gratia sacramenta sunt instituta, sed etiam sanctificandi”\textsuperscript{25}

Simon and Martinus’ claim that sacraments of the New Testament are “sacra quia iustificantia” does not seem to cover the facts entirely; New Testament sacraments have other reasons for which they are holy. For instance, the Eucharist is holy not just because it justifies, but also because of the presence of Christ. This may be a case where enthusiasm for a system overreaches reality. The claim has useful implications, however. Martinus implies here that the New Testament sacraments are holy because of their effects. If New Testament sacraments differ from Old Testament sacraments because the former are sacred and they are sacred because they justify, then New Testament sacraments differ from Old Testament sacraments because they justify. Since justifying is an effect of the sacrament, Martinus is distinguishing between sacraments of the two testaments because of their effects. There is a robust tradition at this time of distinguishing between sacraments of the Old and New Testaments based on their effects.

\begin{footnotes}
\item[24] 1,18-23.
\item[25] \textit{Institutiones} 55va; cf. Augustinus, \textit{Ennaratio in Ps. LXXIII} n.2 (CCSL 39, 1005-6).
\end{footnotes}
Here is Peter of Poitiers’ claim: “Inter sacramenta Veteris et nove legis haec est differentia, quod illa non efficiunt quod figurant, hec autem efficiunt quod figurant.”

Martinus, following Simon, admits that certain sacraments, namely those of the Old Testament, although they are not efficacious, are nevertheless legitimately called sacraments. This argument runs directly against Peter of Poitiers, who asserts that the sacraments of the Old Law are not really sacraments: “sacramenta Veteris Legis improprie dicuntur sacramenta, quia non efficiunt quod figurant.” The spurious Augustine quotation with which Martinus’ treatment of signs ends argues from this perspective, and it clearly contradicts the claim that the sacraments of the Old and New Testaments are both sacraments: “What are instituted for the sake of signifying only are only signs, not sacraments, like the carnal sacrifices and the ceremonial observances.”

Although the text offers no explanation of the purpose this quotation serves in the passage, the inclusion of this quotation can only be understood as an acknowledgement of this other view. It acknowledges a more strict definition of the term sacrament, which Martinus and Simon did not primarily employ but the validity of which they here recognize. The force of the “unde,” which introduces the quotation therefore must be understood not as suggesting that this quotation is proved by what precedes, but rather that what precedes explains this quotation. Thus, it should be understood to mean not “therefore” but “for this reason”. For this reason, i.e. because the sacraments of the New

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26 Sententiae 5, cap.3, Garv. (Peter), 4 (PL 211, 1229B-C).

27 Peter of Poitiers, Sententiae 5, cap.1, Garv. (Peter), 3-4 (PL 211, 1229A).

28 1, 24-26.
Testament not only signify but also justify, the pseudo-Augustinian authority holds that sacraments must do more than signify.

One aspect of the usual treatise *de sacramentis in genere* which is strikingly absent is any insistence that the sacraments look like what they signify. One authority which was regularly invoked derived from Augustine, quoted here as it appears in Simon of Tournai: “si sacramenta non haberent similitudinem rerum quarum sunt sacramenta, proprie sacramenta non dicerentur.”29 A second authority which appears frequently in these treatises also emphasizes the similarity in appearance between the sacrament and the thing signified: “sacramentum enim proprie dicitur quod ita signum est gratie dei et inuisibilis gratie usibilis forma, ut ipsius imaginem gerat et causa existat.”30 Martinus includes neither of these standard authorities in his text, though they were presumably readily available to him from Simon’s text, and in the case of the second, from Udo’s *Sententiae*, which Martinus also used extensively.31 Peter of Poitiers also makes the point that in sacraments the signifier must look like the signified, albeit briefly: “ut aliquid propri dicatur sacramentum, oportet ut sit tale signum rei quod eam significet et efficiat, et imaginem rei figurate in se gerat.”32 Peter also quotes the other authority: “sacramentum est invisibilis gratie in eo collate visibilis forma,”33 but he employs it to argue that sacraments confer grace, not that there should be some conformity between the visible form and the invisible grace.

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30 Ibid.


32 Peter of Poitiers, *Sententiae* 5, cap.1, Garv. (Peter), 3 (PL 211, 1229A).

33 Peter of Poitiers, *Sententiae* 5, cap.1, Garv. (Peter), 4 (PL 211, 1229A).
Martinus’ complete omission of any claim that sacraments must bear a likeness to what they signify is interesting when in conjunction with Simon’s doctrine of sacraments as positive, or conventional, signs. It is part of the nature of a conventional sign that it does not signify intrinsically, but only after a signification has been assigned to it. If the sacraments are positive signs and there is no necessity that they resemble what they signify, it seems that sacraments could have been instituted under any sign. If it also does not need to resemble the thing it signifies, then, at the time of institution, Christ could have made any thing a sign of a sacred thing, or even a sacred sign of a sacred thing. Martinus makes no explicit argument in favor of such a claim, but he allows the possibility, inadvertently or otherwise.

I think the explanation for Martinus’ failing to make clear that sacraments resemble what they signify lies in the fact that Martinus’ selections of the topics which he discusses follow Peter of Poitiers’ closely. As mentioned above, Peter of Poitiers has only a brief discussion of this topic, and his interest centers on three aspects of sacraments: their nature as signs, the reason for their institution, and the difference between the sacraments of the new law and those of the old law. The second of these three is also quite brief in Peter of Poitiers’ text, and Martinus does not deal with it. Martinus, however, selected a part of Simon of Tournai’s treatise which in other respects corresponds very closely to the topics which Peter treated in his chapters on the sacraments in general but arrives at different conclusions. Martinus nevertheless preferred Simon’s innovative treatment. Therefore, although he shows a preference for Simon’s treatment, Martinus also shows that his interests were dictated by Peter’s in that the topics which he treats correspond more closely to Peter’s than to Simon’s.
3.3 Eucharist

Martinus’ treatment of the Eucharist comprises most of three chapters. The topics of these three chapters represent a general trend from more abstract questions to more practical ones. The first chapter begins with the treatise on signs discussed above. The remainder of this chapter deals with the Eucharistic change: what exactly happens and how it should be described. The second chapter discusses the presence of Christ in the sacrament. Chapter three treats questions of reception.

Inter sacramenta autem noui testamenti sanctius est et dignius sacramentum altaris. De uirtute eius non hesitat catholicus, de eo tamen dignum et utile disputare ducit theologus, ut sit paratior elidere hereticorum importunos assultus.\textsuperscript{34}

This is the opening paragraph of the treatment of the Eucharist. The first sentence, as I have discussed above, suggests a reason for Martinus’ distinctive choice in treating the Eucharist first among the sacraments. The other sentence points out that although every Catholic values the Eucharist, the theologian has a particular interest in the topic. This is the first of a number of references to “the theologian,” which I discussed together in the previous chapter.\textsuperscript{35} The theologian, Martinus here asserts, leads in disputing worthily and usefully about the Eucharist. Martinus here explains the contents of the section on the Eucharist: theologians excel others in discussing the Eucharist, and so he

\textsuperscript{34} 1,27-31.

\textsuperscript{35} See p. 56-57.
will include primarily theological discussions. Martinus also gives the reason why theologians excel at discussing the Eucharist: so that they can be more prepared to destroy the monstrous assaults of heretics.

3.3.1 The Eucharistic Change

After this introduction, Martinus’ first chapter discusses what happens in the Eucharistic change, how it can be described, when it happens. He first approaches the question through a study of verbs that can be used to express what happens to the elements such that the body and blood of Christ take their place.\(^36\) Not surprisingly, \textit{transsubstantiatur} is Martinus’ top choice: bread is transubstantiated into the body of Christ.\(^37\) He accepts \textit{formatus est}, though he feels that it is inexact, since the form is not what is changing, but the whole substance.\(^38\) \textit{Fit} is similarly misleading, since someone is likely to understand it to mean that the substance remains, as in the statement, “ex farina fit panis,” “bread is made from flour.”\(^39\) Someone who understands “corpus Christi ex pane fit” to imply that the body of Christ wasn’t made solely “ex purissimis sanguinibus beate virginis”\(^40\) seems to have made a similar mistake. Martinus points out that in this case not only is the understanding of the verb an issue, but also the understanding of the preposition \textit{ex}. Martinus argues that “in the first proposition (i.e. corpus Christi ex pane fit), the preposition \textit{ex} denotes conversion, in the second (ex purissimis sanguinibus beate

\(^{36}\) 1,32-70.

\(^{37}\) 1,42-45.

\(^{38}\) 1,45-47.

\(^{39}\) 1,47-52.

\(^{40}\) 1,66-70.
virginis) it denotes nature.” In other words, there are at least two ways in which something can be from something else. It can be from something in the sense that it was converted from it, and it can be from it in the sense that it takes its nature from it. 41

Martinus mentions a number of other acceptable verbs: mutatur, transit, and conuertitur, 42 the last of which he uses frequently in this treatise. Any form of esse, however, Martinus rules out entirely. He begins the discussion of these verbs by explaining that where one finds a form of esse in a patristic text saying something like this quotation adapted from Ambrose that appears in both Gratian and Peter Lombard’s Sentences: “quod ante consecrationem est panis, post consecrationem est corpus Christi,” then one must expound the “verbum essentie,” such as the second “est” in this quotation, with a “verbum notans conversionem,” because otherwise it will seem to say that after the consecration the substance of bread is the body of Christ. 43 Martinus returns to the verb to be near the end of the discussion of vocabulary to specifically rule out erit as a possibility. “Panis iste erit corpus Christi” will not do because it seems to say that after a variation of properties the identity of the essence or the substance remains. 44

This discussion of the vocabulary for describing the change in the Eucharistic elements serves Martinus as more than a clarification of terms. In fact, the principle object Martinus seems to accomplish in this section is to introduce concepts and distinctions. Although the text appears to be setting rules for what words to use and what

41 Peter of Poitiers’ text, from which Martinus borrows this distinction, has materiam instead of naturam. Peter of Poitiers, Sententiae 5, cap.12, Garv. (Peter), 41 (PL 211, 1248B-C).

42 1,42.

43 1,32-42.

44 1,53-65.
words to avoid, Martinus also introduces the concept of transubstantiation and
distinguishes it from other kinds of change. He establishes that this sort of change is not a
matter of a variation of properties while the identity of the essence or substance remains
the same. He also distinguishes a substance changing into another substance from a form
changing into a form, and from changing something into another thing by the usual
means of production or propagation. Martinus has asserted all of this and established a
vocabulary to elucidate it, but one thing which is strikingly absent is a real definition of
any of the terms. *Substantia, forma, essentia, proprietas*, and even *yle* and *ypostasis*
appear, but are never explained. Here is how Martinus introduces his verb of choice:
“nullum uerbum adeo proprie sicut hoc uerbum ‘transsubstantiare,’ quia substantia in
substantiam transsubstantiatur.” This sentence does not explain much about the nature of
this change. The following sentence gives all the elucidation the reader will receive in
this section: “Cum uero dicitur, ‘panis formatus est in corpus Christi,’ non est expresse
dictum, quia non transit forma in formam.” It gives a definition by contrast, that is, it
makes clear that a transubstantiation is a change of substances, not of forms, but does not
specify how a change of substances differs from a change of forms. Similarly, he explains
that in the sort of change described in the sentence “bread is made from flour,” there
remains “quod a philosopho yle uel ypostasis dicitur.” These terms are nowhere further
described. They are not even identified with the Latin *substantia*. Martinus’ treatment
here derives from Peter of Poitiers’ *Sententiae*, but Peter here includes a passage which
supplies these wants:

Sunt autem tria genera conversionis; est unum genus conversionis quando aliqua
substantia transit in aliam ut sit eius materia, facta varietate proprietatum circa
materiam et materiatum; unde dicitur ovum esse animal potestate, quia inde fit,
operatione naturae, vel filix vitrum, quia fit, operante artifice. Quandoque fit

83
Here Peter carefully explains kinds of changes, but Martinus, although he incorporates the surrounding material into his summa, does not include any such discussion in this part of his text.

What does Martinus gain by omitting such a discussion? Introducing the discussion of Eucharistic change as a discussion about the appropriate vocabulary for describing such a change allows Martinus to compare the different kinds of change by name and so avoid describing them. It should be noted, however, that although Martinus does not include a careful definition of philosophical terms here where he draws primarily on Peter of Poitiers, in the later discussion of what happens to the bread after consecration, which draws primarily on Simon of Tournai, Martinus includes Simon’s explanation of different types of change. To his credit, Martinus has chosen well, because Simon’s treatment gives a more detailed explanation of transubstantiation than does Peter’s.

After discussing the terms to be used to describe the Eucharistic change, Martinus turns to the remaining accidents. His concern is primarily with appearance, though he points out that any words pertaining to corruption or to the senses, such as taste and weight, are dealt with the same way. He asks two questions that get at the problem. First

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45 Peter of Poitiers, Sententiae 5, cap.12, Garv. (Peter), 37 (PL 211, 1246C-D).
he asks whether the body of Christ can be seen, then he asks whether the breaking of the consecrated host is done to the body of Christ. In his treatment of whether the body of Christ can be seen, he concludes that the body of Christ can be said to be seen in the same way that a hand covered by a glove can be said to be seen, or a foot covered by a shoe. Although Thomas Aquinas explicitly rejects this sort of answer, solutions to this effect were common in Martinus time. Peter of Poitiers, who is Martinus’ source for the surrounding material, says the body of Christ can be said to be seen in the Eucharist in the same way that “I say my hand, veiled beneath a cloth, is seen,” and Simon of Tournai says that it is seen in the same way an armed knight is seen. Martinus may owe the idea of the glove to Peter the Chanter, who uses that comparison in his *Summa de sacramentis et animae consiliis*.

Of these theologians who give this standard answer, Martins is the only one who deals with a problem arising from it, namely in what subject the accidents are founded? If the substance of the bread has changed entirely into the substance of the body of Christ, what is left to be the substance of this covering. The question and its answer he takes

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46 1,71-84.
47 See *Summa Theologiae*, IIIa q.76 art.7 ad.1.
48 Peter of Poitiers, *Sententiae* 5, cap.12, Garv. (Peter), 43 (PL 211, 1249D).
49 *Disp. 71* q.7, 203. Martinus probably did not know *Disputatio LXXI*, although he used every other disputation of Simon of Tournai that dealt with the Eucharist. See p. 35-36.
50 AMN 4, 138.
from Peter Lombard (or perhaps Udo). Agreeing with them, Martinus speculates that they exist without a subject. This was the prevailing answer to that question at the time.\footnote{For instance, Praepositinus of Cremona comes to the same conclusion without an argument in his \textit{Summa \textquoteright Qui producit ventos} in \textit{Praepositini Cancelarii de Sacramentis et de novissimis}, ed. D.E. Pilarczyk, Roma 1964, 82.}

The second question regarding appearances has to do with the breaking of the consecrated host which occurs during the ceremony.\footnote{1,85-120.} This was a very common question at the time, and apparently a very disturbing one. It occurs in all of Martinus’ Sources, and they all offer different explanations of the phenomenon. While all of them agree that the consecrated host is in fact broken but the body of Christ is not exactly, they offer different explanations of how this is possible. Peter Lombard stresses that the body of Christ is broken sacramentally.\footnote{\textit{IV Sent.} 4 di.12, 304-305.} Peter of Poitiers takes this one step further by pointing out that the solution to the problem is immediately tied to the problem of whether or not Christ can be seen. He can be seen only in sacrament, not in his essence; therefore he is broken only sacramentally, not essentially.\footnote{Peter of Poitiers, \textit{Sententiae} 5, cap.12, Garv. (Peter), 43-44 (PL 211, 1250A).} Simon of Tournai offers the novel solution that Christ’s body has the property of being able to break while remaining whole, in the same way that it went through locked doors and went out of a closed womb.\footnote{Simon Tornacensis, \textit{Institutiones}, 59va and \textit{Disputatio} 90 q.5, 260-61.} Martinus’ reply is to assert that the body of Christ is not broken, but that it is said to be broken sacramentally. In that he declines to specify how it happens, he is closest to the view of Peter Lombard.
Although they offer solutions to the problem, all of the treatments of this question seem tentative. Martinus and all of his sources acknowledge dissenting opinions, the most common being that there is in fact no breaking at all. Martinus mentions another, that the breaking occurs in the air.\textsuperscript{56} This appears to derive from the opinion of the \textit{Sententiae parisienses} that after consecration the accidents exist in the air.\textsuperscript{57} Nearer to Martinus’ time, this opinion is mentioned by Peter the Chanter.\textsuperscript{58} Martinus seems to be the first, however, to say that the breaking itself, rather than the accidents, occurs in the air. The uncertainty with which theologians approached this problem is apparent in Martinus’ final statement in this treatise: “quid autem verius sit, igni reliquimus conburendum.”\textsuperscript{59} Simon has a similar disclaimer. This was a question which no one felt entirely confident in treating.

Martinus next begins a treatment of what happens to the bread. He begins with two problems: does the bread cease to be, and does it perish.\textsuperscript{60} He then gives his most detailed explanation of transubstantiation and other changes.\textsuperscript{61} Next he discusses whether it is correct to say that “panis iste erit uel fiet corpus Christi”.\textsuperscript{62}

Martinus’ answer to the first two problems centers around the claim that the bread becomes the body of Christ, and to become something else is not the same thing as to

\textsuperscript{56} 1,116-17.  
\textsuperscript{57} \textit{Sententiae parisienses}, ed. A.M. Landgraf in \textit{Écrits theologiques de l’école d’Abélard} (Spicilegium sacrum Lovaniense 14), Louvain 1934, 42.  
\textsuperscript{58} Pierre le Chantre, \textit{Summa} I (ANM 4) Louvain 1954, 168.  
\textsuperscript{59} 1,119-20.  
\textsuperscript{60} 1,121-43.  
\textsuperscript{61} 1,144-71.  
\textsuperscript{62} 1,172-189.
cease to be or the same thing as to perish. In the broad lines of this argument, Martinus follows both Simon and Peter of Poitiers, but he adds some significant argumentation of his own, which is tightly reasoned and relies on logical terminology:

Tamen quod panis desinat esse in consecratione uidetur sic posse probari: panis iste est et non erit; ergo panis iste desinit esse. Non sequitur, quia omissum est tertium membrum, scilicet hoc: non mutatur in aliud. Quo apposito, neccesarium erit argumentum. Instans argumenti: istud est coloratum et non est album; ergo est nigrum. Non sequitur, quia omissum est tertium membrum, hoc scilicet: non est medio colore coloratum.

Martinus considers changing into something else to be a third possibility between continuing to exist and ceasing to exist. He applies this argument to the problem of whether the bread perishes.

Next follows a discussion of different types of change: commutation, mutation, and transubstantiation. Commutation is the change of forms around a subject, as when something changes from white to black. Mutation is a change of subject, and it comes in two varieties: a common one in which the subject changes by the commutation of the accidental forms around it, and a rare one that happens only by a miracle in which the subject changes by the commutation of substantial forms around it. An example of the latter is Jesus’ turning water into wine. In such a change, although the subject changes, the same subject is present before and after the change, although it is qualitatively different. In transubstantiation, one subject is replaced by another. He gives an example: Suppose you have two people, Peter and Andrew, and the one becomes the other. That would be transubstantiation. Afterwards you can’t say “Peter used to be Andrew”,

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63 1,144-71.
because there is nothing in Peter that used to be Andrew. The subject Andrew did not change into Peter; rather it was replaced by the subject Peter, so there is no material in Peter which used to be a part of Andrew. In the same way you can’t say of a consecrated host that it used to be bread, but you can say of the wine that Jesus made that it used to be water. In these examples, the item made present by transubstantiation has an identity which exists prior to and independent of its mode of production, but the crucial thing which distinguishes transubstantiation from mutation by commutation of substances is the fact that the subject itself does not survive the change. This is an ingenious, if idiosyncratic, distinction. It may be a reflection of Simon’s Porretan sympathies, since Marsha Colish identifies a text with the incipit Invisibilia dei that demonstrates a concern to identify what makes Peter a res per se una; to express this concept the unknown author of that Gilbertine treatise invents the term Petritas.64

This discussion leads directly to Martinus’ second treatment of whether it is correct to say that this bread erit or fiet the body of Christ.65 He again rejects erit, but this time also rejects fiet, the present tense of which he had previously accepted, though with reservations. The reason for rejecting both is the same: that these words are liable to the interpretation that the bread remains the subject and is changed by commutation of forms. Martinus states essentially the same objection earlier.66 Martinus adds a few notes: “iste panis fiet et erit aliud a se” is accepted by some, because the “a” denotes a diversity of subjects, but “panis iste fiet uel erit aliud quam sit” will not do. He ends with a series of

64 “Early Porretan Theology,” RTAM 56 (1989), 58-79, esp. 65
65 1,172-89.
66 See 1,57-65, discussed on p. 81.
examples which point out that just because one thing can be made into another does not mean that the two are the same.

Manuscript P₂ adds another paragraph here emphasizing the problems of postulating that bread is transubstantiated into Christ when the bread is still present or after the bread has ceased to be present. Either possibility is problematic, the first because in that case there would be an instant at which bread would be present simultaneously with the body of Christ, the second because in that case nothing would be transubstantiated into the body of Christ. The insertion ends with the solution that at the exact instant in which the bread is last there (“quando nunc ultimo est panis”) the transubstantiation occurs, and therefore it occurs when the bread is still present. The insertion is entirely germane to the question under discussion in the immediate context, namely what happens to the bread in consecration. Nevertheless, it was certainly not in the original text. Discussions similar to this do not exist in Martinus’ sources or contemporary texts, but they became quite common after the early thirteenth century.⁶⁷

The discussion of different types of change and the discussion of whether erit and fiét can be used to describe the change add to the discussion here, but there can be no doubt that these treatments belong with the similar treatments of the same topics early in the chapter. There is an explanation for the present arrangement, however. The earlier discussion drew primarily on Peter of Poitiers. The first evidence of Martinus consulting Simon of Tournai’s Institutiones in his treatment of the Eucharist occurs in Martinus’ treatment of whether the bread ceases to exist. The discussion on the different types of

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change which follows and the question of whether the bread “erit uel fiet corpus Christi” are taken verbatim from Simon of Tournai. I suggest that Martinus did not consult Simon’s work while composing the first parts of his treatment of the Eucharist, but that when he consulted Simon’s work he found interesting discussions which were germane to a topic he had treated earlier and inserted them at the point in the text where he was then working.

The remainder of the first chapter discusses the words of institution to precisely identify the point at which the Eucharistic change occurs. This discussion includes two topics: when the change occurs within the phrase “hoc est corpus meum”, and what part of the change occurs when the priest says “hoc est corpus meum” versus “hic est calix noui testamenti.”

First, I must discuss what appears to be a reversal of the logical order in treating these questions. It would seem reasonable to first establish whether any change at all occurs when the priest says “hoc est corpus meum,” and then ask in what part of that phrase it occurs, but Martinus chooses the opposite order. I think that the continuity between the first of these questions and the previous one about what happens to the bread in the consecration must partially explain Martinus’ choice. Many of the same complications arise here as in the previous section.

Martinus approaches the topic of when the change occurs within the phrase “hoc est corpus meum” by asking to what the pronoun “hoc” refers. This is a classic problem,

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68 1,190-214.
69 1,215-90.
70 they especially resemble the text which P₂ inserted immediately before this part.
and a tricky one. Martinus’ treatment of it follows that of Peter of Poitiers closely. Martinus, following Peter, lays out the problem in this way: if the pronoun “hoc” refers to the bread, and it is truly said of it that it is the body of Christ, then bread is the body of Christ. On the other hand, if the “hoc” refers to the body of Christ, then the body of Christ is already there before the words which had been instituted for consecrating had been entirely spoken, and therefore the transubstantiation can take place without them, which isn’t true.

Martinus (still following Peter) offers a double solution. He first claims that the priest does not signify anything by that pronoun, any more than he does by the pronoun “ego” when he repeats “ego sum lux mundi.” The priest is merely reciting the words. He acknowledges, however, that this doesn’t really solve the problem, because Christ must have indicated something when he first instituted the sacrament, and in that case all the problems mentioned still apply. Martinus offers two solutions, one held by quidam and one by alii. The solution maintained by quidam is the solution espoused by Peter of Poitiers; Peter also mentions the solution held by alii and ascribes it to alii in his text. Martinus does not determine between the opinion of Peter of Poitiers (i.e. quidam) and that held by alii, but lists them both. The position supported by Peter of Poitiers is that the “hoc” did not indicate anything until Christ had finished the complete sentence. The other position maintains that “hoc” indicates the form of bread, and so “hoc est corpus meum” should be interpreted “this signifies my body.” Not determining between the two views is another instance in which Martinus disagrees with Peter of Poitiers, showing that although Peter may have been Martinus’ principle source, Martinus was not an uncritical copier of Peter.
The question of whether the change of the bread into the body happens with the words “hoc est corpus meum” or waits until the words “hic est calix noui testamenti” was also a hotly debated topic at Martinus’ time. Martinus develops the problem at length. He begins with the question of whether, if a priest becomes mute or dies immediately after saying “hoc est corpus meum”, the transubstantiation of bread has taken place or not. If it has, then there must also be blood present, since the body is never without blood. In that case, without the transubstantiation of wine, the sacrament appears to be complete, even though wine is usually considered to be of the substance of the sacrament. One possible solution is that neither the bread nor the wine is transubstantiated until both “hoc est corpus meum” and “hic est calix noui testamenti” have been spoken. This is the theory advocated by Peter the Chanter in his De sacramentis et animae consiliis. James Megivern in Concomitance and Communion calls this the theory of “suspended consecration,” and he points out that the same position had been attributed to Peter Comestor by contemporaries but cannot be found in Peter Comestor’s extant writing. Martinus objects that if it were the case that the bread is not transubstantiated until the wine is, then “hic est calix noui testamenti” would be of greater effect than “hoc est corpus meum,” since the former phrase comes last. He reinforces this claim by analogies to contract law. There is no response to this objection, and Martinus continues to

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71 1,215-90.

72 Pierre le Chantre, Summa I (ANM 4) Louvain 1954, 150-56. Although Peter Comestor’s statement on the subject in his De sacramentis is not unambiguous, in my opinion it strongly suggests this interpretation. See Pierre le Mangeur, Sententiae de Sacramentis, ed. R.M. Martin, in Maître Simon et Son Groupe De sacramentis (Spicilegium Sacrum Lovaniense Études et Documents 17), Louvain 1937, 33*.

73 Concomitance and Communion (Studia Friburgensia N.S. 33), Fribourg 1963, 141-42.

74 1,239-245
develop a different explanation of the Eucharistic change, so the reader must presume that Martinus rejects this theory of transubstantiation.

This other explanation is the more usual claim that the transubstantiation of bread occurs when the priest says “hoc est corpus meum.” In that case, however, it is possible to transubstantiate bread without transubstantiating wine. Martinus, working from Simon of Tournai’s *Disputation 90*, acknowledges that it is possible, but ought not to be done. Another problem with this suggestion is that since the body is never without blood, then the blood must be present either because the wine was turned into blood or because the blood is there by the conversion of bread into flesh. Martinus rejects the first possibility outright, since it would mean that “hic est calix noui testamenti” was uttered superfluously. The second possibility has a related problem, however, in that if there is blood already present by the conversion of the bread into flesh, then the conversion of wine into blood is superfluous. Martinus replies that the sacrament is celebrated in both body and blood because blood signifies the soul, and thus the sacrament signifies the salvation of both the body and the soul. Martinus derives the argument from Peter Lombard (probably through Udo), but it was widely employed to communion under two species at this time, having been derived from Ambrosiaster and introduced into the scholastic discourse in the late eleventh century.75 Megivern suggests that Martinus adds a different reason: “quia in sumptione sub duplici specie est misterium,”76 but I believe that this phrase should be understood as introducing the claim that the two species signify

75 J.J. Megivern, *Concomitance and Communion*, 104 attributes the first citation of this authority to “a certain Manegold, possibly Manegold of Lautenbach.

76 Ibid. 156.
the salvation of body and soul. The “mystery” is that the two species are “mysteries”, i.e. sacraments of the body and the soul. The whole passage reads:

Quia in sumptione sub specie duplici est misterium, cum enim totus Christus et integer sit sub alterutra sumitur in utraque, ut ostendatur totam humanam naturam assumpsisse, ut totam redimeret, scilicet, corpus et animam. Ergo in duabus speciebus celebrat ecclesia hoc sacramentum, ut anime et carnis resurrectio et utriusque liberatio in nobis significetur, nec plus sub utraque nec minus tantum sub una sumitur hoc sacramentum.77

One doctrine assumed in this discussion but never explicitly developed is concomitance. It shows up several times in this question in the form of the repeated assertions that there is never flesh where there is not also blood. The second chapter returns to this topic.

3.3.2 The Presence of Christ in the Eucharist

The second chapter discusses a number of issues dealing with the nature of Christ’s presence in the Eucharist. This chapter begins with two questions that one would expect to find at the beginning of the treatment of the Eucharist: whether the Eucharist is a sacrament of the new testament,78 and whether it is one sacrament or two.79 Almost all of the material in these two questions is excerpted with slight alterations from Peter of Poitiers’ Sententiae, where it is right at the beginning of the treatment of the Eucharist. Martinus’ response to the second question relates to the topic on which the previous chapter ended in that it depends on the topic of concomitance. This, perhaps, explains its

77 1,280-87.
78 2,1-13.
79 2,14-44.
placement here. The first question is obviously related to the second and logically should also be treated before it, since one needs to establish that the Eucharist is sacramental at all before one asks whether it is one sacrament or two. I think that this explains its insertion between the two questions dealing with concomitance.

The first question asks how the Eucharist can be called a sacrament of the New Testament, when sacraments of the New Testament effect what they signify, but the bread and wine signify the body of Christ, but they do not effect the body of Christ. Martinus replies that the species are called sacraments in the way that the sacraments of the Old Testament are called sacraments, that is, they signify but they do not effect what they signify. There are a number of points here that need clarification. First of all, when Martinus says that the species do not effect the body of Christ, he, along with Peter of Poitiers whose text he is adapting, seems to mean it quite literally, that the bread, which signifies the body of Christ, does not effect the body of Christ. Praepositinus, who entertains but rejects a similar objection to the sacramentality of the species, has already established that sacraments effect what they signify in the elect, and he interprets the problem to be that the species do not make the body of Christ in the elect. 80 Although it looks similar, this is really a different objection. Martinus and Peter seem to be concerned solely with whether or not the species are efficacious, and therefore whether or not they are sacraments, and the conclusion is that they are not efficacious and therefore not sacraments of the New Testament, although they are sacraments in the way that

sacraments of the Old Testament are called sacraments. This way of posing the question is a curious one for Martinus to adopt, since, as I mentioned above, in his treatment of the sacraments in general he never discusses the definition that sacraments of the New Testament effect what they signify. It would be more consistent with his definitions to ask whether or not the species justify, or whether they are sacred signs of a sacred thing or merely signs of a sacred thing.

A second aspect of Martinus’ treatment of this question that requires comment is the fact that he does not say what aspect of the Eucharist is a New Testament sacrament. Peter of Poitiers makes it clear that it is the body of Christ, lying under the species, which is the sacrament in the New Testament sense of the term. Martinus, however, omits this part of Peter’s work, and in fact never mentions any distinction between the aspects of the sacrament, such as the one already current at his time between the sacramentum tantum, the sacramentum et res, and the res tantum. Martinus purpose in doing so should be distinguished from that of Praepositinus. Praepositinus is also reluctant to distinguish the parts of the sacrament in the context of this question, but Praepositinus’ contention is that the sacrament as a whole both signifies and effects what it signifies. That a certain part signifies only and a certain part does both does not change the fact that as a whole the sacrament accomplishes both:

Quod dicitur sacramentum nove legis in electis efficit quod figurat ad ipsa sacramenta generaliter refertur. Nam sacramentum corporis Christi, sacramentum baptismi et alia efficiunt quod figurant. Non oportet descendere ad has minutias ut

81 Peter of Poitiers, Sententiae 5, cap.10, Garv. (Peter), 30 (PL 211, 1242D): “Item, corpus Christi est sacramentum unitatis, ergo est visibilis forma invisibilis gratie; at corpus Christi latet sub specie panis, et non videtur, ergo non est forma visibilis, ergo nec sacramentum. Ad hoc dicendum quod corpus Christi non est visibilis forma, quia non est generalis illa diffinitio; non videtur corpus Christi; sicut nec manus sub cappa.”
Martinus’ view is very different. He does not object to saying that the species of bread and wine are not sacraments of the New Testament, but he fails to state what aspect of the Eucharist is a sacrament of the New Testament.

Saying that the species of bread and wine are sacraments in the way that the sacraments of the Old Testament are sacraments sets up the next question, namely whether they are one sacrament or two. Martinus argues that they are one sacrament, because they are the sacrament of the body and blood of the lord. An objection points out that the bread is not a sacrament of the blood of Christ, nor is the wine a sacrament of Christ’s body, which would be the case if both species were a single sacrament of the body and blood. Martinus responds by insisting that although bread is not a sacrament of the blood and wine is not a sacrament of the bread, both are nevertheless a sacrament of the two. To make this point, Martinus returns to concomitance. One takes the whole body of Christ, *totum corpus Christi*, under each species, but one has not therefore communicated twice because each species represents something different.

The topic of eating the whole Christ is continued in the next question, which asks if someone who consumes the sacrament under the species of bread eats the blood of

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83 2,14-44.

84 2,35-40
Christ, and who consumes under the species of wine drinks the body of Christ. Martinus argues that the words, eating and drinking, reflect the differences of the species, and therefore, although it is a stretch of language, it is proper to say that someone who communes under both species eats the blood under the species of bread and drinks the body of Christ under the species of wine. Martinus gives a second response as well. He lists three propositions regarding the presence of blood under the species of bread:

Tres propositiones hic possunt notari, quarum prima est falsa, hec scilicet: sanguis significatur sub specie panis. Secunda sane intellecta uera est, hec scilicet: sanguis continetur sub specie panis, id est, sub specie panis continetur caro Christi, que non est exsanguis. Tertia uero est dubia, hec scilicet: sub specie panis sumitur sanguis. The third proposition, the dubious one, states that blood is taken under the appearance of bread, and therefore it relates directly to the question. The previous two propositions help to interpret the third. It falls between the other two propositions. Blood is not taken under the species of bread if by that you mean that it is signified under the species of bread, but it is taken under the species of bread if you understand that to mean that it is contained under the species of bread, since the flesh of Christ is contained under the species of bread, and the flesh is never bloodless.

Megivern transcribes this passage in *Concomitance and Communion*, but he makes a mistake in the first line. Where it reads “quarum prima est falsa,” he has only “prima” and so he assumes that Martinus approved the first proposition. “The passage is

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85 2,45-70.
86 2,52-61
87 2,65-70
a bit surprising,” Megivern writes. As he goes on to point out, that proposition undermines the doctrine of concomitance.  

His is, of course, correct. Rightly understood, however, this passage is the clearest articulation of concomitance in Martinus’ summa.

The next two questions discuss Christ’s presence in the sacrament when it was first confected at the last supper and under the hypothetical circumstance that one of the apostles had confected it during the triduum. The first asks whether Christ gave his disciples his mortal or immortal body at the last supper. Although the topic was widely discussed, Martinus treatment of the topic does not appear to derive from a source. Praepositinus in his summa and Simon of Tournai in Disputatio 71 both discuss this question. Simon of Tournai’s Institutiones, however, do not, and although Peter of Poitiers assumes the answer in his Sententiae, he does not actually treat the question.

Martinus acknowledges two possible answers to the question and he does not chose between them. Quidam say that Christ gave his immortal body to his disciples, and they acknowledge that this implies that he was simultaneously mortal and immortal but say that this was a miracle. Alii say that he gave them his mortal body. The problem which Martinus sees with this solution is an interesting one: that the body couldn’t fit in such a small place (as in Peter’s mouth). He offers two possible solutions to this problem.

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88 Concomitance and Communion, 156.
89 2,71-103.
91 Les Disputationes, 200-201. For more on Disputation 71 see the chapter on sources.
92 Sententiae 5 cap.13, Garv. (Peter), 50 (PL 211. 1253C): “Item, corpus suum dedit Christus discipulis mortale et passibile; nobis datur immortale et impassibile; ergo melius datur nobis quam illis.”
One is to simply ascribe it to a miracle. The other is to say that when he willed, Christ showed the four properties of the post-resurrection body. Thus he showed agility when he walked on the water, he showed subtlety when he entered through locked doors, he showed gloriousness in the transfiguration, and he showed impassibility after the resurrection. When he gave the disciples his body he was also able to confer to it any of these properties, and he especially gave it subtlety, so that it could fit into such a small space. Martinus gives no explicit statement as to which solution he prefers, but he expends a lot of effort to defend the view of alii, and it was the dominant view at the time. The view of quidam, on the other hand had not, I believe, been endorsed by anyone since Hugh of St. Victor proposed it in his De sacramentis.93

Furthermore, Martinus’ defense of the view of alii seems to be original. The list of the four properties of resurrected bodies does not appear in this context anywhere else. It is, however, related to another discussion of them in Martinus’ treatment of the bodily resurrection. This passage lists the same four properties with the exception that splendor is substituted for gloriositas, and discusses them at greater length.94 Even in this context, the treatment seems to be original, for it is one of the earliest discussions of the dotes, or dowries, of the resurrected body.95 It is interesting to note that later in the text on eschatology, Martinus directly contradicts the claim that Jesus showed agility when he

93 De Sacramentis lib.2 pars 8 (Corpus Victorinam, Textus historici 1), ed. R. Berndt, Münster i.W. 2008, 402..

94 The text has been edited from the two Paris manuscripts by Richard Heinzmann in Die Unsterblichkeit der Seele und die Auferstehung des Leibes (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 40.3), Münster i.W. 1965, 177.

walked on water. Martinus in that passage asserts that Jesus walked on water by a miracle, and not because he possessed agility at that time. Applying such a discussion to the question of whether Christ’s mortal or immortal body was given to the disciples at the last supper is reminiscent of Simon of Tournai’s claim that the body of Christ could be broken after the consecration and yet remain whole because of the body’s capability of entering through closed doors and exiting a closed womb. I believe, however, that although it is similar to Simon’s move here, it is completely original.

Martinus again does not arrive at a determination in the question whether the apostles would have confected a living or dead body of Christ if they had consecrated during the triduum. This time he gives three different replies. The first, “probo quod exanime,” is the answer which Simon of Tournai gives in Disputatio 71, and Martinus’s argument in support of this position is similar to Simon’s: “quia non poterat confici nisi quale erat tunc.” The other possibilities Martinus places following “respondeo”, which seems to suggest that he gives them more weight. Both, however, are quite unusual. The first reply is that in the triduum the sacrament wasn’t able to be confected; the other claims that if Peter had confected the sacrament then, he would have confected a body that was not only alive, but also impassible and glorified. Since the body of Christ was dead in the tomb at that time, the body of Christ would have been simultaneously dead and alive, which would have been a miracle.

Discussion of consecration by Jesus and the apostles leads Martinus to a point of primitive practice: that Jesus celebrated the last supper at a time when there would be no leavened bread in the houses of Jews; he therefore must have consecrated in unleavened

96 Heinzmann, Unsterblichkeit, 186.
bread. Martinus continues by asserting that the church ought to maintain the tradition of celebrating in unleavened bread because leaven symbolizes corruption. He concludes that the Greek church is reprehensible for confecting in leavened bread. Martinus steers this conversation back to the topic of Christ’s presence in the Eucharist by questioning whether the Greek church actually confects, but leaves the question open: “non nostrum sed potius Petri est diffinire”.

Yury Avvakumov identifies a number of different kinds of arguments undertaken against the eastern church during the controversy over unleavened break. Latin theologians argued that celebrating in unleavened bread did not represent “judaizing”; they argued that Jesus would have instituted the sacrament in a way that was consistent with the celebration of Passover, since he was the fulfiller of the law; they argued about the date of the last supper and asserted (in agreement with the synoptic gospels and against John) that the supper would have occurred during Passover, when Jews would not have had leavened bread; a few argued that the Greek word for bread in this context translated a Hebrew word which specified unleavened bread; and finally they argued about the typological meanings of leaven, particularly the Pauline ones but other biblical ones as well. Martinus employs two of these arguments: he argues for use of unleavened bread based on the date of the last supper (“tunc in domibus Iudeorum

97 2,119-29.

98 G. Avvakumov, Die Entstehung des Unionsgedankens (Grabmann-Institutes 47), Berlin 2002, 117-59. 118-24 list discussions of the controversy over unleavened bread in latin texts dating from the 11th-13th centuries, but the list does not include Martinus’ work.
fermenta non essent”), and based on the Pauline typology according to which leaven represents corruption (“per quod corruptio designatur”). 99

Although this is clearly a question of church practice, it also relates to the presence of Christ in the Eucharist. Martinus makes the connection clear in the last sentence of the paragraph: “Utrum autem conficiat necne, non nostrum sed potius Petri est diffinire.” 100 Martinus raises the question here because he is concerned that an improper observance might prevent the presence of Christ.

From discussing unleavened bread, Martinus moves on to questions of how the body and blood of Christ interact with the body of the recipient. Does the body of Christ nourish? Does the wine inebriate? 101 Are they digested? 102 The transition initially seems abrupt, but Martinus’ reason for treating these questions immediately after his discussion of unleavened bread soon becomes apparent. It seems that one thing that prompted him to ask about these things is a report he has heard to the effect that Greeks consecrate large amounts of bread for themselves and their families. Martinus raises the objection that the body of Christ couldn’t nourish, since all the matter there has been transformed into the glorified body of Christ. If that is the case, he counters, why does one feel full? Why can one get drunk from it? Blood does not inebriate. Some people apparently object that to consecrate enough to show these effects is against the tradition of the church, and if anyone goes against this tradition then the sacrament is not in fact consecrated, which

99 See Gal. 5.9.
100 2,128-29.
101 2,130-64.
102 2,165-74.
would explain why it could show these effects. Martinus proposes two other solutions. One is to say that it is no wonder if the body is restored by spiritual food, since it restores and fattens the soul. Martinus is not satisfied with this suggestion, since it doesn’t explain the inebriation. The third possibility is to say that the fullness or drunkenness or anything else of this kind is not from the flesh and blood of Christ, but from the taste and odor and other accidents.

Martinus seems pleased with this solution and applies it to a related question immediately afterwards: is the body of Christ digested? Martinus asserts that digestion occurs to the accidents, not to the body of Christ. These concerns have come to be regarded as some of the distinctive questions of the early scholastic period, and yet they seem to have originated at about Martinus’ time. Peter the Chanter and Praepositinus ask whether the species can nourish or inebriate. Later authors maintain the interest in this question. William of Auxerre treats it, and Guido of Orchelles treats both the question about nourishment and that about digestion. It is not, however, in any of Martinus’ usual sources.

Next Martinus has a brief question on how frequently the Eucharist should be received. He argues in favor of frequent reception by saying that reception augments charity in one who worthily receives, and everyone can use more charity. This argument seems to be original to Martinus. He argues against with an authoritative text attributed to


105 2,175-81.
Augustine: “I neither praise nor rebuke receiving the Eucharist daily.” This authority is attributed to Augustine in both Peter Lombard and Magister Udo. Martinus certainly either got it from one of them or borrowed it directly from Gratian, who also attributes it to Augustine. This topic seems out of place between the preceding discussion regarding whether the body of Christ nourishes, inebriates, or is digested, and the succeeding question on whether the sacrament is miraculous. It seems that it would fit better in the third chapter, where other matters of reception are treated.

The next question discusses whether the Eucharistic change is miraculous. Martinus’ treatment derives from Simon of Tournai’s *Disputatio XC* and it relies on Simon’s distinction between “aliud quam sit” and “aliud a se” which appeared in the discussion of Eucharistic change in the first chapter.\(^{106}\) It compares the Eucharistic change to other types of changes, as do the discussions in the first chapter. One point on which it differs, however, is that rather than distinguishing between different varieties of changes, this discussion is trying to distinguish between miraculous changes and natural ones. Something that can be accomplished by art, such as changing rods into serpents or base metals into gold, is not miraculous because it is within the natural orders of causes, as astonishing as that may seem. In this treatment, changing the water into wine is considered to be one of those kind of miracles, even though earlier it had been specifically stated to have been miraculous.\(^{107}\) In these changes, things become “aliud quam sit”. When something becomes “aliud quam se”, the material does not remain, nor

\(^{106}\) 1,177-82.

\(^{107}\) 1,149. Both treatments derive from Simon of Tournai.
do the seminal causes, and the change does not occur by means of rearranging those causes.

Although scholastic summas frequently describe aspects of the Eucharist as miraculous, a treatise like this distinguishing the Eucharistic change from other changes on the grounds that all others are surprising but natural, whereas the Eucharistic change is in fact miraculous, does not appear anywhere that I am aware of besides Martinus’ work and in his source, Simon of Tournai’s *Disputatio XL*. Its placement here, however, is rather surprising. Why does Martinus discuss whether or not the change is miraculous here, rather than earlier when he discussed transubstantiation?

Martinus returns to the topic of how Christ is present in the Eucharist by asking two questions about how the water mixed with the wine relates to Christ’s presence in the chalice. The first asks whether the sacrament is true if the water is omitted, and the second asks whether the water is transubstantiated. In the first question, the argument against is a spurious authority: “the cup of the lord is not able (non potest) to be water only or wine only unless each is mixed.” Martinus replies that the sacrament can still be true if the water is omitted, and he deals with the objection by interpreting the “non potest” to mean “non debet”, it ought not. This authority appears in Simon of Tournai, Magister Udo, and Peter Lombard, and each also employ this solution. Martinus, however, must have been aware of Peter Lombard’s treatment or have consulted Gratian, because he ascribes the authority to Pope Iulianus, and both of these ascribe it to Pope Iulius, whereas the others leave it anonymous. Martinus adds another note on primitive

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109 2,232-44.
practice: Christ mixed water with the wine. Although he doesn’t say so, presumably he feels an obligation to follow Christ’s practice.

Martinus gives two reasons why the water must be transubstantiated into wine. For one thing, if it weren’t transubstantiated, then the priest would no longer be fasting after his first Mass, and so he couldn’t celebrate a second Mass in the same day. Secondly, since the water symbolizes the many peoples who are converted into the mystical body of Christ, in order for the Eucharist to symbolize this unity, the water must be transubstantiated. Both arguments clearly derive from Peter of Poitiers. The first one, though clearly accepted at the time seems strange for two reasons. First, because priests weren’t supposed to celebrate twice in a day anyway, although it was permitted, and second because the priest wouldn’t be fasting during the second Mass anyway, because the accidents nourish, as Martinus just established. Martinus alters the second argument from Peter’s text in an interesting way by adding the term misticum. Peter of Poitiers describes the Christian people being converted into the body of Christ, which is the church, and this conversion is signified by the water being transubstantiated. Martinus, however, specifies that the Christian people are converted into the mystical body of Christ, which is the church.

The final section of this chapter continues to develop the ecclesiological aspects of the effects of the sacrament. It discusses the interpretation of words from the canon of the Mass: “Iube, domine, illud transferri in sublime altare tuum; consociandum corpori tuo.” The question seems like an odd one to include in a summa’s treatment of the Eucharist. It seems to fit better in a commentary on the Mass. It does appear in Lothar of

110 2.245-68.
Segni’s *De sacro altaris mysterio*, but it was in fact a very popular question in the summas of this period as well. Martinus’ treatment derives from Peter of Poitiers, but Simon of Tournai’s *Institutiones* also contains a treatment, as does the *Disputatio LXXI* of the same author. Peter the Chanter includes a treatment as well, as do Praepositinus and Guido of Orchelles. Martinus has two concerns with this prayer: first, it seems to be asking that the body of Christ should be taken up into heaven, but the body of Christ is already in heaven. Second, it asks that the body of Christ which is on the altar should be associated with that which is in heaven, but that can’t be the right way to say it, because the two are in fact the same. Martinus’ reply is that, although the prayer does ask that the material body of Christ be transferred to the sublime altar, it actually refers to that which the body of Christ symbolizes, namely the mystical body of Christ, which is the church. So it is asking that the church militant be united with the church triumphant.

Other solutions were current at the time. Martinus’ treatment follows Peter of Poitiers’ closely. Simon of Tournai in his *Institutiones* uses this quotation from the *canon misse* in an objection stating that excommunicated and heretical priests cannot consecrate. In *Disputatio LXXI*, which Martinus does not seem to know, the treatment is similar to Martinus’ except that the prayer is seen as asking for the unification not of

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111 PL 217, 891B.


114 *De Sacramentis et de Novissimis*, 91-92.

115 *Tractatus de sacramentis*, 95.

116 see p. 35-36.
the church militant to the church triumphant, but of the church to Christ. Peter the Chanter takes a completely different tack and interprets the prayer to ask that the devotion shown in confecting the sacrament be brought to God and be pleasing to him. Praepositinus’ conclusion is similar to that found in Simon of Tournai’s *Disputatio LXXI*, but he adds and rejects another possible interpretation, namely that the prayer asks that the bread and wine be transubstantiated. Praepositinus rejects this suggestion on the grounds that the bread would already be transubstantiated at that time. In Martinus’ *Compilatio*, this question serves the purpose of further explaining Christ’s presence in the Eucharist by explaining the relation of that presence to the mystical body of Christ, which is the church.

3.3.3 Administration of the Sacrament

The third chapter deals primarily with questions relating to the administration of the sacrament. Manuscripts C and P<sub>1</sub> entitle this chapter “De sumptione corporis Christi.” Although reception of the sacrament is one of the concerns dealt with in this chapter, there are many topics which do not fit under this heading. Even those that do seem to place more emphasis on administration than on reception. The first topic in this chapter is a case in point. It discusses why Christ gave the sacrament to Judas.<sup>117</sup> This problem clearly has to do with Judas’ reception of the sacrament, but is more immediately related to Christ’s offering the sacrament to Judas. Martinus, therefore, approaches the question from the perspective of the minister rather than that of the parishioner.

<sup>117</sup> 3,1-88.
The treatment of Christ’s administering the sacrament to Judas spreads over several questions. The first three questions were unmistakably inspired by Simon of Tournai’s *Disputatio II*, and in many places show textual dependence on Simon’s work. The remainder, however, seems to be largely original to Martinus.

The first question deals with how Christ can have given the sacrament to Judas worthily if Judas did not receive it worthily. The solution states that since Christ was a worthy minister of the sacrament, he therefore worthily administered it. Since Judas was an unworthy recipient, he received the sacrament unworthily. The argument seems to assume that worthy administration depends only on the intrinsic worthiness of the minister to administrate, not on his judgments about the worthiness of recipients.

The next question on Judas’ reception asks whether Christ gave the sacrament to Judas for damnation (*ad damnationem*) or for salvation (*ad salutem*). If he gave it for damnation then Christ wanted Judas to be worse off for taking the sacrament. If he gave it for salvation, then the sacrament did not effect what Christ wanted it to effect. Either conclusion is unacceptable. The solution makes a distinction: “ad” can denote either intention or result. If it is understood to denote intention, then the statements are false, and neither can be conceded, since if Christ had given his body to Judas for salvation, he would have been saved. If he had given it for damnation, then Judas would have sinned by the will of Christ. If “ad” denotes result, on the other hand, then the statement that Christ gave Judas the sacrament *ad damnationem* can be true.

Martinus follows this question with another: with what intention did Christ give the sacrament to Judas? The same intention with which he gave it to Peter or another? If the same, then he must have given it to Judas for salvation. If another, what? The reply
states that Christ did give the sacrament to Peter for salvation, but that he gave it to Judas for our instruction: that we should tolerate evildoers a he tolerated Judas. Martinus further asserts that although Christ wanted to give his body to Judas, he also did not want Judas to accept it. This solves the difficulty of Christ’s apparently wanting Judas to sin. This ends the part of the text which Martinus derived from Simon of Tournai. The remainder of the treatment of Christ’s administration of the sacrament to Judas is original to Martinus.

Although Martinus has explained that Christ did not want Judas to sin, he still faces the difficulty that Christ gave Judas the opportunity to sin. In the next question, Martinus compares this to his offering Judas a medicine which he know would be harmful for him, and points out that this does not seem to show Christ as a good doctor. Martinus replies with another metaphor: Christ was like a head of a household who prepares the best meat for his banquet, but the meat will kill anyone who eats it without a certain delicious spice. He warns them, and even if he knows that some people will forget the spice in eating the meat, he can’t be blamed for that. The meat is like the body of Christ, and the spice is like love. If Judas eats the body of Christ without love, Christ has nevertheless not done evil to offer it.

Martinus next faces a problem with this reply: did Christ ever warn Judas that he should not receive unworthily? Martinus points out that a priest is required to warn someone who is unworthy lest they receive unworthily, and even to prohibit them from receiving. Why did the Lord not similarly prohibit Judas so that he would not receive unworthily? The reply claims that he warned him often through writings of this sort: “He who receives unworthily eats and drinks his own damnation” (I Cor. 11.29). This is an
interesting choice of passages. Simon of Tournai and Peter of Poitiers both have similar questions and at the parallel part of their respective treatments they employ “He who dips his hand with me into the bowl, this one will betray me” (Matt. 26:23). Martinus’ choice has the advantage of being a clearer warning, but he disadvantage that it is hard to believe that Christ ever said it to Judas.

Martinus then has an entirely fresh shot at justifying offering the sacrament to Judas. By this reception God wanted to coax good out of Judas. Since the purpose of the undertaking was good, the undertaking itself was good. He compares this to prostituting oneself to feed one’s father. I’m not sure how much the comparison to this dubious virtue helps Martinus’ case, but it is good to know that God actually had Judas’ good in mind when Christ gave him the sacrament.

Finally, Martinus asks whether giving the Eucharist to Judas was not similar to giving holy things to dogs and casting pearls before swine, which Christ had specifically enjoined upon the disciples to avoid. Martinus replies that this injunction actually referred to preaching to people who wouldn’t listen and should not be applied to giving the Eucharist to unworthy recipients. Martinus follows up, however, by acknowledging that Christ does not seem to have taken his own advice with regard to preaching, since he pointed out that Chorazin and Bethsaida were unreceptive to his ministry, and nevertheless he preached in these places.

Next Martinus discusses the problem that if the bread is transubstantiated into flesh which is enlivened (vegetatum) by a rational soul, then it must be transubstantiated into the person (homo) Christ, and therefore into God, in which case the creature would
be turned into the creator. Martinus offers two solutions, neither of which satisfied subsequent theologians. One is to suggest that the logic above mixes up the part and the whole by giving the following example of a similar fallacy: my hand is a body which is enlivened by a rational soul, and therefore my hand is a person (*homo*). Martinus’ other suggestion claims that the idea that the bread must be transubstantiated into some kind of soul takes the reasoning beyond the biblical witness. Sacred Scripture does not propound such things, but only that the bread is transubstantiated into flesh, that is, the body of Christ.

Neither of Martinus’ solutions to this question ever achieved any popularity, and for good reason. The first seems to imply that the consecrated host is or contains a part of Christ, but not the whole, as a hand is a part of a person. In chapter 2, Martinus himself states that “totum corpus Christi” is under the species of bread and wine. Yet here it appears that Martinus is willing to concede that consecrated hosts are “partiuncula Christi,” as Berengar famously mocked. He can’t have meant it. Martinus’ other solution is no more satisfactory. He suggests that the fact that sacred Scripture says only that the bread is transubstantiated into the body of Christ does not imply that it was a body enlivened by a soul. Although this solution does not divide Christ into physical pieces, it suggests separating his body from his soul, which can be no more satisfactory, especially in light of the possibility, which Martinus stated explicitly in his discussion of consecration in the triduum, that the body of Christ could be separated from his soul,

\[118\] 3,89-105.

\[119\] 2,35.

\[120\] 2,104-118.
and in that case it would be a dead body, like the one in the tomb during the triduum. I will discuss this problem more below when I deal with a related assertion in Martinus’ treatment of reception under two sacraments.  

For the moment I will note that Martinus also seems unsatisfied with his solutions, for he concludes the paragraph with an exclamation which seems to betray a certain anxiety: “Proteruienti autem dicas, ‘si iure uenis, si ciuis es, theologus hucusque licet.’”

The next question discusses the proper frequency of reception. Here Martinus opposes the Augustinian authority “Ut quid paras dentem et uentrem? Crede et manducasti” to the Decretum “et si non frequetius, salterm ter in anno homines communicant, in pascha uidelicet et pentecostes et natali domini.” The first one seems to suggest that physical reception of the sacrament is superfluous, whereas the second mandates it. Martinus’ reply explains that the Augustine authority should be interpreted to mean that in the instant of necessity, failure to receive the Eucharist will not be an obstacle to anyone, but the text should not be taken as license to abstain from the Eucharist. In his Theologies of the Eucharist, Gary Macy discusses a theology which allowed for a spiritual communion. The proponents of this view nevertheless urged sacramental reception. Martinus arrives at a similar conclusion, but from the opposite

121 see p. 122-26.

122 3,102-3. I have no idea what this means: “But to the arrogant say, ‘if you come by right, if you are a citizen, although you are a theologian up to that point.’”

123 3,106-23.

124 3,109-10, from Augustinus Tract. Ioan. 25 (CCLS 36, 254).

125 3,115-17, from Decret. Grat., De cons. di.2 c.16 (Friedberg I, 1319). If any doubt had remained that Martinus did not know the decrees of the fourth Lateran council, this question would have removed it, since a decree of that council, Omnis utriusque sexus, reduces the required times of reception.

direction. His primary position agrees with the *Decretum* as to the necessity of reception, but he concedes that failure to receive will not constitute an impediment.

The following question, which is quite short, discusses which sacrament is the greatest. Martinus claims that there are many reasons why one sacrament might be said to be greater than another. The sacrament of the Eucharist is said to be the greatest in its worthiness, for what is more worthy than the body and blood of Christ? Baptism can be said to be greater since it destroys mortal and venial sins, and confirmation is said to be greater because it is conferred by the person of highest rank. Peter of Poitiers and Simon of Tournai both include a comparison of the greatness of baptism to that of confirmation in their treatments of the latter sacrament, but Simon’s and Peter’s texts, though similar to each other, have nothing in common with Martinus! Simon of Tournai’s *Disputatio 90* also includes a comparison of the merits of the Eucharist to those of baptism, but this text also has nothing in common with Martinus’ text. Although Martinus undoubtedly shows the influence of the theological schools in including this problem, he also seems to have struck out on his own in preparing his treatment. It is interesting to note that Martinus cites as his authorities articles from Canon law.

Lines 134-164 include various information about the right way of celebrating the sacrament. If an animal eats the visible species, he doesn’t get the body of Christ, although the species in the mouth of a mouse may be a sacrament. No intinction except for the celebrant and for a sick person who needs the moisture to digest. The sacrament is to be preserved for the sick under the species of bread only, because the wine is corrupted too readily and spills too readily, and because under one species each is taken. Priests should always minister the sacrament themselves, and never give it to somebody else to
take to the sick unless necessity urges otherwise. Finally Martinus discusses the kiss of peace. This section makes an odd bundle of information, but all of these questions are clearly directed the minutiae of the right way to celebrate Mass and distribute the consecrated elements.

The discussion of what an animal eats is one of the classic concerns at this period. Praepositinus, for instance, entertains views on both sides of the question, although Martinus’ treatment has nothing in common with his. Nevertheless, Martinus’ usual sources pay little attention to the question. It does not occur in Peter of Poitiers, and it receives only passing treatment in Simon of Tournai’s Institutiones. Simon states that the question arises from “curiosi disputatores” but Gary Macy argues that it in fact originated as a real pastoral concern, both because it actually happened that mice ate the consecrated host and so it was a real concern for the conscientious, and because heretics considered the fact that the orthodox doctrine on the presence of Christ in the Eucharist allowed for a mouse to be able to eat the body of Christ to be a weakness of the orthodox position. 

James Megivern discusses each of the next three topics in his treatment of the doctrine of concomitance. Megivern discovers quite a history behind the question of the panis intinctus, including treatments in two early scholastic texts, namely Peter Comestor’s De sacramentis and Innocent III’s De sacro altaris misterio. Both

128 Institutiones 60va.
130 J.J. Megivern, Concomitance and Communion, 141.
disapprove of intinction, and both because of heresies which taught that the whole Christ was not present under each species, but only both together. Martinus’ exceptions for the consecrating priest and for people who can’t swallow without moisture seem to be distinctive relative to other theological texts. The next two topics state that *viaticum* is to be administered to the sick people under the species of bread only and that the priest should always administer the sacrament himself, except in cases of necessity. Megivern mentions a set of instructions from Rathers, a ninth-century bishop of Verona, to his priests which includes both of these regulations.\(^{132}\) The latter regulation also made it into Gratian’s *Decretum*.\(^{133}\)

The discussion of the kiss of peace is without precedent as far as I know, in scholastic summas. Martinus explains the origin of the practice, which, he says, arose in the early church to substitute for communing in Masses, since communing had been so frequent that people were at times approaching (*accedebant*) unworthily. Martinus devotes quite a bit of space to explaining why the kiss of peace is not given in Masses for the dead. It is because, he says, the dead do not need peace, since they already rest from their labors and because it is shown that they have already arrived at true peace. This last statement suggests that purgatory does not inform Martinus’ understanding of the purpose of Masses for the dead. For a similar reason, the peace is not given in monastic Masses, since the monks are dead to the world but alive to God. He then offers another possible explanation for why the peace is not given in the Mass of the dead: because we

\(^{131}\) Ibid., 158.

\(^{132}\) Ibid., 33-34.

\(^{133}\) *Decret. Grat.*, De cons. di.2 c.29 (Friedberg I, 1323).
are in the sixth age, but they are in the seventh, and therefore we cannot have communion with them.

Next follows a lengthy discussion of whether a priest who is *prescisus* can confect the Eucharist. Of the questions in this text which have the form of a classic scholastic question with arguments for, arguments against, solution, and replies to the objections, this is the only one which Martinus assembled on his own. He assembled the question exclusively from authorities found in Gratian. In his reply, Martinus gives four possible solutions: one of *quidam*, one of *alii*, another of a different set of *quidam*, and one which he himself subscribes to: “libentius tamen in eorum sententiam declino….” For different reasons, the first three opinions hold that when consecrated by a *prescisus*, the Eucharist is not fully efficacious, for different reasons. The opinion to which Martinus subscribes, however, holds that priests in heresy do confect the Eucharist, since they retain their ordination, and the power of confecting derives from the ordination itself, rather than from the performance of the orders. All four of the positions which Martinus explains in the reply are strikingly different from any mentioned in his usual sources. The opinion of the *alii* relies upon a claim that a sacrament can be true in essence but false in effectiveness. Peter Lombard does make such a distinction, but applies it to baptism, not the Eucharist. Simon of Tournai in his *Institutiones* mentions and rejects a position similar to a certain aspect of the position supported by the second *quidam*, namely that the *canon misse* is in the first person plural because the priest is speaking on behalf of the church, but a schismatic priest cannot speak on behalf of the church. Simon closely

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134 *IV Sent*. 4. di.25, 412.
135 *Institutiones* 59vb.
follows Peter Lombard in this point, but Martinus' treatment, although it seems to rely on the concept in Simon and the Lombard, is textually independent. In fact, Martinus seems to make only a reference to that argument, a reference which would be opaque to anyone who did not already know the argument from elsewhere.

The argument which Martinus approves also bears a certain resemblance to the one which Simon holds, because both rely on the argument that the power of consecration stems from orders, but Martinus emphasizes that it derives from orders rather than performance, whereas Simon’s emphasis falls on the perdurance of orders.

In all aspects of this question, Martinus seems to be striking out on his own, or at least independent of his theological sources.

Martinus next asks whether a priest ought to give the Eucharist to one whom he knows to be in mortal sin. This question revisits a topic which Martinus already treated to a great extent in the discussion on why Christ gave the sacrament to Judas which opens this chapter. The conclusion of this question is that if the sin is secret, but known to the priest, the priest should warn him not to receive the sacrament. If he persists in seeking it, however, he should give it to him. If, on the other hand, the sin is notorious, then the priest should prohibit him from receiving. This conclusion is absolutely the standard answer at the time, and in fact Martinus’ solution is clearly adapted from Peter of Poitiers’ treatment of the same question. This solution is also anticipated in Martinus’

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136 *IV Sent*. 4 di.13, 312.
137 *Institutiones* 60ra.
138 3,229-52.
139 3,1-88.
treatment of why Christ gave the sacrament to Judas. Martinus there states that Christ
gave it Judas to show us that we should tolerate evil people.  

The question specifically asks about people in mortal sin, but Martinus does not say anything about venial sin. It was already well established at this time that one of the effects of the Eucharist was the forgiveness of venial sin. Simon of Tournai discusses this point in his *Disputation 90*, a text which Martinus knew well. Peter the Chanter earlier points out that it is one of the effects of the sacrament, and Martinus’ contemporary, Praepositus, makes the point as well. In part this omission may reflect Martinus’ assumptions about his audience’s prior knowledge, but it is also consistent with the fact that Martinus’ work, like those of his contemporaries, has no treatment of the effects of the sacrament. Peter Lombard established a threefold distinction between the *sacramentum tantum*, the *sacramentum et res*, and the *res tantum*, which was popular among subsequent theologians for distinguishing between the visible species, the presence of Christ, and the sacramental effects, respectively. The Lombard actually places in the last category, *res et non sacramentum*, only the incorporation of worthy recipients into the mystical body of Christ. Peter of Poitiers follows him in this. Martinus does not include even this kind of distinction, however. He does, however, mention various effects of the sacrament in passing. For instance, his discussion of

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140 3,40-41.
141 *Les Disputationes*, 258.
143 *IV Sent.* lib.4 d.8 cap.7 (284-86).
144 *Sententiae* 5 cap.10, Garv. (Peter), 28 (PL 211, 1241D-1242A).
whether the water which is mixed with the wine is transubstantiated assumes that one of the effects of the sacrament is the conversion of the people into the mystical body of Christ. In his discussion of the proper frequency of reception he mentions that augmentation of charity results from reception for those who receive worthily. Nevertheless, his treatment of the effects of the sacrament is clearly haphazard, and while it discusses some effects, only briefly, it makes no mention of others at all.

Martinus next talks about the propriety of reception under both species. He discusses this topic in almost the same terms in the beginning of the second chapter in the context of Christ’s full presence under both species. Martinus imports some of this discussion into his discussion of the administration of the sacrament. He reiterates the claim that although the whole Christ (totus Christus) is under each species, nevertheless to receive both is not to receive twice, nor is it superfluous to receive under both species, since the species of bread refers to the flesh and the species of blood to the wine. A distinction of obscure value which Martinus derived from Peter of Poitiers follows. Totus in the masculine refers to person, but in the neuter, to nature. Thus it can be said that totus Christus is received when only the flesh is received, just as it can be said that totus Christus was in the tomb, when only the body was. Presumably totum would include both. This distinction seems to be directly contrary to later understandings of concomitance. If the flesh can exist under the species of bread the way the body existed

145 2,239-43.
146 2,176-81.
147 3,253-62.
148 2,35-40.
in the tomb, then Martinus seems to be implying that some parts of Christ are not under the species of bread (presumably the soul, for instance). This discussion reflects a similar willingness to separate the parts of Christ in the Eucharist that appeared in the discussion of whether the bread is transubstantiated into a body enlivened with a soul.\textsuperscript{149}

By later standards, Martinus’ willingness to concede that the presence of Christ under the sacrament did not include Christ’s soul appears disastrous. Thomas Aquinas, for instance, affirmed the presence of the soul in the sacrament by concomitance.\textsuperscript{150} The history of this problem in works preceding that of Martinus appears to be a complex one that deserves further study. Peter Lombard, a few decades before Martinus stated that the soul was present because the wine represents the soul.\textsuperscript{151} Peter of Poitiers follows this text exactly at one point in his \textit{Sententiae},\textsuperscript{152} as does Martinus in the \textit{Compilatio}.\textsuperscript{153} Peter of Poitiers earlier assents to the idea that as soon as the words “hoc est corpus meum” have been uttered, immediately the body, soul and divinity are present.\textsuperscript{154} Peter’s assent to this proposition seems especially conclusive because the matter under discussion is not the presence of the soul and Godhead under the consecrated host, but rather the moment at which transubstantiation occurs: does it occur when the priest says “hoc est corpus meum,” or does it wait until “hic est calix”? Whenever the Eucharistic change occurs, the

\textsuperscript{149} 3,89-105. See p. 113-14.

\textsuperscript{150} Summa theologiae, IIIa q.76 art.1 ad.1.

\textsuperscript{151} IV Sent. lib.4 d.11 cap.4 (300-1).

\textsuperscript{152} Sententiae 5 cap.13, Garv. (Peter), 54 (PL 211, 1256A).

\textsuperscript{153} 1,280-87.

\textsuperscript{154} Sententiae 5 cap.12, Garv. (Peter), 35 (PL 211, 1245B-C): “Sed numquid, si prolatis his verbis: \textit{Hoc est corpus meum}, etc. et integre, quiesseret sacerdos, nichil aliud proferens, cum jam esset facta conversio panis in corpus, et ibi esset sanguis, completum esset sacramentum? Videtur quia ibi est et caro et sanguis et anima et Deitas. Quod si dicatur nichil obst.”

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presence of soul under the consecrated host seems to be assumed. Peter of Poitiers also
defends the presence of Christ’s soul under the consecrated elements in other contexts, as
when he argues that since the body of Christ was never without a soul except in the
triduum, the body of Christ present under the sacrament must be enlivened by a soul. In
this passage he does resist, however, a more extreme claim that would insist that since the
bread is turned into the animated body of Christ, then it must be turned into Christ’s
soul.\textsuperscript{155} Martinus takes an even more conservative approach in his own question about
whether the bread is transubstantiated into flesh which is enlivened by a soul, discussed
above.\textsuperscript{156} His solution, discussed above, states that claiming that the bread is
transubstantiated into flesh enlivened by a soul goes beyond the scriptural witness, which
states only that it is transubstantiated into the body of Christ. In this context the
“protervientes” whose objections he anticipates\textsuperscript{157} recall the people whom he rails against
in the prologue to the \textit{Compilatio} who falsely say that word tricks and vast enigmas are
necessary for theological disputation.\textsuperscript{158} Like Peter of Poitiers, Martinus urges an
approach to the question that is better grounded in authoritative texts, but Martinus goes
much farther. The second passage in which Martinus intimates that the soul is not present

\textsuperscript{155} \textit{Sententiae} 5 cap.12, Garv. (Peter), 48 (PL 211, 1252B): “Item, corpus Christi aut est animatum
aut inanimatum; inanimatum non est, est igitur animatum; et panis vertitur in corpus, ergo panis in corpus
animatum, ergo in animam, quod falsum est. Ideo dicunt qui multa legerunt se non invenisse hec verba in
auctoritate, et ideo novitates verborum in his non admittunt. Mihi videtur veritatem non posse verius
exprimi quam si dicatur corpus Christi esse animatum, id est anima vivificatum.”

\textsuperscript{156} see p. 113-14. The topic is in \textit{Compilatio} 3,89-105.

\textsuperscript{157} 3,102.

\textsuperscript{158} Dampnate fictionis feces admiscent, falso dicentes pro motu et arbitrio inportuni sophiste per
implicitas captiones uerborum et compendiosa enigmata in theologicis disputationibus esse disserendum.
Cambridge, St. John’s College Library C.7 (57), 9ra.
in the consecrated host, discussed above, also leans heavily on Peter of Poitiers.  

Martinus clearly owes to Peter the distinction between *totus* in the masculine, which refers to the person of Christ, and *totum*, the neuter, which refers to the nature of Christ. According to Martinus, this distinction explains how it can be said that the whole Christ was in the tomb, when only the flesh was. Peter employs the same example to clarify the distinction. Martinus likens the body of Christ as received in the Eucharist to the body of Christ in the tomb in that *totus Christus* is present in both places, which strongly suggests that the soul is absent under the consecrated species as it was in the tomb. Peter of Poitiers explicitly points out that the soul is not received in the consecrated host:

> Illud potius inquirendum an sit dandum quod iste sumit animam Christi qui sumit totum Christum, vel sumat deitatem. Sed absurdum est talia concedere; nichil enim hic dicitur sumi nisi quod manducatur. Non ergo dandum est, “manducat animam Christi,” quia non pertinet ad eam manducari, licet totum Christum sumat.  

How to reconcile these competing views on the presence of the soul in the consecrated host? This passage from Peter could be rendered consistent with the places in which Peter points out that the soul is present immediately after consecration because Peter in this passage is not claiming that Christ’s soul is never present, but that it is not eaten. This account, however, is rather unsatisfactory because Peter never suggests that Christ’s soul would have departed during reception. Not even this weak possibility is available to Martinus. Although in the passages on whether the soul is received Martinus

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159 3,259-62.

160 *Sententiae* 5 cap.13, Garv. (Peter), 55 (PL 211, 1256C): “Totus erat Christus in sepolcro, sed non totum.”

161 *Sententiae* 5 cap.13, Garv. (Peter), 55 (PL 211, 1256B-C).
agrees with Peter in denying only that anything but the body is received, rather than
denying that the soul is ever present, Martinus’ first passage makes clear that the bread is
never transubstantiated into a body enlivened by a soul (corpus vegetatum anima). It is
evident that there is some complexity to the tradition of the presence of Christ’s soul
under the species which I do not fully understand. Perhaps it is a problem that was not
fully resolved until the doctrine of concomitance matured.

Martinus next has a question about certain words in a prayer frequently used after
communion. The prayer asks that “Per hec sacramenta que sumpsimus, beneficia potiora
sumamus.” The trouble which Martinus sees is that this follows the reception of the body
of Christ, than which nothing is better, and therefore the prayer, when it asks for
“beneficia potiora,” makes no sense. Martinus explains that “potiora” should be
understood to mean “potius,” the adverb, so that it means not that better benefits are
received, but rather that they are received in a better way. Martinus understands this to
refer to the time when we will see Christ face to face. Martinus derives this argument
from Peter of Poitiers, but apart from these two, this question does not seem to have
attracted attention, unlike the “Iube illud transferri” from the canon misse which was very
popular to discuss in scholastic summas.162

Martinus then defends his techniques of interpretation. First he points out another
prayer that is problematic unless interpreted to refer to the beatific vision: “Perficient in
nobis, domine, sacramenta que sumpsimus quod continent, ut quod specie gerimus,
rerum ueritate capimus.” What the sacraments which we have received contain is already
perfected, but these words are to be understood in reference to eternal life, like the words

162 See 2,243-65
of the previous prayer. Martinus further supports his interpretation of the prayer by adducing other instances in which nouns are given instead of adverbs, which is parallel to the case here, where an adjective is given in place of an adverb.

Martinus then approaches the problems of Christ’s presence on multiple altars at the same time, and of local motion in the body of Christ. Although both of these topics could have been treated usefully as part of the chapter on the nature of the presence in the Eucharist, the fact that they are problems associated with the physical presence on the altar probably explains their treatment here.

The first of these two questions asks whether the body of Christ can be circumscribed in a place. The problem is that if it can be on two or more altars at the same time, then it appears not to be circumscribed in one place and if it isn’t in one place then it seems to not be identical with Christ’s physical body and if it isn’t in one place then it seems to be identical with Christ’s physical body. The reply states that the body of Christ is in one place in such a way that it isn’t everywhere, even though it is in many places at the same time. Martinus contrasts this property of Christ’s body with that of other created beings, such as an angel or a soul when it is out of the body, which are always in one place in such a way that they are not in another--Christ’s soul being another exception. This question is one which many theologians included in their works. Martinus seems to have used either Udo’s Sententiae, Peter Lombard’s Quattuor libri sententiarum, or Gratian’s Decretum, in addition to Peter of Poitiers Sententiae and Simon of Tournai’s Disputatio 20 to compose this question.

\[163\] 3,289-310.
This question ends with a brief explanation of how Christ’s ubiquity relates to the presence of the body of Christ. The entire explanation is excerpted from Simon of Tournai, with crucial omissions. Simon made clear that to infer from the facts that Christ is always everywhere and Christ was never without his body that Christ’s body is always everywhere is to commit a fallacy. Martinus, however, appears to conclude that the body of Christ is in fact everywhere. This conclusion directly contradicts Martinus’ conclusion in the reply, which agrees with the original text from Simon. The scribe of the Toulouse manuscript was apparently unhappy with this conclusion, and although his addition does not yield a coherent text, he was undoubtedly correct in thinking that there was an error in copying the text. That error occurred very early in the manuscript tradition, however, probably when Martinus copied from Simon.

The related question on movement in the body of Christ relies entirely on Simon of Tournai’s Disputatio 20. The problem is that if the body of Christ present on one altar is moved but on another remains unmoved, then movement and rest are simultaneously predicated of the body of Christ. The solution asserts that to believe that the body of Christ can simultaneously be moved on one altar but remain unmoved in another is no more marvelous than to believe that the same body can come out of the closed womb. Certainly this is true, but it does not explain how it is possible for motion and quiet to be in the same body simultaneously. Martinus might have done well to employ the solution which he derived in the previous question to this problem, that the body of Christ is in one place in such a way that it is contained by the definition of a

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164 3,307-10
165 3,311-19.
place and is not everywhere, but not in such a way that it can’t be in another place. I think he could employ this claim as the basis for an explanation of how movement and rest can exist simultaneously in the body of Christ. Instead, however, he quotes Simon’s refusal to offer an explanation.

Four questions follow which deal with the reception of the Eucharist during or before the passion. These questions must be considered in conjunction with two question which Martinus treated in chapter two, namely whether Christ gave his mortal or his immortal body to the disciples, and whether the disciples would have consecrated the living or dead body of Christ if they had consecrated in the triduum. The first of these four questions brings up a gloss which states that the body of Christ was not suitable to eat before the crucifixion. This causes an obvious problem, since the last supper, at which Jesus instituted the sacrament and distributed it to his disciples, precedes the crucifixion. Martinus then compares the body of Christ before the crucifixion, between crucifixion and death, and after death, to bread cooked in three different pans: in a bread pan (clibanus), in a frying pan (sartago), and on a griddle (craticula), respectively. These are the three ways in which bread was offered in the Old Testament. Of the three, Martinus claims, the sartago makes food suitable for eating, just as the crucifixion makes Christ’s body ready to eat, since if Christ had not been sacrificed, we would not eat the sacrifice of his body. Martinus, however, fails to bring the argument back to explaining why Christ’s body could be eaten before the crucifixion at the last supper. He therefore

166 2,71-103.
167 2,104-18.
168 3,320-38.
leaves us to assume that the crucifixion acted proleptically at the supper in which Christ said “this is my body, broken for you.” Clearly, however, the answer must be related to the question in chapter 2 in which Martinus does not determine between two opposed theories of whether the mortal or the immortal body of Christ was present at the last supper under the species of bread. If the immortal body was present at the last supper, then its being retroactively “cooked in the frying pan” (sartago) as well seems more probable, since the body of Christ present under the appearance of bread was in its post-passion state.

I cannot find an immediate predecessor for this treatment. Peter of Cells, in his sermon on the Lord’s supper (Sermo XL: In Coena Domini) lists the bread of heaven as coming from all of the above pots, but does not distinguish between them. Thomas de Chobham makes a very similar distinction in several of his texts, but their date is almost certainly too late to be the source for Martinus. Possibly the influence operates in the reverse.

The next question asks whether Christ would have suffered in a host if one had been preserved from the last supper until the passion. Since Christ was one only, and Christ suffered at that time, then Christ must have suffered under that species, argues the objection. Martinus refuses to acknowledge the possibility: the host was able to be reserved at that time, but Christ could not have suffered under that form. This reflects one

169 PL 202, 767B.
171 3,339-47.
of the possible solutions which Martinus mentions to the question of whether the apostles could confect the Eucharist during the triduum.\textsuperscript{172} In that question, Martinus points out that some say that the apostles could not have confected the Eucharist at that time, but others say that they could have and if they had, they would have confected the living and glorified body of Christ, even though the same body was dead in the tomb at that time. Martinus attributes this ability to be both alive and dead to a miracle. Presumably the ability of the body of Christ simultaneously to suffer under its own species and not to suffer under the species of bread is also attributable to a miracle.

Most of the text in the final two questions on reception of the sacrament during and prior to the passion derives from Peter of Poitiers. In the first of these,\textsuperscript{173} Martinus points out that Christ was mortal and passible during the last supper, and therefore one would not expect eating his mortal and passible body to confer immortality since, according a mysterious authority, “the body of Christ effects in the recipients what it has in itself.”\textsuperscript{174} Nevertheless, Martinus asserts that the sacrament at the last supper conferred to those who received it worthily that they would not be able to die spiritually as long as the effect of it remained.

The last of the questions on the reception of the Eucharist in the last supper asks whether Christ received his own body in the last supper.\textsuperscript{175} Although Martinus entertains objections to the effect that Christ did eat his own body, he determines that he must not

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{172}] 2,104-18.
\item[\textsuperscript{173}] 3,348-56.
\item[\textsuperscript{174}] 3,350-51.
\item[\textsuperscript{175}] 3,357-74.
\end{enumerate}
\end{footnotesize}
have, because, he says, where the truth was, there was no need of a sacrament. He explains the saying that “Jesus took (accepit) bread...” as indicating that he took it in his hands to give to his disciples, not to eat.

The final question on the Eucharist asks why being in a church offers protection to a malefactor but the Eucharist does not, despite the fact that the Eucharist is more worthy than a church is. Viaticum may not be denied to one about to be hanged, but having received communion, he is able to be taken to the gibbet. Martinus proposes two possible solutions to the question. According to the first, it is fitting that one can escape bodily punishment out of reverence for the bodily church. On the other hand, the Eucharist is not food for the body but for the soul, so it doesn’t have any effect on bodily punishments.

Martinus’ other explanation is that the church takes the place of the six cities of refuge in the Old Testament. The Eucharist does not liberate from such punishment; primarily, in fact, it promotes those already freed from spiritual punishment from a good state into a better. This is so that no one will seek the sacrament under a pretext in order to avoid temporal punishment, since one ought to seek only the objective of avoiding the punishment of hell. Who has seen a question like this in a treatise on the Eucharist? I can’t come up with it anywhere.

The comparison between the redemption offered in the Eucharist and the sanctuary offered by the church building is attached to the chapter for topics predominantly focused on the administration of the Eucharist because it is a practical question, and this chapter is the most immediately practical of the chapters on the

\[176\] 3,375-400.
Eucharist. As I have suggested before, Martinus shows particular interest in practical questions. The length of this chapter compared with that of the others provides one superficial indication of Martinus’ emphasis on practical concerns. The chapter runs to 402 lines in the edited text, compared with 289 in the first chapter, which includes the discussion of signs, and 265 for the second chapter. Martinus’ choice almost to omit the effects of the sacraments is also consistent with a treatise that inclines toward the practical.

3.4 Baptism

Martinus’ practical bent and the influence of Peter of Poitiers continue to be evident in Martinus’ section on Baptism. Again the influence of Peter of Poitiers is visible in Martinus’ structure of this section, but in an odd way. The section has three chapters, 4-6 of Martinus’ treatment of the sacraments. At first glance, the section seems to follow no order at all: the chapters do not break down into Peter’s neat distinctions, with one on what is baptism (chapter 4), one on form (5), one on effects (6), and two on the difference between the baptism of Christ and that of John (7 & 8). Instead, after an initial discussion of the baptism of John, Martinus asks what baptism is, and quickly arrives at a definition which focuses on its effects: “in baptismo nubit anima fidelis Deo et contrahit uinculum quoddam spirituale quod dissolui non potest et ideo, licet transeat illa aquarum effusio, tamen permanet sacramentum.”\textsuperscript{177} This definition leads Martinus immediately into a discussion of in what part the sacramental effects inhere, determining

\textsuperscript{177} 4,40-43.
that baptism is neither a substance nor an accident but something entirely superior to those, but nevertheless it is in the whole person, rather than in the body or the soul. Martinus follows this up with a discussion of what some of those effects are, particularly forgiveness of sins and the relative virtue of contrition and baptism. Martinus then discusses the recipients, including whether one is really baptized who is unwilling, whether the fictus receives baptism, whether one can baptize unintentionally, and whether one can baptize oneself. After this he discusses the significance and effects of the sacramentals which accompany baptism.

Martinus begins chapter 5 by returning to his discussion of who receives the sacramental effects, this time the question being whether those who are not elect receive the sacraments. Martinus then gives another definition of baptism: that it is the ablutio. The ablutio, however, is the work of a human being, so in what sense, he asks, does the forgiveness of sins which is the effect of baptism come from God? Martinus compares the claim that the work of the human agent in baptizing is the cause of the remission of sins to saying that the preaching of Paul was the cause of conversions, or that merit, rather than grace, is the cause of salvation. Martinus does not describe the human action as an instrumental cause, but clearly he has some such secondary causality in mind. This definition which focuses on the human agency leads Martinus to discuss the form of the sacrament: what words can be omitted or misspoken without threatening the validity of the sacrament. He follows that with a discussion of the spiritual kinship which the one who baptizes contracts with the people he (or she) baptizes. This involves

\[178\] 5,12-15.
\[179\] 5,20-27.
discussion of whether the infants baptized contract spiritual kinship with their baptizers when the ones baptizing are unbelievers. Martinus’ final chapter on baptism is devoted to whether the virtues are conferred to children in baptism. Perhaps this last topic was suggested by the discussion of the infants at the end of the previous one.

What initially looks like a repetitive free association of ideas actually proves to be governed by a coherent train of thought. Martinus works from two different definitions of baptism, the first of which leads to a discussion of baptismal effects and recipients, the second of which leads to a discussion of the officiant and his or her relation to the recipient. Peter of Poitiers’ influence on Martinus’ structure is not much more obvious than the structure itself, but it is unmistakable in several respects. Martinus’ two different definitions of baptism and his double treatment of the sacrament first from the perspective of the effects of the sacrament and then from the work of the baptizer perfectly mirror a distinction which Peter of Poitiers makes early in his treatment of baptism: baptism has two parts: “conficitur ex actione abluentis et passione abluti.”

The passio abluti represents what occurs in the recipient, and the actio abluentis what is performed by the baptizer. This distinction occurs solely in Peter of Poitiers’ Sententiae. The influence of Peter of Poitiers is also visible in the order in which Martinus treats his topics. Martinus begins with one of the last topics Peter treats, then turns to an earlier point in Peter’s Sententiae and copies treatments of several topics in order, and then skips to a still earlier point and copies a few more. Martinus follows Udo, Simon, and Peter

180 Sententiae 5, cap.4, Garv. (Peter), 6 (PL 211, 1230C).

181 see N. Häring, “Berengar’s Definitions of Sacramentum and their Influence on Mediaeval Sacramentology,” in Mediaeval Studies 10 (1948), 109-146, esp. 132.
Lombard in beginning his discussion of baptism with a discussion of John’s baptism, which Peter of Poitiers put last in his discussion. Nevertheless, Martinus employed Peter of Poitiers’ text in constructing his treatment of John’s baptism. Thus Martinus begins with Peter’s chapter 7 for the beginning of his own chapter 4. In lines 120-43 and 213-42 of that chapter Martinus again draws heavily on Peter’s text, this time turning back to Peter’s chapter 6. Martinus turns back to chapters 4 and 5 of Peter’s treatment of baptism near the beginning of his own chapter 5 (ll. 12-63), and continues to the beginning of Peter’s chapter 6 in his discussion of whether the virtues are conferred to children in baptism. It is clear here as elsewhere that Martinus was working with Peter’s text in front of him. In this case, it appears that his starting at the back of Peter’s treatment of baptism and leafing through it toward the front helped to determine the order of his own treatment. This order of copying explains why he starts with effects, then goes to form, then returns to effects, since he copied from the end Peter’s chapter 6, which discusses sacramental effects, early in the section, and then copied the beginning of the same chapter after he copied from chapters 4 and 5. It explains the location of the discussion of the virtues being conferred to children, which would otherwise be difficult to explain. Martinus copied from sources besides Peter of Poitiers’ Sententiae and added original material as well, but Peter’s text remains strongly determinative of the shape of Martinus work.

Martinus’ discussion of baptism covers most of the usual topics, albeit in a new order, but it has some unusual features as well. Martinus brings some particular concerns to the fore and omits others which are almost universally discussed. Most summas, for instance, discuss the number of immersions which a baptism ought to involve, and decide
that either one or three is valid, but that the baptizer should follow the custom of his church. Martinus, however, has no such discussion. Most summas since Peter Lombard also include a discussion of when the sacrament was instituted, whether at the baptism of Christ, at Christ’s discussion with Nicodemus about being “born again from water and the spirit,” or when the resurrected Christ instructed the disciples to baptize “in the name of the Father and of the Son and of the holy Spirit.” The answer is always that although the last event gives the form of baptism and the discussion with Nicodemus reveals its effects, the institution occurred when Christ sanctified the water by touching it. Other summas also typically explain at some point that only water will do for baptism, and no other liquid, but Martinus does not discuss this point. Finally, Martinus omits all discussion of who can baptize. He does not discuss the merits of the minister, perhaps because he has already discussed this in his section on the Eucharist. He does not mention that although a priest ought to perform a baptism, if necessary anyone could. He also does not mention the validity of baptisms performed by heretics. He does mention the possibility that Jews might baptize, but only in the context of a question about whether such a Jew would contract spiritual kinship with the person baptized.

These topics which Martinus omits all have in common that although they may at one time have had pressing practical concerns behind them, by the 12th century they must have seemed pretty academic in the pejorative sense of the term, with the possible exception of the last one. Who would ever think of using something besides water to baptize?

There are also a couple of concerns which are strikingly prominent in Martinus’ work. Some are concerns with are distinctive to Martinus, and some are fairly common
but receive a protracted treatment in Martinus relative to other works. In chapter 4, Martinus considers many sides to the question of whether baptism or contrition benefits more. This leads him to asking whether an adult or a child needs baptism more, because the adult has more guilt in need of remission but also has, in contrition, another source of remission of sins.

Questions of the efficacy of baptism relative to contrition and the relative need of a child or an adult for baptism do not occur in most scholastic treatments of baptism. They do occur in Peter the Chanter’s *Summa de sacramentis et animae consiliis*. Although the arguments in Martinus have certain things in common with Peter the Chanter’s treatment, the two arguments are quite different.

Another outstanding feature of Martinus’ text is his discussion of spiritual kinship contracted in baptism. Martinus’ discussion of the baptizer and the actions which the baptizer performs leads him to questions about what kind of spiritual kinship is contracted in baptism. In particular, Martinus is interested in what happens if the baptizer is an infidel. If a Jew baptizes a child in a case of necessity, does that Jew become the spiritual mother or father of the child? Martinus ultimately decides that the Jew does not, but that nevertheless even if that Jew should convert, he or she would not be able to marry the person whom he or she baptized. This prohibition does not result from spiritual kinship, however, but only from the institution of the church. Martinus compares it to the prohibition that one partner in a fornicatious union should marry relatives of the other, even though no affinity is contracted in fornication. The prohibition against such people marrying does not result from any affinity, but from the institution of the church.182 This

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182 5,71-101.
discussion is unique among contemporary theological summas. Martinus seems to be aware of a tradition of discussion of this topic, however. This discussion presumably took place in canon law literature, a supposition which seems to be supported by the way Martinus introduces the following topic: “Querit theologus an paruulo conferuntur virtutes in baptismo.” The statement that the “theologian asks” suggests that he envisioned someone else to be asking the previous question.

One other striking thing about Martinus’ treatise on baptism is that immediately after his discussion of the baptism of John he introduces the baptism of Chirst by listing four questions which he is going to ask. He deals with these four questions in thirty lines of text, and then moves on to other topics. Considering Martinus’ usual interests, the third and fourth of these questions are striking: “an sit substantia uel accidens uel substantialis differentia que nec substantia nec accidens est,” and “an baptismus sit in corpore uel in anima.” The two questions are obviously related because the are discussing how baptism can inhere in a baptized person. The question about whether baptism is a substance or an accident is striking for two reasons. For one thing, this kind of question is unique in theological summas of this time. For another, Martinus is never very long on philosophical distinctions. Where everyone uses them, as in explaining what happens in the Eucharist, Martinus does as well, although he does not usually show much accomplishment at using them. Even here he does not seem to have much patience with this kind of distinction, and concludes: “contentus autem sit qui opponit hac solutione, nec nimis instent propter simplices, quia non expedit ita subtiliter incedere inter uteros

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183 6,3-4.
184 4,29-32.
The term *substantialis differentia* is an obscure one, but Martinus seems to be using it correctly here. Peter of Poitiers uses this term in his Christology to describe the effect that assuming human nature had on the substance of Christ. The substance of Christ remained the same, Peter says, but the human nature caused a *substantialis differentia*, and that difference made that substance be something other than God.\textsuperscript{186} It appears that Martinus is offering the possibility that baptism does not make a new substance in the person baptized, but alters the substance in a similar way to that in which becoming man altered the substance of the second person of the Trinity. Martinus actually rejects all the possibilities, asserting that “substance,” “accident,” and “substantial distinction” are terms which apply to natural things, but that baptism and the other sacraments are above the nature of inferior things and are not made by the power of inferior nature but that of superior grace. Therefore a sacrament is not a “predicamentalis res”.\textsuperscript{187} This all makes sense, but it seems difficult to reconcile with the answer to the following question, namely whether baptism is in the body or the soul. Martinus concludes that baptism is in neither but is in the whole person. If it can be said to be “in” anything, however, whether body, soul, or person, in what sense can it be said to not be a “predicamentalis res”? Martinus does not reconcile this apparent contradiction.

Another problem in this question is the matter of the source. The philosophical terminology is uncharacteristic of Martinus’ treatments. The rest of the tradition, however, does seem to have a similar treatment. The latter question of whether baptism is

\textsuperscript{185} 4,51-54.

\textsuperscript{186} *Sententiae* 4, cap.10, Garv. (Peter), 84-85 (PL 211, 1173B).

\textsuperscript{187} 4,44-50.
in the body or the soul is also rare in the theological tradition. Nikolaus Häring notes that Martinus’ solution to this question resembles Hugguccio’s position, but it is hard to imagine that the question whether baptism is a substance or an accident would also derive from this source.

Martinus is evidently conversant in philosophical terminology, but it is evident that his interest lies elsewhere, as can be seen by his disinclination to flesh out the difficulties of his own conclusions and in his plea that others would also refrain from doing so for the sake of the simplices. Martinus’ treatment of these philosophical questions therefore lends further support to understanding this text as one intended to impart practical instruction.

3.5 Simony

The chapter which follows the chapters on baptism discusses simony. It is unclear what inspired Martinus to include this chapter in his treatment of the sacraments. Peter of Poitiers is certainly not responsible. In fact, Peter the Chanter’s *Summa de sacramentis et animae consiliis* is the only other theological summa of this time to include such a treatment. Simony is nevertheless extremely pertinent to the sacraments, at least from the perspective of one who is interested in the practice of them as opposed to their theology in the strict sense of the term. Martinus’ treatment of simony falls immediately between his treatments of baptism and orders. This is a logical place for it because Martinus

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begins his treatment with a species of simony that is related to baptism, and nearly all simony is related to orders.

Martinus’ treatment of simony comprises one chapter. It has a noticeably different style from the text which precedes it. Martinus treats every question with a consistently formed question, with authorities for and against and only one reply. His usual way of treating questions is not nearly so systematic. I have also found no trace of sources besides the authorities which are either patristic or from the Decretum. These two may be related, since composing by compiling sources may be the reason for Martinus’ inconsistency in constructing his treatments. This chapter is also the only chapter in which he cites his master, whom he refers two twice.

One thing that has not changed, however, is Martinus’ proclivity for dealing with particular problems rather than making a systematic treatment. Thus he engages immediately with the problems that interest him: whether one should pay for baptism when the unbaptized child is likely to die and there is no one who will baptize for free, in what sense of the word “for” (pro) is it permissible to receive money for performing spiritualia, what one can ask for in return for dedicating a church and whether the procuracy which is customarily given for such a service can be redeemed. He then goes on to ask whether things like balsam in chrism, lights in the church, or a judgment

\[\text{\textsuperscript{189} 7,1-33.}\]
\[\text{\textsuperscript{190} 7,34-57.}\]
\[\text{\textsuperscript{191} 7,58-74.}\]
\[\text{\textsuperscript{192} 7,75-82.}\]
can be sold\footnote{7,83-95.} and whether a price can be charged for a marriage to be contracted,\footnote{7,96-110.} and whether tithes can be bought.\footnote{7,111-30.} These are the first few questions Martinus discusses. These questions serve a greater purpose than simply casuistry, however; they establish several important themes. When Martinus finally does arrive at a definition of simony, he emphasizes that simony can take the form of either giving or receiving money, favors, or subservience in return for a spiritual thing. Martinus is clear that both the giver and the receiver commit simony.\footnote{7,216-21.} Consequently, although simony concerns clergy in particular, since clergy are the people who dispense spiritual benefits, lay people can also commit simony. Martinus begins with a dilemma which applies to lay people: if an unbaptized child is likely to die and no one can be found who will baptize the child for free, should one commit simony in order to have the child baptized? This is a problem of giving in return for a spiritual thing. Martinus does not here address the priests’ behavior in refusing to baptize without payment. In two other topics he deals with problems from the perspective of both lay people and clergy. He asks whether it is simoniacal to receive money so that marriage can be contracted. Although Martinus may be thinking of paying the clergyman to perform the ceremony, he is clearly also thinking of a bride price, as one of his authorities shows: the parents of Rebecca were remunerated with gifts. Martinus concludes that paying so that a wedding can be contracted is not simoniacal because simony is committed only in sacraments which confer grace, and marriage does not
confer grace. Therefore there is no danger that anyone, whether the priest or the parents of the bride, will be selling a spiritual thing. Although Martinus’ solution determines that marriage is not a case in which lay people can commit simony, he nevertheless addresses the possibility that lay people might commit simony. Martinus also discusses the practice of alienating tithes, and he asks whether it is simoniacal to buy them or redeem them, once sold. The buyers might well include some lay people, as Martinus explicitly acknowledges when he talks about buying them back from the people who have bought them. In this case, Martinus declines to give a general answer to whether buying or buying back tithes is simony, although he concedes that it is common practice. It seems that buying tithes is another realm in which lay people might commit simony. Martinus does not think of simony as a crime which is exclusively a concern for clergy because both the buyers and the sellers are guilty of simony. In fact, near the end of the chapter on simony, Martinus asks whether a cleric or a lay person sins more in buying *spiritualia*. He decides that a lay person sins more, because he sins both in that he commits simony and in that he presumed and desired what he was not allowed to have, whereas the cleric is guilty of simony only. He concedes, however, that the cleric knows better what he is supposed to do.

Although Martinus clearly considers simony to be a crime which both lay people and clerics can commit, the bulk of the chapter deals with problems from the clerical or religious point of view. Many are problems which concern only clergy; whether it is

197 7,96-110.
198 7,111-30.
simony to demand money for entering a monastery,\textsuperscript{199} to sell prebends\textsuperscript{200} or for a bishop to pay clerics in return for the privilege of ordaining them.\textsuperscript{201} In these cases, both buyers and sellers of spiritual things would be clerics or religious.

In some cases which involve a clerical seller but potentially a lay buyer or spiritual things, Martinus deals with the perspective of the seller only. Thus he asks “whether it is simoniaal to sell balsam put in chrism.”\textsuperscript{202} According to his definition of simony, if such a selling is simoniaal, the buying would be also, but Martinus does not approach the question from this side. Similarly he asks whether it is simoniaal to sell the vessels of the church. He does not ask whether it is simoniaal to buy them.\textsuperscript{203} Martinus’ primary concern is with the aspects of simony which concern clergy, but he shows a notable evenhandedness in considering varieties of simony which concern both clergy and laity.

Although Martinus defines simony as giving or receiving something in return for a spiritual thing, he defends certain practices such as giving a benefice in return for consecrating a church,\textsuperscript{204} giving subservience (\textit{obsequium}) in return for a benefice,\textsuperscript{205} and giving a donation in return for a Mass.\textsuperscript{206} Martinus defends the practices by arguing that

\textsuperscript{199} 7,131-44.
\textsuperscript{200} 7,145-64.
\textsuperscript{201} 7,165-71.
\textsuperscript{202} 7,85-86; this question covers 83-95.
\textsuperscript{203} 7,222-33. The solution is that it is not simoniaal to sell such vessels, although it is sacrilege if done for no good reason.
\textsuperscript{204} 7,58-74.
\textsuperscript{205} 7,49-51.
\textsuperscript{206} 7,52-57.
“in return for” (*pro*) can indicate two different things. It can either indicate a result of a spiritual thing being given or it can indicate the cause for which it is given.\textsuperscript{207} If subservience is given in return for a benefice in the sense that it results as a natural obligation from receiving the benefice, then no simony has occurred. On the other hand, when a benefice is given in order to receive subservience, such a transaction is simoniacal. Similarly money can and ought to be given out of natural obligation in return for a commemorative Mass, but if the Mass is sung because of the offered money, simony has been committed. Martinus acknowledges the possibility that the fact that the right way of doing these things looks so much like that wrong way that it readily leads to corruption, and in the case of commemorative Masses, Martinus urges avoiding this possibility by making the offering to the Lord for the Mass only after you have asked the priest for his services.\textsuperscript{208}

Martinus’ defense of custom here is consistent with his regard for church custom in other questions. *Ecclesie consuetudo* in fact has the weight of an authority. For instance, in his question on whether it is simony to give money so that marriage could be contracted, Martinus includes in the arguments against, “universalis ecclesie consuetudo hec approbat.”\textsuperscript{209} In the authorities against in his question on whether it is simoniacal to buy or commute tithes Martinus states: “cotidie commutamus.... Quod autem transigere uel componere liceat in huiusmodi, patet ex consuetudine uniuersali.”\textsuperscript{210}

\textsuperscript{207} 7,46-52.216-21.

\textsuperscript{208} 7,55-57.

\textsuperscript{209} 7,106.

\textsuperscript{210} 7,121-25.
Peter the Chanter’s *Summa de sacramentis et animae consiliis* is the only contemporary theological text to include a section on simony. Peter does not include his treatment of simony in the *de sacramentis* portion of his work, but in the extensive ethical discussions which make up the bulk of the treatise. Peter’s discussion of simony is far more extensive that Martinus’. As in other aspects of these two works, there is significant resemblance between these two treatments. Both distinguish between things which are “impretiabilia” *de iure* and *de facto*, *de iure* but not *de facto*, and neither *de iure* nor *de facto*,\(^{211}\) as well as between simony committed *a manu, a lingua, ab obsequio*,\(^ {212}\) although Martinus’ treatment is closer to the original in Gregory the Great (and quoted in Gratian’s *Decretum*). Both also discuss the way one should arrange commemorative Masses in order to avoid simony. Peter is far more detailed about this: whereas Martinus urges to make the offering only after you have made the arrangements with the priest, Peter discusses the exact wording.\(^ {213}\) Both also point out that the biblical precedents for simony include Simon Magus, from whom the crime takes its name, and Gehazi (Latin *Giezi*), the servant of Elisha who, when Elisha refused the gifts which Naaman offered for his healing, ran after him and requested some of the gifts.\(^ {214}\) Martinus suggests that the crime of Simon magus and Gehazi had been of the same kind and that the crime took its name from the former because what he did was both more recent and worse.\(^ {215}\) Peter, 

\(^{211}\) *Summa de sacramentis et animae consiliis* 3.2a (AMN 16) Louvain 1963, 3-4. In Martinus, 7.200-204.

\(^{212}\) *Summa de sacramentis et animae consiliis* 3.2a (AMN 16) Louvain 1963, 5-6. In Martinus, 7.214-219.

\(^{213}\) *Summa de sacramentis et animae consiliis* 3.2a (AMN 16) Louvain 1963, 11-12.

\(^{214}\) II Kings (IV Reg.) 5,20-27.

\(^{215}\) 7,208-215.
however, claims that simony and *giezia* differ in that simony is incurred when payment is
demanded before offering a spiritual thing, but *giezia* when payment is demanded after
conferring a spiritual thing. Peter also discusses redeeming tithes and even cites one of
the same canons, but arrives at a completely different conclusion from Martinus.
Martinus emphasizes that there are some situations in which it is permissible to redeem
tithes but others in which it is not, and even cites his master’s opinion that it is difficult to
generalize, whereas Peter the Chanter states that it is permissible to buy back tithes only
when other means of regaining them are not available. He mentions excommunication as
one possible recourse. Finally, Both Peter and Martinus employ canon law to discuss
simony. Throughout most of his work, Peter does not employ canon law, and even when
discussing simony, canon law references are sparse and the citations are vague, usually
giving only the number of the *causa*, even when citing *causae* which have multiple
questiones. Peter never cites more than one canon in a question. Martinus, however, often
frames his questions with canons as authorities on both sides of the question, and most of
his patristic authorities probably also derive from Gratian. This is consistent with
Martinus’ treatments in the rest of the work as well.

The inclusion of a discussion of simony in a theological summa is one clear
instance of Martinus’ effort to draw on both theological and legal sources to produce a
practical kind of theological summa. The similarities of Peter the Chanter’s *Summa de
sacramentis et animae consiliis* are interesting because the practical concerns of that
document are well established.

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216 *Summa de sacramentis et animae consiliis* 3.2a (AMN 16) Louvain 1963, 66-67.

217 *Summa de sacramentis et animae consiliis* 3.2a (AMN 16) Louvain 1963, 75-82.
3.6 Ordination

Peter of Poitiers states of orders that “decretistis disputatio de his potius quam theologis deservit.” Martinus seems to concede this point. Although he writes a rather extensive treatise on the sacrament of orders, it is composed entirely of legal topics. The discussion of the seven orders and their functions, and how Christ performed the duties of each which forms the structuring theme of most theological works, including Peter Lombard’s *Sententiae* and Simon of Tournai’s *Institutiones*, receives only a brief mention in Martinus’ treatment of orders. The material which forms the backbone of other theological treatises of the time barely interests Martinus.

Instead Martinus’ text has its own structure. His treatment on ordination is divided into four chapters, 8-11. Chapter 8 discusses the procedure and qualifications for both ordination and consecration in episcopacy. Chapter 9 discusses election in episcopacy, with a particular focus on possibilities of corruption. Chapter 10 discusses the vow of continence, and 11 discusses what happens in cases of violations to the vow of continence.

As these topics suggest, Martinus’ treatise on orders is dense in canon law. It begins, however, with what appears at first glance to be an exegetical concern: when the apostles were all bishops, what did it mean that Peter, James, and John ordained James the brother of Jesus in the episcopacy. Martinus is under the impression that this event

218 *Sententiae* 5, cap.14, Garv. (Peter), 56 (PL 211, 1257B)

219 *Sententiae* 4, di.14, 393-408.

220 *Institutiones*, 68rb-69ra.

221 Martinus lists the orders and their functions, 8,171-77. He also states that “cuiuslibet officium ordinis gestaret dominus”, 11,87-88.
occurs in Acts. In fact, however, Acts records no such event. Martinus’ source for this story on the first episcopal ordination appears to be Gratian’s *Decretum*. Martinus concludes that this consecration reflected James’ appointment to a specific administrative function. In his later explanation of ways in which “persona persone prefertur,” Martinus lists a number of reasons on account of which one person could be superior to another. These include superior merit of life (as Jerome is greater than Augustine), higher order (as a deacon is less than a priest), and higher consecration (as a priest is less than a bishop), but the first reason Martinus mentions is that of higher administrative duty (as Peter was greater than Paul). This clearly relates to Martinus’ claim that when, in his first example, James was ordained bishop after he was already a bishop, this ordination represented his assignment to oversee Jerusalem.

Martinus, however, takes this problem in a different direction. Citing the same distinction in which the story of James’ ordination occurs, Martinus asks whether it is a part of the *forma* for ordaining bishops that the ordination should be performed by three people. Although Martinus concludes that that number pertains to the sollemnity of the sacrament, not the form, he is apparently using James’ ordination as a precedent for the consecration of bishops, not just the giving of administrative duties.

Martinus’ concerns in this chapter are largely procedural. Between the discussion of the consecration of James and the number of people required to consecrate, Martinus

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222 8,1-25.

223 8,178-85.

224 8,44-58.
also discusses how inferiors can consecrate superiors. He discusses whether someone can be compelled to progress into a higher grade, and suggests guidelines for determining under which circumstances it is right to do so, and also advice on means of coercion. He continues to discuss things which might make an ordination invalid. In this context, Martinus finds that one can be ordained into the priesthood without ordination to the previous six orders, and the same is true of ordination into the episcopacy, except that ordination into the priesthood is necessary for ordination into the episcopacy. Martinus acknowledges opposing views as to whether a bishop who had never been ordained into the lower orders could validly ordain people to those orders, and he flatly denies that the consecration to the episcopacy of a gentile, a Jew, or a woman would be valid. He also explains why people who are baptized when they are sick are not allowed to be ordained to sacred orders. Similarly, he points out that mutilation can make one ineligible for ordination if it was willfully inflicted or resulted in significant deformation of a visible member. Such a mutilation could even result in one already ordained being deposed. Martinus then considers what it means that no one is permitted to be ordained to sacred orders “sine titulo.” He gives several interpretations of this claim, most of which argue that “titulus” refers to a means of supporting oneself, either a benefice or an

225 8,34-43.
226 8,59-76.
227 8,77-86.
228 8,87-96.
229 8,97-103.
230 8,104-136.
The alternate interpretation is that the “titulus” refers to examination of the candidate. Martinus lists a number of respects in which the candidate for ordination should be examined. It should be ascertained that he is eligible for ordination in that he is not a slave and has not been married multiple times; he must lead an honorable life, and he must know the articles of the faith and the way of performing the offices. It would nice if he also knew the Scriptures and had an understanding of the times (sollertia temporalium).

Chapter nine discusses problems of the election of bishops. Martinus has three principal concerns in this chapter: what it means that a bishop must be “sine crimine”, the proper way of holding elections, and multiple marriages. The bulk of the chapter concerns the proper way of holding elections. Martinus’ principal concern is with the various ways in which “caro et sanguis” can interfere with an election. According to Martinus, there have been four different forms in which election has occurred: by a voice that falls from heaven saying, “you are my beloved son”, by a miracle in which a rod blossomed, by casting lots, and by canonical election. Although Martinus points out that lots can also be corrupted, he discusses primarily corruption that occurs in canonical elections. The remainder of this chapter establishes that although it is not a sin to marry a second time, nevertheless people who have been married twice are not eligible for

\[231\] 8,137-57.
\[232\] 8,158-70.
\[233\] 9,22-87.
ordination. Martinus admits that a dispensation can be made to ordain such a person as subdeacon in a case of necessity.\textsuperscript{234}

The remaining two chapters discuss the vow of continence. Martinus is aware that continence has not always been required of priests, as it was not under the old law. Since now, however, election to the office is not in the succession of offspring but in perfection of life and knowledge, continence is preferred to fecundity. If, he argues, it is good to abstain from intercourse to make room for prayer, as the apostle says, then it makes sense that priests should abstain from marriage, since they are supposed to pray always.\textsuperscript{235}

Martinus then discusses what happens if an eastern priest comes to the western church. Can he marry? He cannot, Martinus thinks, and nor can a western priest who moves to the east. If the eastern priest arrives in the west already married, however, he can remain married.\textsuperscript{236} Martinus also states that any cleric, even one in minor orders, who is married against the custom of his church should be deprived of his duties and his benefice.\textsuperscript{237}

Martinus then turns to punishments which require continence in unusual ways. Can a married cleric convicted of a crime be confined to a monastery, he asks. The problem is that this would in effect impose continence on his wife. Martinus offers two opposing solutions to this question. The injury to the wife is unfair, he declares. Although the judge’s power to deport the criminal is undisputed, putting him in a monastery is

\begin{itemize}
\item \textsuperscript{234} 9,88-127.
\item \textsuperscript{235} 10,1-10.
\item \textsuperscript{236} 10,28-53.
\item \textsuperscript{237} 10,54-65.
\end{itemize}
different because the wife could follow him into exile, but not into the monastery. The other solution points out that although it is forbidden to enter (ingredi) a monastery without the permission of one’s spouse, it is not forbidden to be forced into one (intrudi). Entering is a matter of will; being forced is a matter of necessity. If a secular judge can exile, an ecclesiastical judge can certainly deport to a monastery. Neither can the judge be said to be the one who separates them, rather it is the guilt which does so.\footnote{238} Martinus then asks if a secular judge gives a married cleric a choice between hanging and entering a monastery, which should he chose? To decide on hanging is tantamount to suicide, but to choose entering a monastery is not permitted without the consent of his wife. Martinus supports the church’s giving a secular judge the right to sentence someone to a monastery.\footnote{239} He decides that in such a situation the wife ought “ex caritate” to offer her assent to her husband to enter a monastery, but that she cannot be compelled to do so. Martinus then determines that if a husband enters a monastery with his wife’s consent, there is no way for her to marry again after he dies, because when one spouse enters a monastery the other must make a vow of continence. This vow cannot be made with the condition that it hold only until the death of the spouse because it must be a solemn vow, and solemn vows do not tolerate temporal conditions.\footnote{240}

This casuistry regarding sexual behavioral of clergy continues in chapter eleven. In this chapter, Martinus asks a number of questions about whether clerics who do things the wrong way disqualify themselves for ordination. He asks whether someone can be

\footnote{238} 10,66-87.  
\footnote{239} 10,108-12.  
\footnote{240} 10,118-76.
promoted to holy orders who marries someone he deflowered. This is not permitted, because people who are promoted to sacred orders are permitted to have married only a virgin, and it doesn’t matter who corrupted her.\textsuperscript{241} He asks whether someone can be ordained whose wife is unchaste, and again the answer is no, because the marriage is supposed to be the sacrament of the marriage of Christ to his spotless bride. Here and here only in his treatise on the sacraments Martinus brings up the definition of a sacrament which was the mainstay of most twelfth century treatises on the sacraments: “sacramentum est inuisibilis gratiae uisibilis forma.”\textsuperscript{242} He asks whether someone can be ordained who has committed fornication with a widow, and the answer is that he can, because fornication does not prevent one from being ordained, provided that it doesn’t cause a scandal and that the candidate performs penance.\textsuperscript{243} A consistent view of the sacramentality of orders underlies all of these questions. These concerns about a candidate having married a woman with whom he had previously fornicated and one who has committed fornication with a widow and others like them appear to be moral concerns, but in fact what disqualifies people from consideration for orders is not the moral quality of the candidates so much as characteristics which make them unsuitable to fulfill the symbolic aspect of the sacrament. This explains why someone who has fornicated with a widow can still be ordained, but not someone who has been married twice.

\textsuperscript{241} 11,1-24.
\textsuperscript{242} 11,25-61.
\textsuperscript{243} 11,62-82.
When Martinus next asks why a bigamous person isn’t able to go to sacred orders when he can to subdeacon if necessary, he mentions as a possible solution that it is because subdeacon is not a sacred order, but spends the most time on a typological explanation. It is because, he says, Christ performed the duties of all the orders, and he performed that of the subdeacon in washing the disciple’s feet. This humble activity is suitable to humble people, and therefore it is possible for someone who has been married twice to become a subdeacon by special dispensation. The duties of the higher orders as Christ showed them to be were not so humble.  

Martinus goes on to acknowledge that the ability of a bishop to ordain someone who has been married more than once by a dispensation even as a subdeacon is disputed, and that on the other hand some people think that the Pope could grant a dispensation which would allow someone who has been married more than once to be ordained a priest. Martinus does not determine between these views.

This section obviously owes a lot to canon law, and Martinus’ concern is to explain proper practice. In some respects, however, these arguments are highly theological. This is the only place in the section on orders in which he employs the concept that Christ performed the duties of all the orders during his life, but this forms a central part of all other theological treatises on orders. This is the only place in which he employs the definition of sacraments that they are the visible form of an invisible grace, which was a standard premise of other theological treatises on the sacraments. In this section where canon law predominates, theology is not absent. Martinus’ treatment of

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244 11,83-94.
245 11,95-106.
orders shows Martinus’ dependence on Peter of Poitiers. Where Peter of Poitiers’ *Sententiae* did not supply any material, Martinus omits the dominate structuring themes of theological treatises on orders. On the other hand, it also shows that Martinus is not committed to following the usual theological discourse, which was available to him in Simon of Tournai’s *Institutiones* a text which he know and employed. This section on orders shows Martinus unique agenda.

3.7 Matrimony

Martinus’ 13 chapters on marriage (chapters 12-24) constitute the longest section of his treatise on sacraments. Although Peter of Poitiers’ treatise on marriage is quite short, Martinus quotes from it at times. Martinus’ text is also very close to Simon of Tournai’s at other times. Martinus’ treatment of marriage is a highly structured section, and its structure does not entirely depart from that of theological treatises on marriage. Each of these thirteen chapters treats a discrete topic which can be readily summarized. Chapter 12 discusses what makes a marriage and what the purposes of marriage are. It ends with a question challenging the concept that marriage ends with death, namely, if Lazarus’ wife had remarried during the time that he was in the tomb, could he claim her? Martinus says there has been no opportunity for forming a rule about this question, since rules are formed when many cases happen in the same way, and this never or rarely happens. The question relates to the topic of the following chapter, however, which is divorce. One problem related to divorce which Martinus discusses in this chapter is what

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246 12.508-30
to do when a husband long presumed dead shows up to find his wife married to someone else. This question relates to divorce both because the wife has either committed fornication or come very close to it, and divorce can occur only because of fornication. It also relates to divorce because in both cases both partners in the marriage are alive when another marriage is formed.

Chapters 14 and 15 discuss respectively how a vow of continence can impede marriage and how marriage can impede a vow of chastity. Chapter 14 is the first of many chapters which discuss things that impede marriage and dissolve one which has been contracted, since a person who has made a solemn vow of continence cannot marry. Someone who has made a simple vow, however, sins in marrying, but the marriage stands nevertheless. Since Mary is presumed to have taken a vow of continence, did she sin in marrying Joseph? Martinus offers two solutions: either she must have had a condition in her vow allowing that God might reveal otherwise, or some say that although she determined that she would not know a man, she had not bound herself with an oath. His discussion of Mary and Joseph carries into chapter 15, which discusses how marriage can impede taking a vow of chastity; since married people owe the marriage debt, they cannot take such a vow without the consent of their spouse. The first question is whether Mary and Joseph were married, when they had never consummated. This question introduces the question of whether people who have contracted a desponsatio but have not consummated are married. There are two kinds of desponsationes, Martinus

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247 13.156-204
248 14,1-57.
249 14,87-116.
points out: a canonical one and a legal one. Canonical *desponsatio* is made in the present tense and constitutes a marriage, except that before the marriage is consummated either party can enter a monastery. Neither, however, can marry someone else.\(^{250}\) This points out a peculiar hiatus in the marriage process: before they are *coniuges* but after they are married, the couple are *sponsus* and *sponsa*, and have one liberty which they will not have after consummation: they do not yet owe the debt.\(^{251}\)

Chapter 16 considers marriage and infidels. Martinus asks whether there is marriage among infidels,\(^{252}\) and what to do if one of the infidels in a marriage converts.\(^{253}\) He is particularly interested in marriage among Jews,\(^{254}\) and considers a Jew a particularly dangerous marriage partner for a new Christian convert.\(^{255}\) Martinus begins chapter 17 discussing the possibility of a Christian marrying an infidel. This chapter considers the errors which can impede marriage. One of these is an error of condition, in which one marries someone who turns out to be an infidel, but was presumed to be a Christian at the time of the marriage. Marrying someone who turns out to be a slave but was presumed to be free is another example of an error of condition. The other kind of error which can impede marriage are errors of person, when the person married in fact turns out not to be the person whom one expected to marry, as when you think it’s Rachel but it turns out to be Leah. Martinus’ principle concern in this chapter is the problems

\(^{250}\) 15,1-122.
\(^{251}\) 15,123-39.
\(^{252}\) 16,1-40.
\(^{253}\) 16,71-147.
\(^{254}\) 16,41-70.
\(^{255}\) 16,84-95.
surrounding slaves marrying. If one believes oneself to have married a free person but afterwards discovers that the person is a slave, how is one to behave towards one’s spouse in the interval between discovering the error and the church dissolving the marriage? Can slaves marry against the will of their masters? What happens if two slaves are married and the master wants to sell one to a distant place?

Another thing which impedes marriage is spiritual kinship, the topic of chapter 18. One should not marry someone who is the spiritual parent of the same person as oneself, nor should one marry one’s spiritual parents or their natural children. Martinus acknowledges ambiguity of the term “spiritual parent,” however. It can be used of baptizers and sponsors for baptism, but it can also be used of priests who hear confession. Spiritual paternity in the latter sense does not prevent marrying a child of one’s own confessor. In Chapter 19 Martinus discusses the conditions of desponsatio contracted between minors. They should not be contracted before seven years old and they are not binding on a minor until the minor agrees to them as an adult.

Chapters 20 and 21 discuss other things that cause problems or might be thought to cause problems in contracting a marriage. These include clandestine marriage, marriage between parties who committed adultery together before the spouse of one died, a marriage contracted between people who promised to marry while the previous spouse was still alive, marriage of a prostitute, marriage of a person undergoing

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256 18,81-100.159-171.
257 20,1-30.
258 20,31-49.
259 20,50-66.
solemn penance, an incestuous marriage or the marriage of someone who has ever committed incest, the man who is discovered to be frigidus, and a marriage which occurred on a festival. These chapters contribute to the dominant theme in Martinus’ discussion of marriage, namely problems that can occur in a marriage. It seems that everyone was looking for an excuse to break off a marriage, and Martinus wanted to distinguish between the good excuses and the bad ones.

Chapters 22 and 23 discuss consanguinity and affinity respectively. These chapters are consistent with what comes before in that both consanguinity and affinity are further examples of what can impede marriage. They differ significantly in style from what precedes, however. The scholastic question disappears and instead Martinus writes in a discursive style. He explains what consanguinity is, how it is calculated by different people, and what its implications for marriage are. His treatment of affinity follows the same pattern. There is nothing disputed; Martinus is only imparting information. Simon of Tournai’s and Peter Lombard’s treatments of consanguinity and affinity follow the same pattern. They also abandon the scholastic form for a more discursive style when discussing consanguinity and affinity. Although there is a certain amount of overlap between all three treatments, Martinus’ treatment is not clearly dependent on either. It appears that this style was simply the suitable or expected conveyance for discussing these topics.

260 20,67-93.
261 20,94-132.
262 20,133-58.
263 21,1-111.
264 21,112-131.
Martinus’ final chapter on marriage discusses coercion. He distinguishes between different varieties of coercion. Coercion in the form of rape is always a bad thing. Coercion to induce consent is also unacceptable, because marriages must be contracted freely. Once consent is given, however, coercion to compel intercourse is only right. Once consent is given, the person giving consent must either consummate or enter a monastery. This contradicts, in spirit but not in content, what Martinus said in his chapter on desponsatio, that the first intercourse should be given freely and not as owed, because until consummation each spouse is free to convert to the religious life without consent of the other.265

Throughout this chapter, Martinus shares a number of the concerns of the theological tradition, including consanguinity, affinity, and spiritual kinship, which in themselves belong to canon law but are included in most theological treatments of marriage with the exception of Peter of Poitiers’. Martinus shows, however, a much greater concern for things which impede marriage and dissolve marriages which have been contracted than is common in theological treatises, and the texts which he does borrow from theological works he works into more practical contexts, as when he quotes Peter of Poitiers’ discussion of the marriage between Mary and Joseph to discuss the legal implications of desponsatio. Martinus’ treatment of marriage is consistent with his discussions of the other sacraments in that all demonstrate a combination of theological and legal material.

265 15,128-31: Primus ergo coitus gratie est non debiti, ut dicunt. Nam cum primum coitum sponsus exigit, libere potest sponsa negare et transire ad religionem, nec contra fidem coniugalem aliquid fieret.
CHAPTER 4: 
CONCLUSION

There are a few things that can be said for certain about Martinus, and there are a number of things that suggest directions for future inquiries. The Compilatio questionum theologie is a distinctive work which draws on a diverse set of sources with a goal of imparting beneficial information rather than novel syntheses. It is a text which discusses selectively theological problems from its day and illuminates them with copious supplemental material from canon law. Although it includes a number of speculative questions, it always inclines to the practical. This text promises to illuminate a number of historical questions about the late twelfth century. It will be valuable evidence in the attempt to discover how the disciplines of law and theology related to each other in the early scholastic period. Its practical bent suggests that it will also have implications for ongoing discussions of pastoral theology in the late twelfth century.

I have argued that Martinus was trained in canon law. The significance of this claim, however, remains unclear because it is not at all certain how discrete the theology and law faculties were in the schools at the end of the 12th century. Martinus appears

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1 J.A. Brundage identifies this as the period in which these fields began to establish separate identities in “Teaching Canon Law,” in Learning Institutionalized, ed. J. Van Engen, Notre Dame 2000, 177-96, esp. 181-84. Kenneth Pennington argues that Innocent III, although he has gone down in history with a reputation as a canonist, was trained not as a lawyer but as a theologian. Although Pennington claims to be able to tell the difference, the misapprehension which he is attempting to set right itself and, if he is right, Innocent III’s ability to learn the new field on the fly both testify to the close relations of the
innovative in writing a theological summa when he was a lawyer, but there are at least a few people who work in both disciplines, like Roland Bandinelli, later Alexander III, author of both theological Sententiae and a Summa on Gratian. Martinus may show innovation in importing so much law into a theological text, but this innovation will look quite different if there were in fact no rigid distinction between the disciplines of canon law and theology at this time. There are masters who are decidedly lawyers, like Stephen of Tournai, and ones who were decidedly not, like Peter of Poitiers, but it may be that these people represent opposite ends of a continuum, rather than opposite sides of a divide.

Martinus’ text may illuminate the development of the distinction between theology and law. One indication that the two fields might have been rather distinct, or at least that Martinus learned them in different venues, is the fact that he mentions his master, whom he refers to as magister meus, exclusively in the context of legal topics. This master was certainly a canon lawyer. That might not exclude his being a theologian, but when writing this theological work, Martinus depended on Peter of Poitiers’ Sententiae, rather than on a work of this master, to establish the order of treatment and as the source for much of the text. The master, on the other hand, seems never to put in an appearance in the exclusively theological parts of the text.


Martinus may also indicate the extent to which the division between canon law and theology had progressed in his very efforts to bring them together. Peter of Poitiers was conscious of a strong distinction between law and theology, and avoids the former. It is possible that he was inventing this distinction, for his contemporaries employ canon law regularly in their theological works, where appropriate. The later generation of theologians, however, such as Peter the Chanter and Prepositinus of Cremona, make markedly less use of canon law. Martinus is also conscious that canon law and theology are two separate fields, as he indicates by referring to the theologus and the periti iuris canonici as the two separate sources from whom draws. Insofar as he draws this distinction at all, therefore, Martinus is consistent with the general consciousness of his time. Theologians of the last decade of the twelfth century testify to the establishment of this distinction tacitly by making scanty use of canon law. Martinus differs from them in that he alone follows Peter of Poitiers in drawing the distinction explicitly. Martinus further bucks the trend in that, although he is conscious of this distinction, he writes at text that includes both. In fact, he employs more canon law than any other theologian of the twelfth century that I know of, including the theologians of the earlier generations like Peter Lombard and Simon of Tournai.

A better understanding of Martinus’ background promises to shed more light on the development of this distinction. It is likely that the distinction which Martinus acknowledges between these two fields speaks to the direct influence of Peter of Poitiers. The exact relationship between Peter and Martinus remains mysterious, but Martinus certainly knew Peter’s text well and relied on it heavily in composing his own. Martinus may even have studied under Peter of Poitiers. Although he does not refer to a master
under whom he studied theology, it seems certain that he did attend classes in theology because of the close connections which I have documented between Martinus’ work and the work of another Peter, Peter the Chanter, which appear to be oral rather than textual. Thus Martinus text provides indirect evidence that the separation of the two disciplines may result in part from the influence of Peter of Poitiers. Other influences may also have been at work, for example the fact that since the 1140’s canon law had its own text book in Gratian’s *Decretum* and therefore its own course of lectures on that book. When the narrative of the separation of the disciplines of canon law and theology can be pursued more fully, Martinus’ text will be crucial evidence.

How deeply the separation of these two disciplines was ingrained into the schools by the late twelfth century remains unknown, however. Therefore how much innovation Martinus evidences in attempting to synthesize the two disciplines also cannot be said. The scope of Martinus’ vision and the significance of his accomplishment cannot be understood in the absence of a better understanding of the relationship between theology and law in the schools around 1200.

Martinus’ text has a pronounced practical bent to which his use of canon law contributes, although he does not keep exclusively to practical topics. His practical purposes are seen not only in his use of law, but also in his use of theological material. Giles Couvreur points out an instance in which Martinus prefers to resolve hypothetical cases than to employ them to prove a larger principle. In borrowing from Peter of Poitiers’ question about whether a good intention is able to legitimate a bad action, Martinus copied much of the material from this question, but made a few questions out of it: whether it is permitted to feed one’s father and mother by theft, and whether alms can
be given from badly acquired substance. Martinus’ text shows an interest in answering these particular problems, rather than deriving a general principle about the value of intention. “Tant l’arbre a grandi qu’il cache presque la forêt,” Couvreur concludes.³

There are many places in the *Compilatio questionum theologia* in which the tree seems to obscure the forest, that is to say, in which Martinus is evidently more interested in solving particular difficulties than in employing those dilemmas to arrive at a general principle. The frequency of these occurrences leads me to conclude that the choice was a conscious one. When Martinus asks whether the consecrated bread and wine nourish and intoxicate, he discusses these questions on their own merit, not because they illuminate the mode in which the accidents remain after consecration. Martinus uses the remaining accidents to explain these phenomena, but he does not use the phenomena to try to shed light on the nature of the change in the Eucharist. Martinus had discussed the problem of accidents earlier.⁴ The problems of inebriation and bodily satisfaction interest him on their own merits.⁵ When Martinus discusses the relative efficacy of contrition and baptism for the forgiveness of sins, this question prepares the following question of whether children need baptism more than adults. The abstract question prepares an answer to the practical one, rather than the other way around. Martinus’ discussion of simony contains many practical questions which do not build towards general principles:

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⁴ 1,71-84.

⁵ 2,130-164.
is it permissible to give money for Masses sung? Sell balsam placed in chrism? Redeem tithes? Sell a prebend? Martinus does not use these instances to derive a general rule about simony. They are only information about what can and cannot be done. His treatment of ordination contains similar patterns. For instance, he asks a series of questions about what kinds of sexual misbehaviors disqualify for ordination: can someone be ordained whose wife was unchaste? Who has fornicated with a widow? Who has been married twice? The answers to all of these questions rely on the principle that qualification for ordination does not depend on the moral quality of the candidate, but on his suitability to signify the marriage of Christ and the church. Nevertheless, Martinus does not introduce these problems to illustrate that principle. The principle is only imported to explain the reason for the decisions in each of these cases. The trees obscure the forest, as Couvreur says, or to put it in a more positive light, Martinus is interested in these practical questions in their own right.

Martinus’ preference for dealing with practical questions of behavior rather than using such questions to inform broader and more abstract questions agrees with his relative disinterest in definitions. Martinus defines simony, but not until almost the end of the chapter treating it. He defines baptism, but he offers two contradictory definitions which he does not reconcile. First he declares: “in baptismo nubit anima fidelis Deo et contrahit uinculum quoddam spirituale quod dissolui non potest et ideo, licet transeat illa

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6 7,34-57.
7 7,83-95.
8 7,111-30.
9 7,145-64.
10 11,25-94.
aquarum effusio, tamen permanet sacramentum.”\textsuperscript{11} Later Martinus offers another definition: “Baptismus est ablutio,”\textsuperscript{12} a proposal which he had explicitly rejected in the previous chapter, saying that baptism lasts after the ablution is complete.\textsuperscript{13} Although the structure of Martinus’ treatment of baptism, which discusses first the actions of God in the sacrament and then the actions of the baptizer, helps to explain why he begins each discussion with a different and contradictory definition, Martinus does not directly reconcile the definitions. He has other business.

Disinterest in definitions agrees with the lack of interest in philosophical distinctions that is apparent in the Compilatio. Martinus dismisses attempts to determine how baptism inheres in the baptized person, urging people not to pursue the subject “propter simplices,” and says “non expedit ita subtiliter incedere inter uteros pregnantium.”\textsuperscript{14} Martinus includes two philosophical treatments of substantial change in the Eucharist, but both are borrowed, one from Peter of Poitiers and one from Simon of Tournai. Scholars who have worked on all parts of the Compilatio have discovered a number of places in which he sounds “philosophical” or “Porretan.” As I have explained in chapter 2, I have been able to locate the source for all these passages, without exception, in Simon of Tournai. It seems that Martinus borrowed his philosophy when he wanted it. Although Martinus was familiar with philosophical terminology, it is possible that he may not have had an extensive knowledge of philosophy. He uses it rather

\textsuperscript{11} 4,40-43.
\textsuperscript{12} 5,12.
\textsuperscript{13} 4,36-39.
\textsuperscript{14} 4,51-54.
sparingly in this treatise, almost exclusively in places where it is expected, and almost exclusively in the words of other masters.

Martinus’ use of law is the exact opposite. It shows up not only in places where the theological tradition had regularly used law, like the treatment of marriage, but also in places where it did not use law at all, like the Eucharist. Martinus’ interest in explaining what should be done in problematic situations and his application of his significant legal training to his theological summa bespeaks a practical intent for this work.

One is tempted to conclude that Martinus was purely a practical thinker with no interest in speculation and syntheses. The *Compilatio* does have a pronounced practical bent, as I have argued, but it is more than a list of situations that might arise and how to deal with them. There are places in which Martinus discusses problems which are not obviously practical. For instance, he gives an explanation of Eucharistic change and specifies which verbs accurately describe that change.\(^{15}\) He talks about different theories about when during the rite the transubstantiation occurs, and he brings up the question of what happens if a priest dies or falls mute to shed light on this question of principle, not the other way around.\(^{16}\) He also asks whether the breaking of the consecrated host occurs in the body of Christ.\(^{17}\) His extensive discussion of whether the virtues are conferred to children by baptism also does not seem obviously practical.\(^{18}\)

\(^{15}\) 1,32-70.

\(^{16}\) 1,215-90.

\(^{17}\) 1,85-150.

\(^{18}\) 6, entire.
Canon law is not necessarily nearer to the practical level; Martinus discusses canon law at the theoretical level, too. For instance, he begins his section on ordination by discussing the significance of the consecration of James as bishop of Jerusalem when all of the Apostles were already bishops. This question picks up on a topic in Gratian’s Decretum, but it is not obviously a practical question. Martinus also asks whether fornication is sin “ex sui natura” or because of a prohibition. Martinus does not question whether or not fornication is a sin but only what makes it a sin. Here again he enters debates among canon lawyers.

Although Martinus often turns content which is elsewhere used to illuminate abstract questions into practical ones, he also includes abstract questions. The topics which are conspicuously absent or sparsely treated in his summa, however, tend to be highly speculative with markedly little practical value. Nearly all summas of this period offer allegorical interpretations of the three pieces into which the consecrated host is broken, but Martinus omits this discussion. The arcane seven orders, which usually structure treatises on ordination, Martinus only lists. Nevertheless, if the Compilatio is described as practical, that term must be understood in a broad sense.

A text always shows most clearly the preoccupations of the author, and secondarily his expectations of the interests of its audience. This text was evidently written by someone who expected an audience that wanted to know about how to deal with particular cases that might arise, particularly tricky situations. The presumed audience was not presumed to want a lot of speculative or allegorical material, although it

19 12,365-95.
was interested in basic theology, especially if cleverly explained. It was also interested in knowing the laws governing the right way of doing things.

From what we know of the use of other theological summas, it is most likely that Martinus employed this book in lecturing. It probably reached its audience primarily as the master’s text book, although Martinus’ students may have kept copies later in their careers. The text was likely intended to give students preparing for the cura animarum a thorough understanding of their work. Martinus’ predominant steering towards practical concerns might address the principal concern of such people, but his explanations of abstract questions might be intended to address their confusion about these points and to cultivate a basic theological competence. Men preparing for a career in pastoral care would also be interested in both canon law and theology, and the fact that Martinus includes material from each of these fields, where appropriate, would make this text helpful to them. Although Martinus is seemingly alone in taking the two steps of writing a practical text in the form of a full length summa and of incorporating law into a text of practical theology, there are other texts which appear to be intended to fill a similar niche in teaching practical theology.

Scholarship on some of these similar texts has suggested how these texts on practical theology might have been taught. One such similar work is Peter the Chanter’s Summa de sacramentis et animae consiliis, a text which Albrecht Diem calls, “one of the first theological compendia that aimed to make scholastic theology accessible to priests outside the great theological schools and applicable for pastoral use.”

Although only the

best educated among priests would have been capable of benefiting from Peter’s text, it is clear that it was intended to prepare people for a career in pastoral care. This practical intention has earned Peter’s text a position in a body of literature which scholars have defined as “literature of pastoral care,” a body of literature which originated in the late 12th century, and to which scholars now assign a number of texts. Joseph Goering, in his groundbreaking work William de Montibus, a contemporary of Martinus, suggests that the teaching of pastoral care, mandated after 1215 by the fourth Lateran Council, was already widespread in the decades preceding the council. Goering points out that although parish priests were usually not sufficiently educated to benefit from lectures in Latin, there were nevertheless a number of clerici seeking preferment to benefices. This is the audience to which he speculates pastoral care literature to have been directed.

Since pastoral care literature is a category only recently and vaguely defined, it may be sufficiently elastic to include a full length theological summa written to prepare clerics for a cura animarum. The interesting question is not whether Martinus’ work fits this modern category, but what that work indicates about the modern perception of these texts called pastoral care literature. The works which have been classed together in this


22 William de Montibus (c.1140-1213): The Schools and the Literature of Pastoral Care (Studies and Texts 108), Toronto 1992, 79.

23 ibid., 59-60.
body of literature are diverse, but Martinus’ work bears little resemblance to many of them. None of the works in this group is a full-length theological summa. Canon law is rare in the pastoral care literature from 1200 and before. In spite of these differences with many works in this supposed genre, Martinus’ *Compilatio* does have striking parallels both in content and in apparent intent with Peter the Chanter’s *Summa de sacramentis et animae consiliis*, a text often considered to be exemplary of the genre. Because of its undeniable affinity to this work and its intention to educate people for the cure of souls, Martinus’ summa promises to help refine the category of “pastoral care literature.” Understanding of the *Compilatio* will similarly benefit from interpreting it in the light of the so-called pastoral care literature, because interpretations that have hitherto been assumed neglect its consistent practical intention and its expertise in canon law, and they therefore fail to recognize the value of this work.
PART II:

TEXT
INTRODUCTION TO THE TEXT

OF THE TREATMENT OF THE SACRAMENTS FROM MAGISTER
MARTINUS’ *COMPILATIO QUESTIONUM THEOLOGIE*.

1 Manuscripts

The *Compilatio questionum* survives in five manuscripts, which I list below with their sigla:

- Cambridge, St. John’s College Library, Ms. C.7 (James 57) [= C]
- Paris, BNF, Ms. lat. 14526 [= P₁]
- Paris, BNF, Ms. lat. 14556 [= P₂]
- Toulouse, BM, Ms. 209 [= To]
- Troyes, Médiathèque de l’Agglomération Troyenne, Fonds ancien Ms. 789 [= Tr]

Some secondary literature on Martinus asserts that Klosterneuburg, Stiftsbibliothek, CCL 299 also contains a copy of the work, but that is not the case.¹

1.1 Sigla

The older convention on the choice of sigla attempted to establish sigla which resembled the name of the city in which the manuscript was housed. The modern

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convention does not attempt to make such an association, since often multiple
manuscripts will be housed in the same city or in cities that begin with the same letter. In
the case of this edition, that modern convention would have been particularly useful,
since there are two Paris manuscripts and two manuscripts from cities that begin with T.\(^2\)

In the interest of continuity with other work on Martinus’ text, however, I have retained
the sigla which have already been employed in several published treatments of Martinus’
work, namely P\(_1\) and P\(_2\).\(^3\) Of the other three manuscripts, only the Troyes manuscript has
ever been assigned a siglum, and that only once.\(^4\) The Siglum assigned was T, which
causes obvious difficulties for the Toulouse manuscript. I do not like T\(_1\) and T\(_2\), because,
by analogy with the two Paris manuscripts, these sigla suggest that the two manuscripts
are in the same city. So I have chosen To and Tr. It is unfortunate that the first is also an
English word, but these sigla have been satisfactory. To be consistent with the sigla
already assigned, C is an obvious choice for the Cambridge manuscript.

\(^2\) In his unpublished dissertation, Munsch assigned letters B-F as sigla for the five Mss. Ibid., 129.

\(^3\) so H.-F. Dondaine, “L’objet et le ‘medium’ de la vision béatifique chez les théologiens du XIII\(^{\text{e}}\)
siècle”, in RTAM 19 (1952), 60-130, esp. 103-105; Couvreur, G., Les pauvres ont-ils des droits?
Recherches sur le vol en cas d’extrême nécessité depuis la Concordia de Gratien (1140) jusqu’à Guillaume
d’Auxerre (†1231) (Analecta Gregoriana 111 ser. fac. theol. B 34), Roma 1961, 297-305. R. Heinzmann,
Die “Compilatio quaestionum theologiae secundum Magistrum Martinum” (Mitteilungen des Grabmann-
Instituts der Universität München 9), München 1964, 4-5. Published literature which assigns different sigla
comprise J. Gründel, Die Lehre von den Umständen der menschlichen Handlung im Mittelalter (Beiträge
zur Geschichte der Philosophie und Theologie des Mittelalters 39.5) Münster i.W. 1963, 201, Gründel uses
A and B for BNF lat. 14526 and 14556, respectively; and W.H. Principe, William of Auxerre’s Theology of
the Hypostatic Union (Studies and Texts 7), Toronto 1963. Principe uses P for BNF lat. 14526, the only
manuscript which he cites.

\(^4\) R. Heinzmann, Die “Compilatio quaestionum theologiae secundum Magistrum Martinum”
(Mitteilungen des Grabmann-Instituts der Universität München 9), München 1964, 5.
1.2 MSS descriptions

**Cambridge, St. John’s College Library, Ms. C.7 (James 57) [= C]**

*Date:* Early 13th century. Based on names mentioned in the marginal notes, A.L. Gregory suggests a 1200-1215 for the completion of the Langton *Questiones.* The Martinus section is similar in hand and format and has marginal notations in some of the same hands, including the hand which made a note about a certain “Magister H” in the Langton *Questiones.*

*Provenance:* the library of William Crashawe, purchased before 1615.

*Origin:* probably English based on the hand and *mise en page.* English origin is provisionally corroborated by the fact that most of Crashawe’s Mss. were collected from English monasteries.

*Binding:* early 17th cent., sewn with six leather binding thongs, cover in brown leather stamped with seal of William Crashawe.

*Composition:* i parchment + ii paper + 352 + ii paper + i parchment. Quires: 1-18, 19, 20-44, 45-2. Significant wear visible on the outside of the outer bifolium of each quire indicates that they may have circulated as unbound gatherings. All folios and quires are numbered in pencil with Arabic numerals by a modern hand. Additionally, quires 2-18 (comprising ff. 9-144) are numbered I-XVII (except for quire 3, which should have been II, where the quire number was presumably trimmed) at the bottom of last verso. These quires include Martinus’ *Compilatio questionum,* the table of contents of Martinus’ summa (ff. 144rb-146ra, quires 18-19) refers to these quire numberings. Quires 23-44 are numbered I-XXII. This enumeration is missing on quires 25-27, 37, and 42, which were presumably numbered III-V, XV, and XX. These quires correspond to the collection of Stephen Langton’s *Questiones.* The separate numbering of Martinus’ *Compilatio and*

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6 Gregory considers this Master H to have played a pivotal role in the assembly of the manuscript. A hand which she considers to be the hand of Master H gives a cross reference to Martinus’ summa. See “The Cambridge Manuscript of the *Questiones* of Stephen Langton,” in *The New Scholasticism* 4 (1930), 165-226, esp. 173-190.


8 R. Quinto states that the proportions of the columns and the proportions of the margins excludes a French origin and makes an insular one more probable. I agree with this assessment. “Il rapporto tra l’altezza e la larghezza delle colonne, e l’ampiezza del mg. esterno rispetto ai mgg. sup. ed inf. escludono un’origine francese del ms., e rendono più probabile un’origine insulare.” Doctor Nominatissimus: *Stefano Langton (†1228) e la tradizione della sue opere* (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters n.F. 39), Münster i.W. 1994, 101.

Langton’s *Questiones* suggests that they were considered a whole before being bound with the other texts in the current volume. The Langton questions, then, despite being written in a number of different hands, have a historical unity that is prior to their unity with the Langton summa which immediately precedes them, and the other contents of the manuscript. Quire 45 also contains Langton questions, but probably was not initially a part of this collection.

Contents:

1ra titulus (rubr.) “Summa magistri Martini et questiones theologie a Cantuariense disputate.”


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10 Häring does not use this ms for his edition, but discusses it, 106. This text identified by C.H. Talbot, “A List of Cistercian Manuscripts in Great Britain,” in *Traditio* 8 (1952), 402-418, esp. 405.

11 Garvin Papers (GRV), University of Notre Dame Archives (UNDA), Notre Dame, IN 46556. See K. Emery et al., *Bulletin de Philosophie Médiévale* 47 (2005), 11-68, esp. 31-66.

347ra-352rb questiones in multiple hands. Also Langton, but in terms of the composition of the manuscript, they are a separate text. 347ra inc.: “Super illum locum Matthei.” 352rb exp.: “in pauperibus placeat hoc.”

**Hands:** Three similar hands wrote the Alanus text in the first quire. ff. 1-7 in one, 8r-va in another, 8va-b in a third. The Martinus text is in a different hand, possibly the same throughout. The Langton summa is in a hand close to the Martinus text, perhaps identical. The Langton Questiones are in many different hands. 171-215va (quires 23-28) is in a compact hand. 215va-278va (quires 28-36) is in a hand or hands very similar to the Langton summa, with the exception of a question on 218r which was apparently inserted later (218v is blank, the last folio of quire 28). 278vb-281va have many different hands (also probably inserted later on blank space at the end of the folio, since quire 36 ends with 282, and 281vb-282v are blank). The hand similar to the Langton summa resumes 283-322 (quires 37-41). 306 (last folio of quire 39) and 322v (last page of quire 41) are also blank. 323-346 (quires 42-44) are written in a distinctive, compressed, angular, and pointy script. The tabula (345vb-346v) are in this hand. Although the quire numberings of the Langton Questiones show that they constituted a unity independent of their collection with the other texts in the manuscript, the multiple hands and the blank folios at the ends of quires show that the production did not occur as a unified project. The tabula at the end may have been a part of this project of unifying a number of different copies of the text. The final quire, which is in at least four hands, was probably an addition subsequent to that assembly. There are three reasons for this conclusion: tabula, such as the one at the end of quire 44, are not usually in the middle of a work; the rubricated “ste-phani” is missing from the upper margins of this gathering; and it has no quire mark (although that could have been removed with the last two pages of the quire, which are missing).

**Paris, BNF, Ms. lat. 14526 [= P1]**

**Date:** The manuscript came to St. Victor as two manuscripts. The first part, 13th century, the second 14th.

**Provenance:** Part 1: library of Berthold, bishop of Würzburg, left to St. Victor in his will for poor clerics studying theology, according to donation record on the verso of the first
parchment flyleaf: “Iste liber de libris domni Bertoldi herbipolensis, ecclesiae sancti Victoris parisiensis collatus, caritative clericis pauperibus in theologia studentibus est accommodandus, secundum formam expressam in autentico testamenti eiusdem Bertoldi quod scilicet autenticum servat armarius.” Of the two Bertholds who have occupied that see, it is more likely Berthold II of Sternberg, bishop 1274-1287, rather than Berthold I of Henneberg (1271-74), on the grounds that the former was the schoolmaster at Würzburg beginning in 1260, whereas Berthold I’s education seems to have occurred primarily in that very cathedral school. Judging from the inscription, this manuscript came to St. Victor after Berthold’s death in 1287. Berthold likely acquired it when he was a student himself, likely in Paris. He became a canon at Würzburg in 1240, so his studies likely commenced before then, although neither his canonry nor his subsequent archdeaconry (1257) necessarily implied residency. Paleographic evidence supports any date in this range, and suggests a Parisian origin. Two medieval catalogue marks are also visible on the verso of the flyleaf: K.11 and J.18. Quinto suggests that J.18 was the number for the first part of the current manuscript, while K.11 was the number for the manuscript after the parts were put together. Part 2: 275rv states that it was acquired for St. Victor by John of la Masse when he was the prior: “Hunc librum acquisuit monasterio sancti Victoris prope Parisius frater Johannes Lamasse dum esset prior eiusdem ecclesie, Deo gratias. Amen.” John of la Masse became abbot in 1448, having been prior before then. He had begun acquiring books for St. Victor in 1417, and acquired more than one hundred of the volumes currently in the Victorine fond in the BNF. 181r has “J.23” written in light pen. Although this was probably not the official catalogue mark, since the others were written with a very thick pen, it is nevertheless consistent with the format of the others, and thus probably does indicate the original catalogue number for the second constituent book of the current volume.

**Binding:** 19th cent., sewn and glued, spine covered in leather saying “varia theologica” and “Latin 14526”. Boards cardboard, pastedowns and first flyleaf on multicolored paper.

**Composition:** iv paper + remains of parchment + 2 parchment (second numbered as folio 1) + 271 + iv paper. Folios are numbered 1-275, but 1 is actually a flyleaf, while 60, 145, and 146 are missing. 1-7*, 8, 9, 10-11, 12, 13-17, 18*, 19, 20, 21-22, 23-29, 30. The quires are numbered in a modern hand in pencil, 1-29. This hand counts the flyleaves as 1, quires 8-9 (ff. 58-59, 60 removed) as 9, and does not number quire 18 (ff. 143-44, 145-46 removed). Quires 1-22 (ff. 2-180) and Quires 23-30 (ff. 181-275) arrived at St. Victor as separate books, as is attested by duplicate *ex libris* marks at the

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17 From which he was expelled in 1263, but family influence apparently overcame the objections of the chapter, since he obtained a canonry in 1267 and the bishopric in 1271. It must have made for some interesting relationships. In 1274 Berthold I moved on to other ecclesiastical appointments, and died in 1312. Ibid., 16-19.


bottom of 2r and 181r. The first part of the manuscript was itself a composite of four texts copied independently (Prepositinus, quires 1-8; Martinus, quires 10-17; unidentified questiones, quires 19-20; Stephen Langton texts, quires 21-22) and small additions. Q uires 1-7 (ff. 2-57), which along with the single folio (58) in quire 8, contain Prepositinus’ Summa ‘Qui producit ventos’ are numbered i-vii on the last verso, with catchwords, except that vii has no catchword. Q uires 10-17, which contain Martinus’ Compilatio, are numbered on the front of each quire with catchwords at the back. The second part of the current manuscript (quires 23-30) was a unified production and contains only one work, the Questiones of Peter of Falco. All quires in this book have 12 folios (except the last which lacks one) and are bound flesh side out. The quires have catchwords and the first six folios of every quire are numbered 1-6, with a letter (a-h) under each number which corresponds to each of the eight quires. These were evidently intended as aids for assembling the manuscript after copying. Although the two books arrived at St. Victor separately, they were bound together during the Middle Ages: folio numbers in a medieval hand run the length of the manuscript, and a list of contents on the verso of the first flyleaf covers the entire contents of the manuscript and is keyed to these folio numbers. The hand in this list changes at the break between the two books, but both hands are medieval.

Contents:

Part 1:

1v tabula for Praepositinus’ Summa ‘Qui producit ventos’, ruled in three columns. Text is cut off by trimming.


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20 The additions include a first attempt at a table of contents for Martinus (quire 9); and a quire (18) added to accommodate Langton questiones which were copied at the end of Martinus’ summa in quire 17 but ran over. The scribe used the space at the end of these questiones to add a complete table of contents for Martinus’ Summa, and somebody, after foliation, cut out the two remaining folios of this quire, which were likely blank.

21 For this identification, see R. Quinto, Doctor Nominatissimus: Stefano Langton (†1228) e la tradizione della sue opere (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters n.F. 39), Münster i.W. 1994, 113.
59r unlabeled incomplete table of contents of Martinus’ *Compilatio*, last entry corresponds to topic on 77va. 59v blank. 60 missing.

61r-141va: Martinus, *Compilatio questionum theologie*. 61r *titulus*: “*Compilatio questionum theologie* secundum magistrum Martinum.” *Inc.*: “Cautum est in sacris constitutionibus.” 141va *expl.*: “Infra se positas extinctus amabitur idem. Doxa tibi, Christe quoniam liber explicit iste.” The top of every recto 61-142 gives the number of the current book in Martinus’ *summa*: I⁰ 61-76, II⁰ 77-119, III⁰ 120-127, IIII⁰ 128-141, Quartus explicit 142. These headers are in a different hand from the text and a different hand from the similar headers in Praepositinus’ *summa*. This is the only manuscript which divides Martinus’ *summa* into books.


144r-v unlabeled *tabula* of Martinus’ *Compilatio*. This table is complete, i.e. covers the entire text beginning to end, but does not consistently note divisions of text in the manuscript. Entries are numbered ii-cxxx, which probably explains Stegmüller’s statement that Martinus’ *summa* contains 130 questions. 25 In fact, although the table begins with ii, it also repeats most numbers, so there are far more than 130 questions listed here. The numbers do not correspond to folio or page numbers on which the questions occur. ff. 145-146 missing.


161-174ra *tabula*, title partially removed by trimming: “Archiepiscopi cantuariensis de...” (Lacombe and Landgraf suggest “viciis et virtutibus”). 25

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22 For the identification of this text, see R. Quinto, *Doctor Nominatissimus: Stefano Langton (†1228) e la tradizione della sue opere* (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters n.F. 39), Münster i.W. 1994, 112, 145.


Apostolorum.” *Inc.*: “andragore in portis nostris dederunt odorem suum.” 180va *expl.*: “ita
uidentur contrarii. Explicit Actus Apostolorum.”

Part 2:

181-275r Petrus Falcus, *Questiones disputatae* (ed. from this ms. and others, A.-J.
Gondras, *Pierre de Falco, questions disputées ordinaires* (AMN 22-24), Louvain
1968).181r *titulus* (different hand and ink from text): “Questiones Egidii de Roma, ut
fertur.” *Inc.*: “Queritur utrum divina scientia sit rerum creatiua.” 275rb *expl.*: “ad bonum
quia non tollit librum arbitrium. Explicit.” Another hand adds: “opera(?) horum
quodlibetorum sunt xxiiii questiones.” 27

*Hands*: Praepositinus is all in one hand with marginal notes in at least two hands, many
partially removed by trimming. The first table of contents of Martinus (f. 59) is in another
hand, and the Martinus text in yet another hand. The two Langton *questiones* are in the
same hand as the Martinus text. All initial capitals in the Martinus text are red. There is
extensive correction in two other hands, as well as marginal notes in a formal script
which are often perpendicular to the text, and in many cases trimmed off. There are
occasional marginal notes in at least three other hands. The second table of contents (f.
144) is in yet another hand, while the unidentified theological *Questiones* (ff. 147-160),
the tabula for the Langton text (ff. 161-174) are each in a different hand. Stephen
Langton’s commentary on Acts is written in at least two different hands (ff. 171v-176r,
176v-180). The multiple hands and the numerous small quires inserted with various
supplemental materials all support the idea that part one of this manuscript was itself a
composite manuscript. The Petrus de Falco *Questiones disputatae* (ff. 181-275) are all in
one hand or in very similar hands.

**Paris, BNF, Ms. lat. 14556 [= P2]**

*Date*: Like P1, this Ms. came to St. Victor as at least two separate manuscripts. Both date
from the 13th century, and the medieval foliation indicates that the books were bound
together during the Middle Ages. The first part dates from the second half of the 13th
century, although the fact that the manuscript betrays no hint that Petrus de Tarantasia
became pope Innocent V suggests a likely but not certain date of copying before his short
pontificate in 1276. The remainder dates from the first half of the 13th century.

*Provenance*: An inscription at the end of the first part (f.163vb) contains an identical
inscription to the one at the end of the second part of P1, stating that the Ms. was acquired

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Scholasticism* 3 (1929), 113-158, esp. 119.

26 For the identification of this text, see ibid.

27 Gondras edition has 25 questions, and he points out, against this note, that all 25 are contained
in this Ms. *Pierre de Falco, questions disputées ordinaires* 1 (AMN 22), Louvain 1968,16. Peter of Falco
was probably a Franciscan and was probably working in Paris around 1280. Ibid., 7-9.
As stated above, this probably locates the acquisition of the first part of the manuscript to 1417-1448. Two medieval library catalogue numbers are on the verso of the second parchment flyleaf: K.9 and J.16. The second part of the current manuscript offers no evidence of how it came to be housed at St. Victor. Neither part offers any evidence regarding earlier ownership.

**Binding:** 19th cent., sewn and glued. Leather cover on spine with “Petrus de Tarantasia” and “Latin 14556” sticker. Boards cardboard, pastedowns and first flyleaf on multicolored paper. Glue has seeped between quires, so that the folios at the ends of quires are held together more tightly than those within the same quire, except where glue has broken.

**Composition:** ii paper + ii parchment + 365 + ii paper. 1-108, 11-20, 21-22, 23-32, 33-34, 35-36, 37-46, 47. Quires 1-21 (ff. 1-163) arrived at St. Victor as a separate manuscript from quires 22-47 (ff. 164-364), as evidenced by the inscription recording donation on f. 163vb, mentioned above. This hypothesis receives further support from the fact that 165r has “Iste liber est sancti Victoris parisiensis. Quicumque eum furatus fuerit uel celaut uel titulum istum deleuerit anathema sit, amen.” This compares to a mark the bottom of f. 1: “Iste liber est sancti Victoris parisiensis. Quicumque eum, etc.” Another inscription at the bottom of 165v exactly duplicates one on 1v: “Jesus, Maria, Sanctus Victor, Sanctus Augustinus”, with a coat of arms before “Victor”. These inscriptions indicate that f. 165 was once near the beginning of a volume. The first part of the manuscript, the two books of Peter of Tarantasia’s commentary on the sentences, is a unified production, but the two books were intentionally kept separate. All quires in this text have eight folios except for the final quire of each book, which had six. Even though the scribe had taken this precaution, he finished the first book with a verso (85v) and a folio to spare, but did not copy book two on these leaves. The spare folio has since been removed, but the remains are visible between ff. 85 and 86. Quires 22-47, on the other hand, brought together two texts which were not written as part of the same production. Quires 22-34, which contain works by Stephen Langton, are numbered I-XIII with catchwords on the verso of the last folio. A table of contents on folio 164 is keyed to these quire numbers. The Martinus text, quires 35-47 (ff. 267-364), has a different organizing principle: medieval foliation is visible, beginning with 1 on the current f. 267 (now faint, possibly because it was erased by the scribe who inserted the present foliation). Furthermore, these quires were bound flesh side out, which is not the case with the Stephen Langton text. There is also a mark at the bottom of 267r, the first page of the Martinus text, reading E.40, which might be a medieval catalogue mark for this volume before it was bound with the Stephen Langton questions. The two texts were likely housed in St. Victor prior to being bound together, for the bottom of 266r, the last page of the Stephen Langton, has an inscription usually found at the beginning and ending of volumes from that library: “Iste liber est sancti Victoris parisiensis. Quicumque eum furatus fuerit uel celauerit uel titulum istum deleuerit, Anathema sit. Amen.” Whether or

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28 hunc librum acquisiuit monasterio sancti Victoris prope parisius frater Johannes Lamasse dum esset prior eiusdem ecclesie.
not the Martinus and the Langton texts were bound together before being united with the copy of Peter of Tarantasia’s commentary on the sentences is uncertain.

Contents:


164r-v: table of contents for the following Stephen Langton Questiones written entirely in red ink. This table identifies the location of the questions by quire numbers, and the quire numbers are a part of the text, not in the margin, and therefore the table must have been completed after copying, but the folio is part of the first quire, so space must have been left for it.

165-266ra: Stephen Langton, Questiones. 165 titulus: “Incipit summa magistri Stephani Cantuariensis archiepiscopi.” Inc. “Latria est cultus soli Deo siue creatori exhibendus.” 266ra expl.: “cura sed occasio. Explicit questiones magistri Stephani, cantuariensis archiepiscopi. Deo gratias.” Several brief notes follow: “Vis iuramentum(?) illicitum cognoscere discere, quis, quid, cui, per quid, ad quid, cur, quomodo, quando...quomodo quando.” Another: “temperantia est...temporaliter delectentur.”


Hands: The Petrus de Tarantasia seems to have been copied by the same scribe throughout. The same is true of the Stephen Langton questiones. The Martinus text seems to have been copied by two scribes. The first ends at the end of quire 42, and the bottom of the last folio(330vb) is left blank. Another hand resumes the text on f. 331r and completes it. No text is omitted, and this break does not correspond to any of the divisions between books introduced in ms. P1. The first scribe had reproduced the paraph marks as they occur in mss. ToTr. The second scribe did not copy them until f. 359rb. Until that point, the only divisions of text which he preserves are the initial capitals at the beginning of each chapter. Both hands supply corrections to their texts in the margins, as well as notations summarizing the argument. There are a number of marginal notations in the Martinus text in at least five medieval hands, including a one in pencil which makes copious notes, though he does not seem interested in the sacraments or eschatology, with the exception of marriage, Martinus’ treatment of which he densely annotates.
Toulouse, BM, Ms. 209 [= To]

I have not seen this ms. in person, and so I refer the reader to the description of it in the Catalogue Général.²⁹ The work of Martinus covers all 235 folios of the current manuscript. The ruling is narrow and the writing large for a scholastic text, as evidenced by the fact that it takes up so many folios. The other copies of the text cover between 81 and 138 folios. This layout of the page suggests either that it is early or that it was not copied in Paris. An ex libris inscription on f. 1r in a modern hand (17th c.?) states that the manuscript belonged to the hermits of St. Augustine in Toulouse. This manuscript contains no title or attribution for the work. 1ra inc. “Cautum est in sacris constitutionibus.” 235ra expl.: “se positas extinctus amabitur idem. Explicit.”

Troyes, Médiathèque de l’Agglomération Troyenne, Fonds ancien Ms. 789 [= Tr]

This manuscript came to Troyes from Clairvaux, where it had the shelf mark I 45. For a first hand description of this ms., see the recent detailed work on the library of the Clairvaux.³⁰ This manuscript is a composite at least two different mss, and contains four principle works. The first part dates from the late thirteenth century, as evidenced by the density of the writing and abbreviation. The second part dates from the twelfth century.

Contents:

Part 1:


111ra-111vb: unidentified text in later hand citing many canon law texts. 111ra inc.: “Remittuntur peccata per auctoritatem a solo Deo, in ea questio Evidenter....” 111vb exp.: “non intendit, cum credam baptizantis intentionem esse necessariam.”


124v-125v Beda Venerabilis, De schematibus et tropis.

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²⁹ Catalogue Général des Manuscrits des Bibliothèques Publiques des Départements 7 (Quarto Series), Paris 1861, 131-32.


³¹ This text remains unedited, in spite of significant interest. For a recent study, see L. Valente, Phantasia Contrarietatis (Unione Accademica Nazionale, Corpus Philosophorum Medii Aevi, Testi e Studi 13), Florence 1997. Valente lists Mss. of De tropis loquendi on p. 215-16.


133vb-134bis: miscellaneous notes in hands contemporary with the main texts. 134bis: “liber sancte Marie Cla<revallisens>.”

Part 2:

135ra small tabula, *titulus*: “Capitula libri de diuinis officiis per circulum anni.”

135ra-261v Rupertus Tuitiensis, *De divinis officiis*. *titulus*: “Prologus sequentis opusculi de diuinis officiis per circuitum anni.” *Inc.*: “Ea que per anni circulum ordine constituto in diuinis aguntur officiis.”

All manuscripts with the exception of the Toulouse manuscript result from a complex process of binding together various texts. These combinations of texts represent decisions on the part of collectors and librarians, some probably well informed and intentional but others more haphazard. In the best cases, the association of one text with another indicates how the two texts were understood by near contemporaries. Inspection of the manuscripts shows that this is one of the best cases, because it shows that the texts which occur together were not copied together, but were put together later, and thus their association reflects a conscious decision. What prompted that decision is not entirely clear; thus the repeated association of Martinus and Langton may show that the two authors interested the same people because they were understood to have common approaches or to address common concerns. It may, simply indicate that both were in vogue at the same times or places.

32 Häring uses this manuscript for his edition (siglum T), 114-15, 118.
Of particular interest is the recurrent association of Stephen Langton’s works with Martinus’ *Compilatio*. Three of the five manuscripts containing Martinus’ work contain works by Stephen Langton; in fact all three of them contain at least a few of Langton’s *Questiones*, and the one which contains the fewest, P1, contains Langton’s commentary on Acts and a list of contents for his treatise on the virtues and vices, as well as *reportationes* of questions that are similar enough to Langton to have been attributed to him a few times by modern scholars. People who were interested in Martinus were also interested in Langton. This interest can also be seen in the marginal notations in C and P2 which cover both texts. Alan of Lille’s *Regulae caelestis iuris* appears in two of the manuscripts, which suggests that it also interested the people who were interested in Martinus. Less frequent associations of text do not compromise the value of the witness that they were understood as similar in the same way, except that frequent associations of texts lessen the possibility that the texts were simply sewn together because they had been lying around loose. Thus texts which occur together with Martinus’ work only once, such as Peter the Chanter, *De tropis loquendi* and Praepositinus’ *Summa ‘Qui producit ventos’* probably also were understood to be similar to Martinus’ work. Binding the texts by Peter of Tarantasia and Peter of Falco was certainly also a result of a conscious decision, but this binding occurred so much later (probably in the fifteenth century in both cases) that the texts were probably associated because they were all *passée* theological works.

It is interesting that the texts with which Martinus is usually read today, namely Simon of Tournai and Peter of Poitiers, do not occur at all. This may indicate a few things: Martinus was read with texts more contemporary with his own, and all of the texts
with whom he was associated early on were written in the last decade of the twelfth century with the possible exception of the Alan of Lille; People who had a copy of Martinus didn’t want a copy of Simon’s and Peter’s texts because they realized that the texts had so much in common; or Martinus, although he had more text in common with Simon and Peter, addressed matters which interested people who were interested in Stephen Langton, Praepositinus, Alan of Lille’s *Regulae caelestis iuris*, and Peter the Chanter’s *De tropis loquendi*.

1.3 Transmission of the Text

The first thing that is obvious from the *apparatus criticus* of the edition of Martinus’ *Compilatio* is that P\textsubscript{2}ToTr regularly read together against CP\textsubscript{1}. Such a pattern of common variants usually indicates that one of those two sets of manuscripts descends from a common hyparchetype and therefore shares many common errors, while the agreement of the other manuscripts shows the original reading of the text. In this case, however, each of these groups of manuscripts shares common errors against the other, suggesting that CP\textsubscript{1} and P\textsubscript{2}ToTr each descend from a hyparchetype.

The problem of determining manuscript families has a circularity which is difficult to break: in order to determine which agreement between manuscripts represents a common error or the original reading of the text, one must know the original reading of the text. Obviously, this cannot be known *a priori*, and very rarely do variants themselves offer evidence to prove which is the original reading. For instance, grammar can be helpful in determining which variant has the correct text, but it is not safe to assume that the original text had perfect grammar; in fact, on the contrary, if the original text contained grammatical mistakes, scribes would be likely to correct them, in which case
the grammatically correct variant would represent a common error from the perspective of textual transmission. The kind of variation in which the error is most easily distinguished from the original reading is an omission by homoeoteleuton. Homoeoteleuta rarely leave room for doubt as to which variant has the original text. When there is a question of whether one set of manuscripts added text, or another set omitted text, and that omission can be explained by homoeoteleuton, the original reading is clear. Additionally, text resulting from an omission by homoeoteleuton rarely makes sense. In the text I edited, P₂ToTr share nine omissions by homoeoteleuta, and P₂Tr share another in a section where a folio is missing from To. There is an additional homoeoteleuton shared by ToTr which P₂ also shares, but inserts the missing text in the margin. These common errors provide strong evidence that P₂ToTr constitute a manuscript family sharing common errors which derive from a hyparchetype. I call this hyparchetype γ (see stemma below). Other variants support this conclusion, since in most other instances in which P₂ToTr read against CP₁, readings of P₂ToTr seem inferior to those of CP₁. γ seems to have introduced many errors into the text.

On the other hand, CP₁ also share two homoeoteleuta. The agreement of CP₁ in these homoeoteleuta suggests that these two manuscripts also share a hyparchetype. CP₁ also almost always have very similar titles for the chapters, whereas ToTr rarely have titles for the chapters, and the titles in P₂ are never as close to those in either C or P₁ as the titles in those two manuscripts are to each other. CP₁ are also the only two manuscripts to distinguish major subdivisions of the chapter, and almost without exception, these manuscripts agree in these subdivisions. Furthermore, the layout of these subdivisions is very similar in both manuscripts. Both begin these subdivisions on a new
line, and mark them with a red or blue paraph mark (C) or capital letter (P). On the basis of all this evidence, I suggest that each group of manuscripts, namely P₂ToTr and CP₁, derives from a hyparchetype, and in addition to γ which is the common ancestor of P₂ToTr, CP₁ derive from a common ancestor not shared by the other manuscripts. I will call this manuscript β.

These two manuscript families indicate the primary readings of the manuscripts, but several of these manuscripts frequently read against their families, indicating that they, or the exemplars they copied, consulted manuscripts outside of that family. Tr frequently reads against P₂To and with P₁ or even CP₁. Even more frequently, P₂ reads against ToTr and with C or CP₁. Finally, P₁ often reads against C and with ToTr.

Of the three manuscripts which frequently read against the other manuscripts in their families, two, namely P₂ and Tr, show marks of correction in the course of copying. There are several places in which each of these manuscripts copies the reading of its primary family but then corrects it. These corrections usually occur in the margin but in the same hand, and sometimes they occur within the body of the text. This evidence further supports the claim that these manuscripts show readings derived from two different exemplars, and suggests that the contamination of these two descendants of γ with the readings of the β family occurred in the copying of these particular manuscripts, rather than in that of manuscripts of which they are a copy.

It remains to identify the manuscripts which each of these manuscripts consulted to find their readings against their primary source. When Tr reads against P₂To (and therefore against γ), it almost always agrees with P₁. Agreements of CP₁Tr and especially P₁Tr against the other manuscripts are common. Agreements of CTr against P₁ and other
manuscripts are quite rare, which suggests that the source consulted by Tr was closer to 
P_1 than to C. The manuscript which Tr consulted may have been P_1 itself, but since P_1 
appears to have been in Würzburg from the mid-thirteenth century until some time after 
1287, and since Tr appears to have been copied in the third quarter of the 13th 
century near Paris, the source was more likely some manuscript close to P_1, either δ, about which 
see below, or one of its descendants.

The source manuscript consulted by P_2 in addition to γ allows it to read with C 
against γ. It is therefore clearly not a descendent of γ. It also reads with C against P_1 when 
P_1 reads with ToTr, and therefore is not a descendent of P_1 or of an ancestor of P_1 
responsible for introducing the common readings with ToTr. It might be either β or C but 
is at least a manuscript related to these. This source appears to be closer to C than is P_1. 
In fact, CP_2 frequently read together against P_1ToTr. CP_1P_2 also frequently read against 
ToTr, including several instances of homoeoteleuton in ToTr. While such common 
variations may indicate that ToTr share an archetype which is a descendent of γ, they 
could also be explained by P_2 reading with this second source against γ at these points. In 
the case of one of these homoeoteleuta, P_2 had originally contained the same reading, but 
corrected it in the margin in the same hand. Studies of the Stephen Langton questions 
contained in each of these manuscripts (C and V according to the sigla for the Langton 
Questiones) find that they belong to the same family. It is interesting that the copies of 
the Martinus text in these manuscripts also show some relationship.

33 R. Quinto, Doctor Nominatissimus: Stefano Langton (†1228) e la tradizione della sue opere 
(Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters n.F. 39), Münster i.W. 1994, 133- 
35.
Some of the common readings of CP₂ against P₁ToTr may arise from this contamination in P₂ if we posit that the source of contamination in P₂ is either C or shares an archetype with C that is a descendent of β. In this case, the agreement of CP₂ would always represent a common error, but the reading of P₁ToTr would indicate the reading of both β and γ and therefore of α. There are a number of instances, however, in which the reading of CP₂ appears preferable to that of P₁ToTr, including one case of homoeoteleuton in P₁ToTr. Furthermore, there are a few places, nineteen in all, in which C has a superior reading to that of P₁P₂ToTr. Seven could easily be explained by assuming a felicitous conjecture in C, but that is harder to imagine in the others, including one omission by homoeoteleuton in P₁P₂ToTr. These common errors make it evident that P₁ had some source of common readings with γ which did not involve β or α. Since there is no evidence in P₁ that it was copied from two exemplars, I suggest that the manuscript which copied from both the β and γ families was actually an ancestor of P₁, which I will call δ. This manuscript or one of its descendents was consulted by Tr. The source from which δ copied might have been γ, an ancestor of γ, or a descendant, and that descendant might also have been a common ancestor of ToTr or of P₂.

Each of these last two possibilities has attractive consequences. If the source of contamination in δ was also the principle source of P₂ but not of ToTr, that would explain the occasional but persistent occurrences of variants in which P₁P₂ agree against CToTr. These occurrences are frequent enough to want some explanation. There is no sign of contamination between C and either To or Tr to explain these variants: the occurrences in which CTo ≠ P₁P₂Tr are both insignificant and rare, and CTr ≠ P₁P₂To are equally insignificant and still more rare. If one of the two sources of δ was very close to one of
the two sources of $P_2$, that would conveniently explain this pattern of variation. On the other hand, if the source of contamination in $\delta$ was also the source for $ToTr$ but not of $P_2$, then that common exemplar would offer yet another explanation, in addition to the two mentioned above, of the many occurrences of $CP_2 \neq P_1 ToTr$, the second most common type of variant (after $CP_1 \neq P_2 ToTr$ and about equal with $CP_1 P_2 \neq ToTr$). I consider it wiser, however, not to clutter the stemma with speculations, but to list only what I can say for certain.

![Proposed Stemma Diagram]

The exact sources of contamination in $\delta$, $P_2$, and $Tr$ are not certain; this diagram should not be understood to indicate them precisely.

2 Editorial Practices

The construction of an edition requires the editor to make numerous decisions. Some of the problems are more obvious than others, while some of the choices are more consequential than others. Therefore, both to justify my choices and to alert the reader to other possible constructions of the text, I have included in this section a discussion of some major dubious points.
2.1 Principles Guiding Choice of Variants

Even the best evidence regarding the history of the transmission of the text leaves a number of areas in which the editor must make decisions. The stemma derived above provides no clear preference for the most common patterns of variation, namely CP₂ ≠ P₁ToTr, CP₁ ≠ P₂ToTr and CP₁P₂ ≠ ToTr. In these cases, I depend primarily on the sense of the text. Because, however, the readings of β are usually subjectively better than the readings from γ, in doubtful cases the edition reads with β. I have followed this same principle in the less frequent occurrences of CP₁Tr ≠ P₂To. According to the stemma, it is quite possible that any of the isolated readings of C in fact preserve the original reading of the text, while all other manuscripts show an error introduced in γ. In spite of the fact that in general I prefer β over γ, I do not in principle read with C against all the other manuscripts, because although the isolated reading of C could preserve the reading of β, it could also represent a variant introduced by the scribe of C. Nevertheless I do frequently prefer the isolated reading of C to the consensus of the other manuscripts, and I feel free to make that choice because the transmission of the text makes it entirely possible that these isolated variants in C in fact preserve the original reading of the text.

On the evidence of the stemma, I usually choose the reading with CP₂To against P₁Tr, but the scribe of δ appears to have been a wizard at the felicitous conjecture, so there are a few places in which I have preferred the reading of P₁Tr or of P₁ alone to the unanimous witness of the other manuscripts. In these cases, I have included what is evidently not original in the text and listed what is not a common error as a variant.

The stemma has not accounted for the infrequent variants in which CToTr ≠ P₁P₂, but since I have found very little agreement between C and either To or Tr to indicate
contamination, the agreement of CToTr most likely shows the reading of both $\beta$ and $\gamma$, and therefore of $\alpha$ as well. In these cases, I read with CTtoTr. In a few cases, I have found no variant that makes sense, and I have supplied conjectures in angle brackets and listed all variants in the apparatus. The reason for these choices will be clear to anyone who reads the text.

2.2 Title

There is no agreement among the five manuscripts as to the title. To gives none. C calls the text the “summa questionum theologica a magistro Martino compilata.”\textsuperscript{34} P\textsubscript{1} calls it the “compilatio questionum theologica secundum magistrum Martinum.”\textsuperscript{35} P\textsubscript{2} employs “questiones theologica secundum magistrum Martinum.”\textsuperscript{36} Tr has a fourth suggestion: “sententie a magistro Martino e multis et diuersis autenticis in unum collecte et congruis distinctionibus ordinate.”\textsuperscript{37}

It appears that the titles in CP\textsubscript{1},P\textsubscript{2} derive from the $\beta$ tradition, while the $\gamma$ tradition may not have had a title: ToTr do not appear to have had titles originally. To does not have one now, although this may be due to the fact that the first folio is trimmed to the very top of the ruling: the initial capital C is missing its upper curve, and perhaps a title and attribution went with it.\textsuperscript{38} The title which Tr has appears to have been added later, because it is in a different hand and is not included in the ruled space.

\textsuperscript{34} 9ra
\textsuperscript{35} 61ra
\textsuperscript{36} 267ra
\textsuperscript{37} 1ra
\textsuperscript{38} Toulouse, BM, Ms. 209, 1r.
In its original form, this work circulated without a title, but I feel the need of one now, as did the medieval scribes. I have followed the lead of P₁ and called the text the *Compilatio questionum theologie*. There are several reasons for this choice. For one thing, the elements of this title occur also in the titles of other manuscripts. CP₁P₂ agree in describing the work as “questiones theologie”, so this part of the title is fairly well attested. Although the word “compilatio” does not occur in other titles, C says that the work was “compilata,” while Tr emphasizes this quality of the work as well in different words: “e multis et diuersis autenticis in unum collecte et congruis distinctionibus ordinate.” Additionally, this title agrees with Martinus’ own description of the work in his prologue, in which he refers to his text as a *compilatio*: “hec compilatio ceteris longe est utilior...”³⁹ Thus although “summa” or “sententiae”, the titles employed by C and Tr respectively, have an immediate appeal because they are now more common names for works in this genre, “compilatio” seems to agree more broadly with what scribes and the author saw in the work.

Using the title from P₁ has the additional benefit of being consistent with more recent scholarship, which employs that title more than any other.⁴⁰ This preference

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³⁹ C 9ra

results more from the fact that \( P_1 \) is the manuscript most respected among those consulted than from a consideration of the merits of the title, but the choice was serendipitous.

2.3 Divisions of Text

The original text seems to have had at least two levels of division: sections marked off by large initial capitals in colored ink and sections within these probably marked off by paraph marks. The text may also have had a more minor division, probably also marked off by paraph marks but somehow distinct from the second division, if they existed at all. The sections marked off by large initial capitals are consistent in all manuscripts except in one instance.\(^1\) Throughout this commentary I have referred to these sections as “chapters”, and I have numbered them, counting the chapter which begins discussing signs at the beginning of my edition as 1. The beginnings of these chapters are also marked by rubricated titles in \( CP_1P_2 \). ToTr consistently omit these titles, while the titles in \( P_2 \) are often at variance with those in \( CP_1 \).

\( CP_1 \) distinguish a second level of division of text by starting a new line and a rubricated initial. C always begins a new line at this point with a large red or blue paraph mark in the margin and almost always gives a rubricated title. \( P_1 \) also begins a new line and prints the initial capital (almost always an “I” for “item”) in red or blue and enlarged relative to the rest of the text, but not exceeding the height of one line. There is therefore no risk of confusing these initials with the chapter divisions. \( CP_1 \) agree in where these

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\(^{41}\) In the only exception, Tr omits the initial capital at the beginning of 19.
divisions occur. The other manuscripts also mark divisions at these points. ToTr have many paraph marks within the text, but never fail to place one at the points where CP1 have their major subdivisions. Many identical paraph marks indicate other sense breaks in these manuscripts, however, and there is no indication that the divisions marked in CP1 were more significant than the other divisions of text. Much of P2 has paraph marks placed identically within the text to the placement in ToTr, but P2 does not have any paraph mark or other mark of division of text within the chapters throughout most of the section which I have edited. The part of the manuscript copied by the first hand (ff. 267-330) includes paraph marks which match those in ToTr. The second hand (ff. 331-64) does not include any paraph marks until 359rb, where they resume and again match ToTr. Possibly the scribe was confused by discrepancy between his two exemplars, which presumably each reproduced the divisions of their respective traditions.

The major subdivisions distinguished in CP1 but also preserved in all the manuscripts appear to have been original to the text. In my edition, I have acknowledged the location of this second level of division of text by introducing section numbers in my text at these places. I have also included the rubricated title given in C. Although these titles were not in the original manuscript, they are interesting and potentially useful reflections of what an early reader thought was useful about the text.

C also preserves a third level of division of text. These divisions consist in paraph marks in the line, and usually do not occur at the beginning of a line. As I mentioned above, ToTr and P2 (except on ff. 331-359ra) have many paraph marks which are indistinguishable from the second level of divisions. C usually has paraph marks at the same places as P2ToTr, but also has many more paraph marks which are indistinguishable
from these. Thus, although it is possible that these minor divisions were in the original
text, it is also possible that both C and γ introduced more divisions of text independently,
but while C maintained a distinction between the original ones and the ones added, γ used
the same mark for each. The coincidence in the placement of these new marks, with C
having one at nearly every place γ has one, can be accounted for by the fact that both
scribes divided the text at breaks in sense, and by the fact that C employed paraph marks
more liberally, and therefore did not miss very many of the places γ placed a paraph
mark.

I have not intentionally introduced any indication of these divisions in my edition,
but because they correspond well to the breaks in sense in the text, almost every place in
which there is a paraph mark in ToTr I begin a new paragraph, although I also begin new
paragraphs in many places where there is no paraph mark in ToTr. On the other hand,
there are many places where C has a paraph mark but I do not begin a new paragraph.

As I noted in the description of P₁, that manuscript divides Martinus’ work into
four books. I do not consider them original to the text.⁴² P₁ is the only manuscript to have
such divisions, and even in P₁, the notes distinguishing the books seem to be an
afterthought and were not a part of the original copying. For one thing, the books do not
begin at the beginning of a new quire, as was common practice in copying books of
sentences. They do not even begin at the top of a new page. Furthermore, the divisions of
the books are not actually within the ruled space but are only in the upper margin. The

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⁴² R. Heinzmann, however, preserves them in his edition of the tituli: Die “Compilatio
quaestionum theologiae secundum Magistram Martinum” (Mitteilungen des Grabmann-Instituts der
Universität München 9), München 1964. For more on this edition, see below, the section of previous
editions.
first opening to have “liber iii” written at the top may therefore be judged to contain the beginning of the fourth book, but the place within the opening where that book allegedly begins is not marked and must be inferred.

Dividing the text into four books is presumably an attempt to bring Martinus’ *Compilatio* into accordance with Peter Lombard’s *Sententiae*, although the fact that Martinus follows Peter of Poitiers’ order more closely than Peter Lombard’s complicates this attempt with regard to the location of the virtues and penance. The first of these “books” marked in P₁ deals with God and the Trinity (ff. 61ra-76rb); the second deals with angels, sin, virtues, penance, grace, and the ceremonial law (76va-119rb); the third book deals with Christ and a few more virtues (119va-128ra); and the fourth with sacraments and eschatology (128rb-141va).

In his *énunération* of theological summas, Glorieux states that Martinus’ text has three parts: 1. *De Deo uno et trino*; 2: creation, sin, virtues and gifts, and incarnation; 3 *De signis*, namely the sacraments followed by the last things. The manuscripts contain no indication that these are the three divisions of text, however. The general title for the supposed first division, “De deo uno et trino” does not occur in any of the manuscripts. Instead Martinus embarks directly on his first question: “hic probatur unum esse principium rerum.” The beginnings of the supposed second and third sections are not marked off any differently than the beginning of any other chapter. A brief section on signs does appear at the beginning of the supposed third part, and in P₂ this chapter is entitled “De signis.” There is, however, no reason to suppose that this title includes the

43 “Sommes théologiques,” in *Dictionnaire de théologie catholique* 14, Paris 1939, 2341-63, esp. 2361.
eschatology; in fact it may not have been intended as the title of the section on the sacraments, but only the title of the discussion of different kinds of signs. Division of Martinus’ treatment into either three or four books represents a later interpretation of the text. The original text did not have any divisions larger than the chapter divisions.

2.4 Titles of Divisions of Text

As I mentioned above, each of the major divisions of text has a rubricated title in CP₁P₂. I have included these titles as the titles for the chapters. Additionally, C includes rubricated titles for most of the minor divisions of text. These titles do not occur in any other manuscript and are not original to the text, but I have retained them in the edition has helpful markers. In each case, I have noted in the apparatus that these titles do not occur in the other manuscripts. In places where I thought it helpful, I have inserted titles which are not in any manuscript. I have marked these with angle brackets.

2.5 Respondeo vs. Responsio

All manuscripts make use of an abbreviation which is an R with a slash across its tail. This abbreviation has many uses in gothic script, but in this context it has usually been expanded as either respondeo or responsio. Johannes Gründel⁴⁴ and Richard Heinzmann⁴⁵ opt for the former, while Artur Landgraf,⁴⁶ Ludwig Hödl,⁴⁷ and Nathan


⁴⁵ Die Unsterblichkeit der Seele und die Auferstehung des Leibes (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 40.3), Münster i.W. 1965, 44-48, 177-86.

⁴⁶ “Quelques collections de Quaestiones de la seconde moitié du XIIe siècle”, in RTAM 6 (1934), 368-93, esp. 388-89, and throughout Dogmengeschichte der Frühscholastik, Regensburg 1952-1956. See list of transcribed texts below.
Munsch\textsuperscript{48} choose the latter. Damien Van den Eynde employs another defensible choice, \textit{respondetur}, probably because he is comparing Martinus’ text to that of Simon of Tournai’s \textit{Disputationes}, and the editor of Simon uses \textit{respondetur} at these places.\textsuperscript{49} Gilles Couvreur and Johannes Schneider avoid the issue by expanding the abbreviation “resp.”\textsuperscript{50} Although it makes little difference in how the text reads, I have decided that \textit{respondeo} is the best expansion for this abbreviation, because in a few instances it conjugates. Thus the manuscripts have four instances of “\textit{Rent}”\textsuperscript{51} and one of either “\textit{Remus}” or “\textit{Retur}”, depending on the manuscript.\textsuperscript{52} Furthermore, in two other occurrences it seems to be part of a sentence which demands a verb: “\textit{Respondeo cum Alexandro tertio in quadam decretali eum esse priuandum officio et beneficio}”\textsuperscript{53} clearly requires a verb to govern the indirect statement, while “\textit{respondeo quod non},” makes more sense than “\textit{responsio quod non}.”\textsuperscript{54} Therefore, I have employed \textit{respondeo} to expand this ambiguous abbreviation.

\textsuperscript{47} \textit{Die Geschichte der scholastischen Literatur und der Theologie der Schlüsselgewalt} (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 38.4) Münster i.W. 1960, 248-50.


\textsuperscript{49} “Notices sur quelques ‘Magistri’ du XIIe siècle”, in \textit{Antonianum} 29 (1954), 129-42, esp. 138-40.


\textsuperscript{51} 8,89.134; 10,76.108.

\textsuperscript{52} 20,11.

\textsuperscript{53} 10,63.

\textsuperscript{54} 14,134.
2.6 Authorities

I have chosen to mark biblical authorities in italics and other authorities with quotation marks. Citations of the Psalms give both the numbering of the Septuagint and the modern number; the latter are in parentheses. Besides marking authorities, quotation marks may indicate phrases which Martinus describes people saying, such as “hoc est corpus meum” which are not properly authorities. Italics also have a second usage. Martinus often discusses the meaning of a particular word, especially in texts derived from Simon of Tournai, as in “Queritur quid demonstrauit Christus hoc pronomine hoc cum ait, ‘hoc est corpus meum etc.’” In order to assist in reading, I have italicized words which do not function grammatically in the sentence but rather are themselves under discussion in the sentence.

2.7 Previous Partial Editions

Although no edition of Martinus’ work has been published, a number of transcriptions from one or both of the Paris manuscripts have appeared in scholarly literature. Below I have a bibliography of works which have included text transcribed from Martinus’ Compilatio, and below that a list of all transcriptions of texts. I have put these texts in the order in which they appear in Martinus’ work, listing first the

55 1,205-7.

manuscripts and folio numbers consulted for the transcription, then the title of the
question or the first words transcribed, and an abbreviated title of the source in which
they appear. Finally, where applicable, I have given the reference to the chapter and line
numbers in which that text appears in my edition. I have not included on this list,
however, a work which covers the whole length of Martinus’ work, Richard Heinzmann’s
dition of the tituli. This edition gives the titles which appear in P₁ and lists variants
found in P₂ in the apparatus. It also lists the folio numbers on which the titles appear in
P₁, P₂, and Tr (which he calls T). Although I have listed below Grabmann’s
transcription of the prologue, Grabmann also transcribes the titles of a number of
chapters, which I have not listed. I have also not listed Nathan Munsch’s unpublished
edition of the Christological questions, which includes several of the texts in the
transcriptions listed below; the folios it covers are: P₁ 119va-122vb, P₂ 340va-344ra.

J.W. Baldwin Masters, *Princes, and Merchants: the Social Views of Peter the Chanter
G., Couvreur, *Les pauvres ont-ils des droits? Recherches sur le vol en cas d’extrême
nécessité depuis la Concordia de Gratien (1140) jusqu’à Guillaume d’Auxerre
H.-F. Dondaine, “L’objet et le ‘medium’ de la vision béatifique chez les théologiens du
XIIIe siècle”, in *RTAM* 19 (1952), 60-130.
M. Dulong and P.S. Moore, *Sententiae Petri Pictaviensis* 1 (Notre Dame Publications in
Mediaeval Studies 7), Notre Dame, IN 1943.
J. Gründel, *Die Lehre von den Umständen der menschlichen Handlung im Mittelalter
(Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 39.5)
Münster i.W. 1963.
R. Heinzmann, *Die Unsterblichkeit der Seele und die Auferstehung des Leibes* (Beiträge
zur Geschichte der Philosophie und Theologie des Mittelalters 40.3), Münster
i.W. 1965.

57 R. Heinzmann, *Die “Compilatio quaestionum theologiae secundum Magistrum Martinum”
(Mitteilungen des Grabmann-Instituts der Universität München 9), München 1964, 4-5.

A.M. Landgraf, “Quelques collections de *Quaestiones* de la seconde moitié du XIIe siècle”, in *RTAM* 6 (1934), 368-93.


———“Notices sur quelques ‘Magistri’ du XIIe siècle”, in *Antonianum* 29 (1954), 129-42.


**Transcriptions of Texts from Martinus:**

- *P*₂ 268ra; Cum nomina creaturarum ad notandum creatorem transumantur: Schneider, *dreieinigen Gott*, 33.
- *P*₂ 277vb; De significatio huic nominis “persona”: Schneider, *dreieinigen Gott*, 128.
- *P*₂ 278rb; Concedunt tamen isti nomen persone: Schneider, *dreieinigen Gott*, 129.
- *P*₂ 278rb; Item de significatio huic nominis “persona”: Schneider, *dreieinigen Gott*, 129.
- *P*₂ 279va; Cum dicitur: Deus Trinitas est, dubitatur: Schneider, *dreieinigen Gott*, 196.
- *P*₂ 279vb; Hunc articulum quidam satis acute decidunt: Schneider, *dreieinigen Gott*, 183-84.
- *P*₂ 280ra; Pater de se genuit alterum in persona et se: Schneider, *dreieinigen Gott*, 66.
- *P*₂ 280va; An proprietates sint in essentia: Schneider, *dreieinigen Gott*, 158.
P₂ 280vb; secundum potentiam, qua potest generare: Schneider, *dreieinigen Gott*, 73.
P₂ 281rb-va; Resp.: Unum principium sunt Pater et Filius: Schneider, *dreieinigen Gott*, 220.
P₂ 282rb; dicit enim Boetius in libro de Trinitate: Schneider, *dreieinigen Gott*, 176.
P₂ 283r; Responsio: Spiritus Sanctus dicitur datus fuisse pluries: Landgraf, *Dogmengeschichte* 1.2, 54.
P₂ 283ra-rb; memini me didicisse a quibusdam unam dumtaxat Spiritus sancti esse processionem: Schneider, *dreieinigen Gott*, 97.
P₂ 283va; Pater et Filius diligunt se Spiritu sancto: Schneider, *dreieinigen Gott*, 89.
P₂ 283va-va; Dicunt alii eandem notionem predicari: Schneider, *dreieinigen Gott*, 89.
P₁ 74ra; sed aliud scilicet paternitatem esse et ea patrem: Baldwin Masters 2, 47.
P₂ 284rb; respective tamen dicitur de Filio: Schneider, *dreieinigen Gott*, 199.
P₂ 284vb; Item Hilarius: “Nativitatis proprietas est veritas”: Schneider, *dreieinigen Gott*, 159.
P₂ 284vb; Item proprietates sunt ab eterno: Schneider, *dreieinigen Gott*, 159.
P₂ 285ra; Item auctoritas dicit: “quicquid est in Deo Deus est”: Schneider, *dreieinigen Gott*, 159-60.
P₂ 285vb; Quedam proprietatis Patris est innascibilitas: Schneider, *dreieinigen Gott*, 209.
P₂ 297r; Responsio: Licet non posset homo in illo statu non peccare mortaliter: Landgraf, *Dogmengeschichte* 1.1, 113.
P₁ 84ra; P₂ 297rb; Anima itaque licet sit res simplex: Heinzmann, *Unsterblichkeit*, 49.
P₂ 299r; Si non habet annos discretionis et malitia supplet etatem: Landgraf, *Dogmengeschichte* 4.2, 249.
P₂ 300v; Quod ergo dicit Augustinus: nullum peccatum adeo veniale: Landgraf, *Dogmengeschichte* 4.2, 29.
P₂ 302r; Solutio: otiosi actus peccata sunt venalia: Landgraf, *Dogmengeschichte* 4.2, 128.

P₂ 302v; Item, huius actionis, inquantum est actio: Landgraf, *Dogmengeschichte* 1.2, 232.

P₂ 303r; Unde queritur quota ebrietas sit mortale peccatum: Landgraf, *Dogmengeschichte* 4.2, 16.

P₂ 304r; Item, quod omnis actio sit a Deo: Landgraf, *Dogmengeschichte* 1.2, 220-21.

P₂ 304v; Si forte quis negaverit illam: non est aliqua res mala: Landgraf, *Dogmengeschichte* 1.2, 231.

P₂ 306v; Cum ergo dicitur: penes voluntatem est omne meritum: Landgraf, *Dogmengeschichte* 1.2, 87-88.

P₁ 92rb, P₂ 307va-307vb; An ubi est par affectus, par sit meritum praemii uel supplicii: Gründel, *Umständen*, 201-2.

P₁ 92r-v, P₂ 307v-308r; Utrum liceat patrem et matrem alere furto and Utrum elemosina possit fieri de substantia male acquisita: Couvreur, *Les Pauvres*, 297-302.

P₂ 308v; Sed nullum opus est bonum: Landgraf, *Dogmengeschichte* 1.1, 60.

P₂ 313v; Alii dicunt peccata dimissa redire non reatu: Landgraf, *Dogmengeschichte* 1.1, 146.

P₂ 316r; Solutio: ante infusionem gratie non est homo dignus gratia: Landgraf, *Dogmengeschichte* 1.1, 275.

P₂ 316r; Quod autem dicitur quis cum nimia affectione: Landgraf, *Dogmengeschichte* 4.2, 238.

P₂ 319v; Alii dicunt peccata dimissa redire non reatu: Landgraf, “Udo und Magister Martinus,” 63.

P₂ 319v; Alii dicunt indistincte occasione actus mortalis: Landgraf, *Dogmengeschichte* 4.1, 207.

P₁ 101ra; Item confessio necessaria est ad salutem: Anciaux, *Pénitence*, 411.


P₁ 101va-vb; Quod sint claues et quot sint: Anciaux, *Pénitence*, 563-64.

P₁ 101vb; Et nota quod sacerdos dicitur tribus modis dimittere: Anciaux, *Pénitence*, 516-17.

P₂ 321r; Quod autem excommunicatus sit quodammodo: Landgraf, *Dogmengeschichte* 4.2, 63.

P₂ 321v; Triplex est excommunicatio: Landgraf, *Dogmengeschichte* 4.2, 63.

P₂ 322ra; Item sicut prohibitum est ne cum excommunicatis: van den Eynde, “Notices,” 139.

P₂ 322vb; Econtra videtur quod audiendi sint: van den Eynde, “Notices,” 139.

P₂ 324r; Servilis timor est, cum propter timorem gehenne: Landgraf, *Dogmengeschichte* 4.1, 315.

P₂ 324r; Item usus servilis timoris est timere: Landgraf, *Dogmengeschichte* 4.1, 306.
P₂ 324v; Quod autem dicitur servilem timorem excludere caritatem: Landgraf, *Dogmengeschichte* 4.1, 305.

P₂ 325r; Item, ille ex eo, quod serviliter timet: Landgraf, *Dogmengeschichte* 4.1, 302.

P₂ 325r; Responsio: Potest dici gratuittum servilis: Landgraf, *Dogmengeschichte* 4.1, 349.

P₁ 105ra; An virtutes substantiales sint vel accidentales: Warichez, *Disputationes*, xxxii.

P₂ 325v-326r; Quid sit virtus: Landgraf, *Dogmengeschichte* 4.1, 302.

P₂ 326r; An dona Spiritus sancti sint virtutes: Landgraf, *Dogmengeschichte* 4.1, 302.

P₂ 327r; Responsio: hoc nomen prodigalitas: Landgraf, *Dogmengeschichte* 4.1, 122.

P₂ 329v; Responsio: Si gratuitas referatur ad signum, verum est, quod obsequia: Landgraf, *Dogmengeschichte* 1.2, 86-87.

P₂ 331r; Alii sic: Duplex est voluntas, affectionis et effectionis: Landgraf, *Dogmengeschichte* 1.2, 93.


P₂ 335r; Solutio: ad hoc dicit quidam, quod illo verbo Bede non assignatur differentia: Landgraf, *Dogmengeschichte* 3.1, 50.

P₂ 335v; Item, inquit Beda: iustitia legis suo tempore custodita: Landgraf, *Dogmengeschichte* 3.1, 42.

P₂ 335v; Item in canone misse legitur: placeat tibi, Domine, sacrificium istud: Landgraf, *Dogmengeschichte* 3.1, 50.

P₁ 116r, P₂ 337r; De furto et aliis consequentibus hoc articulum: Couvreur, *Les Pauvres*, 302-305.

P₂ 340r; Illud vero solet dici de substantia sacramenti: Landgraf, *Dogmengeschichte* 3.1, 165.


P₁ 120rb; Definitio enim personae: Heinzmann, *Unsterblichkeit*, 49.

P₁ 120va; Sicut enim divina et humana: Principe, *William*, 205.


P₂ 344v; Qualitatis scientie in duobus consistit: Landgraf, *Dogmengeschichte* 2.2, 74-77.

P₂ 344v; Dicit Alexander tertius, uir mire perspicacitatis: Landgraf, *Dogmengeschichte* 2.2, 53.

P₂ 344v; Item, Christus secundum quod homo habuit scientiam dialectice: Landgraf, *Dogmengeschichte* 2.2, 118-19.

P₂ 345v-346r; Maiori motu movebatur Christus ad diligendam beatam virginem: Landgraf, *Dogmengeschichte* 2.2, 224-26.

P₂ 348v; Responsio: Christus minus bono modo minusque congruenti: Landgraf, *Dogmengeschichte* 2.2, 267.

P₂ 348v; Et nota, quod non fuit convenientior modus: Landgraf, *Dogmengeschichte* 2.2, 274.

P₂ 348v; Quidam tamen circa hunc articulum VI distinguunt propositiones: Landgraf, *Dogmengeschichte* 2.2, 282.

P₁ 127va; Cum non nisi per unionem corporis et animae homo sit: Heinzmann, *Unsterblichkeit*, 49.

P₁ 127vb; An anima Christi tunc erat persona: Heinzmann, *Unsterblichkeit*, 49.
P₁ 128r; Sed notandum, quod membrum ecclesie aliud sanum; Landgraf, *Dogmengeschichte* 4.2, 63.

P₂ 349va; Signorum alia sunt sacramenta, alia non: van den Eynde, *Définitions*, 66; 1,1-23.

P₁ 128vb; Dicunt quidam quod tunc transsubstantiatio primo panis in carnem: Megivern, *Concomitance*, 155-56n; 1,227-33.


P₁ 128vb; Prima transsubstantiatio potest fieri de facto: Megivern, *Concomitance*, 155; 1,256-58.

P₁ 129ra; Tres propositiones hic possunt notari: Megivern, *Concomitance*, 156; 2,65-70.


P₂ 352r; Baptismus est sacra supra hominem aquarum infusio: Landgraf, *Dogmengeschichte* 3.2, 13; 22; 4,35-36.

P₂ 352r; Sed secundum hanc diffinitionem uidetur quod baptismus transeat: Landgraf, *Dogmengeschichte* 3.2, 22; 4,36-43.

P₂ 352r; Ad illud, quod tertio quesitum est, dicas, quod hoc sacramento non est predicamentalis res: Landgraf, *Dogmengeschichte* 3.2, 22; 4,44-56.

P₂ 352r; causa non ex qua, sed sine qua non: Landgraf, *Dogmengeschichte* 3.2, 123; 4,63.

P₂ 352r; Item, potentiam baptizandi: Landgraf, “Quaestiones,” 388-89; 4,70-83.

P₂ 352v; Item, demonstretur quis, qui ficte accedit ad baptismum: Landgraf, *Dogmengeschichte* 3.2, 101; 4,212-15.

P₂ 352v; Item baptismo illo iste fictus meretur supplicium: Landgraf, *Dogmengeschichte* 3.2, 100; 4,216-17.

P₂ 352v; Item ponatur quod fictio modo recedat: Landgraf, *Dogmengeschichte* 3.2, 100; 4,219-27.

P₂ 352v; Item videtur, quod ficte accedenti dimitatur peccatum: Landgraf, *Dogmengeschichte* 3.2, 99-100; 4,243-62.

P₂ 352v; Item, queritur, si aliquis possit se ipsum baptizare: Landgraf, *Dogmengeschichte* 3.1, 252; 4,264-68.

P₁ 131r; Sacramenta in solis electis efficiunt: Landgraf, *Dogmengeschichte* 3.2, 188; 5,3-11.

P₂ 352v; Dixerunt antiqui, quod ista aqua est baptismus: Landgraf, *Dogmengeschichte* 3.2, 9; 5,20-21.

P₂ 352v; Hec autem est sententia pluriomorum: Landgraf, *Dogmengeschichte* 3.2, 13; 5,23-25.

P₂ 352v; Unde concedunt isti quod opus hominis est causa remissionis peccatorum: Landgraf, *Dogmengeschichte* 3.2, 21; 5,25-30.


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P₂ 353r; Cum ea necessitas institerit, ut baptizandus moriatur: Landgraf, *Dogmengeschichte* 3.1, 247; 7,4-7.


P₂ 355ra; ...cum alexander III definiat quod: van den Eynde, “Notices,” 139; 10,134-36.


P₂ 357va; Respondetur hic quoniam immisit saporem constitutio Alexandri: van den Eynde, “Notices,” 139-40; 13,264-76.

P₂ 357va; Et in extravagante Super eo: van den Eynde, “Notices,” 140; 14,19-22


P₂ 358rb; ...quaeritur si sponsa nec debitum reddere velit: van den Eynde, “Notices,” 140; 15,118-22.


P₂ 359ra; De ista decretali quaeritur: van den Eynde, “Notices,” 140; 17,168-73.

P₂ 360rb; Et nota quod propinqui qui iurant: van den Eynde, “Notices,” 140; 21,21-25.


P₁ 140vb; Alii dicunt, quod in patria erit alius modus dilectionis: Wicki, *Seligkeit*, 27.

P₁ 141r, P₂ 364rb-va; De modo cognoscendi Deum in via et in patria: Dondaine, “Vision béatifque,” 102-5; Landgraf, *Dogmengeschichte* 1.1, 174 (from P₁ only).

Signorum alia sacra, alia non; non sacrorum alia sunt naturalia, alia positivia. Naturalia sunt quando per antecedens significatur consequens, ut rubore matutino imber futurus, uel per consequens antecedens, ut fumo uel cinere ignis, melle fauus. Positiuorum uero quoddam nec est sacrum nec sacre rei signum, ut circulus uini uenalis. Quoddam uero est non sacrum sacre rei signum, ut eneus serpens in palo. Non erat res sacra, eum enim fregit idolatrie persecutor Ezechias. Tamen erat signum rei sacre quia pendentis Christi in cruce. Quoddam uero et est sacrum signum et sacre rei, ut sacra baptismi ablutio est sacrum signum sacre mundationis anime.

Omne uero sacrum signum uel non sacrum, dum tamen rei sacre signum sit, sacramentum dicitur: non sacramentum rei sacre ueteris testamenti, sacrum signum rei sacre noui testamenti sacramentum dicitur. Differunt itaque sacramenta ueteris et noui testamenti, quia sacramenta ueteris testamenti non sunt signa sacra quia non iustificantia, tamen sunt rei sacra, quia rem sacram significantia. Sacramenta noui testamenti sunt sacra quia iustificantia, et rei sacra quia sacram rem significant. unde AUGUSTINUS:

5 rubore…6 futurus] Cf. Mt. 16.2-4: dicitis...plane "hodie tempestas, rutilat enim triste caelum." Faciem ergo caeli diiudicare nostis; signa autem temporum non potestis. 10 eum…11 Ezechias] Cf. IV Rg. 18.4

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"que significandi gratia tantum instituta sunt, solum signa sunt, non sacramenta, sicut sacrificia carnalia et obseruantie ceremoniales."

Inter sacramenta autem noui testamenti sanctius est et dignius sacramentum altaris. De uirtute eius non hesitat catholicus, de eo tamen dignum et utile disputare ducit theologus, ut sit paratior elidere hereticorum importunos assultus.

Circa igitur hunc articulum fidei disputatur sic: quod ante consecrationem est panis, post consecrationem est corpus Christi, auctoritas est AMBROSUS. Ergo post consecrationem substantia panis est corpus Christi. Ergo est unitum uerbo. Ergo post consecrationem substantia panis est unita uerbo, et sic cotidie fit noua unio alicuius cum uerbo.

Respondeo: auctoritas sic est intelligenda, ut uerbum essentie exponatur per uerbum notans conuersionem, et ubicumque legeris circa hunc articulum uerbum essentie, scilicet est uel fuit uel erit, per aliquod horum expone: mutatur, transit, transsubstantiatur, conuertitur, uel fit. Inter

\[24\text{ que}...26\text{ cerimoniales}] \text{ Petrus Lombardus, Sententiae 4 di.1, 233. The Lombard does not attribute this statement to Augustine, although the next paragraph begins with a citation of Augustine. In this misattribution, Martinus follows Simon Tornacensis. } 32\text{ quod}...34\text{ Christi}] \text{ Attributed to Ambrose in Decret. Grat., de cons. di.2 c.55 (Friedberg I, 1334-35) and Petrus Lombardus, Sententiae 4 di.10, 295. Cf. Ambrosius (dubium), De sacramentis 4.4, CSEL 73, 53.}
que nullum uerbum adeo proprie sicut hoc uerbum transsubstantiare, quia substantia in substantiam transsubstantiatur. Cum uero dicitur, "panis formatus est in corpus Christi," non est expresse dictum, quia non transit forma in formam. Similiter inpropris ponitur hoc uerbum fit cum dicitur, "ex pane fit corpus Christi." Non enim sic intelligas fit sicut intelligis cum dicitur "ex farina fit panis."

Hic enim remanet quod a philosopho yle uel ypostatis | dicitur, et tunc proprie dicitur quid fieri in sacramento altaris. Non est ita, quia non remanet panis substantia.

Item, panis iste convertetur in corpus Christi; ergo conversione illa erit corpus Christi; ergo aliquid erit corpus Christi quod modo non est corpus Christi; quod ergo non est natum de Virgine erit corpus Christi.

Item, corpus Christi fuit panis qui a sacerdote positus est in altari et fuit ille alius; ergo fuit unus et alius panis; ergo fuit unum et alius. Solutio: quicquid sit de aliis verbis que predicta sunt, nequaquam concedendum est "panis iste..."
erit corpus Christi"; uidetur enim quod facta variatione proprietatum maneret identitas essentie uel substantie secundum naturam uerbi substantiiu. Potest tamen concedi, "panis transsubstantiacione erit corpus Christi," non tamen "erit corpus Christi."

Item, corpus Christi ex pane fit; non ergo tantum ex purissimis sanguinibus beate uirginis factum est corpus Christi. Non sequitur. *Ex* enim prepositio notat conversionem in prima propositione, in conclusione uero naturam; et ideo est factum quod illatum est.

Nota quod corpus Christi ideo dicitur uideri, quia forma illa panis sub qua uelatur uidetur, sicut dicitur quod manus uelata cirotheca uel pes tectus aluta uidetur. Cum ergo aliquod uerbum uel ad sensum pertinens uel corruptionem aliquam inuenies de corpore Christi dictum, non ad ipsum essentialiter sed ad formam referendum est et alia accidentia, scilicet saporem, pondus, et huiusmodi. De quibus si quesieris in quo subiecto fundantur, credo respondendum quod AUGUSTINUS S u p e r I o h a n n e m ait. Inquit enim

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66 *Item...69 conclusione*] Petrus Pictaviensis, *Sententiae* 5 cap.12, Garv. (Peter), 41 (PL 211, 1248C-D): "Item, corpus Christi fit ex pane, ergo non tantum de purissimis sanguinibus Beatae Virginis. Fallacia...cum haec praepositi, *ex*, notet conversionem in priori propositione, postea materiam, scilicet in conclusione."

71 *De...76 est*] Petrus Pictaviensis, *Sententiae* 5 cap.12, Garv (Peter). 43 (PL 211, 1249D-1250A).

77 *De...84 apparebit*] Petrus Lombardus, *Sententiae* 4 di.12, 304; Magister Udo, *Sententiae* 4, Garv. (Udo), 35: "Si vero queratur de accidentibus que remanent, scilicet sapore et pondere, in quo subiecto fundantur, dicunt quidem in aere. Sed melius videtur esse dicendum quod sine subiecto mirabiliter existunt, quia ibi non est substantia nisi corporis et sanguinis dominici que non afficitur illis accidentibus. Non enim corpus Christi talem in se habet formam sed qualis in iudicio apparebit."

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61 enim] *om. CP*; *proprietatum*] *inv. Tr* 62 proprietatum] proprietatis CP; *fit*] *igitur add. P*; *ergo*] *om. P*; *tandum* CP; *factum*] *add. sed exp. To* 63 *prima*] *propria To* 64 *uo*] *autem To*; *naturam* CP; *70 est factum*] *inv. P*; *est*] *et add. Tr* 65 Christi] *om. P*; *uidetur*] *om. P*; *ergo*] *dicitur add. P*; *aliquod*] *uerbi add. P*; *75 Christi*] *om. To*; *dictum*] *om. P*; *dicitur To*; *76 est*] *om. P*; *saporem*] *panis add. C*; *De quibus*] *om. Tr*; *79 Inquit enim*] *om. P*
potius michi uidetur fatendum huiusmodi accidentia esse sine subiecto, quam in subiecto, quia ibi non est substantia nisi corporis et sanguinis domini, que illis non afficitur accidentibus. Non enim corpus Christi intra se habet talem formam, sed qualis in judicio apparet."

[1.2] *An fractio fiat in corpore Christi.*

Item de fractione queritur, an fiat in corpore Christi an non. In corpore non uidetur fieri, nam si cotidie frangeretur, nullum corpus eo miserabilius esset.

Item, Christus carnalem sensum discipulorum redarguit, qui putabant Christi carnem in partes diuidendam et morsibus lacerandam, ut *De cons.* d. ii c. *Prima quidem, inquit, heresis.*

Item, frangi est pati; ergo si corpus Christi frangitur, ipsum patitur. Sed impossibile est hoc consequens; ergo et antecedens; ergo impossibile est corpus Christi frangi.

Econtra sic opponitur: ecclesia approbat confessionem Berengarii, qui resipiscens dixit uerum corpus Christi a manibus sacerdotum tractari, frangi.

Item, siue frangatur siue non, corpus Christi uidetur intuentibus ipsum frangi, sed, ut dicit AMBROSIUS, "nichil falsi putandum est in sacrificio ueritatis, sicut fit in magorum

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80 Petrus Lombardus, *Sententiae* 4 di.12, 304. The Lombard does not attribute this statement to Augustine; the end of the previous paragraph, however, is attributed to Augustinus super Iohannem, and Martinus (or his source) may have assumed that the quotation continued. 89 Christus…

90 [lacerandam] Petrus Lombardus, *Sententiae* 4 di.12, 304, Simon Tornacensis, *Institutiones*, 59va. 91 Decret. Grat., de cons. di.2 c.44 (Friedberg 1, 1330). 100 Martinus may have derived this authority from a number of sources: Simon Tornacensis, *Institutiones*, 59va; Petrus Lombardus, *Sententiae* 4 di.12, 305; Petrus Pictaviensis *Sententiae* 5 cap.12, Garv. (Peter), 44 (PL 211, 1250A). Appears to originate from Guillelmus de Sancto Theodorico *De sacramento altaris* (PL 180, 343C), where it follows a brief quotation from Ambrose, which Peter Lombard must have thought to continue.

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prestigiis ut uideatur esse quod non est;" ergo si ibi uideetur esse fractio, ibi est uera fractio.

Respondeo: in corpore Christi non fit fractio. Dicitur tamen frangi sacramentaliter; unde AUGUSTINUS: "et quidem in sacramento sic fit, nam et hominem dicitur scindere qui uuestem scindit et sub quibus latet, et Deum passum et mortuum credimus, non quia passio uel mors ei inesset, sed quia passa est humana natura sub qua latebat divinitas." Unde dicitur concidisti sacrum meum et circum me letitia. Illud autem Berengarii sic intellige: corpus Christi frangitur, id est, sub diuersis partibus sacramentalibus sumitur. Illud AMBROSII sic intelligendum est: "non est putandum, etc.," scilicet ut uideatur corpus Christi per partes diuidi quod non diuiditur, uel non uideatur aliquid fieri, id est diuisio speciei panis fieri quod non fiat. ALII dicunt quod fractio illa sit in aere. ALIORUM est opinio quod nichil ibi frangitur licet remus in aqua uidetur fractus cum non sit fractus. Quid autem uerius sit igni reliquimus conburendum.

Item, in consecratione, panis desinit esse uel non desinit. Si desinit esse, non fit alium; ergo non fit corpus Christi. Si non desinit esse, ergo uerum erit post consecrationem ipsum esse.

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105 I don't find this authority. 110 Ps. 29.12 (30.11). 121 Item... 129 est[1] Simon Tornacensis, Institutiones, 59rb.

Respondeo: non desinit esse quia incipit esse aliud a se; nec aliud est quod in aliud uersum est, sed id est in quod uersum est. Sed panis factus est corpus Christi; ergo nec desit esse, nec adhuc est, sed corpus Christi in quod uersus est. Tamen quod panis desinat esse | in consecratione uidetur sic posse probari: panis iste est et non erit; ergo panis iste desinit esse. | Non sequitur, quia omissum est tertium membrum, scilicet hoc: non mutatur in aliud. Quo apposito, neecessarum erit argumentum. Instans argumenti: istud est coloratum et non est album; ergo est nigrum. Non sequitur, quia omissum est tertium membrum, hoc scilicet: non est medio colore coloratum. Non est itaque concedendum: "panis iste perit uel corrumpitur," quia perit notat nullam panis esse utilitatem, corrumpitur infirmitatem nature.

Item, in consecratione tali, sic transit essentia in essentiam, quod nec ipsa remanet nec aliquid remanet ex ea; ergo quedam substantia in illa consecratione perit.

Respondeo: non sequitur quod illatum est, tunc enim dicitur perire substantia aliqua cum uersa est in aliam.

Et nota aliud esse commutationem, aliud mutationem, aliud transsubstantiationem. Commutatio est formarum circa subiectum, cum una recedit, ut albedo, alia succedit, ut nigredo. Mutatio est subiecti ex commutatione formarum circa subiectum accidentalium, et crebra est; et substantialium, que rara est et per miraculum, ut in Chana Galilee aqua mutata est in uinum commutatione substantialium circa idem subiectum. Materia enim, subjecta aqua nature, recedente aqua natura, facta est substantia uinee

144 aliud1…171 ipsum] Simon Tornacensis, Institutiones, 59ra.


Item, panis iste erit uel fiet corpus Christi; ergo panis erit aliud quam sit.

Respondeo: neutrum est concedendum, ne si fore uel fieri aliud quam sit dicatur, panis iste subiectum manere et mutari commutatione formarum credatur.

Et nota quod QUIDAM concedunt "iste panis fiet et erit aliud a se," a enim prepositio notat transitionem personarum, id est, diuersitatem subiectorum. Sed hoc iunctura aliud quam mutationem subiecti ex commutatione formarum significat. Quare non concedunt istam <conclusionem>: "panis iste fiet uel erit aliud quam sit".

Item, substantia panis transit in corpus Christi et fit corpus Christi; ergo est uel erit corpus Christi quod non fuit corpus Christi. Vel sic: substantia panis fit corpus Christi; ergo uerum est quod substantia panis fit substantia corporis Christi. Instans: album erit nigrum; ergo uerum erit album esse nigrum. Vel sic: glacies transit in cristallum; ergo uerum erit glaciem esse cristallum.

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Item, cum dicitur in consecratione "hoc est corpus meum," hoc pronomine aliquid demonstratur: panis uel corpus Christi. Si panis, et de eo uere dicitur quod sit corpus Christi, ergo panis est corpus Christi. Hoc autem est falsum. Si corpus Christi demonstratur, ergo iam ibi est corpus Christi antequam uerba illa que instituta sunt ad consecrationem faciendam omnino prolata sint; ergo sine uerbis illis potest fieri transsubstantiatio quod non est uerum.

Solutio: sacerdos non profert hoc pronomen *hoc* ad significandum; unde nichil eo pronomine demonstrat sed

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190 Item... 214 ] Petrus Pictaviensis, *Sententiae* 5 cap.11, Garv. (Peter), 32-33 (PL 211, 1244A-C): "Item, hoc pronomen *hoc* demonstrative ponitur in ordine istorum verborum: *Hoc est corpus meum*, etc. Ergo aliquid ibi eo demonstratur: aut panis, aut corpus. Si panis demonstratur, et de eo fit sermo, et dicitur vere quod sit corpus Christi, (illa enim locutio nichil nisi verum significat), ergo panis ille est corpus Christi, quod nemo dicit. Si vero per pronomen demonstretur corpus Christi, ergo jam est ibi corpus Christi antequam proferatur verbum, ergo iam aliquid conversum est in corpus Christi antequam verba omnino sint prolata, ergo non propter illorum verborum prolactionem fit transsubstantiatio, aut sine verbs fieri potest; quia antequam proferatur verbum est, prolato hoc pronomine hoc, non potest per ipsum demonstrari corpus Christi quia notandum est ibi donec omnia prolata sint verba que sunt de sacramenti forma. Ideo facile esset hoc solvere dicto quod sacerdos non profert hoc ad significandum (unde nihil eo pronomine demonstrat), sed ad recitandum verba Christi habita ad discipulos in cena pridie quam patet urum; sicut cum sacerdos dicit: *Dixit Iesus discipulis suis: Ego sum lux mundi,* nichil demonstrat hoc pronomine *ego*. Non enim profert verba illa ad significandum. Sed hoc dicto, quod verum est, non minus restat obiectio de Christo qui verba illa protulit ad significandum in cena. Ideo dicendum quod hoc pronomine *hoc* nichil demonstravit donec completa verborum prolacione, quae sunt de forma sacramenti, quod verissimum videtur secundum dialecticorum et grammaticorum facultates, quibus aliter multas quaestiones quae videntur cadere in fallaci ac secundum quid et simpliciter, non est facile solvere, ut: 'omnis homo de quo loquitur est hic; Socrates est homo; ergo Socrates, de quo nemo loquitur, est hic.' Alii dicunt: *Hoc est corpus meum*, id est hoc, scilicet panis iste, iam fiet corpus meum, vel: *Hoc est corpus meum*, id est hoc significat corpus meum; et demonstratur forma panis."
ad recitandum uerba saluatoris habita ad discipulos in cena sic, sicut sacerdos cum dicit, "dixit Iesus discipulis suis, ego sum lux mundi, ego sum pastor bonus," nichil demonstratur hoc pronomine ego.

Hoc dicto non cessat obiectio, quia queritur quid demonstrauit Christus hoc pronomine *hoc* cum ait, "hoc est corpus meum etc." Dicto eum demonstrasse panem uel corpus proprium, oppone ut prius.

Soluto: dicunt QUIDAM quod hoc pronomine *hoc* nichil demonstrauit Christus donec completa esset uerborum prolatio, que sunt de substantia sacramenti.

ALII dicunt quod ibi demonstrata est hoc pronomine forma panis et est sensus "hoc est corpus meum etc.," id est, hoc significat corpus meum.

Item, si prolata hac serie uerorum "hoc est corpus meum etc.," statim sitas sacerdos obmutescens uel morte preuentus, queritur utrum facta sit transsubstantiatio panis in carnem. Quo dicto sic infer: ergo est ibi sanguis. Et est necessarium argumentum istud, quia caro Christi numquam est sine sanguine. Ergo sine transsubstantiacione aliqua uini in sanguinem est ibi sanguis Christi; ergo sine uino potest confici sacramentum altaris; | ergo uinum non est de substantia huius sacramenti. Illud uero solet dici de substantia sacramenti, sine quo non potest confici sacramentum.

Respondeo: dicunt QUIDAM quod tunc primo transsubstantiatur panis in carnem et uinum in sanguinem quando omnino prolata sunt utraque uerba, nec facta est transsubstantiatio panis in carnem donec prolata sunt hoc.

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202 Io. 8.12, Io. 10.11, 14.

uerba: "hoc est corpus meum," nec facta est transsubstantiatio uini in sanguinem donec prolata sunt hec uerba: "hic est calix noui testamenti etc."

Sed contra sic obicitur: in prolacione istorum uerborum "hic est calix etc.," transsubstantiatur panis in carnem et uinum in sanguinem; prolatis tantum hiis uerbis "hoc est corpus meum etc.," nec transsubstantiatur panis in carnem nec uinum in sanguinem. Ergo maioris effectus sunt hec uerba: "hic est calix noui testamenti, etc.," quam illa: "hoc est corpus meum etc." Exemplum: in prolacione ursorum emptoris fit contractus emptionis et uenditionis et perficitur non in prolacione ursorum uenditoris. Ergo uerba emptoris in contractu emptionis et uenditionis maioris sunt effectus quam uenditoris. Vel sic: non in uerbo stipulantis fit stipulatus, sed in uerbo respondentis. Ergo | maioris effectus sunt uerba in stipulatu respondentis quam stipulantis.

ALII dicunt quod in prolacione istorum uerborum "hoc est corpus meum etc.," transsubstantiatur panis in carnem. Sed contra hoc sic obicitur: prius fit transsubstantiatio panis quam uini; ergo illa potest fieri sine ista.

Respondeo: posse dupliciter et sine dupliciter dicitur: posse de facto et posse de debito, et hoc prepositio sine notat instantiam temporis et continuationem. Instantiam, ut cum dicitur "non est dies sine luce," id est, quando dies est, lux est. Continuationem, ut cum dicitur "non est dies sine nocte," id est, nulla dies est cui non continuetur nox. Ergo prima transsubstantiatio potest de facto fieri sine secunda, id est,

233 in...237 sanguinem] Petrus Cantor, Summa 1.61 (AMN 4, 151).
249 ergo...258 secunda] Simon Tornacensis, Disp. XC q.3, 259.
quando non secunda, sed non potest de debito fieri sine secunda, quin continue sequatur secunda.

Item, corpus Christi numquam est sine sanguine, nec sanguis sine corpore. Ad prolationem istorum eterorum "hoc est corpus meum etc.," transsubstantiatur panis in carnem antequam proferantur hec eterba "hic est calix noui testamenti"; ergo tunc corpus Christi cum sanguine est in altari; ergo est ibi sanguis conversione uini in carnem uel non. Si conversione uini in sanguinem, ergo prolatione uel uirtute istorum eterborum, "hoc est corpus meum etc.," et panis in carnem et uinum in sanguinem est conversum; ergo superflue proferuntur hec eterba "hic est calix noui testamenti." Si est ibi sanguis non conversione uini in sanguinem, ergo, cum non sit ibi sanguis nisi conversione, et nulla facta sit ibi conversio nisi panis in carnem, est ibi sanguis conversione panis in carnem.

Quo dicto sic oppone: non plus sanguinis est ibi conversione uini in sanguinem facta quam sit conversione panis facta in carnem; ergo ex habundantia est conversio uini in sanguinem. Non sequitur. Exemplum: non plus huius sacramenti sumitur sub hac specie et sub illa quam sub altera tantum; ergo sumptio illius sacramenti sub altera illarum specierum superfluit.

Non est uerum, quia in sumptione sub specie duplici est misterium, cum enim totus Christus et integer sit sub
alterutra sumitur in utraque, ut ostendatur totam humanam naturam assumpsisse, | ut totam redimeret, scilicet, corpus et
animam. Ergo in duabus speciebus celebrat ecclesia hoc sacramentum, ut anime et carnis resurrectio et utriusque liberatio in nobis significetur, nec plus sub utraque nec minus tantum sub una sumitur hoc sacramentum. "Eadem enim ratio est," ut ait HILARIUS, "in corpore Christi, | que in manna precessit, de quo: *qui amplius collegerat non amplius habebat, nec qui minus parauerat minus inueniebat.*"

[2.1] *Hic queritur an eucharistia efficit quod figurat, et de consecratione.* Hunc argumentum:

Species panis est sacramentum corporis dominici et est sacramentum noui testamenti; ergo species illa efficit quod figurat. Sed species illa figurat corpus Christi; ergo ipsa efficit corpus Christi.

Respondeo: Species panis uel species uini non est sacramentum noui testamenti, sed dicitur sacramentum tam hec species quam illa in ea significacione in qua sacramenta ueteris testamenti dicebantur sacramenta, scilicet ut significantia, non efficientia. Excipitur tamen ab huissmodi

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283 naturam assumpsi[se] | *inv. P_1* | ut...284 speciebus | *om. P_2* | 284 hoc sacramentum | *inv. P_1* | 285 resurrectio | *susceptio ToTr* | 286 in | *om. P_2* | 1 287 tantum | *significetur P_1 insinuetur P_2* | minus tantum | *inv. P_1* | 287 tantum | *sed corr. in tamen P_2 tamen Tr* | 288 que | quod P_1 | 289 amplius² | plus P,P_2 | 1 Hic queritur | *om. P_1* | Hic...2 argumentum | De specie panis et sumptione corporis Christi P_2 | *om. ToTr* | 2 consecratione | continguntur P_1 | 5 figurat | *significat Tr* | illa | *om. P_2* | figurat...Christi | corpus Christi figurat P_1 | 9 ea significacione | *inv. P_1* | in qua | *om. P_1* | sacramental in qua *sup. lin. ins. P_1* | 11 huissmodi | hac P_2
regula sacramentorum ueteris testamenti sacramentum circumcisionis quod suam implebat figuram.

<Utrum unum sacramentum sit an duo.>

Item, species panis est sacramentum carnis Christi, species uini est sacramentum sanguinis. Alia est hec species et alia ista. Allid signifikat hec species et aliu illa; ergo iste due species sunt duo sacramenta. Non est uerum, immo iste due species sunt unum sacramentum dominici corporis et sanguinis. Instans: hec uox albus est nomen, et hec uox alba est nomen. Alia est hec uox albus et alia hec uox alba; ergo sunt duo nomina.

Item, sic obicitur contra hoc: iste due species sunt unum sacramentum corporis uel sanguinis Christi domini uel utriusque. Si sunt unum sacramentum corporis Christi, ergo species uini est sacramentum sanguinis Christi; si sunt unum sacramentum sanguinis, ergo species panis est sacramentum sanguinis.

Respondeo: Neutrum istorum est concedendum: species panis est sacramentum sanguinis, species uini est sacramentum corporis Christi. Sed contra: ille due species sunt unum sacramentum alicuius corporis vel sanguinis vel utriusque. Si sunt unum sacramentum corporis, ergo species uini est sacramentum corporis; si sanguinis, ergo species panis est sacramentum sanguinis. Ideo dicendum quod illa duo sunt unum sacramentum illorum duorum, ita quod neutrum. Et species panis est sacramentum corporis et non sanguinis; similiter species uini est sacramentum sanguinis, non corporis, et hec duo illorum duorum, ita quod neutrum illorum duorum, ita quod neutrum illorum duorum.

15 Item...34 duorum] Petrus Pictaviensis, Sententiae 5 cap.10, Garv. (Peter), 29 (PL 211, 1242B-C): “Item, cum species illa panis sit sacramentum carnis, et species vini sit sacramentum sanguinis, et alia sit hec species quam illa, ergo sunt duo sacramenta; fallacia: alia est prima mersio quam secunda, et utraque est baptismus, ergo duo sunt baptismi, quod falsum est, immo unus. Ita et due species sunt unum sacramentum corporis et sanguinis Christi. Sed contra: ille due species sunt unum sacramentum corporis vel sanguinis vel utriusque. Si sunt unum sacramentum corporis, ergo species vini est sacramentum corporis; si sanguinis, ergo species panis est sacramentum sanguinis. Ideo dicendum quod illa duo sunt unum sacramentum illorum duorum, ita quod neutrum.

sacramentum corporis. Ut ergo declinetur predicta obiectio, dicendum est quod ille due species sunt unum sacramentum illorum duorum, ita quod neutra est sacramentum illorum duorum.

Item, iste sumit totum corpus Christi sub specie panis, idem sub specie uini totum sumit corpus Christi; ergo iste bis communicat. Non est uerum, licet enim idem in utraque specie accipiat, non tamen iteratum uel bis communicat, quia ad aliud representandum sumit hoc sacramentum in ista specie et ad aliud representandum in illa specie. Exemplum: iste profert hoc nomen *Cato* et idem [profert cum dicit *Catonis*]; ergo repetit illud nomen uel bis repetit istud nomen. Non est uerum, non enim est repetitio nisi fiat in eodem casu.

[2.2] *An sub specie panis sumens sacramentum corpus Christi sumat et sanguinem.*

Item, queritur an iste qui sub specie panis tantum sumit hoc sacramentum bibat sanguinem Christi. Quod uidetur, quia sumit sanguinem; ergo comedendo sumit sanguinem uel bibendo. Si comedendo, ergo comedit sanguinem. Eadem ratione potest queri de illo qui sub specie uini tantum communicat, <an> bibit carnum. Hoc autem inconsequenter dicitur, quia distincta sunt uerba que congruunt huic sacramento secundum diuersitatem specierum. Unde *APOSTOLUS*: *Qui sumit indigne iudicium sibi manducat et bibit.* Si bibendo sumit sanguinem, ergo iste qui sub specie panis tantum sumit hoc sacramentum bibit sanguinem.

Respondeo: licet hoc exigat analogia loquendi, tamen talis propria positio dictionum non semper potest obseruari quando fit sermo de sumptione huius sacramenti. Unde

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recipiendum est: iste bibit carnem, comedit sanguinem. Non est hic prophana uerborum nouitas, quia super hunc locum: *accedite ad eum et illuminamini* dicit AUCTORITAS: "manducando crucifixum et bibendo, illuminamur."

Respondeo: tres propositiones hic possunt notari, quarum prima est falsa, hec scilicet: sanguis significatur sub specie panis. Secunda sane intellecta uera est, hec scilicet: sanguis continetur sub specie panis, id est, sub specie panis continetur caro Christi, que non est exsanguis. Tertia uero est dubia, hec scilicet: sub specie panis sumitur sanguis.

< An Christus dedit discipulis corpus suum mortale vel immortale.>

Item, Christus dedit discipulis corpus suum in cena mortale vel immortale. Quod immortale uidetur, quia super hunc locum Matthei, ubi agitur de transfiguratione domini, dicit AUCTORITAS: "Ille corpus quod habuit Christus per naturam dedit discipulis suis in cena: non mortale, non corruptibile."

Sed contra hoc sic oppone: corpus unitum uerbo tunc erat mortale; ergo simul erat mortale et immortale. Ergo duo opposita simul erant in eodem, uel simul poterat mori et non poterat mori, et ita due diuidentes simul erunt uere, quod est contra artem. Si mortale, dedit eis illud. Quomodo potuit illud concludi in tam breui et modico loco, puta in ore Petri?

Solutio: dicunt QUIDAM quod Christus dedit corpus suum discipulis suis immortale. Idem tamen corpus unitum uerbo erat tunc mortale; unde concedunt isti quod duo opposita simul erant in eodem, et hoc asscribunt miraculo et...
potentia divina. Simile tamen ostendunt in naturalibus, dicentes quod unus et idem fluuius latus est et angustus cum tamen latitudo et angustia uideantur esse opposita. |

ALII dicunt quod datum est eis in cena mortale corpus Christi. Quod uero in breui loco concludi potuit, ut in ore Petri et aliorum sumentium, dicunt miraculum fuisse. Vel potest dici quod proprietates quattuor, quas habitura sunt corpora electorum in resurrectione, dominus in suo corpore prout uoluit ostendit. Agilitatem ostendit quando ambulauit super aquas; subtilitatem, quando clausis et signatis foribus intrauit ad discipulos; gloriositatem, quando transfigurauit se in monte Thabor; impassibilitatem post resurrectionem. Sic et quando dedit discipulis proprium corpus, potuit ei conferre aliquam istarum proprietatum, et maxime tunc dedit ei subtilitatem ut posset esse in tam breui loco.


Item, queritur si medio tempore, scilicet in illo triduo, conficerent apostoli corpus Christi, an tunc consecraretur exanime uel animatum. Probo quod exanime, quia non poterat confici nisi quale erat tunc, sed tunc erat exanime; ergo si tunc consecraret Petrus corpus Christi, non conficeret nisi exanime.

Respondeo: dicunt QUIDAM quod in illo triduo non posset confici | sacramentum altaris.

ALII dicunt quod tunc posset confici, et si tunc conficeret Petrus, conficeret animatum impassibile et

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\text{C 122va}
\]

*95* potest ... 100 resurrectionem] Cf. Petrus Cantor, *Summa* 1.65 (AMN 4, 169).

*90* et idem] quidem P$_1$ | latus est] inv. P$_1$ | et$^2$] om. sed sup. lin. ins. To
*91* angustia] illud add. P$_1$ 92] eis] om. P$_1$To | mortale corpus Christi]
104] An... 105 passionis] om. P$_1$P$_2$ToTr 107] an] aut sed corr. Tr
gloriosum. Idem tamen corpus in sepulcro erat tunc exanime, et ita corpus Christi simul esset animatum et inanimatum miraculose.

<Utrum in azimis an in fermentato consecrare debeat.>

Et nota Christum corpus suum consecrasse in azimis, cum tunc in domibus Iudeorum fermenta non essent. Quem ritum tenere debet uniuersalis ecclesia. Non enim ibi debet apponi fermentum, per quod corruptio designatur, et ob hoc reprehensibilis esse uidetur grecorum ecclesia, que conficit in fermento. Turpis enim est omnis pars suo uniuerso non congruens, ut in decretis dicitur d. viii c. Que contra mores. Utrum autem conficiat necne, non nostrum sed potius Petri est diffinire.

[2.4] Queritur si magnus panis fermentatus uel azimus transsubstantiatur.

Item, queritur si magnus panis fermentatus uel azimus transsubstantietur, utrum inde quis possit sustentari sine naturali cibo. Probo quod non, quia cibus iste est anime non corporis, quod sic probo, quia nichil elementatum est ibi, sed totum est transsubstantiatum in gloriosam carnem | Christi quicquid prius erat ibi elementatum.

Econtra, si inde sustentari non potest, unde est satietas illa corporalis, sed unde est ebrietas? Si in multa quantitate transsubstantiatur sit uinum in sanguinem, constat quod ex sanguine non inebriatur quis.

Solutio: dicunt QUIDAM hoc non posse fieri, quia quantitas modum excedens consuetum contra ritum et institutionem ecclesiasticam est. Si opponatur eis de grecis...
qui fermentatum in magna quantitate conficiunt, ut sibi et
generations possit sufficere, dicunt isti, "latini sumus; non est
nostrum iudicare de grecis."

Item, uidetur obloqui consuetudo ecclesie responsioni
huiusmodi. Ecclesia enim in paschali sollemnitate conficit
sacramentum hoc simul in multis hostiis. Sed quare magis
impediat continua quantitas, ut sic loquar, quo minus fiat
sacramentum quam discreta quantitas?

Dicunt isti quod de consuetudine ecclesie est hoc, ut in
multis hostiis conficiat hoc sacramentum. Si autem, omissa
autentica consuetudine, presumatur alia quantitas uel alia
forma, non est sacramentum quod sic peruertitur.

ALII dicunt indistincte quantulumlibet panem
transsubstantiari in carnem Christi, nec est mirum, dicunt
ipsi, si reficiatur corpus spirituali cibo, cum animam reficit
et saginat. Hec autem solutio semiplena est, quia non soluit
quod objectum est de ebrietate.

Ideo dicunt ALII quod satietas uel ebrietas huiusmodi
non est ex carne Christi uel sanguine. Non enim sanguis
inebriat, sed est ex sapore et odore et aliis accidentibus.

<De egestionibus>

Idem de egestionibus sentias, et eas refer ad accidentia.
De hiis querunt heretici et importuni sophiste, et ideo scire
nos expedit quid nos in huiusmodi oporteat respondere. Quod
ita sentiendum sit de egestionibus docent sancti. Inquit enim
CLEMENS papa: "Ne putetur sancte potioni miscere cibum
qui per aqualiculos digestus in secessum diffunditur."

Item, GREGORIUS de hoc sacramento inquit: "Tamdiu
est in te quamdiu habes in ore, nec ducitur in secessum, sed
rapitur in excelsum."

170 Decret. Grat., De cons. di.2 c.23 (Friedberg I, 1321). 172 Cf. Petrus
Pictaviensis, Sententiae 5 cap.12, Garv. (Peter). 47-48 (PL 211,
1252A-B).

145 quantitate conficiunt] inv. P₁ 148 obloqu] obtit P₁ 149 conficit
sacramentum] inv. To 150 hoc] om. To 151 fiet P₂
152 sacramentum] sacramentis Tr 153 ecclesie est] inv. P₁
154 conficit] conficiatur corpus Tr | conficiat . . . sacramentum] hoc
sacramentum conficitur P₁ 157 panem] posse add. P₁ 158 carнем
corpus To 162 ali] quidam sed corr. Tr 166 de] secretas To 167 hiis
Tr 170 sancte] idem To | | potionem] proportioni P₁ potationis Tr
171 aqualiculas] aliqualiculas C | digestus] egestus P₁ 172 Gregorius]
loquens add. To | de] loquens add. sed exp. C 173 quamdiu] quam To | 
in³] se add. sed exp. Tr 174 excelsum] celum P₂
Quotiens eucharistiam sumere debeat.>

Item, eucharistia in sumente digne augeat caritatem, et quotiens digne sumitur sumenti augetur caritas; bonum est cuilibet augmentum | caritatis; ergo quotiens posset quis dignae sumere hoc sacramentum, totiens deberet illud sumere.

Econtra, dicit AUGUSTINUS, "cotidie sumere eucharistiam | nec laudo nec uitupero."


Item, queritur utrum sacramentum altaris sit miraculosum. Quod uidetur, quia fit preter solitum currsum nature; igitur fit miraculose.

Econtra, magi Pharonis arte | uerterunt aquas in sanguinem et uirgam in serpentem, sed quod arte fit miraculosum non est. Non est maius uinum uertere in sanguinem uel panem in carnem quam aquam uertere in sanguinem uel uirgam in serpentem. Ergo transsubstantiation que fit in altari miraculosa non est.

Respondeo: maius est panem in carnem et uinum in sanguinem Christi uertere quam aquam in sanguinem uel uirgam in serpentem. Distinguitur enim utrum res aliud a se fiat uel aliud quam sit. Fit enim res aliud quam fuerit, cum mutato ordine causarum seminalium fit alterius forme, non tamen alterius materie. Arte uero magica compulsi sunt demones a magis pharonis seminalium causarum uirge mutare ordinem, ut mutato ordine materia uirge serpentis speciem haberet. Simile fecit dominus in Chana Galilee, ut

approbaret sacramentum matrimonii aquam mutando in unum mutando ordinem causarum seminalium. Et hec mutatio miraculosa dicitur quia contra solitum currsum nature fit, sed reuera est naturalis. Unde AUGUSTINUS: "in rerum natura erat ut de uriga posset fieri serpens." Unde etiam artifices de terra auriga faciunt; fit enim reciproca conversio metallorum. Sed longe aliter et supra omnem naturam est mutatio in sacramento altaris. Ibi enim non fit res aliud quam sit mutato ordine seminalium causarum manente eadem materia, nec etiam materia panis ordine mutato recipit speciem carnis, nec materia uini speciem sanguinis, sed tam panis quam uinum fit aliud a se; nec seminalibus causis manentibus, nec earum ordine panis fit caro et uinum sanguis. Hanc ergo mutationem nulla potest industria demonum nec artificium humanum; hec ergo mutatio que excedit omnem nature create industriam dicitur miraculosa.


Item, queritur, si pretermissa sit aqua, an uerum sit sacramentum. Quod non uidetur, inquit enim IULIANUS papa: "Non potest calix domini esse aqua sola aut uinum solum nisi utrumque misceatur." Omissa igitur alterutro istorum non est uerum sacramentum; ergo aqua est de substantia sacramenti.

Respondeo: si pretermissa fuerit aqua nichilominus uerum erit sacramentum. Quod autem dictum est: "non potest calix etc.,” expone: non potest, id est, non debet.

204 Cf. Augustinus, De Trinitate III cap.8, CCSL 50, 139-40. 221 Decret. Grat., De cons. di.2 c.7 (Friedberg I, 1316) attributes to Iulius. Probably originally from Isidorus, De ecclesiasticis officiis, CCSL 113, 21 who altered the text of Cyprianus, Epistulae, CCSL 3C, 408. Simon Tornacensis, Institutiones, 58vb; Petrus Lombardus, Sententiae 4 di.11, 302; and Magister Udo, Sententiae 4, Garv. (Udo), 34 include the quotation and the resolution: "‘non potest,’ id est non debet".

Et nota quod dominus dispensans huius sacramenti calicem discipulis suis miscuit aquam uino. Unde IERONIMUS Super Marcum: | Christus "formans calicem suum in calicem uino et aqua mixtum, ut alio purgemur a culpis, alio a penis."


Item, quere an transsubstantietur aqua. Quod probatur sic indirecte: aqua non transsubstantiatur in sanguinem; ergo manet aqua ut prius; ergo ea sumpta sacerdos non est ieiunus. Sed nullus nisi ieiunus hoc sacramentum potest conficere; ergo qui semel hoc sacramentum in die conficit, in eodem non potest iterare hoc sacramentum.

Item, si non transsubstantiatur aqua, eius significatum, id est, populus Christianus, non convexitur in corpus Christi misticum, id est, ecclesiam, nam aque multe populi multi. Per aquam enim significatur spiritualis liberatio gentilis populi qui per Christi passionem redemptus est.

Respondeo: aqua transsubstantiatur in sanguinem.

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229 formans...231 penis] Ps.-Hieronymus Stridonensis (CPL 632), Commentarius in evangelium secundum Marcum (PL 30), 632A, quoted with attribution, Petrus Pictaviensis, Sententiae 5 cap.12, Garv. (Peter), 39 (PL 211, 1247D). 234 aqua...241 multi] Petrus Pictaviensis, Sententiae 5 cap.12, Garv. (Peter), 39 (PL 211, 1247C-D): "Volunt quidam eius transsubstantiationem fieri quia, si non convertitur, eius significatum, id est Christianus populus, non convertitur in corpus Christi, quod est Ecclesia; nam: 'aquae multae, populi multi.' Item, si aqua non mutatur, ergo manet pura aqua; ergo post celebrationem non est sacerdos ieiunus." 241 aque multe populi multi] Cf. Apc. 17.15: "et dixit mihi, 'aquis quas vidisti, ubi meretrix sedet, populi sunt et gentes et linguae.'"
Item, in canone misse legitur: "Iube, domine, illud transferri in sublime altare tuum; consociandum corpori tuo." Hec oratio nulla uidetur esse, cum petat sacerdos quod deferatur in sublime altare corpus Christi, cum ibi sit, scilicet in empyreo celo. Petit etiam ut consocietur corpori Christi, quod indiscreto dictum esse uidetur, nam corpus Christi quod est super altare est illud idem quod est in celo, cum non sit societas uel coniunctio nisi diversorum.

Respondeo: "iube etc.," id est, fac, quia ubi precipit, uirtus fuerit effectus ut unitas ecclesie, que significatur et efficitur corpore Christi quod uerum dicitur ibi esse, associetur corpori Christi, id est militans ecclesia triumphanti. Et est species metonomie, quia quod est figurati uel significati | attribuitur significanti uel figuranti. Et nota aliud demonstrari et aliud significari cum dicitur, "Iube istud etc.," quia demonstratur corpus Christi materiale et significatur unitas ecclesie, sicut aliud demonstratur et aliud

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247 Item...254 diuersorum] Petrus Pictaviensis, Sententiae 5 cap.12, Garv. (Peter), 46 (PL 211, 1251C): "Item, in canone misse habetur post consecrationem 'Iube, Domine, Illud deferri in sublime altare tuum, sociandum corpori tuo.' Nam duo videtur petere sacerdos: et quod deferatur in altare sublime, que petitio est otiosa, quia ibi est corpus Domini, et ut societur ibi corpori Christi, quod inutile est; nam ipsum corpus, quod super altare est, est illud idem quod est in coelo, non ergo ei sociatur, nam ita idem sibi sociaretur; (non est autem societas nisi diversarum rerum)." |

significatur cum dicitur, "hec herba est in orto meo." Vel sic: quod dissociatio uidetur esse, quod corpus Christi uidetur sub forma panis et non in propria forma. Petitur ergo ut a nobis uideatur in empyreo celo in propria forma, id est in effigie humana.

[3.1] De sumptione corporis Christi.

Corpus et sanguinem suum dedit Christus Iude, et digne. Ergo Iudas digne suscepit tantum sacramentum. Ergo dum suscepit non erat in mortali peccato.

Respondeo: digne, quia manu munda possum porrigere alicui anulum aureum, sed qui recipit indigne recipit si anulum recipit manu inmunda. Sic quoque Christus ut mundus et dignus minister digne ministrauit, sed Iudas immunde et indigne accipit.

Item, AUGUSTINUS SUPER REGUM dicit: "Sacerdos qui archam temerarie tetigit reatum sui ausus immatura morte purgavit. Et ibi intuendum est quantum delinquat qui ad corpus Christi reus accedit, si ille morte multatur qui archam, dominici corporis figuram, minori quam debuit ueneratione corripuit."

Item, Christus dedit corpus suum Iude ad damnationem uel salutem. Si ad damnationem, ergo hac intentione dedit: ut esset Iude perniciosa huius sacramenti perceptio; ergo uoluit ut inde Iudas fieret deterior. Si ad salutem, ergo uoluit Christus ut ex perceptione tali proueniret.

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264 Vel...267 forma] Petrus Pictaviensis, Sententiae 5 cap.12, Garv. (Peter), 47 (PL 211, 1252A).
265 sic] sicut P₂ | Christi om. sed marg. ins. P₁ | 266 Petitur] petinus P₁
1 De...Christi om. P₂ToTr | 3 suscepit] recepta C | 4 suscepit] susceptio
Iude salus. Sed aliter est factum, quia illa receptio Iude fuit in detrimentum; ergo non efficit illud sacramentum in Iuda quod Christus uoluit ipsum in eo efficere.

Respondeo: ad prepositio in prima propositione dupliciter potest accipi: potest enim esse nota intentionis uel consecutionis. Cum ergo dicitur, "Christus dedit corpus suum Iude etc.," falsum est si ad prepositio nota est intentionis, uerum est si nota est consecutionis. Neutrum istorum concedendum est: Christus dedit corpus suum Iude ad damnationem uel ad salutem. Si enim daret ei ad salutem, saluaretur. Si uellet ei esse ad damnationem, uoluntate Christi peccaret Iudas.

 Item, aliqua intentione dedit corpus suum Iude, eadem intentione qua dedit Petro uel alia. Si eadem intentione dedit corpus suum Iude qua et Petro sic oppone: bona intentione, id est ad salutem, dedit Petro; ergo et Iude dedit ad salvationem. Si alia, quere qua?

Respondeo: dispari intentione dedit Christus Petro et Iude eucharistie sacramentum. Petro dedit ad salvationem, Iude uero ad nostram instructionem, ut facto eius instruamur tolerare malos sicut ipse tolerauit Iudam.

Et nota quod uoluit Christus dare corpus suum Iude, sed non uoluit Iudam accipere.

Item, sicut sacerdos tenetur ammonere indignum ne sumat indigne et prohibere ne sumat, quare similiter dominus non prohibuit Iudam ante sumptionem et prohibuit ne sumeret indigne?


Item, ex hac sumptione Iude uoluit Deus elicere bonum. Finis huius susceptionis bonus fuit; ergo ipsa susceptione bona fuit. Instans: ista exponit se uenalem ut patrem suum alat. Iste finis bonus est; ergo ipsa expositio bona est.

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63 Sepe monuerat] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter).
53 (PL 211, 1255B): "Dominus autem Iesus sepe monuit Iudam ne acciperet." 64 I Cor. 11.29
Item, dominus dedit corpus suum Iude cum Iudas esset obscenus peccator; ergo dedit sanctum canibus et margaritas porcis; fecit ergo dominus contra suam prohibitionem, quia dixerat *nolite sanctum dare canibus* etc.

Respondeo: non fuit predicatio Christi contraria factis ipsius, quia dedit hoc sacramentum Iude | propter causam preassignatam. Auctoritas uero ista, *nolite sanctum dare canibus* etc., non est intelligenda de eucharistia indignis danda, sed de predicatione, quam dominus prohibit fieri illis, de quibus nulla spes, nulla presumptio boni habetur.

Sed contra hanc solutionem sic obicitur: inquit dominus, *ue tibi Corozaim, ue tibi Bethsaida, quia si in Tiro et Sidone facte fuissent uirtutes que in uobis facte sunt, penitentiam egissent*. Istis predicauit dominus et sciebat eos esse non convuertendos per predicationem suam; quare ergo eis predicauit?

Respondeo: hoc uerum de secretis Chusi nos nescimus.

Ipse solus nouit uel potest dici quod in Corozaim et Bethsaida alii qui conuersi fuerunt.

*<In qualem carnem transsubstantietur panis.>*

Item, panis transsubstantiatur in carnum ut eat anima rationali; ergo panis transsubstantiatur in hominem Christum; ergo in Deum et hominem, uel in hominem, uel in Deum panis transsubstantiatur. Si in Deum, ergo creatura mutatur in creatorem; ergo creatura fit creator. Hoc autem non est uerum.

Exemplum primi: manus mea est corpus quod est vegetatum anima rationali; ergo manus mea est homo. Vel potest dici non esse faciendum progressum in huiusmodi, ut dicatur: panis transsubstantiatur in corpus vegetatum anima

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73 Mt. 7.6. 81 Mt. 11.21, Lc. 10.13 86 Chusi] II Sm. 18.32: messenger who announced the death of Absalom to David; his tactful silence became proverbial, *cf*. Augustinus, *Enn. Psalm. 7*, (CCL 38, 33-34).

rationali uel irrationali. Non enim talia proponit sacra scriptura, sed tantum ista: panis transsubstantiatur in carnem, id est, in corpus Christi. Proteruienti autem dicas, "si iure uenis, si ciuis es, theologus hucusque licet."

Item, panis transsubstantiatur tantum in id quod sumitur; ergo panis transsubstantiatur in Christum.

<An possimus abstinere ab hoc sacramento sine detrimento salutis.>

Item, dicit AUGUSTINUS in libro De remedio penitentie animae, "ut quid paras dentem etuentrem? Crede et manducasti." Ergo si habeat quis fidem huius articulorum qui necessarii sunt ad salutem, fidem dico, siututem, sufficit ei ad salutem, et si numquam sumat sacramentaliter carmem Christi. Ergo semper possimus non sumere hoc sacramentum sine detrimento salutis.

Econo, dicit decretum, "et si non frequentius, saltem in anno homines communicent, in pascha uidelicet, et pentecostes et natali domini."

Respondeo: hoc uerbum "ut quid paras dentem etuentrem" male intelligentes QUIDAM dixerunt quod posset quis abstinere a perceptione eucharstie, sed non est ita. Immo talis est sensus huius auctoritatis, "ut quid paras dentem etc.": neecessitate instante non obest alicui si non accipit sacramentum altaris, ex quo per eum non stat.


<Quomodo hoc sacramentum aliis maius dicatur.>

Et nota quod sacramenta multiplici de causa alia alii esse maiora dicuntur. Sacramentum enim eucharistie omnibus alii maius est dignitate sui. Quid enim maius et dignius est corpore et sanguine Christi, ut c. i q. i Multi? Sacramentum uero baptismi dicitur maius ceteris quia in eo mortalia et uenialia delentur peccata, ut De cons. d. iii A paruulo. Sacramentum confirmationis maius dicitur quia a maioribus qui sunt in ecclesia, hoc est ab episcopis, datur, ut De cons. d. v De hiis uero.

Item, nota quod quamuis hoc sacramentum quoad species uisibiles a brutis possit comedi animalibus, numquam tamen ipsum corpus Christi. Quid autem fiat de corpore quod prius sub illis speciebus latebat, et utrum species illa que est in ore muris sit sacramentum, diuinum oraculum est implorandum in talibus.

Item, nullus panem intinctum suscipiat excepto sacerdote consecrante et excepto infirmo qui propter ariditatem aliter nequit deglutire, ut li. v, Omnis.

Et nota quod quamuis uiaticum in specie panis pro infirmis seruetur, non tamen in specie uini, tum quia cito corrumpitur, tum quia cito effunditur, tum quia sub una specie utrumque sumitur.

Item, numquam sacerdotes sacramentum huiusmodi nisi per se ministrent, aut alicui tradant <ad> deferendum infirmis nisi neccessitas aliter suadeat.

Et nota quod in primitiua ecclesia omnes omni die communicabant, sed quia nonnulli accedebant indigni, osculum pacis pro eucharistia fuit institutum. Ideoque in omni missa pax debet in ecclesia dari | excepta missa mortuorum. Cum enim duplex sit pax: temporis et pectoris, utraque indigemus nos, qui sumus in hoc mundo, ut scilicet sint nobis tranquilla temporalia, et ne in mente ab immundis spiritibus infestemur. Quarum neutra indigent mortui, requiescunt enim a laboribus suas, et in illa die peribunt omnes cogitationes eorum, et quia ostenditur eos ad ueram iam peruenisse pacem. Eadem consideratione nec in missis monachorum pax datur, quia ipsi mundo sunt mortui, Deo uiuunt autem, ut c. xvi q. 1 c. Si cupid. Vel ideo non datur pax in missa mortuorum quia, cum nos simus in sexta etate, ipsi uero sunt in septima, non est nobis communio cum eis.

[3.2] An sacerdos precisus conficiat.

Item, queritur de sacerdote preciso, si conficiat. Quod uidetur, quia in sacramentis ecclesie nichil a bono magis, nichil a malo minus perficitur sacerdote.

Item, de baptismo dicit AUGUSTINUS: "quos baptizat Iudas et Christus."

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158 Ps. 145.4 (146.4).
162 c³…cupis] Decret. Grat., C.16 q.1 c.5 (Friedberg I, 762).
169 Attributed to Augustine in Decret. Grat., C.1 q.1 c.46 (Friedberg I, 376) Cf. Augustinus, Tract. Ioan. 5, CCSL 36, 51.

Item, "per canales lapideos transit aqua | ad areolas," et uisibilis solis radius per loca fetida transiens non coinquinatur.

Item, sacerdotum immunditia non polluit sacramenta. De ordinibus dicit LEO: "Quisquis a pseudo fuerit ordinatus episcopo, talis ordinatio rata ualeret haberi."

De omnibus sacramentis dicit AUGUSTINUS: "Sacramenta que ab hereticis in forma ecclesie ministrantur, iterari non debent, ne non homini sed sacramento fiat iniuria."

Encontra, "non sanat baptismus perfidorum; non mundat, sed polluit."

Item, de eucharistia dicit IERONIMUS: "Deus odit sacrificia hereticorum. Detestatur fetorem eorum et claudit nares suas."

Item, dicit AUGUSTINUS: "Extra catholicam ecclesiam non est locus ueri sacrificii."


\[178\] Decret. Grat., C.1 q.7 c.23 (Friedberg I, 436). Original text quoted in C.1 q.1 c.97 (Friedberg I, 393). Cf. Augustinus, Contra epistulam Parmeniani 2, cap.13, CSEL 51, 79: ideo non eis in populo manus imponitur, ne non homini, sed ipsi sacramento fiat iniura."

\[181\] Ambrosius De Mysteriis 4, CSEL 73, 98. Quoted in Decret. Grat., C.1 q.1 c.50 (Friedberg I, 377). \[183\] Hieronymus, In Amos 5, CCSL 76, 284. Quoted in Decret. Grat., C.1 q.1 c.62 (Friedberg I, 381).


\[181\] Encontra] om. ToTr \[183\] Ieronimus] quod add. P₁ \[184\] Detestatur] attestatur P₂
Item, PELAGIUS: "Si ueritate duce dirigimur, non est corpus Christi quod conficit scismaticus," ut xxiii q. i Scisma.

Item, De consecratione ecclesie dicit GREGORIUS: "Ecclesia pactione consecrata est execrata."

Item, Nicenum Concilium: "locus Deo dicatus iterum non dedicetur, si tamen fidem Trinitatis tenuit qui eam consecravit," ut De cons. d. i Ecclesiis.

Respondeo: dicunt QUIDAM omnium precisorum sacramenta esse inania in essentia et in effectu que sunt extra formam; forma namque sacramentorum in tribus consistit: rebus, uerbis, et personis. Persona uero potestatem perdit.

ALII dicunt omnia esse uera in essentia, quia persona ius non amisit, sed falsa in efficientia, quantum ad eos qui male tractant maleue | suscipiunt. QUIDAM uero dicentium omnia esse uera in essentia excipiunt unitatis sacramenta ut eucharistia et consecrationis ecclesie, | et maxime eucharistia, eo quod in canone misse dicitur "conficimus," et quia etiam in necessitatis articulo non est sumendum de manu precisi uiaticum, cum tamen baptismus et penitentia possit accipi, ut xxxiii q. i Si quidem cepit.

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188 Pelagius I, Epistula 35 in Pelagii I papae epistulae quae supersunt, ed. P.M. Gasso and C.M. Battle, Montserrat 1956, 99-100. Quoted in Decret. Grat., C.24 q.1 c.34 (Friedberg I, 980). Attributed to Gregory in Decret. Grat., C.1 q.4 c.11 (Friedberg I, 420): "Ecclesia, que pactione consecrata fuerit, potius execrata quam consecrata dici debet." De cons. d. i (Friedberg I, 1299). Quidam... 205 conficimus] Magister Udo, Sententiae 4, Garv. (Udo), 40; "Illi vero qui excommunicati sunt vel heresi manifeste notati non videntur hoc sacramentum conficere licet Sacerdotes sint, quia nemo in ipsa consecratione dicit 'offerio' sed 'offerimus' quasi ex persona ecclesie, et ideo cum alia sacramenta extra ecclesiam possint celebrari, de hoc non videtur." Cf. Petrus Lombardus, Sententiae 4 di.13, 312. xxxiii... cepit] I cannot find the object of this citation.
Et nota quod in sacramentis tria considerantur, scilicet forma, potestas, et unio, non tamen omnia in omnibus, quia forma tantum in baptismo, forma et potestas | tantum in ordine, forma et potestas et unio in Christi corpore. Cum enim sacramentum corporis Christi sacramentum sit unitatis, extra unitatem et ab unitatis impugnatoribus confici non potest, ut asserunt isti.

Libentius tamen in EORUM sententiam declino, qui dicunt post quantamcumque damnationem sacerdotes in heresi constitutos sacramenta conficere, cum in ipsa heresi ordines suos retineant, et uirtus consecrationis ex ordine ipso, non autem ex ordinis executione, haberetur.

Auctoritates que uidentur uelle hereticos et scismaticos non conficere non referende sunt ad essentiam sacramenti, sed ad efficientiam, ut sit sensus, hereticus uel scismaticus non conficit sibi uel ad suam utilitatem. Eodem modo sentias de suspenso et exauctorato sacerdote.

Utrum enim degradatus sacerdos sit, questio est que forte infra determinabitur ubi de ordinibus agetur.

<An sacerdos eucharistiam debeat dare ei quem scit in mortali peccato.>

Item, queritur an sacerdos debeat eai dare eucharistiam quem scit esse in mortali peccato. Quod probatur sic: non potest eum conuincere, ei communicat ecclesia; ergo sacerdos non debet eum sequestrare a communione ecclesie; ergo si petat hoc sacramentum, debet ei dare.

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209 Et...212 corpore] Cf. Summa monacensis, Munich, Staatsbibliothek, Clm 16084, 15rb, according to D. van den Eynde, "Notices sur quelques 'Magistri’ du XIIe siècle", in Antonianum 29 (1954), 129-42, esp. 137.

230 Item...236 deterior] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 53 (PL 211, 1255A-B).
Econtra, magister eius est et pastor, et tenetur eius prouidere saluti; ergo non debet ei dare unde ipse sit deterior.

Solutio: refert utrum peccatum sit notorium uel occultum. Si occultum, licet notum sacerdoti, debet eum sacerdos monere | ne suscipiat. Si uero institerit ille petens, debet ei dare. Si notorium est, arcendus est a sacramento; unde super hunc locum psalmi: *Manducauerunt et adorauerunt omnes pingues terre* etc., dicit AUGUSTINUS: "non prohibeat dispensator manducare, sed moneat exactorem timere." Si quis tamen manifeste in criminali perdurat, prohibendus est. Occultus uero monendus.

Item, sacerdos cauere debet ne ponat hoc sacramentum loco inmundo, | et si ponit ex certa scientia, grauiter peccat. Os istius quem scit esse in mortali peccato sacerdos inmundissimum est; ergo si sciens dederit ei, peccat. Ergo non debet ei dare quem scit esse in mortali peccato.

Respondeo: non sequitur hoc uel illud. Alio enim modo dicitur os peccatoris locus inmundus et alio alia | loca.

Et nota quod, licet totus Christus sumatur sub specie panis et totus sub specie uini, non tamen est ibi duplex sumptio, sed una sola, sicut nec ipse bis manducat qui bibt et postea iterum manducat. Nec est superfluum quod idem

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237 refert...245 monendus] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 53 (PL 211, 1255B): "si tamen sciat eum esse in mortali peccato debet eum monere ne accipiat, quia qui indigne manducat, iudicium sibi bibit et manducat. Sicut enim ait Augustinus: 'Non prohibeat dispensator manducare, sed moneat exactorem timere.' Si quis tamen in criminali manifeste perdurat, prohibendus est, occultus vero monendus."

241 Ps. 21.30 (22.29).

243 Attributed to Augustine in Glossa ordinaria II, 480. Cf. Decret. Grat., De cons. di.2 c.67 (Friedberg I, 1338).

254 non...258 refertur] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 54 (PL 211, 1256A).
sumitur sub utraque uel duplici specie, nam species panis ad carnem, species uini ad sanguinem refertur.

Et nota quod totus Christus sumitur et tamen unum scilicet corpus; sicut totus in sepulcro fuit et tamen tantum caro fuit in sepulcro. Totus enim, masculinum, ad personam refertur. Totum uero, neutrum, ad naturam.

<De intellectu cuiusdam orationis.>

Item, iste sumit corpus Christi, quo nichil est melius. Male ergo uidetur sacerdos orare cum dicit, "per hec sacramenta que sumpsumus, beneficia potiora sumamus."

Respondeo: hoc sic intellige: potiora, id est potius, ut resoluatur nomen in adverbium, id est meliori modo. Modo enim ita sumitur a nobis corpus Christi quod non est nobis uita eterna nisi per causam, sed in futuro fruemur visione ipsius deitatis. Eodem modo intelligitur istud: "perficiant in nobis, domine, sacramenta que sumpsumus quod continent, ut quod specie gerimus, rerum ueritate capiamus". modo quidem rerum ueritatem capimus sed occultam, tunc autem manifestam, scilicet ut per ea que per hoc sacramentum

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259 totus…262 naturam] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 55 (PL 211, 1256C): "totum Christum sumat, quia totum quando est masculini generis ad personam refertur, quando est neutrius, ad naturam; sicut dicitur: totum erat Christus in sepulcro, sed non totum."

264 Item…268 modo] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 49 (PL 211, 1253A): "Item, iste sumit Christum, qui sumit corpus Domini, quo nichil est melius, ergo sumit id quo nichil est melius; falsum ergo dicit sacerdos dum orat: 'ut per ea que sumimus potiora sumamus,' cum nihil sit potius Christo. Ideo resolvendum est illud nomen scilicet potiora in adverbium, ut sic intelligatur: potiora id est potius sumamus, id est melius, scilicet meliori modo."

265 Cf. Corpus Orationum 4485, CCSL 160F, 85 and 4875, 160F, 279: "de perceptis muneribus gratias exhibentes, beneficia potiora sumamus." These entries attest to a wide use of this prayer either "post communionem" or "ad complendum."

268 Modo…277 iurtute] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 49-50 (PL 211, 1253A-B).

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sumimus, id est per fidem, spem, et caritatem, sumamus potiora, id est uitam eternam, que potior est omni uirtute. Similiter et hic ponitur nomen pro aduerbio; aliud est quod hominibus dicitur, aliud quod perfectoribus imperatur, id est quod imperatur ut perfectius uiuatur. Non enim imperatur, uade et uende omnia que habes et da pauperibus, sed tamen si uis uiere perfectius imperatur uel potius consulitur. Econuerso, aduerbum ponitur pro nomine; unde AUGUSTINUS: "ipsum sumimus inuisibiliter; non ipsum uisibiliter." Cum ergo dicitur "per ea que sumpsimus etc.\textendash\non comparo sumenda ad corpus, sed sumendo per corpus ad ea que sumpsimus per ipsum.

[3.3] An corpus Christi sit circumscrip bibile loco.

Item, queritur utrum corpus Christi sit circumscrip bibile loco. Quod uidetur quia dicit AUCTORITAS: "corpus in quo resurrexit uno loco esse oportet. Veritas autem eius ubique diffusa."

Econtra, corpus Christi est in hoc altari et in illo, et sic de singulis. Ergo non est in uno loco solo.

Respondeo: corpus Christi ita est in loco quod non facit localem distantiam, sed ita est in loco quod diffinitione loci continetur; quod ita est in uno loco, quod non est in quolibet, licet sit in pluribus simul. Quod non conuenit spiritui creato, quia angelus uel anima, quando extra corpus est, ita in uno loco solo.
loco quod non in alio. Ideo dixi "quando est extra corpus," 300 quia dum est in corpore anima, ut dicunt QUIDAM, est in qualibet parte corporis, et ita est in pluribus locis. | ALII dicent et putant animam, cum sit simplex, | ita esse in una parte corporis quod non in alia.

Et nota quod anima Christi a predicta regula excipitur, 305 quia cum sit spiritus creatus, simul est in pluribus locis.

Item, Christus semper ubique est, nec umquam desinit corpus habere; ergo ubi semel habet corpus et semper. Instans: iste in scolis non desinit esse, nec desinit manum habere; ergo in scolis habet manum.

Item, corpus Christi tollitur de hoc altari, sed in illo alio altari manet immobile; ergo motus et quies insunt ei.

Econi, motus et quies contraria sunt; ergo in eo simul esse non possunt.

Respondeo: de quo concedo quod integrum manens in partes diuiditur; quod clauso utero exiuit de utero; quod circumscriptum huic loco, circumscribitur alio. De eodem non dubito assere quod ab hoc altari mouetur, et in illo alio manet immobile. Hic enim non est locus regule dialeticæ.

<De transsubstantiatione in cena et in passione.>

Item, inquit AUCTORITAS super hunc locum Leuitici: Si oblatio illa fuerit in sartagine etc., "crux super omnia fortis. Omnem creaturam crucifixo subiecit, et carnem eius, que ante passionem esui non uidebatur apta, post passionem fecit
aptam esui." Cena passionem precessit; ergo in cena caro Christi non erat apta esui; tunc ergo non erat esibilis; quomodo ergo dispensauit discipulis suis?]


<An Chistus pateretur in hostia si reseruata esset a cena usque ad diem passionis.>

Item, ponatur quod corpus Christi reseruatum esset a cena usque ad diem passionis sub tali forma in quali dedit. Quo posito sic oppone: Christus tunc erat totus sub illa specie. Christus tunc patiebatur. Christus tunc erat unum solum. Ergo sub illa specie Christus patiebatur.

Respondeo: poterat reseruari, sed non poterat pati sub illa forma.

<De effectu eucharistie quando Christus mortalis et passibilis erat.>

Item, dicit AUCTORITAS: "hoc efficit corpus Christi in sumentibus | quod in se habet." In se habebat mortalitatem et

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325 see ln. 322 350 Item…353 hoc] Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 50 (PL 211, 1253C-D).| hoc…351 habet] I have not found the source of this quotation. Garv. (Peter), 50 also does not.


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passibilitatem quando Christus dedit illud discipulis suis; ergo in sumentibus efficiebat hoc. 355

Respondeo: licet mortale esset quando dedit discipulis, tamen conferebat digne sumentibus ut manente effectu ipsius non posset mori spiritualiter.


Item, queritur utrum Christus corpus suum sacramentaliter accepit. Quod uidetur: inquit enim super Leuiticum AUCTORITAS: "Christus prius in cena sanguinem accepit, deinde discipulis dedit."

Item, alia AUCTORITAS: "Cum enim bibit prius inde apostolis bibere dedit intelligibilem sanguinem super altare, id est sanguinem suum fundit." Hoc autem uidetur uoluisse qui ait:

Rex sedet in cena turba cinctus duodena; se tenet in manibus; se cibat ipse cibus.

Econtra, ubi erat ueritas non erat necessarium sacramentum. In Christo erat ueritas illius sacramenti; ergo Christus non accepit corpus suum sacramentaliter.

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354 licet…精神的に| Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 50 (PL 211), 1253D: "licet discipulis datum sit mortale, erat tamen immortale, id est potens non mori, et immortalitatem efficiebat, id est hoc conferebat sumentibus digne, ut non possent mori."
355Item… spiritualiter| Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 51 (PL 211, 1254B).
356 accepit| Cf. Petrus Pictaviensis, Sententiae 5 cap.13, Garv. (Peter), 51 (PL 211, 1254B).
357Glossa ordinaria I, 230.
358 accepit| Glossa ordinaria I, 230.
359 Item…
360 super Leuiticum| Auctoritas super Leuiticum P₂ Tr
361 glossa ordinaria| Auctoritas glossa ordinaria P₁ P₂ ToTr
362 erat ureritas| Auctoritas erat ureritas P₁ P₂ ToTr
363 corpus| Corpus P₁ P₂ ToTr
364 super…| Super Leuiticum P₁ P₂ ToTr
365 sanguinem| Sanguinem P₁ P₂ ToTr
366 non To| Noto P₁ P₂ ToTr
367 uoluisse| Uoluisse P₁ P₂ ToTr
368 in contrarium| In contrarium P₁ P₂
Respondeo: Christus numquam sacramentaliter corpus uel sanguinem suum accepit, sed accepit ut daret discipulis. Accepit in manibus ad dandum, non ad manducandum. Sic ergo intellige hanc auctoritatem.

[3.5] Quare malefico patrocinium prestet ecclesia.

Item, ultimo queritur quare malefico patrocinium prestet ecclesia ne puniatur | corporaliter si ad eam confugerit, et non sacramentum altaris si susceperit illud. Dignior enim est eucharistia quam ecclesia. Quod autem suspendendis non sit negandum uiaticum, xiii q. ult. Quesitum. Accepto communionis remedio ad patibulum potest trahi. Quod tamen iniquum esse uidetur, cum fugiens ad sacram edem propter reuerentiam sacri, immunitatem nanciscatur, ut numquam debeat reddi nisi de omni penarum genere. Clerici qui presunt ecclesie sint securi ut xvi q. iiii Frater et c. Id constituimus.

Solutio: diuersitatis ratio potest hic assignari. Domus enim orationis est ecclesia corporalis; unde propter reuerentiam illius corporalis ecclesie potest quis corporales euadere penas. Corpus autem domini non est cibus corporis sed anime, ut De cons. d. ii Non iste panis. Unde, cum sit cibus anime, a penis que infliguntur corpori non liberat aliquem, nec excusat. Vel sic: ecclesia gerit uicem sex ciuitatum refugii in quibus tutus erat a pena corporali fugiens ad eas. Sed eucharistia non dico liberat a tali pena, sed liberatum per confessionem et contritionem a spirituali pena

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372 Christus| om. P1ToTr | sacramentaliter| accepit add. P1  
373 accepit[']  
374 manducandum| comedandum P1  
375 intellige…  
376 Quare…ecclesia| om.  
377 Item| et add. To  
378 Quesitum| est add. P2 et add. ToTr | Accepto| accepit C acceptio P2  
379 | remedio| in medio P2  
380 ejacum| mirum C | esse uidetur| inv. Tr | cum fugiens| confugiens P2  
381 negandum add. sed exp.  
382 Quesitum| est add. P2 et add. ToTr  
383 iniquum| movet  
384 sacri| sacramenti P1  
385 nanciscatur| nanciscatur CTR nanciscatur To  
386 xvii q. ii P2 xvii CTR  
387 Frater| stant C stans P1  
388 potest hic[']| inv. P1ToTr  
389 euadere| om. P1 | est| om. Tr  
390 Unde| ut To| sit| om. Tr  
391 anime| sit sup. lin. ins. Tr | liberat| liberantur sed corr. Tr  
392 erat| quis P1| fugiens| om. sed sup. lin. ins. Tr  
393 liberat| eas P1
de bono in melius promouet, et ne etiam sub pretextu declinandi | penam temporalem peteret sibi dari sacramentum huiusmodi, cum tantum debeat petere | propositum 400 declinandi penam gehenne.

398 et] om. P1 | pretextu] pretexta To 400 debeat] deliberat CP2 | propositum] proposito ToTr 401 declinandi] deuitandi Tr
Baptismus Iohannis antiquior tempore sed non excellentior fuit dignitate baptismo Christi. Baptismus ergo Iohannis assuefactio fuit ad baptismum Christi, nec eius signum nec alterius rei sacramentum. Nisi enim precessisset Iohannes suo modo baptizans, exhorruissent homines baptisma Christi ueluti inusitatum. Baptizabat autem Iohannes suo modo in nomine venturi, scilicet Christi, qui quamuis ad quedam iam uenerat, ad quedam tamen uenturus erat, ut ad predicationem et mortem. Quidam tamen ex hiis qui baptismo Iohannis baptizati sunt rebaptizati sunt baptismo Christi, quidam uero nequaquam. Illi autem sunt rebaptizati qui dixerunt, neque si Spiritus sanctus est audiuius, ne quis ex Iudeis uel gentibus putaret aquam sine Spiritu sancto ad salutem posse sufficere. Baptismus autem ille dictus est Iohannis et non Dei quia ibi Iohannis operatio uisibilis tantum erat exterius lauantis, non inuisibilis gratia Dei interius operantis.Nota differentiam inter hunc et illum, nam ille hominis, iste Dei; ille in aqua, iste in spiritu; ille lauabat corpora, iste peccata.
Et nota quod baptismus Iohannis dictus est penitentie, quia quos baptizabat | penitere docebat et iniungebat eis penitentiam. Baptismus uero Christi in remissionem peccatorum, quia per ipsum mundabatur interius anima a peccatis.

Circa baptismum Christi, omissis que satis nota sunt et alibi scripta, hec queruntur: primo quid sit baptismus; secundo an baptismus transeat an permaneat; tertio an sit substantia uel accidens uel substantialis differentia que nec substantia nec accidens est; quarto an baptismus sit in corpore uel in anima.

Ad primum dicas quod baptismus non ita expresse potest diffiniri. Quocumque tamen modo sic QUIDAM diffiniunt: baptismus est sacra supra hominem aquarum infusio, sancto Trinitatis nomine inuocato. Sed secundum hanc diffinitionem uidetur quod baptismus transeat et desinat esse cum illa sacra aquarum effusione; ergo iste non est baptizatus.

Respondeo: in baptismo nubit anima fidelis Deo et contrahit | uinculum quoddam spirituale quod dissolui non potest et ideo, licet transeat illa aquarum effusio, tamen permanet sacramentum. |

Ad illud quod tertio quesitum est, dicas quod hoc sacramentum non est predicamentalis res. Non enim substantia uel accidens uel substantialis differentia. Hec autem nomina et uerba locum habent circa ea que naturaliter sunt. Hoc autem sacramentum et sacramenta cetera supra naturam sunt inferiorum, nec ex uirtute nature inferioris fiunt.

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sed superioris gratie. Eodem modo solue si obiectum fuerit de sacramento ordinis et coniugii. Contentus autem sit qui opponit hac solutione, nec nimis instent propter simplices, quia non expedit ita subtiliter incedere inter uteros pregnantium.

Ad quartum dicas quod baptismus non est in corpore uel in anima sed est in persona.

Item, contritio sine baptismo ualet adulto ad remissionem peccatorum; baptismus uero sine contritione non ualet; ergo efficacior est contritio ad remissionem peccati quam baptismus.

Respondeo: baptismus dicitur esse efficax ad remissionem | peccatorum ut instrumentum, contritio ut causa, non ex qua, sed sine qua non fit remissio. Sed in utroque, scilicet baptismo, contritione, sola Dei gratia est efficax remissionis. Ergo nec baptismus contritione, nec contritio baptismo est efficacior. Dissimiliter sumitur iste terminus efficax, cum neutrum predictorum sit efficax proprie remissionis peccatorum; ubi autem est dissimilitudo termini non est ratio comparandi.

Item, potentiam baptizandi, quamuis potuit Deus dare, sibi retinuit, ne tot essent baptismi quot baptiste. Sed opponet QUIS dicens, licet dominus hanc retinuerit sibi potestatem, non ideo pauciores uidentur esse baptismi, quia ablutio istius

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50 superioris| superne P1 | | gratie| fiunt add. P1 | | si| sicut sed corr. P2
52 nimis| minus P2| instent| instet P2 | 53 ita subtiliter| diuitum To diiuitem
56 uell| nec Tr| est| om. Tr| est in persona
in persona est P1 | 57 uaele| in add. C | 59 ad| sa add. sed exp. To| peccati|
peccatorum P1 | 61 esse| om. Tr | 62 peccatorum| peccati P1 | 63 remissio| re CP2ToTr sed missio marg. add. P2peccatorum add. P1 | 64 baptismo| baptisma C et add. P1 | 65 nec contritio| om. To | 66 Dissimiliter| autem
add. Tr | sumitur| accepitur P1 | 70 quamuis| quam suis P1 quam et spat.
vac. tres litt. P1 quam Tr quam secundum ius rationis To | Deus| suis add. Tr| Deus dare| inv. P1 | 73 pauciores| potiores CP2 sed corr. P2potentiore To| uidentur esse| inv. P2| istius| in add. sed exp. To
exterior uel interior non est ablutio illius, et sic per singulos; ergo tot sunt baptismi quot sunt baptiste.

Respondeo: licet hec ablutio non sit illa, tamen plures ablutiones sunt unus baptismus, quia sunt unum sacramentum, id est signum unius sacre rei, id est Spiritus sancti intus abluentis, sicut plurium panum forme in altari que remanent post consecrationem panum sunt unum sacramentum, scilicet sacre unius rei signum, scilicet corporis Christi. Singule igitur et omnes sunt simul unum sacramentum.

[4.2] An plus indigeat paullus quam adultus.

Item, queritur utrum plus indigeat baptismo paruulus quam adultus. Quod paruulus probatur sic: paruulus manens paruulus hanc unicam uiam habet salutis; adultus hanc et aliam habet; ergo paruulus magis indiget hoc sacramento quam adultus.

Econtra, adultus pluribus reatibus tenetur quam paruulus; ergo magis indiget baptismo quam paruulus.

Respondeo: plus indiget adultus baptismo ad fugiendum discrimen supplicii maioris. Licet sit ei minus discrimin, paruulus uero plus indiget ad fugiendum maius discrimen supplicii licet minoris supplicii. Ubicumque enim tam adulto quam parulolo contingit decedere sine baptismo, est discrimen supplicii maioris adulto et minoris paruolo. Sed | maius discrimen est paruolo, quia tantum baptismo potest relevari; minus uero discrimen est adulto quia contritione

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85 Item...106 aliud] Cf. Petrus Pictaviensis, Sententiae 5 cap.6, Garv. (Peter), 14-15 (PL 211, 1234C-1235A), Petrus Cantor, Summa 1.18 (AMN 4, 56-57).


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etiam sine baptismo saluari potest, uel sic solue secundum pinguiorem Mineruam. Adultus infidelis magis indiget baptismo quam paruulus quoad hoc quia pluribus peccatis tenetur quam paruulus. Paruulus | uero magis indiget hoc sacramento quoad unicam uiam salutis in talibus que secundum comparationem concluduntur semper unum debet refelli per aliud.

Item, baptismus plura peccata remittit in uno quam in alio; remissio peccatorum effectus est baptismi; ergo baptismus maiorem habet effectum in uno quam in alio.

Respondeo: uerum est, sicut maior est effectus contritionis in uno quam in alio. |

Item, isti per contritionem ante baptismum peccata fuerant dimissa; non ergo necesse habet ad salutem ut baptizetur. Non sequitur, quia si non susciperet baptismum cum haberet locum et tempus, incurreret contemptum, nec ei prodesset precedens contritio, et ad hoc ualet ei baptismus, quo solutus est a pena satisfactionis ad quam tenebatur nisi baptizaretur, prodest ei etiam ad augmentum uirtutum et gratie.

Item, ex Adam contraximus saccum et meritum sacci, id est culpam et penam; per baptismum, qui est donum Dei, non abluimur in presenti nisi a culpa; ergo plus nocuit delictum Ade, quam hoc donum Christi profuit.

Respondeo: non sequitur quod illatum est, quia cum liberemur in presenti a culpa per baptismum ad utilitatem

101 pinguiorem Mineruam] A classical expression, current in the twelfth century, meaning a dull person, Cf. Iohannis Saresberiensis, Metalogicon II (CCCM 98, 98), Policraticus II (CCCM 118, 127) and VIII, ed. Webb, Oxford 1909, 273, 279. See also"Minervae," 3a, OLD 1110-11. 112 Item…119 gratie] Cf. Petrus Pictaviensis, Sententiae 5 cap.6, Garv. (Peter), 12 (PL 211, 1233B-C). 120 Item…133 conualescat] Petrus Pictaviensis, Sententiae 5 cap.6, Garv. (Peter), 13 (PL 211, 1233D-1234A).}
nosteram est, nisi per nos steterit quo non liberamur in presenti a pena per ipsum, ut ita laborando in lucta maiorem consequamur coronam. Unde AUGUSTINUS: "propter uitandum peccatum infirmitas reseruatur ut per hanc penam quam sentimus magis timeat homo peccare," sicut uides quod medicus ex duobus | uulneribus unum curat, alterum relinquens ex industria non sanatum ut per illud sanies egrediat, et ita fortior denique conualescet.

Item, per baptismum quoad culpam et quoad penam deletur peccatum, sed per contritionem deletur tantum quoad culpam. Ergo melior est baptismus quam contritio. Hoc autem uterum est, quia in pluribus habet penitentiam.

Econtra, sic: per contritionem sine baptismo possunt deleri peccata in adulto, sed non per baptismum sine contritione; ergo melior est contritio quam baptismus. Instans: per medicinam potest eger sanari, sed non potest per medicum sanari sine medicina; ergo melior est medicina quam medicus.

Et nota, tria esse genera baptismi. Est baptismus in aqua, in sanguine, in penitentia. Unde AUGUSTINUS: "firmissime tene et nullatenus dubites, non solum sanguinis effusionem sed cordis contritionem uicem obtinere baptismum cum non contemptus sed articuli necesseitas sacramentum excludit." Paruulis autem baptismo aque et sanguinis succurrur tantum. Adultis uero hiis duobus et tertio. Quod autem dicitur, nisi quis renatus fuerit ex aqua et Spiritu

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sancto etc., sic expone: id est si quis contempserit baptizari baptismo aque. Vel sic: nisi quis renatus fuerit ex aqua et Spiritu sancto uel alio remedio huic equipollente. Vel sic: nisi quis renatus fuerit etc., id est nisi quis fuerit regeneratus ea regeneratione que fit per aquam et Spiritum sanctum. Illa autem regeneratio fit non tantum per baptismum sed etiam per penitentiam et sanguinem, tamen baptismi sacramentum non fit nisi in aqua, etsi uirtutis ipsius sanctificatio datur per aquam et sanguinem et penitentiam. Tamen uidetur uelle AUGUSTINUS quod non potest quis saluari sine baptismo nisi sanguinem fundat pro domino. Inquit enim, "ex illo tempore quo salvator noster dixit, nisi quis renatus fuerit etc.: absque sacramento baptismi, preter eos qui in ecclesia sanguinem fundunt, aliiquis uitam eternam accipere non potest."

Respondeo: hoc intelligendum est de illis qui utrumque possunt facere sed contemnunt.


Item, queritur an intentio baptizantis neccesaria sit in baptismo. Secundum QUOSDAM ita est; non enim baptizat

152 sic...165 potest] Magister Udo, Sententiae 4, Garv. (Udo), 16-17: "Sed illud intelligendum est de his qui possunt et contemnunt baptizari. Vel potest intelligi de virtute et efficentia sacramenti, ut sit sensus: Nisi quis renatus fuerit ex aqua et Spiritu sancto, etc., id est Nisi quis renatus fuerit ea regeneratione que fit per aquam et spiritum sanctum, non salvabitur. Illa autem regeneratio non tantum fit per baptismum sed etiam per penitentiam et sanguinem. Inde dicit auctoritas ideo Apostolum pluraliter dixisse fundamentum baptismi quia est baptismus in aqua, in sanguine, et penitentia. Hoc autem non ideo dicit quod baptismi sacramentum fiat nisi in aqua sed quia ipsius virtutis, id est sanctificatio, datur non modo per aquam sed per penitentiam et sanguinem. Sed dicunt aliqui nullum caritatem habere uel esse dignum vite sine baptismo nisi sanguinem fundat pro domino, nimius inherentes verbis Augustini, dicentis: 'Ex illo tempore quo salvator noster dixit: Nisi quis renatus fuerit denuo, etc. absque sacramento baptismi preter eos qui in ecclesia sanguinem fundunt, aliiquis vitam eternam accipere non potest.' Sed hoc intelligendum est de illis qui utrumque facere possunt sed contemnunt." Cf. Petrus Lombardus Sententiae 4 di.4 cap.7, 257-58. 162 Fugentius Ruspensis, De fide ad Petrum (CCSL 91A, 740-41).

quis nisi baptizare intendat. Secundum QUORUMDAM sententiam nec furiosus baptizare potest cum sit mente captus et uelle aliquid non possit. Canon tamen dicit ebriosum posse baptizare, ut De cons. d. iiiii Baptismus.

ALII uero in contrarium sentiunt hac ratione moti: sicut non est necessaria ibi intentio eius qui baptizatur |uel qui baptismum recipit, nam furiosus baptizatur, ut c. xxvi q. vi qui reedunt, ita nec eius intentio requiritur qui baptizat. Secundum quos etiam puere in litore maris, quamuis baptizassent in ueritate Anastasium, tamen uoluntatem baptizandi non habebat uel intentionem, ut c. i q. i ecce. Quaquumcumque igitur ludicre uel mimice ut ita loquar et iocolanter dicat quis "baptizo te in nomine patris et filii et Spiritus sancti etc." super eum qui non fuerit baptizatus, secundum istos uerus fuerit baptismus. Tamen AUGUSTINUS ualde hesitat super hoc articulo, et adeo ut ipsum nolit diffinire, dicens: "utrum approbandum est baptismus qui sic daretur divinum iudicium per alicuius revelacionis oraculum concordi oratione gemitibus implorandum esse, censerem."

Lege De cons. d. iiiii Sol etiam queri et ita inuenies.

ALII sic distinguunt: | duplex est intentio: credendi et exequendi officium baptizandi. Intentio credendi non est neccessaria. Siue enim credat siue non qui baptizatur uel

175 Decret Grat., De cons. di.4 c.26 (Friedberg I, 1369).
178 Decret Grat., C.26 q.6 c.7 (Friedberg I, 1037-38).
180 Secundum...182 intentionem] Cf. Petrus Pictaviensis, Sententiae 5 cap.8, Garv. (Peter), 26 (PL 211, 1240D-1241A).
182 Decret Grat., C.1 q.1 dict. post c.58 (Friedberg I, 380).
183 ludicre...184 quis] Cf. Decret Grat., De cons. di.4 c.31 (Friedberg I, 1371).
188 Augustinus, De baptismo VII cap.53 par.102 (CSEL 51, 374), quoted in Decret Grat., De cons. di.4 c.31 (Friedberg I, 1371).
191 Decret Grat., De cons. di.4 c.31 (Friedberg I, 1371).

173 furiosus] furiosi Tr | potest] nec ebrii add. P1 | sit] sint P1Tr
174 captus] capti P1Tr| possit] possunt P1Tr
176 sentiunt] concedunt P1
177 necessaria] ibi| inv. P1ToTr| intentio eius] inv. P2
178 vi] v CP3P2
179 ita nec] cum P1| eius intentio] inv. P1
180 quos] quosdam P2
182 baptizandi] eum voluntatem add. ToTr| habeant] habeant P1| intentionem] tensionem To
183 iigitur] om. P1| uel| et P1ToTr| mimice] om. sed marg. ins. Tr
184 quis] om. P1
185 fuerit] fuerat P1ToTr
186 fuerit] om. P1|To est] Tr| baptismus] est add. P1
187 hoc articulo] hunc articulum To
188 est] est] set P1Tr
189 datur C
190 concordi] cum corde P2| implorandum esse] inv. P2
191 Lege] ut
192 est] om. P2
194 baptizatur] baptizat P1| uel| qui baptizat uel add. To
patrinus, nichilominus est sacramentum si tamen seruetur forma ecclesiastica et uerbo et facto. Quod uero dicitur, "accedit uerbum ad elementum et fit sacramentum, non quia dicitur, sed quia creditur," intellige creditur non actu, sed aptitudine, est enim sensus quia creditur, scilicet credendum est, siue credatur siue non. Intentio uero exequendi officium baptizandi necessaria est que sic a QUIBUSDAM diffinitur: intentio est forma uerborum a baptizante prolata cum gestu baptizandi et habitu sine rediculi reprehensione.


Item, queritur si baptismetur | adultus renitens et contradicens, an baptismum recipiat. Quod uidetur, quia sicut sacramentum ordinis potest quis inuitus suscipere, ut d. lxxiiii Ubi ista, sic et de hoc sacramento uidetur dicendum quod possit inuito conferri, ut d. xlv De iudeis.

Respondeo: QUIDAM dicunt tale suscepisse sacramentum etsi non rem sacramenti, ALII aliter.

Item, demonstretur quis qui ficte accedat ad baptismum. Iste baptizatur baptismo Christi; iste baptismus non efficit in isto remissionem peccatorum quam figurat; ergo iste baptismus non est sacramentum noui testamenti.

Item, baptismo isto iste fictus meretur supplicium; eodem merebitur premium quando fictio recedet; ergo opus modo factum sine caritate reuiuiscet.

197 accedit…198 creditur] Augustinus, Tract. Ioan. 80 (CCSL 36, 529).
207 Decret Grat., di.74 c.7 (Friedberg I, 263).
209 Decret Grat., di.45 c.5 (Friedberg I, 161-62).
213 Iste …215 testamenti] Petrus Pictaviensis, Sententiae 5 cap.6, Garv. (Peter), 15 (PL 211, 1235A).

Item, ponatur quod fictio recedat, iste tenetur penitere de omni mortali quod conmisit; susceptio baptismi cum fictus esset fuit ei mortale peccatum; ergo tenetur penitere de baptismo quem fictae suscepit. Nam si baptismus est opus meritorium uite cum sucipitur ex caritate, cur idem non esset meritorium susplicii si mala susciperetur uoluntate uel intentione? Ergo tenetur penitere quia est baptizatus.

Econtra, sic oppone: iste scit baptismum sic prodesse ad salutem; ergo non tenetur penitere de illo baptismo.

Item, dum penitet iste de illa fictione, incipit sacramentum baptismi habere effectum suum in eo; ergo remittuntur ei peccata et quoad culpam et quoad penam; ergo non debet ei inuii satisfacio pro peccatis que conmisit ante baptismum, neque pro hiis que post gessit.

Respondeo: dixerunt ANTIQUI quod fictae accedenti ad baptismum omnia remittuntur peccata dum est in sacris fontibus sed quam cito emergit de spiritualibus undis redeunt.

Hec opinio antiquata est, et dicunt MODERNI quod ficte suscipienti baptismum non dimittuntur peccata, immo baptismus est ei occasio, non dico causa, mortis eterne, quia bono male utitur.

Item, uidetur quod ficte accedenti dimittatur peccatum. Inquit enim AUCTORITAS, Quotquot in Christo baptizati estis, Christum induistis. Sed qui ficte suscipit baptismum in Christo, Christum induit, et baptizatus est; ergo qui ficte suscepit baptismum, Christum induit; ergo sanctificatus est in baptismo.

Respondeo: hoc dupliciter soluitur. Potest enim dici quod "qui in Christo," id est in Christi conformitate, "baptizantur," ut scilicet moriantur uetustati peccati sicut Christus mortuus est uetustati pene, illi "induunt Christum" quem per gratiam inhabitantem habent. Et secundum hoc, qui ficte suscipit baptismum non baptizatur in Christo quia non baptizatur in conformitate Christi <qui adeo> non moritur uetustati peccati, sicut Christus mortuus est uetustati pene. Vel aliter potest solui: duobus modis dicitur quis induere Christum, uel per assumptionem sacramenti, uel per rei perceptionem. Uniuersi igitur qui in Christi nomine baptismantur Christum induunt, uel secundum sacramenti

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perceptionem, uel secundum sanctificationem. Primo modo
induit Christum fictus in baptismo, non autem secundo.

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   quod non, quia nullus se ipsum potest ordinare, confirmare
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   Item, quere si corrupte dicatur "in nomine patria et filia
   et spiritu sancta" uel alio quolibet modo, quid censendum sit.
   Respondeo: refert utrum quis scienter ita dixerit an
   ignoranter. Si scienter, non est sacramentum. Si ignoranter,
   et error fidei ibi inuenitur, baptismam iteretur. Si uero solus
   error grammatice ibi reperitur, ratum est sacramentum.

   Item, quomodo sunt vii dona Spiritus sancti, ita sunt vii
   dona baptismi. Primum est salutis collatio, ut De cons. d. iiii.
   Secundum, aurium et naruum sputi linitio, ut eadem
   distinctio Postea tanguntur. Tertium, in fronte et in pectore
   crucis facta signatio, ut eadem distinctio Postea signatur.
Quartum, olei sacrati perunctio, ut eadem distinctio *Deinde a sacerdote*. Quintum, baptismi ablutio, ut eadem distinctio *Venit*. Sextum, in uertice crismatis perunctio, ut eadem distinctio *Postquam ascendit*. Septimum, eiusdem in fronte consignatio, ut eadem distinctio *Presbyteri*.

Queritur ergo si tenuerit quis ad sacramenta huiusmodi que precedunt baptismum, an contrahatur spiritualis cognatio. Quod uidetur, quia dicit decretum, "a primo pabulo sacramentí salis et ingressu ecclesie usque ad confirmationem per crisma, nullus christianus suam connametrum ducat in uxorem;" ergo si tenuerit quis aliquem ad hec sacramenta uel unum ex istis erit ex hoc spiritualis cognatio inter eos.

Resonsio: dicunt *QUIDAM* quod in his sacramentis que precedunt baptismum nulla contrahitur conpaternitas uel spiritualis cognatio. Habent rationem ex hoc moti, quod filius spiritualis christiani esse non potest nondum factus christianus, cum adhuc membrum sit diaboli, et quod matrimonium | non potest contraher inter tales. Introductum est, magis ratione publice honestatis quam pro causa alicuius uinculi spiritualis.

*ALII* dicunt quod licet talis nondum sit christianus, tamen est | christianatus, et ideo non est membrum dyaboli, et contrahit | in his sacramentis spiritualis proximitas. Unde dicunt quod tales, scilicet cathecumini, ad susceptionem baptismis iuste compelli possunt.

280 Decret Grat., De cons. di.4 c.70 (Friedberg I, 1385).
282 Decret Grat., De cons. di.4 c.71 (Friedberg I, 1385).
283 Decret Grat., De cons. di.4 c.88 (Friedberg I, 1391), incipit is "Postquam ascendit."
284 Decret Grat., De cons. di.4 c.120 (Friedberg I, 1399), but this canon specifies that priests may not sign baptized on the forehead, which is reserved for bishops at confirmation.
287 Decret Grat., C.30 q.1 c.1 (Friedberg I, 1096).

Queritur utrum baptismus efficit quod figurat in non predestinatis.

"Sacramenta in solis electis efficiunt quod figurant." Ex hac AUCTORITATE, sic oppone: baptismus figurat remissionem peccatorum; ergo solis electis dimittuntur per baptismum peccata. Hoc autem falsum, immo uniuiersis qui non ficte accedunt ad baptismum uniuiersa dimittuntur peccata in baptismo.

Respondeo: hoc ideo dicitur quia, cum in aliis qui non sunt electi efficiat | baptismus remissionem peccatorum, non eis hoc facit ad salutem, sed solis electis.

Item, baptismus est ablution, sed ablution talis est actio abluentis uel passio illius qui abluuitur. Utrumque istorum est opus hominis; ergo baptismus est opus hominis; non ergo tantum opus Dei.

Item, illa ablution corporis est sacramentum noui testamenti; ergo efficit quod figurat; ergo efficit remissionem peccatorum cuius est figura; ergo opus hominis est causa remissionis peccatorum; non ergo solus Deus.

Respondeo: dixerunt antiqui quod ipsa aqua esset baptismus, et hoc uidetur uelle AUCTORITAS super hunc locum Iohannis nisi quis renatus fuerit etc. Inquit enim, "uisibili sacramento et spiritu inuisibili intellectu." Hec autem est sententia PLURIMORUM, ut dicant corporis

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exteriorem ablutionem esse baptismum. Unde concedunt isti quod opus hominis est causa remissionis peccatorum, sicut et predicatio Pauli multis fuit causa conversionis. Nec ualet quod supra illatum est: opus hominis est causa remissionis peccatorum; non ergo solus Deus. Instans: ex meritis est salus; non ergo ex sola gratia. Immo ad illud quod dicitur super Iohannem dicas auctorem illius uerbi non intellexisse, aquam esse sacramentum baptismi, sed aquam sanctificatam benedictione ibi uocat sacramentum.

Item, ad substantiam sacramenti pertinet uerbum, id est inuocatio Trinitatis, et elementum. Cetera pertinent ad decorum. Forma autem uerborum quam tradidit dominus hec est: _Ite, baptizate omnes gentes in nomine patris et filii et Spiritus sancti._ Unde secundum hoc non uidetur baptizatus qui in nomine Christi tantum baptizatur.

Respondeo: non est ita, quia in hoc nomine _Christus_ tota Trinitas designatur, ut ait AMBROSII, "cum enim dicis _Christum_ intelligitur pater a quo unctus est et filius qui est unctus et Spiritus sanctus per quem est unctus Christus."

Item, si quis diceret, "in nomine Trinitatis baptizo te," queritur si baptizatus est.

Respondeo: dicunt QUIDAM quod baptizatus est sicut et ille qui tantum in nomine Christi baptismum suscepit. Cautius tamen non dico melius baptizatus esset si expressa fuissent nomina personarum.

ALII dicunt contrarium, nec baptizatus esset si quis diceret, "baptizo te in nomine domini" uel "Dei" uel "patris" tantum uel "Spiritus sancti" tantum.

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26 sicut…29 peccatorum] _om. hom._ To 27 Pauli] _om._ P1 28 supra illatum est] _illatum est supra Tr_ 29 Instans] _solutio CToTr_ 30 illud] _dicas add._ Tr 31 _dicas_ om. Tr | _auctorem| auctoritatem P1P2 35 inuocatio Trinitatis] _inv._ P1 | _et| _om. sed sup. lin. ins._ Tr 37 _baptizate_ docete To | _gentes| baptizantes eos add._ P1 _homines Tr_ 38 secundum hoc non uidetur| non uidetur secundum hoc P1 | _uidetur| esse add._ P2 40 hoc] _om._ P1 | _Christus| Christi P1Tr 41 designatur| intelligentur To| _ut ait| unde P2 | _dicis| dicit P1 dici P2 42 et| _om._ P1 43 unctus| _in celis P2To | _est unctus| _inv._ P1P2 44 Item] _respondeo P3Tr_ 45 est] _eset Tr_ 48 _tamen_ uero P1 | _expressa…50 si| _om. hom._ P2 51 _dicere| ego add._ P1 | _nomine| patris uel Dei add._ P1 | _uel…52 tantum| _om._ P1 52 _tantum| _om._ Tr
Si quis uero diceret ordine turbato, "in nomine Spiritus sancti, patris et filii baptizo te," queritur an sit bapitizatus.

Respondeo: dicunt QUIDAM ita esse, quamuis enim mutetur ordo remanet tamen forma, nam nomina et uerba transposita idem significant.

Item, si quis diceret, "baptizo te in nomine patris et filii et Spiritus sancti" et adderet "et beati Iohannis" uel "beate marie," et huiusmodi, sicut simplices solent facere ex deuotione, uidetur quod baptizet, quia quod rectum est ibi non euacuat id quod inutiliter est adiunctum, ut De cons. d. iiiiii *Si non sanctificatur aqua.*

[5.2] **Quomodo intelligendum sit "baptizo te in nomine patris et filii et Spiritus sancti."**

Item, queritur quomodo intelligendum "baptizo te in nomine | patris et filii et Spiritus sancti," cum non sit aliquod nomen quod sit patris et filii et Spiritus sancti.

Respondeo: hoc nomen *nomine* semel apponitur sed tertio intelligitur repetitum.

**<Quomodo spiritualis paternitas contracta sit>**

Item, cum baptizatus a Iudeo uel quocumque alio uerum suscipiat sacramentum, queritur an contrahatur spiritualis paternitas inter infantulum et infidelem. Quod uidetur, quia infidelis efficitur patrinus uel pater spiritualis infantuli, dum eum baptizat uel erigit ex sacris fontibus.

Item, si mulier infidelis baptizat aliquem in necessitate uel tenet in sacris fontibus, non potest contrahi matrimonium inter illos, et si illa convirtatur ad fidem. Sed non est impedimentum, quominus possit contrahi matrimonium inter

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istos, nisi spiritualis conmaternitas uel filiatio; ergo ista infidelis efficitur mater spiritualis huius paruuli.

Econtra, spiritualis paternitas quoddam donum spirituale est quod non habent nisi illi qui sunt de ecclesia; ergo si Iudeus baptizat aliquem uel erigit a sacris fontibus non efficitur eius patrinus uel pater spiritualis.

Respondeo: dicunt QUI DAM quod reuera talis Iudeus non efficitur pater spiritualis huius infantuli, nec Iudea mater spiritualis. Quod ergo est impedimentum ne possint contrahere matrimonium inter istos? Dicunt isti, sola institutio ecclesie. Ita enim decreuit ecclesia ut si qua baptizaret aliquem uel erigeret a sacris fontibus non posset de cetero contrahere matrimonium inter istos, sicut, dicunt isti, non est affinitas impedimentum quominus possit contrahere matrimonium aliquis de cognatione mea cum illa quam cognouei fornicario coitu. Nulla est ibi affinitas, ut dicunt, quia affinitas ex honestate nuptiarum provenit, non ex turpitudine. Quid ergo impedit, quod non possit contrahere matrimonium inter illam cum qua fornicatus sum et aliquem de cognatis meis? Respondeo: sola institutio ecclesie, que tales interdixit coniungi.

Hic queritur utrum paruulis conferantur in baptismo uirtutes.

Querit theologus an paruulo conferantur uirtutes in baptismo. Quod uidetur, quia "fides datur in aquis et affinitas impedimentum quominus possit contrahere matrimonium aliquem de cognatione mea cum illa quam cognouei fornicario coitu. Nulla est ibi affinitas, ut dicunt, quia affinitas ex honestate nuptiarum provenit, non ex turpitudine. Quid ergo impedit, quod non possit contrahere matrimonium inter illam cum qua fornicatus sum et aliquem de cognatis meis? Respondeo: sola institutio ecclesie, que tales interdixit coniungi.


Querit theologus an paruulo conferantur uirtutes in baptismo. Quod uidetur, quia "fides datur in aquis et
nutritur in aquis." Datur quantum ad paruulos et nutritur quantum ad adultos.

Item, baptismus non tantum aufert penam sed conferit gratiam.

Item, nisi quis | rena tus fuerit ex aqua et Spiritu sancto.

Item, "egressus utiorum uirtutis operatur ingressum."

Item, uirtus et uirtium sunt opposita immediata; iste paruulus non habet uitia; ergo habet uirtutes.

Item, baptismus facit dignum uita eterna paruulum; sed nullus est dignus uita eterna nisi ratione uirtutum; ergo iste paruulus habet uirtutes.

Item, nullus post mortem inuenitur iustus nisi in uita fuerit iustificatus; ergo paruulus iste qui post baptismum decedit, post mortem iustus non erit nisi in baptismo fuerit iustificatus; ergo si in baptismo iustificatus, ei tunc uirtutes conferuntur.

Item, quod paruulis conferantur uirtutes uidetur, nam super hunc locum APOSTOLI per unum hominem intrauit mors in mundum, dicit AUGUSTINUS, "Christus, preter imitationis exemplum, dat etiam sui Spiritus aliquam occultissimam fidelibus gratiam, quam latenter etiam infundit paruulis." Igitur gratia infunditur paruulis, sed de remissione originalis intelligi non potest, quia uerbum infusionis locum non habet circa remissi onem peccatorum, ut dicatur

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10 egressus…ingressum] Ambrosius, De Cain et Abel II cap.4 par.16 (CSEL 32.1, 392). quoted in Decret. Grat. C.32 q.1 c.9 (Friedberg I, 1117).
25 Rom. 5.12.
26 Augustinus, De peccatorum meritis et remissione I cap.9 par.10 (CSEL 60, 11), quoted in Petrus Lombardus, Coll. in Paul. (PL 191, 1388C).
remissio peccatorum infunditur alicui. Hoc minus congrue dicitur, et ita aliqua uirtus infunditur paruulis.

Item, de Iohanne legitur quod fuit iustificatus in utero matris et Spiritu sancto repletus, replebat matrem. Repletio non potest intelligi nisi per positionem alicuius | uirtutis; ergo aliqua uirtus tunc erat in illo. Eadem ratione paruulis in baptismo confertur aliqua uirtus.

Item, quid dices de Nicholao, qui in cunis adhuc iacens seruabat ieiunia et abstinebat ab ubere materno, nonne tunc habebat uirtutes. Videtur quidem tunc habuisse quod de eo dicitur in ecclesia, a mamilla cepit summa promereri gaudia.

Solutio: hiis auctoritatibus et rationibus moti, QUIDAM dixerunt uirtutes paruulis in baptismo conferri, habitu inquam non usu, quia eas habent in quadam habilitate et aptitudine, ut eis utantur cum ad annos discretionis uenerint.

ALII hoc negant, cum tunc paruuli non habeant uelle nec nolle. Omnis enim uirtus consistit penes usum liberi arbitrii.

Item, eadem ratione fuerunt in paruulo uirtutes ante baptismum, quia quedam potentie quibus aptus natus est, ut esset fortis, prudens, mansuetus, iustus, et huiusmodi, erant in eo ante baptismum. Est enim homo animal mansuetum natura.

Quod autem paruulis non conferantur uirtutes in baptismo probatur sic: si paruulus iste ideo dicitur habere uirtutes quia immunis est a peccato et est membrum Christi,
eadem ratione habebat uitia uirtutibus opposita cum esset membrum diaboli et teneretur peccato originali, et si decederet ante baptismum non dampnaretur pro solo originali sed pro aliis uitiis.

Item, si iste puer qui baptizatus est habet fidelis, credit, et diligit, ergo diligit Deum supra se et proximum sicut se. Eadem ratione iste paruulus credit omnes articulos fidei, quod falsum est, posito quod futurus sit simplex et idiota. Eadem ratione iste paruulus habet caritatem perfectam uel imperfectam.

Item, cum AUCTORITAS dicit quod circumcisio delebat culpam | sed non conferebat gratiam, queritur quomodo paruulis conferebantur uirtutes tempore circuncisionis cum nullum sacramentum in ueteri testamento esset tante efficacie. Videtur ergo quod in ueteri testamento non conferebat uirtutes ante annos discretionis. Similiter nec in baptismo ante idem tempus.

Item, super epistulam ad Romanos dicit AUGUSTINUS, "sicut per fidelis, uirtutem adultus iustificatur, ita per fidei sacramentum paruulus." Si crederet Augustinus paruulum habere fidelis, quare non dixit paruulum per fidei iustificari sicut et adultus?

Solutio: si uis sequi HORUM opinionem qui dicunt quod uirtutes non conferuntur paruulis in baptismo, dic quod prima auctoritas intelligenda est de statu adultorum quibus aut fides datur si tunc primo convertuntur quando baptizantur aut in eis nutrirur, si post contritionem accedant ad baptismum. Secunda

68 circumcisio...69 gratiam I cannot find this authority. See Petrus Lombardus, Sententiae 4 d.1 c.9, 235. 76 Petrus Lombardus, Coll. in Paul. (PL 191 1397A) attributes to Augustine. 81 prima...114 collatione] Alanus ab Insulis, Tract. de uir. art.4, 62-63.

similiter auctoritas de eodem statu adultorum intelligenda est.

Et nota quod Spiritus sanctus dicitur dari dupliciter: aut quantum ad peccati remissionem, prout datur paruulis, aut quantum ad uirtutum collationem, prout datur adultis contritis. Quod postea dicitur, "egressus uitiorum etc.," locum habet circa statum adultorum.

Ad hoc quod dicitur quod uirtus et uitium sunt opposita immediate, dicas quod non sunt opposita immediate maxime infra annos discretionis, quemadmodum usius et ecitas non sunt opposita circa animal latrabile ante tempus determinatum, ita spiritualis uisio et spiritualis ecitas circa animal rationale ante tempus discretionis.

Ad hoc quod postea dicitur quod baptismus facit paruulum dignum uita eterna, dicas quod paruulus post baptismum est dignus uita eterna de congruo ratione innocentie, sed non de merito. Congruum enim est ut qui immunis est a peccato saluetur, puer autem non alia de causa dicitur membro diaboli, nisi quia obnoxius est pene eterne. Non enim aliquod peccatum habet in se, sed quod contraxit originaliter a primo parente, ut pro peccato ipsius sit obnoxius pene eterne. Puer ergo iste nec ante baptismum proprie habet peccatum nisi peccatum uocemus reatum, id est obnoxietates pene, nec post baptismum uirtutem nisi uirtutem uocemus quandam dignitatem congrui quam, scilicet contrahit ex baptismo et fide ecclesie. Quod uero postea dicitur quod post mortem non inuenitur aliquis iustus nisi in uita fuerit iustificatus, intelligendum est tantum de adultis, uel "nisi fuerit in uita iustificatus": aut peccati remissione aut uirtutis collatione.
Hic queritur utrum istorum sit incurrendum: symonia scilicet pro puero baptizando, uel mors pueri non baptizati.

Cum ea necessitas institerit ut baptizandus moriatur nec offerens ualeat baptizare | nec inueniat qui sine pecunia baptizet, quere utrum debet eligere ut puerum | sinat mori sine baptismo, uel pecuniam offerat pro baptizando.

Ut non offerat pecuniam patrocinatur hoc, quia pro salute alterius mentiri non debemus, ut xxii q. i c. primum. Multo fortius igitur nec committere debemus symoniam pro salute alterius.

Sed ut offerat in hoc casu pecuniam pro baptizando suadere uidentur quod de Stephano legitur, quod proprium filium baptizauit, ut xxx q. i Ad limina.

Respondeo cum AUGUSTINO: qui sine peccato consulere nequit, "iam se existimet non habere quid faciat," ut xxii q. i Faciat.

ALII dicunt aliter, quod maioris uidentur esse pietatis, et hec probant a diffinitione symonie, quae est studiosa cupiditas emendi uel uendendi aliquod spirituale uel annexum spirituali. Hic enim accipitur cupiditas illa portio cupiditatis que uertitur circa temporalia commoda. Iste autem econtra ad eterna suspirat; non est hic studiosa cupiditas sed amor pius. Quemadmodum, si Christus teneretur inclusus, et darem capam meam uel aliud ut eum uiderem, non committerem symoniam.

Vel sic: si adultus est, sufficit cordis contritio si baptismi necessitas non religionis contemptus excludit, ut de...
Valentino habetur, ab AMBROSIO dictum "uentrem meum doleo, ut prophetico utar eloquio, quia quem regeneraturus eram amisi. Ille tamen gratiam quam <poposcit> non amisit."
Si uero paruulus est, minus malum est dare pecuniam. De duobus enim malis, minus est eligendus, ut d. xiii c. i et ii.

Item, transfer disputationem ad similia et quere si pro temporalibus pecunia sit accipienda, puta pro denario missa celebranda. Quod uidetur, quia probeneficii magis orare tenemur.

Item, "Gratias agimus tibi pro uniuersis beneficiis tuis."

Item, inquit APOSTOLUS, Omnia michi licent; ergo sumptus pro predicacione accipere, quia species symonie est, minus ammonui suscipere.

Item, qui dispensat spiritualia, euangelizat pro temporalibus, ut comedat, et ideo mercennarius.

Item, non licet, quia sibi constituit duos fines, et sic admiscet dextram sinistre.

Respondeo: si pro causatiuum est, falsum est. Pro deo namque sunt finaliter tantum et causaliter dispensanda. Si obligatoriet, uerum est. Temporalia namque nos obligant, non tamen ciuiliter sed naturaliter; uerbi gratia, episcopus dedit michi canonicam | pro Deo finaliter, pro obsequio meo obligatorie. Verum si talia in pactione deducantur, penitus dehonestantur, et ideo nulla pactio interueniat. Nullum

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29 Ier. 4.19.  |  Ambrosius Mediolanensis, De obitu Valentiniani cap. 29 (CSEL 73, 344), perhaps through Petrus Lombardus, Sententiae 4 di.4 cap.4, 256. 33 Decret. Grat., di.13 c.1 and 2 (Friedberg I, 31, 31-33). 39 I Cor. 6.12

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pretium exigatur ante uel post pro missa cantanda, pro anniuersario, et similibus, sed nec aliquid pretermittatur. Unde animus possit corrumpi sacerdotis. Si uis sine macula symonie procedere, debes supplicare sacerdoti ut missam celebret, et deinde munus Domino offerre.

Item, queritur si procuratio et similia, que sunt consuetudinis, exigenda sunt pro dedicatione ecclesie, uel si qua ex pactione conueniunt persoluenda. Videtur, quia dictum est "ut consequantur stipendium qui suum commodasse reperiuntur obsequium," ut xii q. ii c. <Caritatem>.

Item, quia in talibus est consuetudini deferendum nec est instituenda nouitas, sed servandum quod antiqua exigit consuetudo, ut d. lxiii <Quia sancta Romana> ecclesia, non quasi ex debito minus quod debet exigatur, ut q. ii Placuit. "Nec sub obtentu consuetudinis aliquid exigatur," ut i q. iii <Si quis prebendas>.

Respondeo: pro dedicatione nec est paciscendum, nec si pactum fuerit persoluendum, preter, ut QUIDAM dicunt, procurationem uel procurationis redemptionem, quia dignus est mercennarius mercede sua, sed si ecclesia indiguerit, nichil penitus exigatur, ut i q. ii Placuit.

Videtur tamen quod procuratio non possit redimi | certo pretio sine macula symonie, quia nec uisitatoris procuratio pretio est redimenda, ut x q. i Relata.

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54 et similibus| om. sed marg. ins. P1 | aliquid| potest add. sed exp. To | pretermittatur| promittatur To | possit corrumpi sacerdotis| sacerdotis possit corrumpi P1 | 56 symonie| inde add. P1|ToTr | 57 Domino| Deo P1 | 58 queritur| om. sed sup. lin. ins. Tr | procuratio| procreatio C | 59 consuetudinis| sint add. P2 | sunt| om. P2 | 60 qua| quam To | pactione P2|ToTr | Videtur| om. sed sup. lin. ins. To | 61 dictum| dignum P1|ToTr | 63 Caritatem| Ecclesiastica CP|P2|ToTr | 64 est| om. P1 | nec| non P1 P2|ToTr | 65 lxiii| xliii P1 | Quia| agat CP|ToTr | 66 agere P2 | sancta Romanæ| hiis CP|bec P2|ToTr | 67 minus | munus P1|ToTr | debet|debeat P2 | ut...68 exigatur| om. hom. P1|P2|ToTr | 69 si...prebendas| Ecclesia CP|P2|ToTr | 70 dedicatione| dedica C | paciscendum| paciscendum P1 | 71 ut quidam| om. sed ubi quidam marg. ins. P1 | dicunt| om. P1 | 72 uel| pro add. P1 | redemptionem| redemptione P1 | 74 q ii| om. P1 | 75 Videtur| utrum P1 | 76 procuratio| om. sed sup. lin. ins. Tr | 77 Relata| relate P2
Econtra, qui procurationem offerre voluerit, cur non et eius pretium, cum et forsae inter sit ecclesia?
Respondeo: in arbitrio sit offerebant, utrum istorum vigil offerre, non autem episcopi exigentis, qui neutrum civili debet exigere.


Item, queritur an symoniacum sit balsamum in crismate positum vendere, luminaria in ecclesia, uel incaustum, uel calamum quod fit cum archdiaconus uocat et nominat ordinandos.
Respondeo: et hoc quidam canones uelle uidentur, huc cum spiritualibus ad paria iudicantes et eisdem regulis prohibentis, ut c. i q. i statuimus, nisi uelimus inter rem et officium distinguere, dicentes symoniam sapere si officium uendatur, maxime si perciptiatur salarium, ut xxxiii q. i Militare, non autem si pro cedula pretium exigatur. Quicquid dicatur, solutum est | pretium in curia pro bulla institutum.


Item, queritur an sit symoniacum pecuniam accipere ut matrimonium contrahatur. Est enim tantum sacramentum, et est unum | de beneficiis Dei pro quibus munera non sunt accipienda, ut d. xxiii Hiis. Nam, cum olim fuerit legis obsequium, nunc est infirmitatis remedium, ut xxvii q. i Nuptiarum.


Econtra, quia remunerantur parentes Rebecca muneribus, ut xxxii q. ii Cum.

Item, quia uniuersalis ecclesie consuetudo hec approbat. Respondeo: Non committitur symonia nisi in sacramentis que gratiam conferunt, ut baptismo, ordine, et similibus; coniugium autem non confert gratiam, ut xxxii q. ii conubia.


Item, queritur si sit symoniacum emere uel commutare decimas uel ius decimarum et primitiarum et ius patronatus. Videtur nam et hec iura sunt spiritualia, et spiritualibus annexa.

Item, c. i q. iii: "altare et decimas emere nullus ignorat heresim | symoniacam esse."


Preterea presens et Apostolicus sustinet decimas de manu laicorum redimi, et quoquo titulo liberari.

Respondeo: dicebat magister meus: hic malo consulere sapientes, quia non omnia possimus omnes.


Item, queritur si pro ingressu monasterii sit pecunia exigenda, uel exacta persoluenda, ante uel post ingressum. Videtur exemplo Samuelis, pro quo mater obtulit.

Item, exemplo eorum qui po|nebant omnia ante pedes apostolorum.

Item, quia sic spoliantur Egiptii ut ditentur Hebrei.

Contra, quia nec monachus in monasterio est recipiendus pretio, nec aliquis ad conuersionem pretio ammonendus, nec aliquis in ecclesia susciendi est pretio, ut c. i q. ii Quam pio.

Respondeo: pecunia excitur ab ingressuris, et est hoc symonia, ut c. Quam pio. Exigitur etiam ab ingressis interdum, et hoc absolute symonia est.


Item, queritur si uendere prebendas sit symonia. Quod non uidetur: temporalia namque non sunt spiritualia.

Econtra, quia officium et beneficium adeo sunt annexa "quod quisquis alterum horum uendid sine quo alterum non prouenit, neutrum inuendit derelinquit," ut c. i Saluator.

Respondeo: prebenda dicitur ius ita coherens officio quod unum sine altero non potest uendi. Unde si quis

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127 et| om. P₁| de...128 redimi| redimi de manu laicorum Tr 131 An... pecunia| om. P₂P₃ToTr 132 queritur| om. To| si| an P₁| pro ingressu| in progressu CP₂ToTr 137 ut| iam sed corr. Tr| ditentur| dicunt Tr 138 in...139 recipiendus| est recipiendus in monasterio ToTr 139 pretio| om. C 140 est pretio] inv. P₂ 141 ii] v Tr 142 est hoc| inv. P₁P₂ToTr 143 c| i q. ii add. P₂ | Exigitur] exigatur Tr 145 An... symonia| om. P₂P₃ToTr 146 symonia| symoniaeum P₁ 147 namque] enim Tr 148 Econtra] econtrario P₁ | officium et beneficium| beneficium et officium P₂ 149 quisquis| si quis eorum Tr | alterum horum] inv. P₁P₂To | horum| om. Tr | sine...150 proueni] om. P₂ToTr 151 prebenda| ieo add. sed exp. Tr| ius] hoc add. To hoc scrip. sed corr. in ius hoc Tr
priuatur officio, consequenter priuari intelligitur et beneficio, ut d. lxxxi Eos etiam qui, nisi causa utilitatis aliud interueniat, ut d. idem c. antecedens. Hoc itaque uendere symoniacum est. Simile iudicium est de omnibus annexis, ut electione et decreto electionis, ut c. i q. vi in principio.

Item, prebenda dicitur fructus percepti, qui licite uenduntur et percipiendi. Hos uendere, ut quidam dicunt, symonia est, dicentes stipendium et seruitium conexa, ut alterum sine altero non possit uendi. Sed hoc de iure est intelligendum. Fructus etenim percipiendos uendi posse et consuetudo probat et exemplum summi pontificis, qui oblationes beati Petri impignorat.

[7.7] An sit symonia si cleric<o> dat episc<us> pecuniam ut ordinetur ab ipso.

Item, queritur utrum sit symonia si episcopus dat pecuniam clerico ut ordinetur ab eo. Nam cum symonia in emptione consistat, episcopus non uidetur uenditor, sed donator.

Respondeo: hoc solui uidetur in i q. ii Quam pio.

[7.8] Item, cum liquido constet quod dare ut facias uel ut des sit symonia, queritur an sit symonia dare ut non des uel ut non facias. Videtur quod eadem lege tenetur qui pecuniam accepisse convincitut ut aliquid faceret uel non faceret.

Contra, quia symonia est emptio uel uenditio rei spiritualis.
Item, Simonis cupiditas fuit dare ut donum Dei pecunia possideret. | Hoc autem non datur | ut possideatur; immo datur ut non possideatur.

Respondeo: PASCHALIS hoc asserit sacrilegium, ut c. i q. i Sunt quidam, et GRATIANUS probat per leges esse symoniam, sed sine conflictu disputationum dicebat magister meus, "Nolo dare iudicium."

Item, proba in generali esse peccatum emere spiritualia sic, scilicet, quia "gratia nisi gratis data gratia non est."

Item, "quia dantem uel accipientem damnatio Symonis inuoluit."

Item, "anathema danni, anathema accipiendi, hec sunt symoniaca heresis."

Item, "ubi Christus non est fundamentum, nullum super est edificium boni operis."

Econtra est, quia prophetia uendi consueverat.

Item, quia sinistra principia perueniunt | ad felices exitus, ut Iacob per supplantationem peruenit ad benedictionem.

Respondeo: spiritualia dicuntur per que Spiritus sanctus habetur, ut uirtutes; per que Spiritus sanctus haberi presumitur, ut miracula; per que Spiritus sanctus infunditur, ut sacramenta; per que uel in quibus sacramenta tractantur, ut uasa; que spiritualibus annectuntur, ut iura. Uirtutes et miracula sunt impretiabilia de iure | et facto. Sacramenta et

Tr 99ra
C 127rb

Item, Simonis cupiditas fuit dare ut donum Dei pecunia possideret. | Hoc autem non datur | ut possideatur; immo datur ut non possideatur.

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iura de iure et non facto sunt impretiabilia. Vasa uero sunt pretiabilia de iure et facto, quia, si reducantur ad aliam formam rudem, laicis uendi possunt. Aliquo in ut xii q. ii Aurum, et De cons. d. i Ligna.

Et nota quod symonia dicitur a Symone mago qui uidens apostolos miracula facere, obtulit pecuniam dicens, "Date michi hanc potestatem." Cui Petrus, "pecunia tua tecum sit in perditionem." Huius tamen criminis in ueteri testamento Giezi precessat auctor, nec tamen ab illo sed ab isto hoc crimen accepit nomen, tum nouitate, tum sceleris magnitudine. Ille namque in ueteri testamento fuit, iste in nouo, ille extra ecclesiam, iste de ecclesia.

Et notandum quod symonia committitur a manu, ut pretio uel pecunia; a lingua, ut fauore uel precibus; ab obsequio, ut seruitute uel impensa; hiis, dico, datis uel acceptis, pro data uel accepta, danda uel accipienda re spirituali, ut pro notet efficientiam, non naturalem obligationem.


Item, cum dictum sit uasa sacra esse spiritualia et tamen de iure et facto uendi posse, queritur si committatur symonia, cum sine causa et modo uenduntur.

Respondeo: cum causa subest et modus accedit, scilicet ut conflata laicis et formata eis uendantur, licite possunt uendi, at si causa uel modus defuerit, sacrilegium, non symonia, committitur, ut d. l Si quis presbyter. Symon etenim gratiam emere uoluit, et ideo in hiis que gratia committatur ut


fiant operante gratia proprie committitur symonia; unde et circa iura improprie. Sed forte aliter alteri placebat, quia aliter URBANUS sentire uidetur, ut c. i q. iii Saluator.

Et nota quod de misericordia triplex dispensatio admittitur circa eum qui symoniace sibi comparauit ecclesiam uel prebendam: magna, ut sit in ecclesia alia propriis seruatibus ordinaribus; maior, ut sit in propria sed in minoribus ordinibus; maxima, ut sit in propria seruatibus propriis ordinibus.

[7.10] An monachali habitu sit priuandus qui interuentu pecunie monasterium intrauit.

Item, queritur si aliquis interuentu pecunie monachus est factus, an monachali habitu sit priuandus. Videtur quod nullus ex promotione que est per negotiationem facta proficere debet ut c. i | q. i Si quis episcopus.

Respondeo: priuetur illo cenobio sed non illo habitu, non enim data est pecunia propter habitum, sicut si quis per pecuniam ordinaretur in episcopum non amitteret sacramentum ordinis, sed dignitatem sacramenti, propter quam solam obtinendam, et non propter sacramentum, pecuniam dedit. Non enim sacramentum curaret si sacramento dignitas non assisteret.


Item, queritur quis magis peccet, clericus uel laicus, emendo spiritualia. Videtur quod laicus, quia dicit canon: "si milites ecclesie ob huiusmodi scelus aliter percelluntur, nemo | sapiens dubitat, non militantes ecclesie multo

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233 Decret. Grat., C.1 q.3 c.8 (Friedberg I, 413-15). 245 Decret. Grat., C.1 q.1 c.8 (Friedberg I, 359-60). 256 Decret. Grat., C.1 q.3 c.8 (Friedberg I, 413-15).

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dampnabilius ob hanc causam uendmentis uel emptionis debere percelli."

Econtra, clericus plus nonit quid faciendum et quid non.

Respondeo: hoc ideo dicitur quia ex pluribus peccat laicus emendo spiritualia quam clericus; peccat enim et quia presumit et appetit quod sibi habere non licet, et quia symoniam committit. Clerici vero in hoc tantum delinquent, quia tantum spiritualia symoniace acquirunt.

Item, dicit GREGORIUS quod grauius est res ecclesiasticas consanguineis quam extraneis dare, ut c. i q. iii Peruenit. Sed AMBROSIVS uidetur uselle contrarium, dicit enim super Cantica Canticorum "ordinata caritas est ut primo diligamus Deum, deinde nos, postea consanguineos, postremo extraneos."

Respondeo: grauius esse dicitur sic, ut non grauius delictum, sed ut grauius dampnum intelligatur, cum proniores sint prelati ad augenda beneficia suorum consanguineorum quam extraneorum. Illud uero debuit prohiberi fortius quod solet frequentius euenire.

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268 Decret. Grat., C.1 q.3 c.13 (Friedberg I, 417). 270 ordinata…272 extraneos] I cannot trace this authority.
Hic queritur de consecratione Iacobi et de contingentibus hunc articulum.

Legitur in Actibus apostolorum quod Iacobus in episcopum est ordinatus a Petro, Iacobo, et Iohanne. Sed queritur quid sit ei collatum in sua ordinatione, cum omnes apostoli essent episcopi, ut d. xxii In nouo.

Respondeo: dicunt QUIDAM quod fuit ordinatus | ab hiis tribus, id est in sede collocatus uel ordinatus, non in episcopum sed in archiepiscopum per pallii dationem, uel ab illis fuit ordinatus, id est consecratus visibili unctione, quam non habebat, licet episcopus esset quoad officia exercenda. Ipse enim primus in nouo testamento inunctus legitur, quia ab eis inunctus fuit, quia nondum uctionis extrinsece sacramentum fuerant consecuti. Vel potest dici quod apostoli erant simplices sacerdotes, non episcopi ratione consecrationis, tamen episcopi dici possunt propter administrationem. Postea uero ad tollenda scismata, que erant causa parilitatis eorum, institutum | est ut unus ceteris preferretur, et maio a minoribus consecraretur.

Et notandum quod administratio Iacobi limitata est, nam cum apostoli constituti essent principes super orbem terrarum, tamen indifferenter omnes omnibus administrabant ecclesiis. Sed Iacobo assignata est Ierosolima, ut eius curam pre ceteris gereret, et nullus eo inuito uel inscio aliquid ibi presumeret.

Et attende quod dicuntur tenere locum apostolorum episcopi, lxxii discipulorum presbyteri, quia sicut apostoli preerant discipulis in administratione, sic episcopi sacerdotibus in administratione et officiorum executione. Olim namque in administratione erant disparis, in officio erant pares, quia quocumque sacramentum dabat Petrus, quilibet sacerdos dare poterat. Sed hodie disparis in utroque, cum solis episcopis liceat confirmare et similia.

[8.2] Quomodo minores consecrarent maiores.

Item, queritur quomodo minores consecrarent maiores, quod non habent conferentes, quia non potest alienari possessio nisi a uero domino, ut d. liiii et xvi q. i Si quis laicus.

Item, qui honorem non habet, quomodo dabat, ut c. i q. i Qui? Econtra, quia sepe conferimus quod non habemus, ut iudeus baptismum, populus imperium, cardinales apostolatum, Moyses Aaron summum sacerdotium.

Respondeo: Instrumenta sumus nos, Deus collator.

Item, queritur si numerus talis, scilicet ternarius, sit de substantia sacramenti. Videtur quod talis est forma episcopos ordinandi, ut d. xxiii Episcopus et d. lxv et lxvi. Sacramenta extra formam celebrata nullius sunt momenti, ut De cons. d. iiii· : Si reuera.

Non est igitur episcopus qui ab uno vel a duobus est ordinatus. Sed secundum hoc, <si> non essent hodie nisi duo episcopi, non possent hodie consecrar<e>; nec

etiam uidetur quod apostolicus posset statuere ut unus uel duo episcopi episcopum ordinarent, nam ab apostolis hec forma fuerit prefixa ecclesie.

Respondeo: dicunt QUIDAM talem numerum de substantia sacramenti non esse, sed de sollemnitate. Adhibentur enim tot ad testimonium. Sacerdotes uero a solo propio episcopo titulantur et ordinantur. Solus enim dare potest honorem sine aliis episcopis aut clericis.

[8.3] Item, queritur quid sit faciendum si quis ad altiores gradus noluit promoueri. Videtur quod sit cogendus, ut d. lxxiii Si qui, Placuit, Consuluit.

Item, Co. de episcopis et clericis, nullus est dignus sacerdotio nisi fuerit ordinatus inuitus.

Item, si locus religionis desiderantibus non est negandus, ita fugientibus est offerendus.

Econtra, quod nullus est ordinandus inuitus, ut d. lxxiiiii Episcopus, Gesta.

Respondeo: In coactione considera: ordinandi contemptum, nam si contemptit ordinem, deponatur; humilitatem, que si iusta fuerit cogatur, sed si iniusta non cogatur. Circa ecclesiam considera: utilitatem, et tunc alius preferatur; necessitatem, et tunc beneficio priuetur.

Et nota quod potest quis cogi ad altiores gradus <ab> inferioris relatione, ut d. lxxiii c. ultimo; ab officiis...
suspensione, ut idem d. Placuit; beneficii subtractione, ut d. lx Innuouamus; corporis cohabitatione, ut xxiii q. iii Displicet.


Item, queritur si esset sacerdos ordinatus ceteris postpositis ordinibus.

Respondeo: esset utique.

Item, si esset episcopus ordinatus ceteris postpositis ordinibus.

Respondeo: quia sacerdotalis ordo et episcopalis dignitas coniuncta sunt, unde aliis postpositis excepto sacerdotio episcopus esset.

Sed quid si alios ordinaret in hiis ordinibus quos in se pretermisisset.

Respondent QUIDAM non esse ordinatos, ut c. i q. i. Econtra, quia sepe dat aliquis quod non habet, ut cardinales apostolatum.

Item, quid si Iudeus uel gentilis ordinis et dignitatis accipiat consecrationem?

Respondeo: non est episcopus.

Quid si mulier consecurret?

Respondeo: idem sentias.

Et nota quod in egritudine baptizati a sacris ordinibus prohibentur. Sed quis dedit causam edicto?

Respondeo: sola presumptio ad uerisimilia, namque consueuerunt accedere iura. Fides in egritudine baptizati presumitur, quia non voluntaria sed necessaria. Ita standum

est huic presumptioni donec pro\betur in contrarium, ut si uita eius sancta et conuersatio religiosa apparuerit.

Item, corpore uitiati arcentur a sacr\is ordinibus. Sed refert utrum in occulta membro sit uitiatus quis uel in manifesto. In occulto membro, abscisus ordinab\it. In manifesto hic ordinabitur. Intell\ige tamen utroque | "nisi sponte," id est sine aliqua necessitate se abscidet uel abschiderit. Nam qui spontanea uoluntate mutilatus est sui ipsius homicida est et Dei conditionis inimicus, et merito arcetur a sacr\is ordinibus.

Sed opponitur de sancto Marco qui sibi ne sacerdos fieret pollicem amputauit. Respondeo cum Ieronimo: priuilegia paucorum non faciunt legem communem.

Item, opponitur de Origene, qui seipsum eunuchizauit ut liberius et sine turpi suspitione feminis predicaret, et tamen presbyter postea ordinatus est. Respondeo ut prius; uel, non credimus eum imitandum, quia ex uerbis IERONIM non dubitamus eum fuisse hereticum. Sed si in manifesto membro et magno mutilatus fuerit quis, non ordinabitur. Magnum uero dicimus quantitate non dignitate. Non est oculus officii necessitate; non est unus trium digitorum.

Sed quid si sacerdos erat ante mutilationem?

Respondeo: si membrum abscisum faciat deformitatem absciso, ut nasus uel labrum, aut pariat officio detrimentum, non exequatur officium.
Et notandum quod indignos ordinantium multiplex pena inuenitur instituta. Alicui enim dicitur, "deponatur," ut d. li *Aliquantes*; alciui, ut integro anno abstineat a missa, ut d. lv *Nullus*; alciui, ut ordinationis alterius ius non habeat, ut i q. i *Si qui episcopi*.

Respondent QUIDAM dicentes quedam esse rigoris, quedam dispensationis. AI.LI dicunt non esse contraria, sed est adiectio pene ad penam.

Item, neminem licet absolute ordinari presbyterum uel diaconum. Ordinari absolute est absque titulo ordinari. Ergo nullus est ordinandus sine titulo.

Econtra, uideo quod uidua uel puella domi potest assumere uelum et emittere uotum continentie, etsi non transeat ad monasterium. A simili uidetur quod possit quis ordinem sacrum assumere, etsi non sit titulatus in aliqua ecclesia.

Respondeo: dicunt QUIDAM quod duplex est titulus: titulus simplex et titulus beneficii. Cum ergo precipit canon nullum ordinandum esse sine titulo, intellige "sine titulo simplici uel beneficii." Simplex titulus dicitur cum habet ordinandus hereditatem que possit sufficere uictualibus suis. Titulus beneficii hic intellitetur beneficium ecclesiasticum.

AL.II uolunt hoc intelligere de titulo tantum beneficii, ut quicquid de minoribus ordinibus hodie praua teneat consuetudo in diaconum uel presbyterum. Si episcopus ordinauerit aliquem sine titulo ex noua institutione, tamdiu ordinato ministret necessaria donec assignet militie sue


stipendia, nisi paterna substantia possit sustentari uel alia uel unumcumque tamen honeste acquisita.

ALII sic: sine titulo, id est, sine examinatione et cognitio.


Et nota: vii esse ordines sicut vii sunt dona spiritus sancti: hostiarius scilicet, qui pre est hostiis templi; lector, qui pronunciat populo quid sequatur; exorcista, qui adiurat inmundum spiritum; acolitus; qui cereum | portat ante evangelium; subdiaconus, qui subiacet officio diaconi; diaconus, qui ministrat altari; presbyter, quia sit senior non etate sed dignitate.

Item, nota quod persona persone prefertur officio administrationis, unde Petrus dicitur maior fuisse | Paulo; uite merito, ut Augustinus minor est Ieronimo, ut c. ii q. vii *Paulus*: ordine, | ut diaconus minor est presbytero; consecratione, ut presbyter minor est episcopo. Hac distinctione soluitur contentio que est inter archidiaconos et archipresbyteros, et decanos, presbyteros prepositos, et contratietas de pari consortio apostolorum.

161 *I Tim. 5.22*      171 Et…177 dignitate] *Cf.* Petrus Lombardus, *Sententiae* 4 di.24 cap.2, 394. 180 *Decret. Grat.*, C.2 q.7 c.34 *Quamquam* (Friedberg I, 493); see also C.2 q.7 c.33 *Paulus* (493).

De electione et ecclesiasticis honoribus.

APOSTOLUS scribens Timotheo et Tito xiii enumerat capitula, dicens oportet episcopum esse sine crimen. Hic uidendum est quid sit crimen et quod modis hic accipiatur, et quid in regula criminis intelligatur. Crimen est peccatum accusacione dignum et damnatione. Sed nonne omne mortale peccatum est criminale?


Item, peccatum accusacione uel damnatione dicitur crimine. Crimen etiam dicitur infamia talis peccati. Oportet ergo eligidum esse sine crimen, id est, sine reatu mortali, uel sine crimen publici iudicii, uel infamia eius.

Item, circa electionem ad ecclesiasticos honores opponitur sic: loco sortium, que nemini fauebant sed in humana dubitatione ostendebant Dei uoluntatem, successit canonica electio, que si necessaria est canonica est. Sin autem non est introitus per hostium.

Item, si faceret quis unde sortes ad uoluntatem suam caderent, nonne fur esset? Nec sic acquisitum posset retinere. Qui postposito utili uel utiliori dat inutili uel minus utili honorum ecclesiasticum intuitu carnis et sanguinis non est

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introitus per hostium. Ergo fur est et latro qui sic intrat. Ergo tenetur resignare.

Item, preceptum est in ueteri testamento: sorte diuidetis terram promissionis; ergo et multofortius patrimonium crucifixi.

Item, sint tres: unus utilis, alius utilior, tertius peroptimus. Utilem, quia caro et sanguis reuelauit ei, preponit prelatus utiliori et optimo. Ergo non est canonica electio.

Item, dicit AUCTORITAS: doce me facere uoluntatem tuam. Voluntas autem domini est ut preferatur melior. Ergo debet iste eligere meliorem.

Item, non datum nature, quia homo, nec uirtuti, quia iustus, nec quia adiunctum est uirtuti, quia ut prudens litteratus, etc. Ergo dant mammone uel alii uitio.

Item, Petrus non pateretur eligi, causa sanguinis, dispensatores, scilicet vii diaconos, ad distribuendem elemosinas pauperibus.

Item, Moyses noluit cognatos suos constituere principes ut sciremus principatum carni et sanguini non esse conferendum.

Item, si quis talentum sibi creditum ad erogandum pauperibus suis impertiret, cognatis postpositis extraneis magis indigentibus uel eque indigentibus, nonne peccaret grauiter? Scriptum est enim, ab omni specie mala abstinete uos.

Item, in epistola ad Hebreos nec quisque sibi assumit | honorem nisi qui uocatur a Deo, tuamquam Aaron. GLOSA super hunc locum: "per hoc potest ille pontifex prodesse

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etiam Christo, quia non assumit sibi honorem." Sic ergo uidetur quod qui assumit sibi honorem non prodest sibi; ergo tenetur resignare.

Item, uocatur. GLOSA super hunc locum: "qui recte eligitur a Deo uocatur."

Item, Christus non semetipsum glorificauit ut pontifex fieret, sed qui locutus est ad eum dicens, filius meus es tu, ego hodie genui te. Sic ergo nullus debet se clarificare ut fiat pontifex.

Item, in epistola ad Timotheum, noli negligere gratiam, GLOSA: "episcopatus qui datus est tibi per prophetiam."

Solutio: prima electio fuit facta uoce lapsa de celo, sicut uoce patris dicentis, tu es filius meus dilectus, etc. sicut de beato Nicholao. Secunda fuit miraculosa, ut in Aaron signo urige et incendio emulorum. Tertia fuit iactu sortium, ut in Mathia segregatis duobus. Quarta, que successit loco sortium est canonica electio. Hanc impediunt symoniaci, giezite, adulatores,chorite; illi scilicet qui per uiolentias intrant ut per potentiam minas et potentiam principum, sicut Chore et socii eius.

Utrum autem caro et sanguis impediant electionem canonica in questione relinquatur, cum ex premissis

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63 Petrus Lombardus, *Coll. in Paul.* (PL 192, 436C). 66 Heb. 1.5 69 l
Tim. 4,14 70 Petrus Lombardus, *Coll. in Paul.* (PL 192, 350B).
rationibus uideatur esse impedimentum ex carne et sanguine, ut impediant consanguinitate, sicut et alii.

Item, facto ex cursu perutili reuertere ad quedam ex capitulis que enumerat APOSTOLUS loquens de statu episcopali. Inquit enim, oportet episcopum esse unius uxoris uirum, id est, si aliquam habuit, oportet etiam unicum habuisse et uirginem. Censetur autem quis bigamus postquam habuit duas uxores siue ante baptismum siue post secundum AUGUSTINUM, INNOCENTIUM, et AMBROSIUM, licet IERONIMUS uideatur contradicere, ut d. xxvi, et adeo contradicit quod nulla potest nisi superstitiosa solutio adhiberi nisi quis uel eum non asserendo hoc dixisse sed opinionem referens aliorum. Sed cum sancti Ieronimum dicant in hoc male dixisse, patet quod non semper expositores per sanctum spiritum loquebantur, quia non essent sibi contrarii si de eodem fonte potarent.

Et nota quod bigamia est casus ubi aliquis sine peccato punitur. Cum enim non peccet qui coniugia iterat, tamen promouerit non potest, quod est ei ad penam.

Item, hic est casus ubi quedam sacramenta conceduntur, alia uero prohibentur contra id quod est in d. xcvi Illud. Sed ratio hec est, quia sacramentum ordinis est sacramentum dignitatis. Unde ab hiis non debet accipi qui sunt irregulares persone.

Et nota quod hec est una ratio quare secunde nuptie non benedicantur, quia deest ibi Christi et ecclesie sacramentum, ut c. xxxi q. i Quomodo. Pro eodem autem est si duas accepit uel unam corruptam, ut d. xxxiiii Si quis uideat, quia...
Christus unicum et uirginem accepit iuxta illud, *despondi enim uos uni uiro* etc. Sed numquam | minus esset quis episcopus uel sacerdos si plures haberet uel habuisset uxores et ordinarerit de facto.

Respondeo: dicunt QUIDAM quod non esset, ALII aliter.

Item, cum dicat AUGUSTINUS, "bigamum non peccasse sed normam quandam sacramenti | admisisse," obloqui uidetur ei IERONIMUS, dicens "bigamiam et fratricidium eadem pena cathaclismi deleuit," lege in xxxi q. i *Quomodo*. Et ita inuenies, sed illud sic expone: bigamum, id est Lamech, et fratricidam, non tamen merito bigamie sed fratricidi.

Nota quod dispensatio admittitur circa bigamos ut causa necessitatis subdiaconos ordinetur, ut d. xxxiiiii *Lector*.

[10.1] **De iugi continentia sacerdotum.**

Pro varietate temporum uaria legitur dispensatio conditoris. Hinc est quod sacerdotibus legalibus concessa sunt coniugia, quia in successione familie officii constabat successio. Nunc autem quia muneres electio non est in generis successione sed scientie uiteque perfectione, continentia fecunditati prefertur, et castitas imperatur sacerdotibus. Si enim, ut APOSTOLUS ait, ab uxoribus abstinendum est ut expeditius orationi uacemus, sacerdoti, cui semper est orandum, semper est carendum matrimonio. In primitiua tamen ecclesia poterant, et hodie in orientali possunt habere sacerdotes uxores, dum modo tempore ministerii cessent ab opere coniugali. In hac occidentali itaque ecclesia, coniugia sunt interdicta sacerdotibus,

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114 II Cor. 11.2 119 Augustinus, *De bono coniugali* (CSEL 41, 214), quoted in *Decret. Grat.*, di.26 c.2 (Friedberg I, 95). 122 *Decret. Grat.*, C.31 q.1 c.10 (Friedberg I, 1111-12). 127 *Decret. Grat.*, di.34 c.18 (Friedberg I, 130). 8 Apostolus…9 uacemus] Cf I Cor. 7.5

diaconibus, et subdiaconibus, quia sacer ordo res est enixa sollemnpi uoto.

Sed opponitur: sunt quedam que nisi uouerimus non debemus, ut c. xxii q. i c. i.

Item, sola uirginitas suaderi potest, imperari non potest, ut xxxii q. i Integritas.

Item, campestria se induebant filii Aaron et non induebantur.

Respondeo: uotum est res consilii, et ante susceptionem uoluntatis est; susceptum uero necessitatis est. Si ergo spontaneus ad sacrum ordinem accedis, uotum tibi annectens obseruare teneris, ut quicumque emit alteram sine quo nec alterum proben, neutrum inuenditum derelinquit.

[10.2] Quid sit iuris si sacerdos orientalis transeat ad ecclesiam occidentalem.

Item, quieritur si clericus unius consuetudinis transierit ad ecclesiam contrarie consuetudinis, quid sit iuris, puta si sacerdos orientalis transierit ad ecclesiam occidentalem? Videtur quod debeat seruare consuetudinem ecclesie ad quam transit. Alioquin aut inconstans uel intemperans erit, aut superstiosus, ut d. xli Quisquis.

Item, quia monachus factus episcopus tenetur fratribus condescendere, quia turpis est omnis pars suo toti non congruens, ut d. viii Que.

Econtra, quia si quis sacerdos occidentalis ecclesie contraheret matrimonium in oriente, ueniret contra sollempe


uotum, quod nemini licet, ut xxvii q. i Ut lex. Si orientalis sacerdos in occidentali contraheret matrimonium, magnum inde generaret scandalum, quod penitus est uitandum.

Respondeo: ubique seruetur ecclesie consuetudo, ut d. xi et xii, nisi sit superflue actionis et uetusti erroris, ut scilicet contra fidem uel bonos mores aliquid contineat uel pacem ecclesie turbet. Occidens habet consuetudinem ut qui facit sollemne uotum contineat in perpetuum. Ergo occidentalis sacerdos in oriente propter uotum et orientalis in occidente propter scandalum matrimonium non contrahat.

Sed quid si orientalis sacerdos uenit ad nos uxoratus?

Respondeo: seruetur optio tempore sponsi data, | ut xxvii q. ii Multorum, et ita poterit uxorare.

Item, queritur si clericus constitutus in minoribus ordinibus uxoratus contra sue consuetudinem ecclesie, suo possit fungi officio et beneficio frui uidetur, quod dicit GREGORIUS loquens Augustino Anglorum episcopo de instituendis consuetudinibus in clero suo. Inter cetera ait, "Si quis autem continere non ualeat, ducat uxorem et exterius stipendia sua perciapiat," ut d. xii Nouit et d. xxxii Si qui.

Econtra, tum propter scandalum tum quia se fecit indignum.

Respondeo cum Alexandro tertio in quadam decretali eum esse priuandum officio et beneficio, conferendo et collato, si fieri possit sine magno discrimine.

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41 Decret. Grat., C.27 q.1 c.40 (Friedberg I, 1059-60).  53 Decret. Grat., C.27 q.2 c.20 (Friedberg I, 1068).  58 Decret. Grat., di.32 c.3 (Friedberg I, 117).  60 Decret. Grat., di.32 c.10 (Friedberg I, 29).  63 cum...65 discrimine] 1 Comp. 3.3.3 (X 3.3.2) (Friedberg Quin. comp., 27).
Item, queritur si talis clericus uxoratus de crimen fuerit convictus, an sit retrudendus in monasterium. Videtur, ut d. 1xxx1 Si quis clericus.

Item, si degradaretur pro enormi crimen, possit occidi, deportari, in metalla damnari. Ergo multo magis in monasterium detrudiri.

Econtra, legi uxoris astrictus non habens potestatem sui corporis. Item, unum corpus non potest ex parte converti et ex parte manere in seculo. Item, "penitentia non est danda coniugans nisi ex consensu," ut xxxiii q.iiii c. ult.

Respondent QUIDAM non esse detrudendum propter coniugii vinculum. In depositione enim monasterii non ex sui deportatione, iniuria fieret uxori, quia detrusus uoto astringeretur. In exilio uero potest uxor sequi virum.

ALII dicunt quod aliud est ingredi, aliud intrudi. Ingredi est uoluntatis, intrudi necessitatis. Nullus ergo ingreditur sine consensu uxoris, sed intrudi potest sine consensu uxoris propter enormitatem criminis, sicut iudex secularis deportare potest eum in exilium uxore contradicente, ita iudex ecclesiasticus eum deportet | in monasterium ea nolente. Nec est dicendum quia "homo separat quos reatus accusat et pena condempnat", ut xxxiii q. ii Quos.

Item, queritur si aliquis clericus degradatus uel si aliquis laicus enormiter delinquit et ei a iudice seculari optio data fuerit ut uel monasterium intret uel suspendium subeat,
utrum istorum debeat eligere. Videtur quod monasterium, quia non est nostrum mortem acciscere.

Econtra, uidetur quod suspendium, cum non liceat ei sine consensu uxorib facere uotum continentie.

Respondeo: uir uxori suadeat de ingressu consentire, qua tamen contradicente monasterium eligatur, sed a coniuge postea reuocetur.

Sed queritur si iudex in eum animaduertere poterit eo quod a pena recessit.

Respondeo: nequaquam, quia per eum non stetit quin adhuc in monasterio sit. Tamen uidetur quod possit intrare monasterium, nec uxor eum reuocare possit. Quia iudex potest eum suspendere, ergo et penam leniendo quolibet membro mutilare. Ergo pena genitalium potest eum condempnare. Sed sectis uirilibus uiri tenetur uxor continere, ergo si in monasterium detrusus erit uir cuius de crimine, non poterit eum uxor cum effectu reuocare.

Respondent QUIDAM quod non licet iudici seculari tractare de pena spirituali. Sed quod possit cum auctoritate ecclesie habes, ut d. xiii Dei et xvi q. iii Quia, et ecclesia debet auctoritatem prebere cuius est defendere reos sanguinis.

Et nota quod uxor in hoc casu ex caritate tenetur prebere assensum uiro | ingrediens monasterium, nec tamen potest cogi iudiciarii potestate. Simile habes in simplici uoto et in eo cui, cum patrimonium sufficeret, redditus accepit in ecclesia indigne.

C | 129rb

110 d xiii Dei et xvi q iii Quia] I cannot find the objects of these citations


Item, queritur si uxor consenserit uiro | monasterium ingredienti, an post mortem eis poterit alii nubere. Videtur quod non, quia unum corpus non potest ex parte conuerti et ex parte manere in seculo, ut xxvii q. ii Agathosa et d. xxviii Quia, ubi dicitur quod si uxor diaconi alteri coniungatur qui male sociati fuerant disiungantur, ut d. xxxii Seriatim, ubi dicitur quod si uxor uiro consenserit ad sacerdotium promoueri, et in uita post mortem eius contineat.

Econtra, xxvii q. ii Si quis per contrarium sensum capituli.

Item, si dederit ei licentiam transfretandi et ibi defungatur, cum de morte constiterit uxori licebit alii nubere.

Respondeo: olim fuerunt diuerse opiniones et diuerse sunt ecclesiasticarum consuetudines. Que tamen hodie ab aula sunt eliminande, cum Alexander tertius diffiniat quod alter coniugum ad frugem melioris uite non transeat sine altero intranseunte uel castitatem promittente.


Item, queritur an possit uouere ad tempus, puta usque ad mortem uiri, permittens uirum suum intrare monasterium. Quod uidetur, ut xxvii q. ii Agathosa, ubi, ut quidam aiunt, continentia temporalis innuitur, cum dicitur, "Ne forte eius uoluntate conuersus sit," et perpetua cum dicitur, | "uel se mutare promisit."
Item, uouere posset usque ad annum, uiro consentiente. Cur non usque ad uiri mortem, eadem consentiente matrimonium?

Item, de eo quod suum est, potest uouere ad tempus et in perpetuum, scilicet exigere debitum. Sed de alieno non potest, scilicet reddere debitum, nisi uir consenserit. Ergo de utroque potest uouere uiro consentiente.

Econtra, legittimi contractus non recipiunt diem nec conditionem.

Item, indirecte: si permittat uxor uirum ingredi monasterium uouens continentiam usque ad mortem, uir iste solutus est a lege uxoris, quia factus est monachus ea consentiente. Ergo potest fieri sacerdos sine uxoris consensu amplius requisito, si nichil aliud impediat. Fiat ergo sacerdos. Hec est ergo uxor sacerdotis canonice ordinati et soluti a lege uxoris; ergo eo defuncto non poterit nubere, ut d. xxviii c. Si qua uidua episcopi vel presbyteri vel diaconi.

Respondeo: quot homines tot sententie, quas tamen omittimus, | et quod ex uerbis auctoritatis uidetur haberi, dicimus coniuges posse uouere ad tempus et in perpetuum ex communi consensu, et etiam sine consensu alterius quod suum est posse uouere, scilicet non exigere debitum. Sed quod alienum est uouere non possunt nisi ex petito consensu alterius. Sed hoc simpliciter, non autem sollemniter, quia sollemne uotum nec sub conditione nec sub coactione nec temporis adiectione probat ecclesia. Si ergo uxor uirum permisit ingredi monasterium, licet ipsa non uouerit in perpetuum continentiam, tamen perpetuo continebit, quia monachalem habitum induit annexum sollemni uoto, etsi

159 Decret. Grat., di.28 c.12 (Friedberg I, 104).

post obitum uiri propositum habet uxor nubendi alteri. Licet cum eo temporaliter uoueat, non tamen eum sollempniter uouere uel sacrum habitum religionis induere permittat, ut legitur de Editia, causa xxxiii q. v. |


Querit peritus iuris canonici si possit ad sacros ordines promoueri qui a se defloratam postea duxit in uxor|rem. Videtur quod ordinis perturbatio non irritat factum, ut de eo qui prius fuit sacerdos quam diaconus, qui non impeditur quo minus sit sacerdos quam diaconus, ut d. lii.

Item, si seruus ordinetur prius, postea dominus consentiat, nichilominus ordinatus erit.

Item, si cum ancilla mea prius contraxterim matrimonium, eamque postea manumiserim.

Item, si cum adoptiua mea prius contraxterim matrimonium, quam postea emancipauerim.

Item, qui ante nati, matrimonio contracto, fiunt liberi et legittimi.

Item, in contrarium quia si duxit uirginem, ut d. xxxiii.

Item, quia non interest utrum a se uel ab alio corruptam acceperit uxorem, sicut non interest an clericus uel pretor suam uel alterius ancillam occiderit, nichilominus tamen homicidii reus sit.

Item, quia lex non attendit prohibens oppressam a consecratione utrum consenserit an non, sed tantum si oppressa fuerit. Similiter non attendit lex utrum a te uel ab alio dum modo constet esse corruptam, ut xxxii q. v Ille.

\[\text{Decret. Grat.}, \ C.33 \ q.5 \ c.4 \ (\text{Friedberg I, 1251-52}). \ 16 \ \text{Decret. Grat.}, \ C.34 \ c.9 \ (\text{Friedberg I, 128}). \ 24 \ \text{Decret. Grat.}, \ C.32 \ q.5 \ c.14 \ (\text{Friedberg I, 1136}).\]

Item, queritur si possit ordinaru uel promoueri cuius uxor non seruuit castitatem. Videtur quod non, ut d. xxxiii Si cuius uxorem.

Econtra, quia que iustitia est ut alius peccet et alius puniat? Preterea, penam convetimus in culpam, ut in menstruata mensuam, ut d. v Si mulier.

Respondeo: despondi enim uos etc. Nota: uerba signa mysteria, nam matrimonium temporale sacramentum est, spirituale sacramentum autem huius rei debet gerere similitudinem cuius est sacramentum. Unde sacramentum est inuisibilis gratie usibilis forma. Sicut ergo in spirituali coniugio unus est sponsus de quo dicitur, despondi enim uos etc., uirgo castus, quia non nouit peccatum, sed etiam uncam accepit, de qua dicitur, unica sponsa mea. Virginem et castam, quia non habet maculam neque rugam, liberam accepit que est mater nostra. Et ita in carnali coniugio hec omnia oporteret simul concurrere, ut sit plenum et perfectum per omnia sacramentum. Inde est quod bigami benedici non debent, tum propter sacramenti defectum tum propter incontinentie signum. Inde est quod poligamia fornicatio dicitur, et poligamis penitentia dari precipitur, ut xxxi q. ii De hiis. Poligamia autem laicis, <humanam> dico propter infirmitatem, permittitur. | Clericis uero et omnibus ad sacros ordines promoueri uolentibus propter prerogatiuam | ordinis,
qui mundiciam desiderant, interdicitur, ut d. xxvi, una. Volens ergo promoueri seruet continentiam, uel unicus seruet unicam, uirgo uirginem, castus castam, liber liberam habeat. Aliquin si ecclesie consitterit de rigore non promouebitur, ut d. xxxiii iSi quis de. Sed quia defectus nostri temporis non patitur distinctionis huius manere censuram, sic misericorditer ordinatur qui non uirginem duxit in uxorom, uel qui ducte fidem non seruauit perpetuam, ut d. xxxiii fraternitatis tue. Multo misericordius ordinabitur qui ducit non uirginem et cui fides ab uxorom non seruatur nisi arguatur lenocinii uel celando uel opem prestando.


Item, queritur an possit ordinari qui cum uidua fornicatus est. Videtur quod non, quia si uideu uel coniugis impedit promotionem, cur non et coniunctio | fornicaria?

Econtra, si misericorditer promouetur qui preter uxorom habuit concubinam et ancillam, cur non misercordius qui cum uidua unica fornicatus est?

Respondeo: si crimen fuerit oculatum uel etiam manifestum tamen ecclesie non parit scandalum, per acta penitentia poterit promoueri, ut d. xxviii Presbyterum. Nec aliquem moueat quod fornicatio cum uidua perpetuo non impediat promouendum, cum tamen matrimonium impediat. Hoc enim uidemus in pluribus, nam bigamus ordinari non potest, cum ordinetur qui preter uxorom habuit concubinam, ut d. xxxiii. Item, plus punitur sacerdos contrahens

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51 Decret. Grat., di.26 c.4 (Friedberg I, 97-98).
55 Decret. Grat., di.34 c.8 (Friedberg I, 127-28).
58 Decret. Grat., di.34 c.7 (Friedberg I, 127).
73 Decret. Grat., di.28 c.16 (Friedberg I, 105-6).
78 Decret. Grat., di.34 c.8 (Friedberg I, 127-28).
matrimonium quam fornicans, ut d. xxviii Presbyterum. Similiter et monialis, ut xxvii q. i Deuotam, et hoc fit tum propter ecclesie scandalum, tum propter sacramenti defectum. |

Item, queritur quare bigamus nulla causa faciente possit diaconus fieri uel sacerdos, cum subdiaconus possit fieri, instante necessitate.
Respondeo: cum cuiuslibet officium ordinis gestaret dominus, id est Christus, sacerdotis tamen officium sic gessit quod se ipsum obtulit, et diaconi officium ita habuit quod idem fuit corpus tradens discipulis et oblatum. In subdiaconatu uero gessit humilia, lauit scilicet pedes discipulorum. Unde humiles persone in subdiaconatum possunt promoueri. Vel quia subdiaconatus quodammodo non est sacer ordo, ut d. Ixi Nullus.

Item, queritur an ratione dispensationis, quam concessit Martinus papa, quilibet episcopus sua auctoritate possit ad subdiaconatum bigamos promouere, et an bigamus hoc uelut sibi debitum possit petere.
Respondeo: QUIDAM neutrum concedunt. An uero summus pontifex possit bigamum ad sacerdotium promouere, uel utrum esset sacerdos si eum ordinaret de facto, solet queri, et dicunt QUIDAM hoc non posse dominum papam, et si ordinaret de facto non esset ille bigamus ordinatus. ALII aliter dicunt.

[12.1] Hic disputatur circa matrimonium et eius multiplices articulos, cuius hic ponitur diffinitio.


Indiuiduam uite consuetudinem retinens, id est de iure esse retinendam exigen uel in perpetuum uel donec canonicum diuorcium interueniat, non quidem continuo, ut sibi inuicem animo coniunguntur, sed postquam semel una caro effecti sunt. Indiuidua autem consuetudo uite est mulierem tales se in omnibus exhibere uiro qualis ipsa sibi est et econverso. Ad indiuiduam uite consuetudinem pertinet ut absque consentu uiri aliquando orationi non posse uacare, nec continentiam profiteri ad quam legem seruandam sibi mutuo non tenetur nisi postquam carnaliter coniunguntur.

Et nota | hic diffiniri tantum matrimonium fidelium | et consummatum. Non autem hic diffinitur matrimonium fidelium initiatum et non consummatum, etiam quo alteri sine altero, ut dicunt fere uniuersi, licet orationi uacare et profiteri continentiam salua pace ueterum.

4 Simon Tornacensis, Institutiones, 72vb. cf. Decret. Grat., C.27 q.2 c.1 (Friedberg I, 1062), and Institutiones Iustiniani 1.9.1 (CIC I, 4). 5 Coniunctio...10 feminine] Cf. Simon Tornacensis, Institutiones, 72vb. 20 absque...uacare] Cf. I Cor. 7.5

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Dicunt ALII aliquid minus uidetur continere hec diffinitio; quare sic dicunt diffiniendo matrimonium: matrimonium est uinculum uiri et femine quamdiu uixerint inuicem, obligans ad fidele consortium per utramque fortunam et ad mutuam in carnis operibus seruitutem. Fidele non hic dicitur a fide sed a fidelitate.

Item, de isto uinculo quod matrimonium dicitur, queritur quid sit et in quo uel in quibus, et an idem sit uinculum quo uir uxori iungitur uel aliud uinculum. Illud potest dici quedam obnoxietas qua alter contrahentium est alteri perpetuo obnoxius et obligatus, et placet QUIBUSDAM aliud esse uinculum quo uir uxori coniungitur, aliud quo uiro uxor obligatur.

ALII dicunt unum idemque esse uinculum quo animus utriusque coniungitur et ligatur. Nec obest huic solutioni quod obici solet: tale uinculum accidens est; ergo non est in diuersis subjectis, nam binarius proprietas est, et tamen est in duobus subjectis ita quod in neutro eorum. Sed melius est ut dicatur quod matrimonium uel eius uinculum non est substantialia uel accidentis uel substantialis differentia, nec res predicamentalis. Hec autem nomina et uerba locum habent circa ea que naturaliter sunt, non circa sacramenta.


Item, queritur an ille qui amisit genitalia possit matrimonium contrahere. Dicunt QUIDAM non posse, cum non possit in tali coniungio sacramentum Christi et ecclesie figurari, nec proles ibi esse possit.

ALII dicunt quod possit, quia naturaliter est potens ad carnis officium, licet de accidenti sit impeditus. Nam "spadones adoptare possunt," licet de accidenti nequeant generare. "Castrati uero," id est caste nati, id est frigidi, non...
"adoptare non possunt," quia nec naturaliter generare possunt, ut in Institutiones primus liber De adoptionibus. Unde nec matrimonium tales contrahunt.

Causarum per quas contrahitur matrimonium, alia est operans, alia cooperans, tertia | consummans. Operans: consensus uel desponsatio, unde NICOLAUS: "consensus facit matrimonium." Consummans: carnis connixio. Cooperans causa sunt | solemnitates que in desponsatione adhibentur, sine quibus tamen tam fieri quam perfici potest matrimonium, sed sine carnali commercio consummari non potest, sicut nec absque desponsatione uel consentu nequit incipi.


65 Decret. Grat., C.27 q.2 c.2 (Friedberg I, 1062), dictum post verba Nicholai.


Item, expressus debet esse consensus. Sed quid dicendum si non consentiat, quia iurauit se non consensurum in aliam, uel si non iurauit, ficte agens? Dicat in facie ecclesie, "ego recipio te in meam."

Respondeo: Matrimonium esse presumitur, et si ille non consentiat animo, plus enim hic ualet quod est in opinione quam quod in re. Veritati namque multifaric preiudicatur tum quia ecclesia non iudicat de occultis, tum quia nemini dolus debet esse lucrosus, sicut et in iuramentis, non iurantis calliditas, sed simplicitas accipientis attenditur, ut xxii q. i c. Quaecumque. Tamen propter sollemnem formam, ut in baptismo De cons. d. iiiium Quamuis, sed et sine uerbis aliquid ex solo actu presumitur, approbatur, ut xx q. ii c. i. Vel potest dici quod non est matrimonium inter istos; filii tamen legitimi erunt, quia ecclesia credit esse inter eos

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matrimonium, nec possunt tales separari, non tamen deficit
ius sed iuris probatio. Nec ipse potest eam cognoscere quin
mortaliter peccet, nec ipse potest ei negare, quia se impulsit in
hanc necesseitatem. Illa tamen non peccat quia consentit.
Consentiat ille omnino non peccabit.

Item, APOSTOLUS loquens de coniungio ait, hoc autem
dico secundum indulgentiam, non secundum imperium. Sed
opponitur: ubi est indulgentia, ibi conceditur uenia, sed uenia
non est nisi ubi est uel fuit peccatum. Ergo matrimonium sine
peccato non est. Ita opponit Catharus qui nuptias detestatur.

Respondeo: Indulgentia non uertitur circa matrimonium
uei eius actum, sed circa culpam que se ingerit actui
coniugali.

Et nota quod dicit APOSTOLUS: mulier non habet
potestatem sui corporis etc. sic intelligendum: id est non
habet potestatem officii quod per membra genitalia
exercetur, sed uir. Similiter econtra.

Item, circa hanc diffinitionem matrimonii,
"matrimonium est legitima coniunctio maris et femine, etc.,"
sic opponitur: ubi est matrimonium, ibi est coniunctio
individuam uite consuetudinem retinens; ergo matrimonium
contractum inter alios separari non potest. Non sequitur,
quia intelligi debet, ut dictum est: individuam uite
consuetudinem retinens, id est retinendam exigens usque
dum canonicum divorcium intercedat.

Item, matrimonium est sacramentum Christi et ecclesie
quia commixtione carnali inter coniuges significatur
coniunctio illa qua Christus ecclesiam copulavit conformitate
nature. Hec autem coniunctio separari non potest. Ergo nec
matrimonium separari potest.
Respondeo: uerum est separari non posse quoad quid matrimonium, scilicet fidelium et consummatum, quia alterutro uiuente neuter potest aliud contrahere matrimonium, sed perennat cum legitime coniunctis tertium bonum coniugii quod dicitur sacramentum, scilicet inseparabiltas ueri matrimonii.


Item, coniugalis coitus excusatur omnino per tria bona coniugii uel matrimonii, ne sit peccatum secundum QUOSDAM. Si uero sit fragilis, id est causa incontinentie, uenialis est cupla, si uero impetuus criminalis. Impetus quattuor modis fit: quando scilicet aliquis meretricio amore cognoscit uxor sua, rapiens de ea uoluptates que de meretricum amplexibus rapiuntur. Secundo, quando ad uxorum pregnantem sciens et prudens accedit. Tertio, quando non obsuerat tempora orationi constituta. Quarto, quando in coitu utitur membro non ad hoc deputato.

Item, duo decrepiti contrahunt matrimonium. Spes prolis et fides, que sunt duo bona coniugii, desunt in hiis duobus. Posito quod alterutrum diuertat ad thorum alterius. Si ergo matrimonium est inter istos, tertium bonum coniugii, scilicet sacramentum, est ibi, uel matrimonium potest exerceri, et si nullum bonum coniugii sit ibi. Sed

151 Gn. 1.28 et frequentius.
sacramentum, prout dicitur, tertium bonum coniugii, est inseparabilitas. Ergo matrimonium istud non potest separari.

Respondeo: si est matrimonium inter fideles et consummatum, necesse est saltem ibi esse tertium bonum coniugii, scilicet sacramentum, et inter istos est sacramentum, id est inseparabilis quoad quid, quia tolli non potest nisi morte alterutrius.

Item, cum matrimonium sit institutum a Deo et sit sacramentum, queritur an conmixtio coniugum causa propagande sobolis ad cultum Dei sit meritoria. Hoc probatur sic: cuius finis bonus est, ipsum quoque bonum est.

Item, ex caritate conueniunt isti carnaliter. Ergo eorum copula meritoria est.

Item, dicit auctoritas: "pro sanctificatione perfecta Deus tibi computat si non quod tibi debetur exigit sed reddis quod debetur uxori."

Item, cum amor non procreandi sobolis, sed uoluptatis dominatur in opere conmixture, habent coniuges de conmixture sua quid defleant. Ergo per contrarium sensum auctoritatis cum amor procreandi sobolis dominatur, non habent coniuges de conmixture sua quid defleant.

Sed opponitur: inquit enim Origines Super Numeri: "Ego autem, licet non usque pronuntiæm, puto esse quedam communia etiam hostium gesta que, quamuis peccato careant, non tamen digna uidentur quibis intersit Spiritus sanctus, ut conubia legitima carent peccato, non tamen cum actus coniugales geruntur Spiritus sanctus datur, etiam si propheta operatur. Alia autem plura sunt in quibus sufficit uis humana, nec res indiget, nec Spiritus sancti adesse

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presentiam." Videtur ergo quod opus coniugale non sit meritorium.

Item, super hunc locum Numeri, ubi precipit dominus sibi offerri iuge sacrificium, dicit Origenes: "certum est quia impeditur sacrificium indesinens hiis qui coniugio deseruiunt."

Item, certo certius est quod nemini licet sua auctoritate uxorem dimittere etiam causa consanguinitatis, ut xxxv q. vi Multorum, et in Extrauagante, Ex litteris. Sed quid faciendum si scit aliquis uxorem suam esse consangwineam suam? Reddetne eidebitum cum probare non possit consangwineitatem?

Respondeo: si in tali gradu scit eam esse sibi coniunctam in quo non fuisset dispensatum, ut in primo et secundo, magis conscientie propriacuique escaescat. Non enim malum est tunc non obedire precepto ecclesie. Sed melius est sentire quod eam debet, si potest, ad continentiam inducere. Quod si facere non poterit, petenti reddat debitum. Sed potius ccesset ab exactione.

Item, dicit AUCTORITAS: "ipsa licita commixtio coniugis sine uoluptate carnis fieri non potest. Ideo a sacri loci ingressu abstinendum est, quia uoluptas ipsa absque culpa nullatenus esse potest."

Respondeo: dicunt QUIDAM: meritoria est copula carnis inter coniuges si predicto fine conueniunt finaliter, licet uitium infirmitatis se ingerat, quomodo ieunium bonum licet esuries adiuncta sit | ex infirmitate. In consummatione uero...
carnalis copule, cum homo totus sit, caro non meretur, ut dicunt, nec ab hoc precedentis operis meritum tollitur. Et dicunt isti carnale commercium, quocumque fine inchoetur, consummari non posse etiam inter sanctissimos coniuges sine peccato, sed peccatum leuissimum est. 

AUCTORITATES uero que obloqui uidentur eis dicunt omnes referendas esse ad primordia operis coniugalis. Potest enim inchoari coniugalis actus, ut dicunt, sine omni peccato, sed consummari non.

ALII dicunt sine omni peccato coniugales actus inchoari et perfici posse. Quod autem ORIGENES dicit, tempore quo coniugales actus geruntur non datur presentia Spiritus sancti, sic exponunt, id est non quicquid ibi sit est a Spiritu sancto auctore, quia non libido, que est culpa. Vel sic: ecclesie sacramenta singula singulas spiritualiter gratias continent per significationem et efficient per uirtutem. Solum autem matrimonium rem sacram in commixtione sexuum significat, quod eam, lege turpitudinis impediente, non operatur. Signum hoc est coniunctionis Christi et ecclesie. | Non est effectum sed representatium tantum. Presentiam ergo Spiritus sancti ibi uocat <ORIGENES> spirituallem coniunctionem Christi et ecclesie, que, dum actus illi geruntur, absens significatur nec presens efficitur. Vel sic: "presentia Spiritus sancti non datur" etc., id est propter coniugales illos actus gratia Spiritus sancti non datur, sed tamen habitur, nec ammittitur nisi quando incurritur mortalis culpa.

Ad illud quod dicit GREGORIUS delectationem illam non esse sine peccato, dicunt hoc esse intelligendum quando

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240 Ad illud quod dicit **GREGORIUS** delectationem illam non esse sine peccato, dicunt hoc esse intelligendum quando
homo uel causa incontinentie uel libidinis explende cognoscit uxorem, in quo casu committitur peccatum.

Utrum autem mortaliter peccet qui causa incontinentie accedit ad uxorem diligentius infra inuestigabitur.

Item, coniunctio maris et femine de iure naturali est, uerbum est ISIDORI. Sed positio non tollit naturam, nec ius naturale tollituir ciuili. Ergo nulla positio humana fecit ut coniunctio maris et femine non esset de iure naturali; ergo coniunctio maris et femine in concubinatu est de iure nature; ergo non est peccatum.

Respondetur a QUIDUSDA: coniunctio maris et femine est de iure naturali siue in coniugibus siue in fornicantibus. Sed in fornicantibus talis coniunctio est peccatum, quia destituta est ornatu ciuili, et priuata est debita forma sollemnitatis que dicitur matrimonii, nec enim caret aliquo debito nature talis coniunctio, sed debita sollemnitate.

ALII dicunt hoc posse intelligi de fornicaria coniunctione: quia ipsa est peccatum, et ideo de iure naturali esse non potest. De ea ergo intelligendum est, secundum eos, que fit per matrimonium, quod inuentione est iuris naturalis, fornicatione iuris ciuiliis, transumptione iuris canonici | uiri et femine. Ideo dictum est quia solis hominibus ius naturale est datum, nec est nobis commune cum pecore. Pecora enim quamuis coeant, non tamen iure naturali, sed solo naturali motu appetitus mouentur.

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*Cf. Decret. Grat., di.1 c.7 (Friedberg I, 2), from Isidorus, Etymologiarum sive originum libri XX lib.5 cap.4 par.1, ed. Lindsay, Oxford 1911, 182-83.*

Simon Tornacensis, *Disp XCVIII*, q.2, 284.

Item, queritur utrum qui cognoscit uxorem propter uitandum fornicationem, timens lubricum carnis, mereatur. Quod uidetur, quia introductum est matrimonium propter fornicationem ui|tandam. Unde APOSTOLUS: unusquisque habeat suam propter fornicationem.

Item, melius est nubere quam uri.

Item, introductum est matrimonium ut infirmitas, prona in ruinam turpitudinis, honestate exsuperetur coniugii.

Respondeo: dicunt QUIDAM non mereri in hoc casu opere coniugali.


Item, queritur utrum uir potestatem habeat in menstruatam uxorem. Non uidetur, quia dicit AUCTORITAS super E z e c h i e l e m, uir non exigat debitum ab uxore menstruata putans eam esse semper subjectam sue potestati.

Respondeo: semper habet potestatem uir in uxorem quoad quid, sed non semper quoad debitum carnis exigendum.


Item, queritur an uir possit petere debitum ab uxore emoroissa. Quod non uidetur, quia menstruum patitur continuum, sed a menstruata non potest exigere debitum. Ergo nec ab emoroissa.

Respondeo: cum menstruata non prohibeatur a coitu nisi propter hoc quod fetus corruptus nascatur, licite potest uir accedere ad uxorem emoroissam, cum fluxus continuus impediat conceptionem.

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289 1 Cor. 7.2.  291 1 Cor. 7.9.  299 auctoritas…301 potestati] Cf. Hieronymus, Comm. in Ezech. lib.6 cap. 18 (CCL 75, 235).

284 An…285 meretur] om. P\textsubscript{1} P\textsubscript{2} ToTr  280 fornicationem] om. Tr  283 exsuperetur] expertetur(!) Tr  298 utrum] an C  299 quia] quod To  300 esse semper] inv. P\textsubscript{2} ToTr | semper subjectam]  303 potestatem uir] inv. Tr | uxorem] uxore P\textsubscript{1}  305 An…306 emoroissae] om. P\textsubscript{1} P\textsubscript{2} ToTr  307 an] si P\textsubscript{1}  309 sed] nec P\textsubscript{1} | non] nempe C om. P\textsubscript{1}  311 prohibeat] cohibeatur P\textsubscript{1}  312 nascatur] nascitur Tr  313 uxorem] om. To
An quis cum uxore propria committat adulterium.

Item, queritur an cum uxore propria committat quis adulteriam. Quod uidetur, quia dicit AUCTORITAS, "adulter est in sua uxore amator uehemens."

Item, "nichil est fedius quam amare uxorem quasi adulteram."

Item, uluptates que meretricum amplexibus capiuntur etiam in uxore dampnabiles sunt."

Item, nuptiarum opus si non fiat cum honestate ut tantum liberis susciupiendi seruatur, immundicia est et luxuria, que APOSTOLUS nominat, dicens Manifesta sunt opera carmis que sunt immunditia, fornicatio etc. hoc autem singula regnum Dei tollunt.

Solutio: ex hac ultima auctoritate uidetur quod si quis preter intentionem generandi cognoscit uxorem, non uenialiter sed mortaliter peccat.

Item, dicit AUGUSTINUS quod coitus contra naturam execrabilius fit in uxore quam in meretrice.

Respondeo: sciendum est quod uir aliquando cognoscit uxorem spontaneus, aliquando coactus, id est exactus.

Item, cum spontaneus aliquando naturali usu, aliquando contra naturam. Cum uero spontaneus et naturaliter, aut facit hoc causa sobolis susciuipende, aut causa incontinentie, aut pro explenda libidine. Si exactus nec etiam committit ueniale secundum QUODSIAI. Si spontaneus et intuitu tantum | susciuipende sobolis, nullum prorsus committit peccatum secundum easdem. Si causa incontinentie, peccat uenialiter. Quod autem dicitur "adulter est," etc. intelligitur adulter non


Item, queritur an cum uxore propria committat quis adulteriam. Quod uidetur, quia dicit AUCTORITAS, "adulter est in sua uxore amator uemhemens."

Item, "nichil est fedius quam amare uxorem quasi adulteram."

Item, uluptates que meretricum amplexibus capiuntur etiam in uxore dampnabiles sunt."

Item, nuptiarum opus si non fiat cum honestate ut tantum liberis susciupiendi seruatur, immundicia est et luxuria, que APOSTOLUS nominat, dicens Manifesta sunt opera carmis que sunt immunditia, fornicatio etc. hoc autem singula regnum Dei tollunt.

Solutio: ex hac ultima auctoritate uidetur quod si quis preter intentionem generandi cognoscit uxorem, non uenialiter sed mortaliter peccat.

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reatu illius capitalis criminis, sed similitudine adulterine libidinis, sicut enim adulter ardet in adulteram, ita iste in propria

Quod postea dicitur, "nichil feditus" etc. sic expone, id est ualde fedum est, et est usualis locutio.

Quod tertio dicitur, "uoluptates" etc., intellige: quando pro explenda libidine accedit quis ad uxorem.

Quod postea dicitur, "nuptiarum opus" etc., intelligenda est immundicia non quoad reatum mortalis uicii sed quoad speciem facti. Speciem et similitudinem immunditie et luxurie pretendunt, qui preter sperm suscipiente sobolis uel prolis uxor um suas cognoscunt.

Et nota quod concubitus qui causa incontinentie fit ueniale peccatum dicitur, non pro eo quod sine mortali peccato semper fiat, sed quia ad instar uenialis leui soleat satisfactione purgari. Qualiter accipitur illud GREGORII "usus naturalis si ultra modum probatur in uxore quidem ueniale est in meretrice uero damnabilis." Vel sic expone: "adulter est | in sua uxor e," etc., id est more adulteri se habet amator ardentior, id est indebite ardens in uxor e, intentionem scilicet habens quod si aliena esset eam non minus cognoscere et.

[12.8] Utrum fornicatio ex sui natura sit mortale peccatum.

Item, queritur utrum fornicatio modo ex sui natura sit mortale peccatum, aut tantum ex prohibitione.

Dicunt QUIDAM ex sui natura, quia in fornicatione modo intelligitur actionis abusus.

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359 Augustinus. *Decret. Grat.*, C.33 q.7 c.11 (Friedberg I, 1143), from Augustinus, *De bono coiusgali* (CSEL 41, 203).
Sed opponitur, fornicati sunt patres nostri ueteris testamenti, et tunc fornicatio in eis non erat mortale peccatum. Per prohibitionem fuit in eis mortale peccatum. Ergo prohibitione facta est fornicatio mortale peccatum, et non ex sui natura.

Respondeo: necessitas potuit patres ueteris testamenti excusare ut Abraham, Isaac, et Iacob, quia raritas hominum tunc erat ferentium Dei caracterem, et, ut numerus fidelium augeretur, non causa explende libidinis, diuertebant ad ancillas. Instans: quandoque non erat peccatum huic furioso tradere gladium, et post prohibitionem modo est peccatum tradere gladium. Ergo ex prohibitione gladii, non ex uitio ipsius, peccatum est ei tradere gladium.

Item, quod licitum esset in ueteri testamento cognoscere solutam, uidetur argumento huius uerbi Domini loquentis Abimelech de uxore Abrahe. Inquit enim Dominus, Scio quod mundo corde hoc fecisti, quasi "tu putabas eam esse solutam, non coniugem Abrahe," unde sic infertur: ergo si soluta esset Sara, mundum cor haberet Abimelech in concupiscendo eam solutam.

Respondeo: AUGUSTINUS | soluit hoc Super Deuteronomium, dicens "non mundum ita uoluit intelligi ut similis eis esset de quibus dicitur, Beati mundo corde etc., sed ab illo peccato de quo agebatur, quia quantum ad ipsum pertinebat non coniugem concupierat alienam."

Item, antiquis patribus licuit habere duas uxoribus. Sit modo illud tempus, utraque exigit debitum a uiro. Quid faciet uir in hoc casu cum sit uir duarum?
Respondeo: utrique tenetur reddere pro loco et tempore et fortasse que prior est tempore prior est iure; unde ei cum qua prius contrahit matrimonium, primo tenetur reddere debitum.

Item, in sacris noctibus supersedendum est amplexibus quia in temporibus sacris uacandum est orationi. Unde egrediatur sponsus | de cubili suo etc. Ergo tunc non debet uxor exigere debitum uel econuerso.

Respondeo: exigere non debet, sed si exigerit, uxor tenetur reddere, ut dicunt QUIDAM, nec peccat illa sed ille.

Item, cum motus qui est in illicita commixtione inquantum motus eque sit licitus, sicut motus cum propria coniuge, queritur quid prohibeatur cum dicitur, "Non fornicaberis."

Respondeo: abusio illius motus tantum prohibetur, | sicut qui prohibet alicui ne aliquem occidat manu. Non prohibit manus extensionem, sed abusionem extensionis.

Item, maius peccatum est incestus quam adulterium, sed si ex necessitate, propter raritatem hominum, cognosceret quis consobrinam suam, non peccaret. Ergo si cognosceret quis uxorem alieius impotens, eam cognoscendo ex necessitate propter raritatem hominum, non peccaret. |

Econtra: iste ueniret contra hoc mandatum domini, Non mechaberis. |

Respondeo: dicunt QUIDAM quod non transgredetur iste in hoc casu, sicut mulier baptizans necessitate instante non transgredetur mandatum ecclesie, quamuis dicatur "mulier baptizare non presumat," nec committeret iste in tam

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arto positus adulterium, sed necessitas restaurandi humanum genus excusaret eum.

Dicunt tamen ALII quoniam exspectandum esset diuinum mandatum antequam tale quid fieret.

Item, dicit APOSTOLUS, mortuo uiro soluta est mulier a lege uiri. Nubat cui ualt in domino. Ergo secunde nuptie licite sunt.

Item, IERONIMUS: "aperiant, queso, obtrectatores mei." "Non dampno bigamos nec trigamos, sed et, si dici potest, octogamos."

Econtra, dicit CRISOSTOMUS "secundum preceptum apostoli secundam accipere uxorem licitum est. Secundum autem rationem veritatis uere fornicatio est."

Item, canon dicit penitentiam inuingendam esse sepe nubentibus, ut xxxi q. i De hiis. Ergo licitum est secundum matrimonium.

Item, secunde nuptie non benedicantur, nec sacerdos eis interesse debent, sicut legitur in predicto capitulo.

Item, IERONIMUS loquens ironice ait, "Quam sancta sit bigamia hinc etiam ostenditur, quod bigamus ad clerum eligi non potest."

Solutio: regula est ecclesie, qui continere non possit, sublata consorte thori, posse ad secundas nuptias transire.

Ad illud quod IOHANNES <CRISOSTOMUS> dicit sic responde: huius nominis significatio duplex est. Una est que congruit tantum hiis qui matrimonialiter semel iuncti sunt et alii postea miscentur, scilicet diuiisio carnis unius in plures. Alia que congruit generaliter omnibus fornicantibus, scilicet omnis usus libidinis preter legitimum coniugium. Prima fornicatio non semper est peccatum, de qua idem IOHANNES dicit "cum, permittente Deo, licite et publice committitur, fit honesta fornicatio." Secunda uero semper est peccatum. Quod autem dictum est secundum nominis ueritatem etc., sic expone: id est secundum nominis naturam et propriam interpretationem.

Ad id quod dicit canon, penitentiam iniungendam esse secundis nuptiis, dicas hoc non esse intelligendum de omnibus qui contrahunt secundas nuptias sed de hiis qui non causa sobolis uel incontinentie sed delectatione tantum libidinis explende uel satiande amplius contrahunt matrimonium.

ALII dicunt figuratiua sunt uerba huiusmodi et intelligitur hic nomine penitentie quedam necessitas uerecundie. Debet enim presbyter uolenti contrahere secundas nuptias dicere: bonum esset te continere et exemplo continentie alios prouocare ad continentiam, tamen si uis

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contrahere, licet, sed uercundiam quandam habere debes, quia denuo contrahis matrimonium.

Ad illud quod dictum est secundas nuptias non benedici etc., nec sacerdotes eis interesse, dic ideo hoc esse quia non est ibi Christi et ecclesie sacramentum. Unde IERONIMUS: "ubi numerus maritorum est, ibi uir, qui proprie unius est, esse desistat." Quod sic intellige: in secundo coniugio desinit esse Christus, id est Christi et ecclesie sacramentum.

Quod postea dictum est, "Lamech punitus est propter bigamiam," non est concedendum. Punitus est enim pro homicidio, non propter bigamiam, que peccatum non est.

Quod autem dicitur fraticidium et bigamiam eadem cathacliismi pena deleuit, sic expone: bigamiam, id est eum qui bigamiam commisit, dico non in sua persona sed in eius potestate. Unde hic habes quod pater dicitur puniri in filio.

Item, contra hoc quod | dictum est, "in secundo coniugio non esse | Christi et ecclesie sacramentum," sic opponitur: Non est in secundis nuptiis Christi et ecclesie sacramentum. Potest deesse fides ibi, si alter coniugum diuertit ad amplexus alterius. Similiter ibi deest sive intetio prolix uterque uel alter esset sterilis. Ergo cum non esset ibi sacramentum nec aliquid bonum coniugii, non excusaretur coitus talium ab adulterio uel fornicatione.

Respondeo: licet difficile hoc possit accidere, tamen excusaretur coitus talium tum propter sacramentum fidelis anime ad Deum, quod est in secundo coniugio, uel propter auctoritatem ecclesie. Hec ergo et similia non dicuntur de secundis nuptiis ad earum detestationem uel dampnationem, sed ad exhortationem uidualis continentie.

481 secundas...482 interesse | Cf. 444–445 484 Decret. Grat., C.31 q.1 c.10 (Friedberg I, 1111), from Hieronymus, Adversus Iovinianum (PL 23, 223C).

An resuscitatus possit repetere uxorem suam alii maritatam.

Item, queritur quid sit iuris si quis resuscitatus, puta Lazarus, repetit uxorem, que medio tempore nupsit alii. Quod non possit repetere | cum effectum uidetur. Regulare enim est in iure nostro quod morte alterutrius coniugum soluitur matrimonium. Unde APOSTOLUS: Mortuo autem uiro nubat uxor superstes cui uult in domino. Si ergo uxor Lazari eo mortuo nupsit alii in domino, stabit matrimonium.

Econtra, uidetur quod debeat rescendi et reformari ad primum, et hoc figmento legis Cornelie que detentum apud hostes fingit esse presentem. Unde tempore captiuitatis contra eum prescriptio non currit, sed reuertenti postumo iure postumi que alienae fuerant restituantur. A simili et in hoc casu ius ecclesiasticum fingere debet talem non fuisse mortuum propter breve tempus.

Item, APOSTOLUS: acceperunt mulieres de resurrectione mortuos suos.

Respondeo: quid iuris sit in hoc casu non est exemplum inuenire, quia super hiis que numquam aut raro accidunt regulam edi non oportet. Est autem regula collectio plurium in eadem ratione cadentium. Tamen putant QUIDAM uxorem restituendam esse priori uiro. ALII in contrarium sentiunt.

De causa diuortii inter coniuges et de contingentibus hunc articulum.

Causam diuortii inter coniuges docet dominus solam esse fornicationem. Unde IERONIMUS: "sola fornicatio est..."

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que uxoris uincit affectum," id est que uiro reddit illicitam uxorem donec perficiatur penitentia et hoc usque adeo explicitum est ut etiam pro matricidio non prohibeatur quis ab opere coniugali, ut xxxiii q. ii Seculares.

Sed opponitur: "ubicumque est fornicatio uel fornicationis suspicio, libere dimittitur uxor." Non ubicumque est suspicio fornicationis est fornicatio. Ergo non propter solam fornicationem potest dimitti uxor. Non sequitur, quia si dimittitur pro suspitione fornicationis presumit ecclesia eam fornicatam fuisse, et ita non dimittitur nisi pro fornicatione, et si non principaliter, secundario tamen dimittitur pro fornicatione. Sed huic uerbo IERONIMI "ubicumque est fornicatio" etc., obloqui uidetur quod dicitur alibi, "Neminem iudicetis suspitionis arbitrio."

Nota ergo quod suspicio alia uenit ex mediocri presumptione, ut si quis uideat uxorem suam alicui lasciuo frequenter nutus facere impuditos; ex violenta presumptione, ut si quis eum nocte deprehenderit in thalamo, licet eos non uideat pariter commisceri. Ex priori presumptione non est dimittenda uxor; ex secunda, legitimis testibus comprobata coram ecclesia, dimittit potest.

Et nota quod triplex est uxoris dimissio: una, que permittitur; alia, que precipitur; tertia, que prohibetur. Permittitt dimitti a communi cohabitatione. Dimissio que precipitur est quoad reddendum debitum donec fornicaria persona agat penitentiam. Dimissio que prohibetur est quoad

disciplinam et curam usque dum de fornicatione peregerit penitentiam.


Item, cum causa fornicationis possit uxor dimittere uirum et uir uxor, queritur si inuentus fuerit male ludens cum puero et conuictus sit inde, utrum possit eum uxor dimittere. Similiter si uxor aliquidus turpitudinem operatur cum alia femina et inde conuincatur, an possit eam uir dimittere. Quod possit uidetur, quia nulla fornicatio turpior quam talis. Ergo si talis interueniat, talis sufficit diuortio matrimonii.

Respondeo: credo ita esse.


Item, queritur an uir teneatur post diuortium prouidere necessaria sue uxori. Quod non uidetur ex quodam capitulo octogesime prime distinctionis, Si quis amodo, et xxxii q. i De Benedicto, quod forte uerum est nisi habeat dotem et ne afflicte addatur afflictio.

Sed de dote queritur ad quem ipsius pertineat dominium. Dicunt QUIDAM quod uxor naturaliter est domina, maritus uero utiliter. Item, ALII dicunt quod maritus naturaliter est dominus, | mulier uero utiliter.

Et nota quod si uir noluerit recipere uxor adulteram post penitentiam peractam non potest de iure ad hoc artari per iudicem, ut xxvii q. ii Agathosa, nisi ipse in similem inciderit reatum, ut GREGORIUS in Ex trauagante,
Significasti, C. De inofficioso testamento, In harenam, ubi dicitur quod pater non harenarius potest filium harenarium ab hereditate excludere. Quid autem si pater sit similis conditionis? Utique non potest, quia infamia infamie compensatur.

Item, Moyses propter aliam causam permittebat uxorem dimitti a uiro, quia si uir esset pertesus uxoris sue, permittebat Moyses dare libellum repudii.

Sed opponitur, Moyses permittebat iudeos dimittere uxores. | Talis dimissio erat eis mortale peccatum. Ad eum

59 Codex Iustinianus 3.28.11 (CIC II, 132). 64 Item ... 91 predicto] Cf. Petrus Pictaviensis, Sententiae 5 cap.17, Garv. (Peter), 67-68 (PL 211, 1262C-63B): Moises permisit eos dimittere uxoribus, quod erat mortale peccatum, et scienter hoc faciebat, et ad eum pertinebat eos redarguere, ergo mortaliter peccabat. Item, permissonis fuit mortale peccatum. Ergo et permisso eius qui permittebat. Item, contraria fuerunt instituta Christi et Moisi, quia Moises ob multas causas permittebat dimittere uxoribus, Christus ob solam causam fornicationis, ergo alterius peccavit in instituto; sed non Christus, ergo Moyses. Item, antequam cause assignarentur a Moise propter quas licebat uxorrem dimittere, mortale fuit peccatum dimittere, et post causas assignatas similiter; in nullo ergo alleviatum est illud peccatum a crimine per permissionem. Item, ob nullam causam poterat dimitti uxor ab aliquo, in Veteri Testamento, qui non peccaret mortaliter; modo, si dimittatur ob causam fornicationis, non est mortale peccatum; ergo firmius erat sacramentum conjugii in Veteri Testamento quam in Novo. Ad hoc dicunt quod Moises sustinuit minora mala, ut vitaret maiora; sciebat enim Ludeos esse crueles et pronos ad effusionem sanguinis, et cito interempturos uxoribus, si dissemblerent eis, nec possent dimittere; et ideo, dato libello repudii, certas causas divortii continenter, eas permisit dimitti, non quod dimittere non esset mortale peccatum; erat enim; sed ne deterius facerent, id est eas interficerent. Unde Dominus dicit in Evangelio, quod propter duritiam cordis Ludeorum hoc dedit Moises. Et nota quod est triplex genus permissionis: quandoque enim aliquid permititur quod nisi permittingetur mortale esset peccatum; sed quia excusatur aut mortale peccatum non est quod nullum; et talis permission potest dici concessio, et talis est coitus qui fit in conjugio qui permittitur, id est conceditur. Quandoque aliquid permittitur quod non potest vitari, et est veniale peccatum; tales sunt primi motus: Irascimini et nolite peccare. Quandoque aliquid permittitur ne fiat maius malum, non quod non sit malum et mortale peccatum, sed quia minus malum est alio quod fieret si istud non fieret; sic permittebat, id est sustinebat, Moises dimittere uxores, non quod non esset mortale peccatum, sed quia minus malum erat quam eas interficerere, quod facerent si inviti cum eis habitarent; et inde nullam penam tempore inferebat Moises.

pertinebat Iudeorum excessus corrigere. Ergo et Moyses grauiiter peccavit in permissione repudii.

Item, ipsum permissum erat mortale peccatum. Ergo et permissio Moysi permittentis erat mortale peccatum.

Item, ob nullam causam poterat dimitte uxor in ueteri testamento, quin peccaret mortaliter dimittens. Modo si dimittitur uxor pro fornicatione, qui dimittunt nullum committunt peccatum pro dimissione. Ergo firmius erat sacramentum coniugii in ueteri testamento quam in nouo.

Respondeo: Moyses sustinuit fieri minus malum, scilicet uxores dimiti si pertesus esset uir uxoris sue, ne maius flagitium fieret, scilicet uxoris interemptio. Sciebat enim Moyses Iudeos interempturos uxores suas si eis dislicerent nec possent dimittere. Ideo permisit eis, id est impunitum reliquit, dimittere uxor(es).

Et nota quod triplex est genus permissionis, ut distinguunt QUIDAM. Quandoque aliquid permittitur quod nisi permitteretur mortale peccatum esset, sed quia permittitur aut peccatum non est, aut est ueniale. Talis permission est de coitu coniugali. Quandoque aliquid permittitur quod non potest uitari et est ueniale peccatum. Talis permission est de primis motibus. Quandoque aliquid permittitur licet sit mortale peccatum ne fiat maius mortale, sicut in casu predicto.

Item, nota quod ueniale dicitur permitti, id est nec prohiberi, nec concedi. Si enim prohibetur ueniale, omnis essent transgressores.

Item, sic distinguishunt ALII: permission alia est absoluta, alia comparatiua. Ubi est permission absoluta, nullum peccatum committitur. Verbi gratia, aliquid contrahit matrimonium cum sua consanguineae | in quarto gradu consanguinitatis uel ulteriori, dispensat ecclesia rigorem canonis, ut, cum de iure communi hoc non liceat, tamen

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auctoritate ecclesie sit sine omni peccato. Ubi uero est permissio comparatiua, ibi committitur peccatum, ut in permissione libelli repudii facta collatione a Moyse inter adulterium et homicidium. Quod ergo obiectum est Moysen peccasse tali permissione non est uerum. Nam timor euentus deterioris coegit Moysen ad hanc permissionem.

Et nota quod talis permissio Moysi non fuit contraria institutioni Christi, qui ob solam fornicationem uxorem dimititi precepit, cum et Christus uellet Moysen hoc permettere, id est tolerare.

Item, nota quod non erat uerum matrimonium inter eos qui legitimas uxor(es) dimittebant et secundas quas sibi copulabant. Nec tamen, dicunt QUIDAM, fornicatio erat in eorum coitu, quia tunc pauci erant fideles. Et quocunque modo permisceretur illius temporis homo mulieri ad procreandam sobolem in cultu unius Dei permansuram minus erat peccatum quam si aliquid in sua uxor(e) modo carnaliter delectetur. Unde et plures tunc licebat habere uxor(es), quorum tamen una erat uxor legitima, relique erant concubine ad propagandum populum Dei. Credo tamen distinguerem esse quo fine, qua intentione tunc aliquid cognosceret concubinam suam. Si hac intentione ut dilataretur sors et hereditas domini uel nullum erat peccatum uel tantum ueniale. Si uero causa libidinis explande, credo talem coitum mortale peccatum fuisset.

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107 Et... 110 tolerare] Petrus Pictaviensis, Sententiae 5 cap.17, Garv. (Peter), 69 (PL 211, 1263C-D). 109 Christus... 110 permettere] Cf. Mt. 19.8, Mc. 10.4-6. 113 Nec... 120 Dei] Petrus Pictaviensis, Sententiae 5 cap.17, Garv. (Peter), 69-70 (PL 211, 1264A).

Item, queritur si uxorem uir dimiserit quia eam adulteram esse suspicatur, an cogatur illam suscipere donec ipsa se purgauerit.

QUIBUSUSDAM placet quod recipere eam non est cogendus antequam se purget illa, ad similitudinem illius capituli Presbyter si a plebe ii. c. q. v. ALII uero in contrarium dicunt.

Utrum autem pro fornicationis suspicione uxor uirum possit accusare aliquam auctoritate non est expressum, et ideo doctorum opinio uariatur.

Item, si quis conuincatur de adulterio comissmo cum Teberga, non tamen credo quod ob hoc Teberga constituatur adultera uel infamis. Unde nec a marito Lothario potest repelli.


Item, si uxor alciuss fuerit inuita | cognita ab | alio, queritur an properea maritus possit eam dimittere. Non uidetur, cum non dicatur adultera que inuita corrumpitur, quia non corrumpitur corpus nisi et mens corrumpatur.

Item, non fornicatur nisi quando proprie libidinis instinctu propter coniugale debitem cognoscitur. Hinc patet quod que uiolenter corrumpitur diuortii dampna non meretur. Si ergo aliqua castitatem corporis per uiolentiam amisit, seruata spiritus castitate, non solum ob hoc dimittanda non est, sed duplicatur ei castitas ad coronam, sicut legitur de beata Lucia. Ignorantia enim excusat a fornicatione, sicut habemus de uxore captiuii uel peregrinantis que nubit alii.

133 Decret. Grat., C.2 q.5 c.13 (Friedberg I, 459).
Ex hoc autem casu, decem nascuntur questiones. Prima est an sit matrimonium cum secundo, et uidetur quod non, quia matrimonium est inter istam et illum qui tenetur apud hostes, quod solui, nisi morte alterius, in nullo casu potest. Ergo inter istos non est matrimonium sed potius adulterium, quia non excusatur per bona matrimonii.

Respondeo: excusantur isti per ignorantiam et auctoritate ecclesie, sicut et ille excusatur qui uxorem alterius qui frigide nature erat accepit in uxorem, cum autem frigidus factus sit potens | redere debitum | uxori.

Respondeo: excusantur isti per ignorantiam et auctoritate ecclesie, sicut et ille excusatur qui uxorem alterius qui frigide nature erat accepit in uxorem, cum autem frigidus factus sit potens | redere debitum | uxori.

Secunda questio est an possit nubere auctoritate propria. Respondeo: Non, immo auctoritate ecclesie.

Tertia questio est quanto tempore debeat eum exspectare. Sed hoc canonibus non est diffinitum. Lex dicit per quinquennium.

Quarta questio est qualiter fides facienda est ecclesie. Respondeo: per testes, qui ibi fuerunt, iurantes se uidisse eum mortuum, uel per famam publicam. Publice omnes dicunt nauem esse fractam in qua erat et aliqii qui uiderunt fractam. Autenticum tamen dicit quod ille sub quo militabat, si miles erat ille, notificare debet.

Quinta: an filii talium sint legitimi.

Respondeo: Non, quia non sunt nati de legitimo matrimonio, sed sunt quasi legitimi et succedunt patri in hereditatem.

Sexta: si alter illorum sciat maritum uiuere et alter ignoret, an debeat preiudicare filiis an non.

Respondeo: QUIDAM dicunt quod debeat, ALII aliter.

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175 Autenticum... 176 debeat] Authenticae 5.17.7 (CIC II, 517).
Septima: si, mortuo priore uiro, possit secundum accipere.

Respondeo: potest, et est argumentum ad illud quod dicitur c. ii q. i *Imprimis*. Si quis tamen accepit uxorem alterius ignoranter, eo mortuo, poterit eam habere.

Octaua questio est, cum omnia fere iure spiritualia possint prescribi, quare istud similiter.


Nona questio est an compellendus sit uir reuersus uxorem suam recipere in hoc casu.

Respondeo: est utique per excommunicationem. Sicut et ipsa mulier.

Decima questio est, si mulier certa est quod sit uir eius, utrum debeat ei reddere debitum, an exspectare sententiam ecclesie.

Respondeo: reddere debet exactum, sed exigere non nisi per sententiam ecclesie.

Item, cum propter fornicationem concessum sit uiro dimittere uxorem, quere an de spirituali fornicatione hoc sit utrum, sicut et de corporali. Quod uidetur, inquit enim AUGUSTINUS, "Non tantum propter illicitas concupiscentias que in stupris cum alienis uiris uel feminis committuntur"

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187 *Decret. Grat.*, C.2 q.1 c.7 (Friedberg I, 429-42).

208 *Decret. Grat.*, C.28 q.1 c.5 (Friedberg I, 1080), from Augustinus, *De sermone Domini in monte* lib.1 (CCSL 35, 52).

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184 Septima] questio est *add.* C | si mortuo] *iter. sed corr.* P₁ | priore] *om.* P₂Tr | *accipere* recipere Tr | *Imprimis* in primis C | *quid* To | *uxorem* ecclesiam To | *iure* iura P₁ToTr | spiritualia possint] *inv.* To | *possunt*] *corr.* P₁ | similiter] *non add.* ToTr | *dirimit* determinat P₂ | *enim* quia *add.* To | *potest*] *possit* P₂ | *Non enim*] *inv.* To | *currit prescriptio*] *inv.* To | *possidenti*] *presidenti* Tr | *prescribi*…*potest*] *non potest prescribi* To | *nec* P₁ nec potest P₂ | *Ita*| *idem* P₁ | *sit* om. P₁ | *accipere* recipere Tr | *question est* om. P₁ToTr | *est*| *sit* P₂ | *si* To | *utrum* matrimoniem To | *debent* ei *inv.* Tr | *Respondeo reddere* om. Tr | *reddere* om. P₂ | *debent* eti *add. sed exp.* C | *exactum* exacta CP₂ | *exigere non* inv. P₂ | per sententiam ecclesie| ecclesie in sententiam P₂ | *sententiam ecclesie* inv. ToTr | *cum* om. To | *add. sed exp.* P₂ | *stupris*] *strupis* To
potest fieri diuortium, "sed omnino propter quaslibet quem animam a lege Dei aberrare faciunt."

Sed opponitur, omne mortale peccatum tale est. Ergo pro omni mortali commisso ab uxore potest uir eam licite dimittere, quia omne mortale peccatum spiritualis est fornicatio quo anima recedit a Deo et fornicatur cum diabolo. Ergo sicut pro fornicatione corporali semel commissa potest quis licite dimittere uxorem suam, ita pro quolibet mortali semel commisso potest quis uxorem suam dimittere. Ergo, cum nulli uel pauci sint coniuges qui quandoque non commiserint aliquod mortale peccatum, potest fieri diuortium in omni coniugio. |

Respondeo: cum fornicatur uxor alicuius spiritualiter, refert utrum ad eam fornicationem cogat uirum uel non. Si cogat, dimittere debet, id est recedere permittenda est. Si alias est incorrigibilis ita tamen, ut si uxor postea corrigi uluerit, | uir eam recipiat. Si autem uirum non coegerit sequi temeritatem illam, pro fornicatione spirituali dimittenda non est. Excipitur idolatria, in qua, si mulier perseuerare uluerit, dimittenda est etiam si uirum ad hoc non coegerit. Pro auaricia tamen non est dimittenda uxor, licet APOSTOLUS uocet auaritiam idolorum seruitutem, etsi uirum ad auaritiam cogere uelit, nisi dicas dimittendum, id est abire permittendam.

Item, pro usura siue pro quolibet mortali peccato potest uir dimittere uxorem uel econtra, et tollitur istud vinculum quo tenebantur | reddere debitum alter | alteri. Ergo si aliquis

\[231\] uocet … seruitutem\] Cf. Col. 3.5

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210 potest … diuortium diuortium potest fieri To propter] per C
fenerator uelit contrahere cum aliqua et contrahat de facto, impediente eius peccato nullum est matrimonium. Instans argumenti: pro fornicatione potest uir dimittere uxorem suam et tollitur uinculum quo tenebatur reddere debitum uxor. Ergo si aliquis fornicator contrahat de facto matrimonium cum aliqua, non est matrimonium impediente eius peccato.


Item, queritur an uxor uirum adulterum possit accusare de adulterio et dimittere. Quod possit probatur sic: inquit AUGUSTINUS "christiana religio adulterium in utroque sexu pari ratione condempnat."

Econtra, "publico iudicio mulieres accusationem non habere, Lex Iulia declarat."

Respondeo: lex ista antiquata est tam iure Autenticorum quam iure canonum. Vir tamen in accusando uxorem iure mariti triplici gaudet priuilegio. Nam potest accusare uxorem sine prescriptione, absque metu calumpnie, et de sola suspitione. Hoc autem ius mariti non feminine. Unde dicitur: lex, cum masculis iure mariti accusandi facultatem dedisset, non idem priuilegium feminis dedit iure mariti, id est sine metu calumpnie, sine inscriptione, ex sola suspitione. Viro autem non licet nisi infra xl dies utiles, nam si postea uelit accusare uxorem, communi iure idem faciet.


Item, dubium solet esse an licitum esset uiro dimittere uxorem leprosum et uxori uirum leprosum.

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Respondeo: huic questioni inmisit saporem Constitutio ALEXANDRI. Inquit enim quod sicut "ex multis auctoritatibus et precipue ex euangelica ueritate appareat, nemini licet nisi causa fornicationis uxorem dimittere. Constat quod si mulier leprosa fuerit siue alia alia graui infirmitate detenta, non est propertia a uiro separanda suo et dimittenda. Leprosis autem, si continere nolunt et aliquam que sibi nubere uelit inuenerint, liberum est matrimonium contrahere, et si leprosus a sana coniuge carnale debitum exigat generali precepto APOSTOLI, quod exigitur est persoluendum, cui precepto in hoc casu nullam inuenimus exceptionem." Leprosum autem mulier sana non cogitur sequi, ut in Extrauagante, Peruenit ad nos.

[14.1] Queritur an uotum possit separare matrimonium; cuius diffinitio hic ponitur.

Votum generaliter sic diffinitur: uotum est testificatio spontaneae promissionis. Melius et spiritualius uotum est melioris boni conceptio animi deliberatione firmata. Votum est testificatio quedam uoluntatis spontaneae Deo facta et de hiis que ad Deum pertinent. Votum aliud simplex aliud sollempne. Simplex dicitur illud quod siue publice siue priuate fiat, tamen sollempnitate caret, ut si quis tota coram ciuitate uoueret quod intraret monasterium, cum tamen tonsuram uel habitum non suscepisset. Sollempne uero uotum tam publice quam priuate potest fieri, dum modo ea interueniant que uotum faciunt sollempne, scilicet religiose uestis susceptio et mutatio persone que fit in tonsura. Primum uotum Deo homines obligat, non ecclesie, nam post

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265 1 Comp. 4.8.2 (X 4.8.2) (Friedberg Quin. comp., 49).
273 quod… persoluendum] Cf. I Cor. 7:3
276 1 Comp. 4.8.1 (X 4.8.1) (Friedberg Quin. comp., 49).

264 questioni] questio P₂ | saporem] soporem P₁To
266 nisī] om. P₁To
270 noluerint] noluerint To
271 inuenerint] inuenerit To
272 carnale debitum exigat] debitum exigat carnale P₁
273 persoluendum] soluendum P₁
P₂ToTr 8 Simplex…siue] om. sed sup lin. ins. P₁ | dicitur illud| inv. ToTr 9 sollempnitate| sollempne To | tota coram| inv. P₂ToTr | coram |
on. P₁ 10 cum tamen] et To 13 religioso| religiosa P₁ 14 persone…fit |
on. P₂To | in] id est To 15 homines obligat| inv. P₁ | obligat] obligant To | ecclesie| nature P₂To
tale uotum contractum matrimonium non dirimatur, ut d. xxvii Si uir et c. xvii q. ii Nos nouimus, nec aliquis cogitur monasterium intrare, licet | promisit, ut xvii q. ii Cosaldus. Et in Extr. Super eo in quo dicitur quod sit ante susceptum, positum in probatione uoluerint secundum regulam beati Benedicti, non uidetur ad priorem prohiberi statum redire secundum uotum, et contrahendum impedunt et iam dirimit contractum.

Sed queritur, cum simplex uotum non minus Deo obliget homines quam sollemne, quare primum non dirimit matrimonium contractum, sed secundum?

Solutio: forte plus obligat Deo homines sollemne uotum quam simplex, et plura uidetur contemnere et ex pluribus peccare sollemniter ouenus, si ueniat contra uotum, quam oueens simpliciter. Vel, quod melius est, sola constitutio ecclesie hoc facit. Sed secundum hoc posset ecclesia mutare quod constituit, scilicet ut sollemne uotum non dirimeret matrimonium. Quod tamen non est uerum, quia huius institutionis APOSTOLUS fuit auctor, cum dixit Adulescentiores autem uidas deuita. Contra eis institutionem aliqoid non potest facere ecclesia.

Item, simpliciter ouentes ex uoto non tenentur contrahere matrimonium. Ergo quia contrahunt matrimonium

16 Decret. Grat., di.27 c.3 (Friedberg I, 99). 17 Decret. Grat., C.17 q.2 c.2 (Friedberg I, 814). 18 Decret. Grat., C.17 q.2 c.1 (Friedberg I, 813-14). 19 Extrauagante … 23 contractum] 1 Comp. 3.27.9 (X 3.31.9) (Friedberg Quin. comp., 39). 35 I Tim. 5.11.
peccant, et ipsum contrahere est mortale peccatum. DICUNT IBI plura esse quorum quedam sunt peccata, quedam non. Est ibi fractio fidei, que est peccatum, et voluntas et actus contrahendi, quorum utrumque est peccatum, et est ibi quoddam spirituale unicum, scilicet matrimonium, quod non est nec potest esse peccatum.

Sed queritur an voluntas recedendi a simplici uoto et contrahendi matrimoniun sit mortale an ueniale delictum.

Respondeo: dicunt quidam quod uenialis sit culpa, sed grauis que nec feno nec stipule comparari potest, sed ligno. Pro qua non septennis, que pro mortali iniungitur, sed triennis debet iniungi penitentia, | ut d. xxvii Si uir. | Potest etiam a tali uoto recedere secundum istos et nichilominus perseverat bonus, ut xvii q. i Qui bona.

ALII dicunt non esse matrimoniun post simplex uotum, sicut et post sollemne, et quotiens conueniunt tales carnaliter, | fornicationem committunt, et si constaret ecclesie eos uouisse simpliciter, eos separaret, nec deest ius, sed sola iuris probatio.


Item, queritur de | simulantibus uotum, an possint contrahere matrimoniun. Quod uidetur, inquit Augustinus loquens de castitate, "quedam sunt que debemus etsi non uouimus; quedam que nisi uouerimus non debemus."

Item, AMBROSIUS: "uriginitas suaderi potest, non imperari. Res enim magis uoti est quam precepti." Quid ergo

ad castitatem contingit talem simulanten, utum uel aliud? Constat quod non aliud. Quia non uotum sic probo: Non habuit iste qui simulauit bonum conceptionem melioris boni animi deliberatione firmatam. Ergo non uouit, et est locus a diffinitione. Ergo nec aliam necessitatem ei uotum infert.

Econtra, quod non possit uidetur, inquit enim INNOCENTIUS, uirgines "nondum sacro uelamine tecte que in proposito uirginitatis se simulauerint permanere, si nupserint iniungenda est penitentia, quia a Domino sponsio earum tenebatur."

Item, cum baptizatur quis absque patrino, nec aliquis loco interrogatur, non potest euacuari sacramentum.

Respondeo: utrum simulator uoti habitum ab alio susciupiens celauit ecclesia propositum uere simulationis uel non. Si celauit non potest matrimonium contrahere, nam dignus est decipi qui decipere cogitauit ad instar | pretendentis frigiditatem. Si manifestauit ecclesie simulationem non impeditur si uelit contrahere matrimonium, quia plus ualet quod in ueritate agitur quam quod in simulatione perficitur, excepto eo quod absorbi non potest sine sacramento.

72 Decret. Grat., C.27 q.1 c.9 (Friedberg I, 1050), from Innocentius Primus, Decreta Innocentii Papae (PL 67, Col. 245A). 88 queritur…92 contrahendum] Cf. Petrus Pictaviensis, Sententiae 5 cap.16, Garv. (Peter), 60-61 (PL 211, 1259B)


An licuit beate uirgini contrahere post uotum.

Item, queritur an licuit beate uirgini nubere post uotum. Videtur quod non. Post uotum non solum nubere sed etiam...
uelle nubere damnabile est. Beata uirgo obtulerat Deo uirginitatem antequam nuberet; ergo non erat legitima persona ad contrahendum.

Respondeo: uotum quod fecerat priuatum legitimum fuit, et sub conditione nisi aliter Deus reuelaret. Si enim sine conditione ouisisset, nec peccasset in nubendo, quia priuata lege ducta est ad nubendum, que preuidicat legi publice. Licet ergo contra legem communem nuberet, non tamen illegitime, sicut contra demonstrationem iuris naturalis tenetur quis in seruitutem, non tamen illegitime.

ALII sic referunt inter propositum et uotum, sicut distinguitt PROPHETA, dicens: *Concupiuit anima mea desiderare iustificationes tuas in omni tempore.* Propositum rei medie non astringit hominem uel apud Deum uel apud homines. Proposuit ergo deliberando quod virum non cognosceret, sed uoto se non astringit. Si legeris quod fecerit uotum nomen consequentis, id est uoti, transfertur ad antecedens nuncupando, scilicet propositum, et sic nomine uoti intelligitur propositum.

Item, maledicta erat in lege que non faciebat semen in Israel. Scuiit beata uirgo quia uotum uirginitatis seruari non posset sine maledictione legis. Ergo indiscrete uouit.

Respondeo: Maledictum illud non fuit culpe sed pene, sicut et stud, *Maledictus omnis qui pependit in ligno.* Nec Christus exemptus est ab illa maledictione, que fuit pene et non culpe. Infamis enim erat que non faciebat prolem. Infamia uero peccatum non est.

An ante conceptionem Christi an post contractum sit matrimonium inter beatam uirginem et Ioseph.

Item, queritur an ante conceptionem Christi an post contractum sit matrimonium inter beatam uirginem et Ioseph. Videtur quod ante conceptionem Christi, quia legitur: *Cum esset desponsata Maria Ioseph, antequam conuenirent, inuenta est in utero habens de Spiritu sancto.*

Econtra, uidetur quod post, quia legitur, *Missus est Gabriel angelus ad Mariam uirginem desponsatam Ioseph.*

Respondeo: licet hoc forte non diffiniat auctoritas, credendum est tamen quod ante conceptionem contractum sit matrimonium inter illos.

An dominus fuerit auctor diuorcii commendans Iohanni matrem.

Item, si queratur an dominus fuerit auctor diuorcii cum matrem suam Iohanni commendauit.

Respondeo quod non. Sicut enim dicitur in quodam paragrapho xxvii cause, non dicitur diuortium nisi ante precesserit consummatum coniugium, nec beata uirgo proprie dicitur coniunx, sed sponsa. Inter sponsum et sponsam non proprie dicitur fieri diuortium. Vel potest dici quod Ioseph iam decesserat quando dominus matrem uirginem uirgini commendauit.

Item, si frater alicuius decessisset sine semine, tenebatur ex lege superstes premortuo semen suscitare. Ergo tenebatur non continere.

Respondeo: tenebatur non precise, sed tenebatur nisi uellet improperium incurrere.

Item, queritur an impuberes a parentibus monasteriis traditi sint proposito religionis astricti. Quod uidetur quoniam monachum | facit paterna deuotio aut propria confessio.

Item, exemplo Samuelis, quem Deo mater obtulit.

Item, quia eius est uelle cuius est nolle. Parens posset uotum impuberis mutare. Unde uidetur quod suum sit similiter ratione fundare.

Econtra, tunc firma | professio uirginitatis cum adulta ceperit esse etas.

Item, qui dant puellas in cunabulis nichil faciunt. Similiter qui dant monasteriis.

Item, uotum uoluntatis et uirginitatis imperari non potest.

Respondeo: Sciendum est quod qui monasterium ingreditur aut est adultus aut minor. Si adultus fuerit et propria uoluntate intrauerit, de cetero non poterit exire. Si uero coactus ibi ponitur, exire poterit nisi propter iuste ostensionis causam. Ibidem fuerit detrusus. | Similiter exire poterit si causa probationis intrauerit, ut in Extraugante, Ad nostram noueris. Si uero minor fuerit, aut intrauit auctoritate propria aut a parentibus est oblatus. Si auctoritate propria, infra annum et diem a parentibus uel tutoribus potest extrahiri. Annum autem et diem a tempore scientie dico numerandos, nam etiam post decem annos poterunt extrahere, si ante non poterunt eum inuenire, ut c. xvii q. ii Si quis, nisi forte minores annos puer excesserit, nec

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168 | Comp. 3.27.8 (X 3.31.8) (Friedberg Quin. comp., 39). 173 Decret. Grat., C.17 q.2 c.3 (Friedberg I, 814).

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secundum quosdam an sit doli capax uel non. Si uero a parentibus est oblatus et doli capax fuerit, quod a septennio et ultra esse poterit, et consenserit, similiter cogitetur susceputum habitum retinere. Si uero doli capax non fuerit, uel, si fuerit, non consensit, dabitur ei optio Marcelli Pape in xv° anno, an permanere cupiat in suscepto habitu uel non. Si uero in xv° anno non contradixerit, quia forte non est interrogatus, et longo tempore postea ibidem fuerit, | exire non poterit, quia ratum uidetur habuisse quod ab initio de iure non tenuerit capitulum aut monachum, etc. Expone sic: *aut paterna deuotio*, id est deuotus pater facit filium suum monachum. Dico minorem sed doli capacem et consentientem, nam alias si minor sine consensu patris monasterium intrauit, licet sit doli capax et consentiens, tamen potest eum infra diem et annum extrahere, quia non debet patri malicia filii que supplet etatem preiudicium generare. *Aut propria professio*: hoc de adulto plene intelligitur. |

[15.1] Queritur an matrimonium fuerit inter Mariam et Ioseph.

Probato uerum matrimonium esse inter sponsum et sponsam ante carnis commerçium, euidens erit uerum coniugium fuisse inter beatam uirginem et Ioseph. Quod autem coniugium sit inter sponsum et sponsam probatur primo a diffinitione coniugii, nam matrimonium est coniunctio animorum, non corporum.

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179 optio Marcelli Pape] *Decret. Grat.*, C.20 q.1 c.10 (Friedberg I, 845-46).

Item, idem probatur a causa efficiente, nam solus consensus facit matrimonium.

Item, non coitus, sed voluntas facit matrimonium.

Item, non defloratio virginitatis, sed pactioconiugalis facit matrimonium.

Item, Augustinus: "a prima desponsationis fide coniuges appellantur."

Item, si premoriatur sponsus, nulli de consanguineis eius sponsam superstitem licebit ducere. Quare uidetur quod inter sponsum et sponsam sit matrimonium. Quid enim impedire nisi affinitas?

Dicunt tamen quidam causa publice honestatis hoc esse interdictum. Totidem et forte plures in contrarium confligunt rationes. Inquit enim Augustinus, "non est dubium illam non pertinere ad matrimonium de qua non docetur non fuisset nuptiale mysterium."

Item, neutrum coniugum potest suscipere propositum continentie absque consensu alterius, sed secus est inter sponsum et sponsam. Quare inter ipsos non est matrimonium. Assumpto huius argumentationis probatur exemplo Alexis et Macharii.

Item, impossibilitas coeundi post carnalem copulam non dirimit matrimonium, sed ante.

Item, si matrimonium est inter sponsum et sponsam, si, mortuo uno, alius sponsam superstitem duxerit, dicetur bigamus. Ergo non erit promouendus ad sacros ordines.

Econtra, ordinatus est Valentinus clericus. Nichil enim quantum ad hunc pertinent articulum de canoniciis obuiat institutis.

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9 solus | om. P₂ | 11 Item...matrimonium | om. hom. C | 12 Item... | om. hom. P₂ToTr sed ins. marg. P₂ | sed...13 matrimonium | om. hom. | P₂ToTr sed ins. marg. | P₂ | mos moriatur P₂ | moriatur CP₂ | 20 causa | eam To | 22 enim | om. P₂ToTr | illam | eam | P₁ | 23 de | cum Tr | non omn. To | 24 misterium | ministerium CToTr | 26 continentie | incontinentie | P₁ | 27 est | om. To | 33 sponsam superstitem | inv. P₂ | 34 erit | esset | P₁ | 36 obuiat | om. sed sup. lin. ins. | P₁
Item, si quis cognouerit sororem uxoris sue scienter, uxore mortua perpetuo continebit. Sed cognita sorore sponse, sponsa mortua, sponsus aliam ducere poterit.

Item, si uxor causa fornicationis a uiro separata fuerit, nisi ei reconcilietur, uuiuat sine spe matrimoni. Unde si sponsa rapta fuerit non consentiens, si repudiata fuerit a sponso ali rubere poterit. Quare inter sponsum et sponsam non est matrimonium.


Verum secundum hoc non diceretur matrimonium perfectum fuisse inter beatam uirginem et Ioseph.

Respondeo: perfectum duobus modis dicitur, sanctificatione et significatione. Fuit ergo perfectum quantum ad sanctificationem sed non quantum ad significationem.

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53 coniuges...54 presentium] Not in Augustine. Cf. Decret. Grat., C.27 q.2 c.45 (Friedberg I, 1076).
57 matrimonium...62 Ioseph] Cf. Petrus Pictaviensis, Sententiae 5 cap.14, Garv. (Peter), 57-58 (PL 211, 1257C-D).

38 cognouerit] cognoscit P1
39 perpetuo continebit] inv. P1 To[ sponse] et add. P1 ToTr
42 nisi] non P2
48 dixerimus] dicam Tr | facti] faciat P1 To 49 initiatum] initiatatum(!) P2 | desponsatio om. sed sup. lin. ins. Tr
51 nisi] non To
52 duobus] tantum To
58 imperfectum] est add. P1
59 post] per ToTr
62 perfectum] om. C | beatam] ueram To
63 duobus...dicitur] dicitur duobus modis P2 | dicitur] om. P1
64 sanctificatione et significatione] significatione et sanctificatione P1
Item, inquit LEO "societas nuptiarum preter commixtionem sexuum non habet inter se coniunctionis Christi et ecclesie sacramentum." Ergo in desponsatione non est Christi et ecclesie sacramentum. Ergo nec in desponsatione beate virginis Christi et ecclesie sacramentum. Ideo sic intellige: non est sacramentum omnimodum et plenum, licet enim in desponsatione representetur illa coniunctio qua Christus ecclesiam sibi copulauit in fide dilectione. Unde omnes fideles una sponsa Christi ab APOSTOLO dicitur, despondi enim uos etc. In sola tamen censis commixtione illa coniunctio significatur qua sibi ecclesiam copulauit conformitate nature quando in utero virginis uerbum caro factum est.

[15.2] An liceat sponso ad secunda uota transire.

Item queritur, si liceat sponso uel sponsa renuntiare priori conditioni et transire ad secunda uota.

Respondendo: nequaquam licet, sed si de facto, sic fieret. Referebat olim utrum sponsa benedicta esset cum sponso. Si benedictio illa interuenisset sollemnis, si secundus desponsasset eam, etiam si nuptias celebrasset et cognouisset eam, tamen primum reformabitur matrimonium.

Item, si non processum erat usque ad benedictionem, primo referebat utrum statim esset in eisdem finibus a secundo cum primo uel non. Si sic, redibat ad primum. Si ultra processum erat, manebat cum secundo, siue desponsatio esset de presenti siue de futuro. Et hec consuetudo a Longobardis adhuc obscuratur. Verum eiusmodi cavillationibus medetur decretum summi pontificis, quod precipit sponsam de presenti, etiam si ab alio in...
matrimonium usqueaque perfectum assumpta fuerit, ad primum redire.

De desponsatione autem de futuro dicimus quod non licet ad alium transire, quod si fecerit quis, iniungatur ei penitentia de fide mentita et tunc cum secundo maneat. In desponsatione de futuro possunt plures casus interuenire in quibus, sponso uiuente, alius ducit sponsam. In desponsatione de presenti secundum QUOSDAM [...] secundum ALIOS duo tantum, scilicet religio et maleficium. Quod causa religionis possit sponsum uel sponsam intrare monasterium, etiam suo renitente consorte, clamant iura, ut xxvii q.ii c. Beatus Alexius, et c. desponsam, et c. decreta.

QUI in nullo casu dicunt disolui matrimonium contractum inter sponsum et sponsam, spirituale dicunt fuisse in istis, scilicet Alexio et Machario. De desponsatione facta per futurum, dicunt intelligenda hec duo capitula: Desponsatam, Decreta. Item, quod causa maleficii possit sponsa separari a sponso, habemus in xxxiii q.i Si per sortiarias. Sed dicunt isti capitulum hoc nullius esse momenti quia non est summi pontificis constitutio, sed cuiusdam archiepiscopi, uel de maleficio loquitur quod ante desponsationem est factum.

Item, secundum primum, queritur si sponsa nec debitum reddere uelit sponso nec intrare monasterium, quid sit iuris.

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110 Alexio et Machario] Decret. Grat., C.27 q.2 c.26 (Friedberg I, 1070).
Respondeo: dicunt ISTI quod ad alterutrum eligendum debet ecclesiastica censura compelli, ut in Extuagante, capitulo Publico instrumento.

[15.3] An debeat sponsa compelli sponso reddere debitum.

Item, queritur si sponsa sponso debitum reddere compelli debeat.

Respondeo: non debet compelli secundum ISTOS antequam sponsos et sponsa sint | una caro effecti. Primus ergo coitus gratie est non debiti, ut dicunt. Nam cum primum coitum sponsus exigit, libere potest sponsa negare et transire ad religionem, nec contra fidem coniugalem aliquid fieret. Nam a prima desponsationis fide tenetur sibi ad mutuam castitatem servandam, ut xxviii q. i Caue, ex secunda ad mutuam servitutem, quod fit postquam fuerunt simul una caro effecti.

Et nota quod non debet a sacris ordibus tamquam bigamus arceri qui sponsa mortua et incognita consentit et aliam cognoscit, quia unius carnis in plures diuisio bigamum facit.

[16.1] Utrum matrimonium sit inter infideles.

Ambiguum esse potest an matrimonium sit inter infideles. Quod sit uidetur ex uerbis Domini dicentis, Quinque erunt in una domo; duo diuidentur in tres, et tres in duos. Quinque: uir et mulier, filius et filia, uxor filii et filie maritus. Non dicitur uir aliquis alius mulieris nisi sit maritus ipsius. Dominus autem ibi loquebatur de conversatione

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1 Comp. 3.28.7 (X 3.32.7) (Friedberg Quin. comp., 39), inc. Ex publico instrumento. 123 Decret. Grat., C.28 q.1 c.15 (Friedberg I, 1088). 4 Lc. 12.52-53

infidelium ad fidelem. Ergo matrimonium est inter infideles. 
Quis autem sit sensus uerborum domini que prediximus: 
aduente domum istorum quinque, intret euangelii predictor, 
et uirtute predicationis interdum duo conversantur ad 
dominum et tres in infidelitate permanent uel econuerso, et 
hoc est quod dicit, tres diuidentur in duos, id est contra duos, 
quia qui conversantur ad dominum contrarii sunt eis qui 
aduenter in infidelitate permanent.

Item, infidelibus, dum quererent an liceret alicui 
dimittere uxorem, responsum est a domino non licere nisi 
causa fornicationis.

Item, dominus infidelibus loquens ait, nisi quis 
dimiserit patrem et matrem, uxorem et filios propter me, non 
est me dignus.

Item, inquit Apostolus, si quis fidelis uxorem habet 
infidelem non dimitte eam.

Econtra, quod non sit matrimonium inter infideles 
ostenditur sic. Omne quod non est ex fide peccatum est.

Item, omnis uita infidelium peccatum est.

Item, non est uera pudicicia hominis infidelis cum 
coniuge sua.

Item, ueritas sacramenti in fidei uirtute consistit, sed 
infideles fidei uirtute non habent. Ergo tale sacramentum 
inter ipsos non est.

Respondeo: matrimonium aliud legitimum et ratum, ut 
inter fideles. legitimum refertur ad sollemnitates faciendas 
secundum leges uel morem prouincie, sicut sunt puelle a 
parentibus tradito, a sponso facta donatio uel donatio 
propter nuptias, sacerdotis benedictio. Ratum refertur ad 
insolubilitatem illius sacramenti. Aliud legitimum et non 
ratum, obseruatis sollemnitatibus inter infideles. Aliud

\[19\text{ nisi…21 dignus}] \text{ Cf. Lc. 14.26} \quad \[22\text{ l Cor. 7:21}\]
ratum et non legitimum, omissis sollemnitatibus, ut inter infideles.

Item, queritur an matrimonium Iudeorum careat culpa.
Respondeo: quibusdam placet quod non, tum quia non est ibi Christi et ecclesie sacramentum per quod nuptie ab adulterio discernuntur, tum quia AUGUSTINO teste "omnis uita infidelium peccatum est, nec ualet esse bonum quod fit absque Deo."
ALII dicunt tale consuquam esse licitum, quia eis a domino est permissum.

[16.3] An Iudei delinquant ducentes sibi iunctas linea sanguinis.
Item, queritur an Iudei ob hoc delinquant cum in tertio uel in ulteriori gradu coniungantur per matrimonium illis quibus sunt linea sanguinis iuncti. Quod non peccent ex hoc ea ratione uidetur: dicendum quod huiusmodi prohibitio tantum de iure canonico emanavit, quod usque ad infideles non porrigitur, sed eos solos obligat qui Christiani sunt nominis et fidei professores. Non enim nostrum est de hiis iudicare. De hiis qui foris sunt, teste APOSTOLO, Dominus iudicat. Hoc etiam uidetur quod in orientali ecclesia licite possunt clerici ducere uxores, quia ad eos non extenduntur canones in quibus de clericali continentia est introductum.

Item, si Iudeus et eius uxor coniuncti in septimo gradu convuertantur ad fidem, queritur an debeant separari.
Respondeo: si in primo uel secundo gradu sibi inuicem attinent, debent separari, quia in talibus gradibus nec etiam

58 Non…60 iudicat] Cf. I Cor. 5.12-13

lex mosaica matrimonium permittebat dicens, *Turpitudinem uxoris tue non reuelabis*. Si uero in ulterioribus gradibus sibi attinent, non debet separari matrimonium sed, ut dicit AUCTORITAS, "per cognitionem creatoris confirmatur."

Item, si alter coniugum infidelium convertatur ad fidem reliquo manente in infidelitate, queritur utrum fidei dissimilitudo soluat matrimonium eorum. Hoc autem uidetur sic posse probari. Inquit Augustinus, "contumelia creatoris soluit ius matrimonii."

Item, dicit canon, "Iudei qui christianas mulieres habent in coniugio, si cum eis manere cupiunt, christiani efficiantur. Alioquin separentur."

Econostra, "crimina in baptismo soluuntur, non coniugia."

Item, APOSTOLUS, *Ego dico, non dominus, "Si frater fidelis habet uxorem infidelem" etc. per uirum enim fidelem sanctificatur mulier infidelis et econuero."

Respondeo: refert utrum fuerint gentiles uel Iudei.

Item, si gentiles, refert utrum fidelis uoluerit manere cum infidelii uel non. Si noluerit, poterit fidelis infidelem dimittere, sed, ea uiuente, non poterit aliam ducere. Sed si infidelis blasphemat nomen Christi nec uult cum fidei cohabitare, tenetur eam dimittere et poterit aliam ducere uxorem etiam prima uiuente. Si uero sunt Iudei, uno conuero et baptizato, conuertatur alter, alioquin omnino separentur. Huic diuersitatis hec est ratio: Iudei astutiores sunt per leges et prophetas quibus sunt muniti, et habiles...
animas simplicium fallere. Gentes legem non habent nec prophetas quibus possint decipere simplices. Ita sciendum est in huiusmodi si coniuncti fuerint dum erant in infidelitate.

Sed si coniuncti fuerint dum erant in fidelitate et alter postea apostatauerit, quid dicetur? Videtur enim inter eos dirimi matrimonium, quia dicit AUGUSTINUS, "que facit simulacrum discede ab ea, alioquin particeps eris sceleris illius."

Econtra, ratum est matrimonium inter istos.

Item, mulier excusatur si participat uiro excommunicato.

Respondeo: Sic | coniuncti non separentur sacramentaliter, licet corporaliter, quia dicit AUGUSTINUS, "Recede ab ea," etc., id est recede ab eius simulacro, uel recedente etiam corporaliter | non comitaberis.

Item, quis est sensus huius verbi, "contumelia creatoris soluit ius matrimonii" quantum ad | eum qui relinquitur?

Quomodo enim quantum ad uirum factum fidelem matrimonium soluitur et non quantum ad mulierem remanentem in infidelitate? Cum enim nonnisi inter duas personas possit contrahi matrimonium, constat quod non potest quantum ad unum dissolui, quia quoad alterum dissolvatur.

Item, cum uir et uxor quodammodo respectu et relatiuorum imitentur naturam, patet quod si iste non est maritus huius, ergo ista non est uxor istius.

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98 attributed to Augustine in Decret. Grat., C.28 q.1 c.6 (Friedberg I, 1081), from Hermæ Pastor, Mandatum 4, ed. A. Hilgenfeld, Leipzig 1873, 40. 107 Decret. Grat., C.28 q.2 c.2 (Friedberg I, 1090).
Respondeo: ideo dicit AUCTORITAS, matrimonium solui quoad fidelem, non quoad infidelem, quia de hiis qui foris sunt Dominus tantum iudicat, non ecclesia. Vel ideo hoc dictum est, quia uir, uiuente infidelis uxor et cohabitare nolente, potest aliam ducere. Quoad infidelem uero coniugem, matrimonium solui non dicitur, quia et si potest alii nubere, uiuo uiro, cum quo habitare contemptit, non tamen hoc potest sine peccato effectui mancipare. Peccat enim in Deum quem, conuerso marito, contemnitis colere.

ALII dicunt quod potest solui matrimonium quoad unum non quoad alterum, quia in nonnullis contractibus contractus soluitur in altero tantum, et in altero durat. Hoc autem non approbo, quia alia ratio est in matrimonio, nec separabitur fidelis a secunda, licet infidelis uxor postea convertere. Cum eodem dico, si uir uoluerit, fueritque absolutus, nec propter hoc dicendus esset iste bigamus, quamuis alius esset ibi matrimonium quam prius, quia non cum alia contrahitur matrimonium.

Et nota quod tunc primo soluitur eorum matrimonium quando illa post mariti conversionem et ammonitionem animo diuertendi recedit ab illo, uel incipit thurificare idolis. Sed quid erit si surda erit naturaliter uxor ita quod non potest

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118 auctoritas…126 colere] Cf. Petrus Lombardus Sententiae 4 di. 39, 489 or Coll. in Paul. (PL 191, 1593C) or Decret. Grat., C.28 q.2 c.2 (Friedberg I, 1090); from Ambrosiaster, In I Corinthians (CSEL 81.2, 77).
119 de…120 ecclesia] Cf. I Cor. 5.12-13.

exhortationem mariti uel uiri intelligere et credit adhuc maritum in infidelitate permanere?
Respondeo: tunc signis sollicitare eam debet ut relinquat idola, uel quia clamore opus est, et ut sentiat auris super uerticem eius debet ur clamare, quia ut dicit lex, nullus adeo est surdus quod audire non possit si supra uerticem eius clamet quis.

[17.1] Que uel quid impediant matrimonium.
Conditionis error ideo impedit matrimonium, nam seruilis conditio, secundum legis fictionem, ipsum seruum facit non hominem reputari. Unde nulla potest cum seruo matrimonium contrahere si eius conditionis ignorantia et dolo decepta fuerit. Qualitatis uero et fortune error ideo non impedit matrimonium, quia hec non in quid sed in quale predicantur, et substantiam uel personam non mutant. Hec enim non aliu uel alium sed alterius modi potius hominem reddunt.

Sed de frigiditate opponitur, que, cum sit qualitatis error, tamen matrimonium impedit.
Respondeo: Qualitas illa naturalis est, uel potest dici quod in frigido non error sed potius illegitima persona matrimonium impedit. Sunt autem quattuor errores: tres predicti et error persone. Error persone est cum quis putatur esse Parisi et est Hector; conditionis, quando putatur esse liber et est seruus, uel fidelis et est infidelis, uel laicus et est monachus, sed hec conditio potius professio nominatur. Error fortune est quando | existimatione diuitiarum fallit inedia, qualitatis quando qualitas est contraria sperate qualitati subiectum informat, ut si meretrix credatur casta, uel sterilis fecunda.

145 lex ... quid [Digesta Iustiniana, 50.17.124, (CIC I, 923).]
Quod error persone possit solvere matrimonium, probatur argumento sumpto de simili materia, ut in agri uenditione, auri emptione.

Item, si lectum mariti soror uxoris intrauerit, et eam maritus cognouerit, nonne excusabit eum talis ignorantia?

Item, si quis hereticorum nomine Augustini, Ieronimi, et Ambrosii aliquem catholicum ad sue fidei imitationem prouocaret, deceptus non in hereticorum sectam, sed in fidei intergritatem consensisse diceretur.

Econtra, uidetur quod matrimonium sit inter tales, et quod error persone non impediat matrimonium vel soluat, exemplo Iacob, qui putans se cognoscere Rachelem cognouit Liam, quam postea in matrimonii reuerentia habuit.

Respondeo: consensus duplex est: precedens et subsequens. Precedens non fecit matrimonium inter eos, quia nullus fuit, sed subsequens.

Et nota quod si aliquis consensit in aliquam et alius nomine eius eam duxerit, distinguitur utrum primum sponsum cognouerit uisu uel fama uel alio modo. In quo casu, quia, testi Augustino, eum diligere potuit, nam non usos diligere possumus et ita in eos consentire, debet mulier a secundo separari et restitui primo. Non enim in secundum, sed in primum potius consensisse uidetur. Errauit enim, unde non consensit. Nichil adeo contrarium est sensui sicut error. In alio uero casu, quia incognitos omnino diligere non ualemus nec in eos, per consequentiam, consentire, non separabitur a secundo, quia ibi non persone sed potius elationis error interuenisse uidetur.

43 Augustino...44 possimus] Glossa ordinaria IV, 260.

Item, eius est uelle cuius est nolle. Consensus autem qui est efficiens causa matrimonii debet esse liber et non coactus. Similiter et uerum matrimonium. Quare precipientibus dicimus istorum et istis renitentibus, inter eos non erit matrimonium. Quare a simili per contrarium si seruus et ancilla inter se consenserint, nolentibus et dominis, eorum possunt inter se contrahere matrimonium.

Item, ad omnia sacramenta ecclesiastica admittuntur et dominis inuitis, ergo et ad istud.

Econtra, seruus non habet liberum arbitrium nec voluntatem solutam, ut c. xxxii q. iii c. i.

Item, cum Deo non potest seruus matrimonium contrahere, domino inuito, ut d. liii Generalis.

Item, concesso quod matrimonium sit inter eos, sic indirecte oppone: APOSTOLUS dicit, | Mulier non habet potestatem sui corporis sed uir et econuerso. Sed dicit lex: "quicquid per seruum acquiritur, domino acquiritur." Ergo cum uxor sit in potestate serui et una caro etiam cum ipso, ipsa erit in potestate domini. Nam quicquid est possessionis et possessoris possessionem possidentis. Eadem ratione probatur quod seruus est domini ancille et uterque est utriusque illorum.


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Respondeo: sine voluntate domini potest seruus uel ancilla matrimonium contrahere, nec obest quod dicitur seruus non habere liberum arbitrium uel voluntatem solutam, quia hoc referendum est ad publicos contractus.

Quod postea obiectum est de spirituali matrimonio, quia seruus spirituale matrimonium contrahere non potest, inuito domino, cum Deo; id est transire ad religionem, facile soluitur. Tunc enim dominus ex toto suo iure fraudatur et ei iniuria fit. Hic uero, scilicet in matrimonio serui et ancille nichil deperit utilitati domini. Ultimum autem articulum uaria | multitudo terrarum determinat. Ut autem omnis deinceps tollatur ambiguitas audi sententiam summi pontificis super hac questione. Inquit enim ADRIANUS papa in decretali Dignum est, "in Christo Iesu neque liber est neque seruus est qui a sacramentis ecclesiasticis sit amouendus." Itaque inter seruos nullatenus debent matrimonia prohiberi, et si dominis contradicentibus et inuitis contracta fuerint. Nulla ratione propter hoc ecclesiastico iudicio sunt dissoluenda debita, tamen et consueta seruitia non ex hoc minus propriis dominis sunt exhibenda.


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82 matrimonium contrahere\] inv. P_1 83 non\] om. P_1 84 publicos contractus\] inv. P_1 85 obiectum est\] inv. P_2To\] est\] om. P_1\] quia\] quod Tr 86 contrahere non potest\] non potest contrahere Tr 87 Deo Christo P_1\] Tr\] 88 enim\] om. sed. sup. lin. ins. P_1\] dominus…fraudatur\] ex toto fraudatur dominus suo iure et P_1\] suo\] iter. Tr\] ei iniuria\] eum iuriam autem C 91 terrarum\] om. P_1\] Tr\] 93 hac questione\] hanc questionem P_1\] 94 Christo\] Domino To\] neque\] nec C\] est\] om. P_1\] 95 neque\] nec C\] seruus\] et ancillas add. C\] 98 Nulla…hoc\] propter hoc nulla ratione P_1\] propter hoc\] om. P_2\] Tr\] 99 iudicio\] iure P_2\] tamen\] quidem P_1\] 100 serui\] iudicia P_1\] minus propriis dominis\] propriis dominis minus P_1\] sunt\] om. P_2\] Tr\] 103 est\] om. P_2\] Tr\] 104 ancillam\] suam add. P_2\] Tr\] 105 uel donare\] om. P_2\] 106 ducere\] et vendere uel donare alicui add. P_1\] 107 possit dominus\] inv. Tr\] 108 suo…uti\] uti suo iure P_2\] uti\] utet Tr\] 109 suam\] om. To

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Item, iudex non peccat si condempnat istum homicidam, licet uxor eius reclamet, quia "homo non separat quos pena condempnat, reatus accusat," facinus coiunquit. Ergo nec dominus peccat si uendit seruum in hoc casu.

Econtra, in legibus uidetur innui quod dominus non debeat seruum uel ancillam talem extraneo uendere, ut C. Liber iii, Communion utriusque iudicii, Possessionum. "Quis enim ferat liberos sorores a fratribus, a uiris coniuges separari? Igitur si qui dissociata in ius diuisum mancipia uel colonos traxerint, in unum eadem redigere cogantur."

Item, si uendi potest seruus ducturo ipsum in remotissimam regionem, quid fieri de coniuge, cum non possit ad secundas nuptias transire uiuente uiero, nec continere possit, numquid tenetur eum sequi? Non sequitur, cum non possit, quia ancilla est alterius domini. Certe mouentur acute qui sic obiciunt. Eis tamen satisfacimus in hunc modum, dicentes quod episcopus illius loci tunc debet iusto pretio illum redimere ut ecclesie seruiat et uxori debitum reddat. Si vero hoc facere noluit episcopus, liberum erit domino seruum uel ancillam uendere cuicumque uiolerit, et alter tenetur uiuo altero continere. Sibi enim imputent quod in contrahendis nuptiis dominicum presumserunt preterire mandatum.

[17.3] Item, queritur si ingenuus contraxerit matrimonium cum ea quam ingenuam esse credebat, et, operta conditione serului, eam cognouit antequam apud ecclesiam inter eos esset diuortium celebratum, an de cetero

\[\text{To 218rb}\]

\[\text{110 homo...112 accusat} \] Decret. Grat., C.33 q.2 c.18 (Friedberg I, 1158).
\[\text{115 Codex Justinianus} \] 3.38.11 (CIC II, 145).

\[\text{110 istum} \] hominem P\textsuperscript{1} \[\text{111 homo non separat} \] non separat homo P\textsuperscript{1} \[\text{113 nec} \] om. P\textsuperscript{1} | dominus] iudex CP\textsuperscript{1}ToTr non add. P\textsuperscript{1} \[\text{114 innui} \] uerum To | quod] quia P\textsuperscript{1} \[\text{115 talem} \] om. P\textsuperscript{1} | extraneo uendere] inv. P\textsuperscript{2} | ut] om. ToTr \[\text{116 Liber} \] li. iii \[\text{118 Igitur} \] ergo P\textsuperscript{1}P\textsuperscript{2} | qui] quis P\textsuperscript{1}P\textsuperscript{2} | in ius] unius P\textsuperscript{2}ToTr | diuisum] diuisit P\textsuperscript{2} \[\text{119 traxerint} \] traxerunt CToTr traxerit P\textsuperscript{1} | in] uel C | cogantur] etc. \textit{add.} P\textsuperscript{1} \[\text{120 ducturo} \] ducket C et duci P\textsuperscript{1} ductoa P\textsuperscript{2} \[\text{121 regionem} \] om. P\textsuperscript{2} \[\text{122 secundas} \] nuptias] secunda uota P\textsuperscript{2}P\textsuperscript{2}ToTr | uiero] marito P\textsuperscript{1} \[\text{123 Non sequitur} \] om. Tr | sequitur] uidetur P\textsuperscript{1} \[\text{125 acute} \] om. \textit{et spat. vac.} To | satisfacimus] satisfaciamus Tr \[\text{126 loci} \] uel prouncte \textit{add.} Tr \[\text{127 illum} \] eum Tr \[\text{128 episcopus} \] om. P\textsuperscript{1} \[\text{129 domino] suo} \textit{add.} To | seruum] suum \textit{add.} P\textsuperscript{2}ToTr | ancillam] suam \textit{add.} C \[\text{130 uiuo altero} \] inv. To | continere] contineri To | Sibi enim] \textit{iter.} Tr \[\text{131 imputent} \] imputant To \[\text{132 presumserunt} \] presenserunt To \[\text{134 matrimonium} \] om. P\textsuperscript{1} | credebat] putabat Tr \[\text{135 operta} \] comperta P\textsuperscript{1}Tr | seruii] om. \textit{sed marg. ins.} P\textsuperscript{1} | eam] ea To
ingenuus potest ancillam dimittere. Quod in canonibus licet inueniatur expressum. Argumento tamen cuiusdam canonis uidetur dicendum quod eam de cetero a se nequeat remouere. Consensisse enim uidetur in ancillam sciner, ex quo, post detectam seruilem fortunam, eam cognouit. Nam licet post adulterium mariti possit mulier, eo inuito, transire ad religionem, ut xxvii q.ii Agathosa, tamen si acta penitentia de adulterio mulier sibi uiurum reconciliauit et reddiderit ei potestatem sui corporis, de cetero sine uiiri licentia non poterit mulier eo uiuente intrare monasterium. Post detectam autem conditionem ancille et probatam liberam, potest cum alia contrahere, et ancilla similiter, licet forte sine peccato non possit hec ancilla. Nec etiam si manumitteretur antequam esst eius nota conditio, eam postea tenetur habere, nisi ex certo consensu in eam postea consentiret.

Item, comperta conditione et non probata illa petit debitum et ille negat, queritur an possit de iure negare. Quod uidetur, quia non est inter eos matrimonium.

Item, si redderet, presumeretur de consensu, et sic non posset de cetero dimittere eam.

Econtra, uidetur quod debeat reddere debitum exigenti, quia apud ecclesiam non est matrimonium <dissolutum>, nec ab ea diuertere potest donec probata sit conditio ecclesie, ut xxxiii q. ii Seculares.

Item, clerici ab obedientia episcopi accusati ab aliis se eximere non possunt donec obiecta sub luce constituerit. A
simili nec iste potest eam dimittere donec constet ecclesie de conditione.

Respondeo: debet liber exigenti reddere debitum medio tempore, nec peccat, quia ecclesie auctoritas excusat eum, nec tamen consentit in eam.

Item, de illa decretali queritur. Propositum est nobis, in qua dicitur quod quidam, cum haberet uxorem, aliam de facto duxit. Mortua prima, uult discedere ab adultera. Dixit ALEXANDER quod non potest, non enim dolus suus debit ei patrocinari; ergo obligatus est ei. Ergo si illa exigit debitem, tenetur ille reddere.

Econtra, illa potest omnino separari ab illo. Ergo matrimonium non est inter illos.

Item, si redderet debitum, peccaret mortaliter. Ergo non tenetur reddere.

Respondeo: dicunt QUIDAM quod non tenetur ei reddere debitum, nec obligatus est ei.

[18.1] De Spirituali proximitate.

Spiritualis proximitas est uinculum diuersarum personarum ex spirituali cognatione contractum. Contrahitur autem duobus modis, a primo pabulo salis usque ad confirmationem, uel quando alicui confitenti peccata | iniungimus penitentiam. Consideratur autem tribus modis: inter generantes tantum, et dicitur conpaternitas siue conmaternitas; quandoque inter generatos tantum, et dicitur spiritualis fraternitas; quandoque inter utrosque, et dicitur spiritualis filiatio in generatis. Et dicitur compaternitas siue conmaternitas spiritualis in generantibus et generatis. Conpaternitas autem siue conmaternitas quandoque precedit matrimonium contrahendum, quandoque sequitur. Quando sequitur, queritur utrum dirimat matrimonium. Quod dirimit
uidetur tam ratione quam auctoritate posse probari. Inquit enim AUCTORITAS, nulla ratio uel auctoritas permittat ut aliquis connemari suae per carnalem copulam misceat.

Item, quicumque alia ratione susceperit separetur.

Item, si quis filiastrium uel filiastram suam ante episcopum tenuit ad confirmationem, separetur ab uxore sua et aliæ nuncuam accipiat. Similiter et mulier.

Econtra: affinitas contracta post matrimonium non soluit matrimonium, ut xxxiiii In Lectum Mariti. Ergo nec conpaternitas secuta matrimonium dirimit ipsum.

Solutio: circa presentem articulum uario modo locuntur canones. In prima questione tricesime cause et sibi uidentur prima facie obuiaire. Sed, canonum mente inspecta, dicimus quod in primis capitulis de conmaternitate agitur que matrimonium precedit, | que quidem, sicut matrimonium contrahendum impedit, ita dirimit contractum. In posterioribus uero capitulis, agitur de conmaternitate que post matrimonium contractum contrahitur, que quidem matrimonium non dissoluit. Vel post posteriores canones hodie nouo iure prioris canonibus prejudicatur, sicut manifeste colligitur ex illa decretali summi pontificis, licet preter solutum. Ibi enim dicitur quod si uir uel mulier scienter uel ignoranter filium de sacro fonte susceperit non debent propter eam separari nec alter alteri debitum debet subtrahere nisi ad conseruandam continetiam possint induci. Quod si ex ignorantia id factum est, eos ignorantia excusare uidetur. Si ex malicia, non debet eis sua malicia patrocinari uel dolus.]

\[16 Decret. Grat., C.30 q.1 dict. ante c.1 (Friedberg I, 1196). \ 23 Decret. Grat., C.34 q.1 c.6 (Friedberg I, 1259). \ 35 1 Comp. 4.4.3 (X 4.4.3) (Friedberg Quin. comp., 46).\]
Et nota quod dicitur in illo capitulo de eo, "si talis preuaricato coniugii superuixerit, sine spe coniugii maneat," intelligendum esse de doloso et non de desidioso. Minus enim punitur desidiosus quam dolosus.

Item, si ex necessitate hoc factum est, non solum non imputatur ei qui fecit, sed etiam bene fecisse uel <laudari> docetur, sicut habemus de Stephano qui ex necessitate baptizauit proprium filium, ut xxx q. i Ad Limina.


Item, queritur an duas conmatres possit quis diuersis temporibus accipere in uxores.

Respondeo: refert utrum conmaternitas precedat matrimonium uel sequatur. In primo casu nullus prohibetur duas conmaternes accipere in uxores. In secundo uero duabus conmatribus <prohibetur> copulari. Verbi gratia: Helena facta est conmater Theberge. Hoc facto, accepi Helenam in uxorem, qua mortua non prohibeor Thebergam ducere in uxorem, licet post conmaternitatem inter eas contractam, factus sum una caro cum alia, non tamen | factus sum conpater alterius, quia per unionem carnis subseuentem ad unionem spiritus precedentem non pertransitur, ut xxx q. iiii Qui Spiritualem. Si uero Helena, postquam una caro mecum fuit effecta, Theberge uel aliciuus conmater efficitur, ea mortua conmatrem eius non possum accipere in uxorem quia mea conmater est mediante uxore, licet illi directe, michi uero indirecte.

Item, ALII dicunt referre utrum uxor receperit filium alicuius, uel eius filius de alio uiro suscipiat. Si suscipit,
quia una caro effecti sumus, trahit me ad copaternityem. Unde siue eam postea cognouero siue non, non possum accipere alteram que facta est eius connater. Si autem eius filius de altero uiro susciptur ab aliqua, non trahit me ad copaternityem. Communicat enim michi uxor mea factum suum non alienum, id est actionem suam, non ut ita loquar passionem, ideoque ea defuncta in uxorom accipiam eius connatrem siue cognouero uxorom meam post copaternityem siue non.

[18.3] An filius sacerdotis patris sui penitentialem possit ducere in uxorem.

Item, queritur si filius sacerdotis patris sui penitentialem possit accipere in uxorem, cum certum sit | quod eam quam pater suus baptizauit uel de fonte suscepit non potest ducere in uxorem.

Respondeo: secundum QUOSDAM potest, non tamen illum quam pater suus baptizauit uel de sacro fonte suscepit.

Diuersitas autem hec potest esse ratio quia in baptismo duplex est sacramentum: mortis scilicet, et resurrectionis, et in baptismo mors et uita operantur, ut De cons. d. iii Proprie. Mors autem in immersione, uita in eleuatione designatur. Alterum autem istorum per se sufficit ad matrimonii impedimentum, ut si quis baptizauit aliquam uel leuauit de sacro fonte, nec ipse nec filius eius poterit eam ducere in uxorem. | Secus autem est in penitentia. Penitentia autem, licet sit sacramentum, non tamen misterium. Unde quia tantum non est sacramentum penitentia quantum
baptismus, licitum est filio sacerdotis penitentialem patris accipere in uxorem. Argumentum xxx q. i Non Debet.

Item, redi ad spiritualem proximitatem que consideratur inter generatos tantum, scilicet filios. Filiorum autem alii sunt naturales tantum, alii legitimi tantum, alii naturales et legiti, alii spirituales. Naturales tantum, qui sunt natura producente et non ex uxore, sed ex tali que potuit esse uxor. Legiti tantum lege faciente, scilicet adoptiui. Naturales et legiti de legito matrimonio nati. Spirituales a primo pabulo salis usque ad confirmationem dicuntur et in laxa significacione filii penitentiales. Filii naturales contrahere non possunt inter se, legiti inter se non prohibentur nec etiam spirituales nec legitimi cum spiritualibus, sed inter naturales filios alicius et spirituales eiusdem non potest contrahi matrimonium. Est enim inter eos non consanguinitas, sed spiritualis proximitas. Naturales autem adoptiuis iungi possunt si fuerint emancipati. Ante emancipationem coniungi nequeunt, honestate publica contradicente, ut in Institutionibus lib. i De nuptiis.

[18.4] An spiritualis filius et filia eiusdem hominis possit inter se matrimonium contrahere.

Sed queritur an spiritualis filius et spiritualis filia eiusdem hominis possint inter se matrimonium contrahere.

QUIBUSDAM placet quod non possunt. Sunt enim inter se spirituales fratres ex quo sunt unius spiritualis filii et maxime, dicunt isti, coniungi non possunt tales, quia nullus

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100 Decret. Grat., C.30 q.1 c.10 (Friedberg I, 1099), 117 Institutiones Iustiniani 1.10.2 (CIC I, 4).

istorum posset carnalem filiam sui paterni | accipere in
uxorem. Ergo nec spiritualem filiam eiusdem. Quod tamen
prouenire non credunt QUIDAM; per unionem enim spiritus ad
unionem spiritus numquam transitur, quia nec compater
meus est qui conmatri mee compater efficitur, nec ultima
ratio ual quam ipsi inducunt. Quorundam enim carnales
filias accipere | non possumus in uxores, quorum tamen filias
spirituales ducere non prohibemur. Sequeretur etiam hoc
absurdum et inconueniens, scilicet quod nullus de parochia
posset de eadem parochia uxorem accipere, cum omnes qui
sunt in parochia sunt presbyteri illius parochie spirituales
filii.

Verum de ante genitis et post conpaternitatem
scrupulosior se ingerit questio. Nam super hoc sancti patres
dissentire uidentur. Dicit enim URBANUS: "Spiritualium
parentum filii uel filie ante uel post conpaternitatem genite
possunt legitime coniungi, preter illam personam per quam
compatres sunt effecti."

Econtra, PASCHALIS ait: "post susceptum de fonte,
filium uel filiam spiritualem qui ex conpatre uel ex conmatre
nati fuerint, matrimonio coniungi non possunt quia leges
seculi non emancipatos adoptiuis prohibentur copulari."

Solutio: Consentimus Urbano. Quod autem dicit
Paschalis, "matrimonio coniungi non possunt," sic
intelligendum est, scilicet illi persone per quam proximitas
contracta est.

Item, de proximitate que attenditur inter generantes,
quiritur de qua constet quod nullus potest contrahere cum

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125 Decret. Grat., C.30 q.3 c.4 (Friedberg I, 1101).
126 Decret. Grat., C.30 q.3 c.5 (Friedberg I, 1102).

125 accipere| ducere P₁
tamen CP₂ non credunt
quidam| quidam non credunt P₁ | spiritus| spiritu To numquam add. Tr
128 spiritus| spiritu To | numquam| om. sed marg. ins. Tr 129 efficitur|
est sed corr. Tr 130 ratio| originatio P₁ 131 accipere non possumus|
non possunt ducere P₁| filias² in uxores add. sed exp. C 132 spiritualis|
om. C | etiam| autem add. sed exp. Tr 133 scilicet| om. P₂ | parochia| sua
add. To 134 parochia| ducere add. To| accipere| om. ducere add. sed exp.
To 135 sunt²| sint P₂ | parochiae| patres add. Tr | spiritualis| filii| inv. P₁
138 super...| patres| sancti patres super hoc P₂ 139 Urbanus| si add. sed
exp. Tr 140 uel post conpaternitatem| conpaternitatem uel post P₁ |
genite| gente To 141 per quam| qua C 142 sunt effecti| inv. P₁
144 qui| que P₁ | conpatre| conmatre P₁To | conmatre| conpatre P₁To
145 fuerint| fuerunt CTo 150 est| om. To 151 inter| circa P₂ | generantes| et generatos add. P₂To generatos et generantes P₁Tr
152 contrahere| matrimonium add. P₂

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sua filiola. Utrum uero cum sorore illius uel conmatris filia queritur. Quod non uidetur innuere capitulum Tiburensis concilii. Inquit enim, "si quis fortuito casu filiam sue conmatris uxorem acceperit," "consilio maturiori seruato habeat, atque honeste legitimo matrimonio operam det." Ita legitur in ultimo capitulo iii questionis xxx cause.

[18.5] An filia sacerdotis cum penitentiali patris sui uel baptizato ab eo possit contrahere matrimonium.

Item, queritur an filia sacerdotis cum penitentiali patris sui uel baptizato ab eo possit contrahere matrimonium. Sit sollicitudinis sacerdotum orientalium, qui spirituali de talibus gaudent priuilegio. Si autem importune aliquis instaret, dicerem quod potius cum illo qui a sacerdote accepit penitentiam quam cum baptizato. Cum eo posset contrahere matrimonium, tamen NICHOLAUS uidetur uelle econtra. Dicit enim, "Ommes quos in penitentia suscipimus | spirituales nostri sunt filii ut illi quos, uel nobis suscipientibus uel sub trine inmersionis uocabulo mergentibus, unda sacri baptismatis regenerauit." Ita legitur in xxx q. i |

[19.1] Quo tempore sponsalia debeant contrahi.

Quo tempore sponsalia debeant contrahri in canonibus non est expressum. Ideo standum est legibus et decretalibus epistolis, in quibus dicitur quod a septennio possunt contrahri sponsalia. Ab eo enim tempore, ut leges asserunt, potest puer esse doli capax, et illicita que fecit ei imputantur ad penam. Parentes ergo puerorum post septennium sine consensu
eorum contrahere non debent. Verum si ante contraxerint, in fine septennii inquirendus est eorum consensus, sine quo quicquid factum est mutatur.


Item, queritur utrum illi qui contraxerunt sponsalia infra septennium possint de iure recedere postquam peruenierint ad annos pubertatis, et est dicendum quod nisi post septennium rata habuerint sponsalia, ita possunt recedere ac si nichil actum fuisset.

Item, si maior contraxerit cum minore, quid iuris erit? uidetur quod matrimonium sit inter eos. Nam maior obligatus est minori aliquo uinculo, non alio quam matrimoniali. Ergo matrimonium est inter eos.

Econtra, minor non consensit, et sine consensu utriusque non est matrimonium. Ergo non est matrimonium inter eos.

Respondeo: non est matrimonium inter eos. Nam status matrimonii ad hoc, ut firmus fit, duabus columnis uult sustentari, scilicet consensu maris et femine. Maioris tamen festinatio propterea est inter eos quia ei non licet abrenunciare sponsalibus. Minor uero, cum ad legitimam etatem sponsalium uenerit, sponsalibus poterit renunciare, ad instar liberi nescienter puellam ducentis. Obligatus itaque maior, minorem sibi obligauit, ut legitur de pupillo, qui alium sibi obligat, ipse tamen non est obligatus.

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32 legitur…33 obligatus] Digesta Iustiniana 27.4.1 (CIC 1, 402).


Item, queritur ad quid obligent sponsalia infra annos nubiles, cum uterque factus pubes, possit sponsalibus renuntiare.

Respondeo: Ad hoc quod interim ante annos pubertatis non possunt contrahere cum aliis, et si contractum fuerit rescindetur.

[19.4] Et an parentes sint periuri qui iurauerunt inter illos futurum matrimonium.

Item, queritur si parentes sint periuri qui iurauerunt inter illos futurum matrimonium.

Respondeo: non, quia tacita conditio in iuramento intelligebatur, hec scilicet: si pueri facti puberes rata habuerint que inter parentes facta fuerint.

[19.5] Queritur, si puberes ante annos pubertatis se cognoverint carnaliter, utrum sit matrimonium.

Item, queritur, si puberes ante annos pubertatis se cognoverint carnaliter, utrum sit matrimonium.

Respondeo: ratum est matrimonium inter eos. Nam dicit Gregorius, "Manifestum eum puberem esse qui sui corporis gesticulatione talis est ut iam possit procreare, licet ad annos nondum peruerit lege diffinitos." Intelliguntur postquam gesticulatione sui corporis mouentur, malicia enim suplet etatem in talibus.

Item, quod etas neccessaria sit ad matrimonium probatur sic: dicit enim auctoritas, ubi non est consensus utriusque non est coniugium. Sed consensus ante legitimam etatem nullus est. Ergo etas legitima neccessaria est ad matrimonium.

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34 Ad…35 nubiles| om. P2P2ToTr 36 obligent| obligant P1To| infra| ita
37 nubiles| innubiles P2Tr obnubiles To| uterque| utrique To| factus
sit add. C| pubes| papes Tr| possit sponsalibus| inv. P1 39 ante| om. P2
40 fuerit| separabitur et add. P1 42 Et…43 matrimonium| om. P1P2ToTr
47 hec scilicet| inv. P1| rata| rati Tr 49 Queritur…50 matrimonium| om.
P1P2ToTr 53 Nam| ut add. P1P2ToTr 54 Manifestum| est add. P1
55 gesticulatione| gesticulationem CP2Tr| est| om. P1 57 gesticulatione
gesticulationem CToTr 60 probatur sic| inv. P1| sic| om. P2 62 Ergo
solution To
Item, in matrimonio neccessarius est coniungendorum contractus. Sed qualiter contrahunt qui nichil distrahere possunt?

Item, firma tunc erit professio uirginitatis ex quo adulta iam etas esse inceperit. Cum ergo contemplatiue uite neccesaria sit etas, multo magis et actiue.

Item, ad paria iudicantur furiosi et infantes respectu consensus, sed furiosi non possunt contrahere. Ergo nec infantes.

Econtra: quedam cum peteretur ad nuptias respondit, "sponsalium meorum causam pater meus subibit, hoc enim non est meum."

Item, si uoluerit nubere, nubat tantum in domino ut electionem mariti | parentibus offerat. Si ergo cura et sollicitudo sponsalium et electio uiri parentibus deferenda | est, non uidetur interesse de etate coniungendorum quantum ad matrimonium contrahendorum.

Respondeo: neccessaria est etas quoad substantiam matrimonii. Illa uxor que in contrarium uidentur facere ad sollempnitates nuptiarum referenda sunt.

[19.6] **An desponsatio facta de futuro cum iuramento faciat matrimonium.**

Item, queritur si desponsatio facta de futuro cum iuramento faciat matrimonium. Quod uidetur, quia dicit AUCTORITAS, "si quis, tactis sacris scripturis, iurauerit mulieri se eam legitimam habiturum uxorem, sit illa uxor legitima."

Econtra: AUGUSTINUS de bono coniugali: iuramentum pertinens ad futurum non facit matrimonium.

Respondeo: desponsatio facta de futuro siue comite sacramento, | siue absque sacramento non facit coniugium.

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76 I Cor. 7:39 88 Decret. Grat., C.30 q.5 c.9 (Friedberg I, 1107) 91 iuramentum…92 matrimonium] Summa sententiarum 7 cap.7 (PL 176, 160A).

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Auctoritas autem inducta non ostendit matrimonium factum sed promissum metu iuramenti seruandum, unde non dixit "illa legitima uxor" sed "sit legitima uxor," consulendo non asserendo.


"Vides, fili, quia quod contra leges fit per leges dissolui meretur." Clandestina coniugia fiunt contra leges. Ergo per leges dissolui merentur.

Item, quod contra leges sit pro infecto est habendum, et quod ex eo uel ob id sequitur cassum et inutilis est.

Item, non est legitimum matrimonium nisi puella legitima detur et accipiatur. Cum ergo clandestina coniugia canoniis prohibeantur, tamquam canoniis contraria sunt mutanda.

Hiis ita respondemus: multa ab initio non ualent que expostfacto conualescunt, sicut est coniugium cum sorore sua adoptiua et coniugium simpliciter uouentis. Similiter clandestina coniugia, licet a principio non ualeant, tamen expostfacto conualescunt.

Et nota quod licet clandestina coniugia sollemnitatis priuentur, legitima tamen si assit testium probatio manifestis preiudicant. Aliter nequaquam, quia super re incerta non est certa precipitanda sententia.

Item, delictorum aliud precedit matrimonium contrahendum, aliud sequitur iam contractum. Delictorum precedentium matrimonium, aliud impedit temporaliter et singulariter, ut simplex adulterium, aliud perpetuo et singulariter, ut adulterium cum machinatione et fide data; | aliud temporaliter et uniuersaliter, ut prostitutio; aliud perpetuo et uniuersaliter, ut incestus et uxoricidium. Temporaliter referas ad determinationem temporis, ut peracta

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2 Decret. Grat., di.10 c.10 (Friedberg I, 22).

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penitentia et in consimilibus, uel temporaliter quia non dirimit licet impediat. Singulariter ad personas delinquentes referendum. Sequentia contrarium sensum obtineant.


Item, queritur an liceat alicui habere in matrimonium quam polluit per adulterium. Super hoc uarie locuntur canones.

Respondeo: sed post habita prolixitate sic sentias circa hunc articulum. Penitentia peracta potest quis eam ducere in matrimonio quam polluit per adulterium nisi in duobus casibus, scilicet si, uiuente uiro, iurauit quod eandem eo mortuo duceret in uxorém, et nisi in morte mariti aliquid fuerit machinatus. In hiis enim casibus si eam, mortuo uiro, acceperit ab ea ecclesiastica auctoritate est separandus quoniam hec prohibitio perpetua est, ut in Ex tra u a g a n t e, c. Super.

Sed opponitur, uirum Bethsabee per machinationem interemit Dauid, quam tamen Dauid in matrimonium assumpsit.

Respondeo: facta ueteris testamenti magis sunt admiranda quam imitanda.

[20.3] An quis eam possit habere in coniugem quam uiuente uiro suo sibi desponsauit.

Sed queritur si quis eam possit habere in coniugem quam uiuente uiro sibi de facto desponsauit.
Respondeo: dicunt QUIDAM quod non potest, quia si eam habere non potest prestito sacramento dum uiueret maritus quod eam duceret in uxorem, multotfoeius cum marito uiuo eam duxit, quia tunc in morte uiri aliquid machinatum fuisset presumitur.

ALII in contrarium sentiunt, et presumptionem per presumptionem elidunt. Secundum quos tunc demum machinatio presumitur quando, uiuo uiro, iurauit adultere. cum uero, eo uiuo, eius uxorem duxit, uidebatur quod sibi liceret eam habere. Unde non presumitur quod in mortem uiri fuerit aliquid machinatus, sicut de eo qui publice duxit consanguineam presumitur quod eam consanguineam esse ignoret. Secus uero est de eo qui clam eam ducit.


Item, queritur an licitum sit meretricem ducere in uxorern. Quod liceat uidetur, nam Raab meretricem princeps tribus iuda duxit in uxorern, nec peccauit ex hoc.

Item, Osee, xii prophetarum primus, ex precepto domini uno choro ordei emit meretricem quam sibi duxit in uxorern.

Econtra, uerbum est domini non licere dimittere uxorern nisi causa fornicationis. Cum ergo fornicatio dirimit matrimonium, non inmerito uidetur quod impediat contrahendum.

Item, canones et leges clamant quod "patronus est turpitudinis et crimen lenocinii incurrit qui crimen celat uxorern." Celat qui "doctus spectare lacunar et ad calicem uigilanti stertere naso," uxorern adulterio consentit uel eam non arguit.

77 conflation of Decret. Grat., C.32 q.1 c.1 (Friedberg I, 1115) and c.10 (1117-18); see also Codex Iustinianus 9.9.2 (CIC II, 374). 79 Iuvenalis, Satura 1, 56-57.
Item, que certidum pudicitie aut que spes fidei de meretrix, cui fornicatio non tantum crimen sed etiam ars et natura esse uidetur? Unde peccata "ars fit ut a teneris crimen condiscitur annis," Fides unum est ex bonis coniugii. Ubi ergo fides non est, ibi et matrimonium esse non uidetur. | Respondeo: meretricem illam prohibemur desponsare quae meretricari non desinit, quam tamen si quis acceperit, si aliud non impediat, matrimonium est inter eos, nec potest dirimi, nam temporalis est illa et non perpetua prohibitio.

Item, delicta que perpetuo et uniuersaliter impediunt matrimonium sunt incestus, uxoricidium, et alia enormia peccata, propter que sollemnis penitentia iniungitur.

[20.5] Utrum sollemnitatibus penitentibus liceat contrahere matrimonium.

Sed queritur utrum sollemniter penitentibus liceat contrahere matrimonium, et si contraxerint utrum sint separandi an non. | Quod possint uidetur, inquit enim NICOLAUS: "Si quis cum duabus sororibus fuerit fornicatus, si dignam egerit penitentiam et continere non poterit, licet ei in coniugio legitimam uxoriam accipere."

Item, rationibus probatur idipsum in hunc modum: penitentia peracta, sollemniter penitentes reconciliantur ecclesie. Ergo uel ad omnia sacramenta uel saltem ad ea que sunt remedii.

Item, idolatre inter se possunt contrahere matrimonium. Cum ergo idolatria, qua forte nullum peccatum est maius, non impediat matrimonium contrahedum, nec uxoricidium

84 P. Ovidius Naso, Heroides 4, 25. 99 Decret. Grat., C.33 q.2 c.16 (Friedberg I, 1157).
sufficienti contritione | deletum dirimere debet iam contractum matrimonium.

Econtra, multi sunt canones qui intendunt talibus ne contrahant matrimonium, ut xxxii q. vii et xxxv in fine octae questionis.


Item, cum matricida ab uxoris copula non prohibeat, | cur uxoricide perpetuo continentia iudicatur? Diuersitatis hec potest ratio assignari: proniores enim sunt homines ad uxores quam matres necandas. Unde istud potuit uel debuit prohiberi fortius quod solet frequentius euenire, et hic est casus ubi quod maius est minus punitur. Quod matricida ab uxoris copula non prohibeat habes xxxiii q. ii c. Latorem. Quod uxoricide perpetuo continentia iudicatur in eadem causa iunieus, c. Ammonere.

[20.6] Queritur de incestu propter quem coniugum alteri sit affinis.

Item, queritur de incestu propter quem alterum coniugum alteri sit affinis. In quo diuersi diuersa sentiunt.
Dicunt QUIDAM quod explicus incestus, etiam incestuoso uiuente, nubere poterit alii, sed hec opinio detestabilis est.

ALII dicunt quod nec incestuoso se iungere nec eo uiuente potest alii nubere, sed tantum mortuo. Hec sententia tolerabilis est, sed magis equitate uidebitur solutio si distinxerimus inter scientiam et ignorantiam. Nam ignorsns potest reddere et exigere, ut xxxiii in lectum mariti. Sciens uero reddet, sed non exiget. Quidam tamen episcopus cuidam confitentii se sororem suam uiolasse iniunxit a coniuge continere. Que cum publice quereretur debitum sibi a uiro negari, precepit ei episcopus ut uxori debitum redderet. Ille uero rediens ad episcopum iterum clam recepit interdictum. Tandem mulier proclamauit in synodo in qua uiro dixit episcopus reddere debitum uxori. Qui ait, "Quare bis interdixisti?" Cui episcopus: "quia sororem eius cognouisti, quod et soror uocata est confessi." Dixitque episcopus, "Tu perpetuo continebis ab uxore tua." Sed hanc sententiam nullus approbare debet, quia nulli coniugatorum iniungenda est penitentia continetie sine consensu alterius. Preterea confessio propria proprium et non alterius potest facere preiudicium. Dolus uero meus et crimen meum priuare me debet dominio et iure meo, non autem uxorem suo.


Cum impossibilitas coeundi inter coniuges allegatur et proponitur aut uterque consentit alteri, aut alter alteri

143 Decret. Grat., C.32 q.1 & 2 c.6 (Friedberg I, 1259).

139 incestuoso incestuose P₂To 141 tolerabilis] talis abilis P₂ | magis] rati add. P₂ | equitate] equitare To | uidebitur] uidetur C
contradicit. In primo casu uterque septima manu propinquorum iurabit quod non sunt una caro effecti, et post mulier, si uoluerit nubere, nubat, uiro perpetuo continente.

De spatio temporis non inuenimus in canonibus expressum, sed in legibus antiquis biennium. In Authentico triennium inuenitur. Sed si aliam postea uir cognouerit, pristinum reformetur coniugium. Si uero sibi inuicem contradicunt, tunc secundum QUORUNDAM opinionem in ueritate uiri constabit. Vel sic distinguat: aliquis eorum pro matrimonio, quis uero contra agat, in quo casu quis eorum pro matrimonio stare uoluerit alteri debet in probatione preponi, uel etiam tunc distinguitur quis eorum probabiles et uerisimiles probationes inducat, et quis uerax. Et si quidem uir uult probare se cognouisse illam, illa uero per aspectum corporis uult probare se non esse corruptam, tunc uiro uxor esset in probatione preponenda.

Et nota quod propinqui qui iurant post principales personas in anima propria iurabunt, non sic esse, sed potius quod sic credant esse uerum ut principales persone iurant, ut xxxv q. vi De parentela, et in Ext a u a g a n te, Quotiens frater noster. Nam alias si in anima propria non iurarent, non uidetur quod possent. Nota infamie aspergi, sicut dicitur xxxiii q. i Quod Autem.

Item, ALII dicunt quod in anima principalium personarum iurabunt. Quod autem de crimen periuiri dicitur

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5 In... 6 effecti] Cf. Decret. Grat., C.33 q.1 c.2 (Friedberg I, 1149).
9 Autentico triennium] Authenticae 5.17.10 (CIC II, 517).
24 Decret. Grat., C.35 q.4 c.5 (Friedberg I, 1278-79). 1 Comp. 5.29.4 (X.5.34.5) (Friedberg Quin. comp., 62). 27 Decret. Grat., C.33 q.1 c.1 (Friedberg I, 1149).

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in capitulo, ad principales personas dicunt tantum referendum esse.

Et nota quod si tot inuenire non possent, non crederetur eis. Si ideo impossibilitas coeundi proponitur ex arte maleficii, aliquanto tempore uacent orationibus. Si postea concubitus non sequitur, separentur. Data utrique licentia coeundi vel contrahendi, et postquam alias nuptias expetierint, uientibus illis quibus coniuncti fuerint, prioribus quos reliquerant, etiam si possibilitas eis redditu fuerit, reconciliari nequibunt.


Sed queritur si frigidus post separationem aliam cognoscit, tenetur reuerti ad primam uxorem, et non ille qui impeditus erat arte maleficii; sed si aliam ducit uxorem et cognoscit eam, immo stabile est matrimonium cum secunda.

Sciendum est itaque aliter esse in frigiditate nature, aliter in impossilitate procedente ex maleficio. Ibi enim postquam triennium uiuere coire cum muliere non poterit, certa ratione presumitur ita eius frigidam esse naturam ut numquam de cetero aliquam cognoscere ualeat. Qua propter ex coitu huius sequente presumptio uiolenta apud ecclesiam editur, ut si postea cognoscat aliam, judicetur cum priori haberisse concubitum, et decepisse ecclesiam, licet forte aliquando secus posset coniungere. Ideoque precipitur ut si

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30 in capitulo] Decret. Grat., C.33 q.1 c.2 (Friedberg I, 1149).
33 Si... 35 separentur] Cf. Decret. Grat., C.33 q.1 c.4 (Friedberg I, 1150).

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postmodum aliam cognoverit pristinum reformetur coniugium. Hoc autem non ita esse in eo qui maleficio impeditur quique potest aduertere.

[21.3] Qualiter fides possit fieri ecclesie de coeundi facultate.

Item, queritur qualiter fides possit fieri ecclesie de coeundi facultate reddita ei qui frigidus esse dicebatur ad hoc, ut pristinum possit redintegrari coniugium. Non enim potest ei ecclesia precipere ut alicui commisceat se, cum fornicari nemini liceat.

Item, si se aliam cognouisse fatetur, ergo per consequentiam dicit se adulterum. Unde non potest deinceps uxorem repetere.

Respondeo: non debet ei ecclesia fidem adhibere de facultate sibi reddita, nisi cum erit cognitum eum aliam cognouisse.

Sed quomodo uirum adulterum tunc mulier compelletur recipere, ut dicit canon, cum etiam post actam penitentiam non cogitur casta uiro reconciliari.

Respondeo: ad hoc dici potest quod licet hic fornicationem commiserit, non tamen poterit ab uxoride dimitti; unde et ipse quodammodo commissit fornicationem, quantum ad actum non quantum ad reatum, a quo propter auctoritatem ecclesie excusatur. Unde, cum par sit eorum conditio, non potest alter propter fornicationem alterum dimittere, ut xxxii q. vi Nichil, et in Extravaugante.

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Significasti. Adulter enim adulteram, sicut nec accusare, ita nec potest dimittere.

Item, ei quod dicitur in illo capitulo, *Si per sortiarias*; obliqui uidetur quod dicit GREGORIUS in eodem capitulo. Dicit enim quod si alter potens apparauerit priora recipere coniugia cogantur.

Respondeo: quod dicit GREGORIUS illi preiudicat. Nam in decidendis causis maior est auctoritas pape quam archiepiscopi, ut d. xx *De libellis*.

[21.4] *Si inter frigidum et illam cum qua contraxit unquam fuerit matrimonium.*

Item, queritur si inter tales numquam fuerit matrimonium. QUIDAM negant eo quod consensu matrimonium contrahatur. Nichil autem tantum contrarium est consensui quantum error quem imperitia detegerit; unde si ecclesie uirum possibilitem constaret habuisse, nullatenus in secreto diuortium approbaret.

Econtra, quia tam uiro quam mulieri erranti licet frigiditatem proponere, et cum effectu desiderare diuortium, quod non credimus. Immo si mulier non querit diuortium, dicens "mater esse uolo," habebit eam pro sorore qua non potest uti pro uxor.

Et nota, quod si mulier non consenserit in impotentem sciens et prudens, quamquam post dixerit "mater esse uolo," non tamen eo uiuente alterius ineundi coniugii habebit.
libertatem, quia non debuit certiorari que sciuit, nec uidetur esse decepta que non ignorauit. Si ignorauit uirum esse impotentem coeundi interueniet diuortium, aut si approbauerit manere cum eo, illo defuncto, debebit hec a consanguineis uiri abstinere, non ratione affinitatis, sed causa publice honestatis.


Item, queritur de feriarum sollempnitate an sicut impedit matrimonium contrahendum, ita dirimat contractum. Sed de diuisione iam contracti, diuersi diuersa sentiunt. | Dicunt QUIDAM quod tales debeant separari ad tempus, sed melius est ut ecclesiasticus rigor serueret in perpetuum, scilicet tales separari, quia contra institutionem ecclesie iuncti sunt. Ita tamen quod si postea consenserit ecclesia, pristinus et dis|solutus possit reformari contractus.

Nec mireris esse abstinendum a ducendis uxoribus, cum et consilium suadeat abstinere a ductis, sed ex communi consensu ut uacet expeditius orationi. Alioquin nec est continen|ia proprio motu sumenda, nec est in penitentia a presbiteris iniungenda, quia pares sunt coniuges in continentia. Unde si alter alterius consensu uouerit sicut uenit siue ad tempus siue in perpetuum, perseueret, quamuis alter reuocare uoluerit. In ceteris uero uir est caput uxoris. Unde uir sine consensu uxor est caput uxoris potest uotum abstinentie facere, non autem uxor sine uiro, et si fecerit, uir poterit immutare.

Quid sit consanguinitas, quid linea consanguinitatis, quid gradus.

In Veteri Testamento duabus de causis consanguinearum coniunctio legitur fuisse permissa: tum necessitatis, tum iuste rationis causa. Cum enim humanum genus per multiplicem exceptionem debet ex crescere, nec potest < nisi > contribules et eius stipitis propagines possent aliqui reperiri, eudens compellebat necessitas ut uiri coniuges consanguineis coniungibus iungerentur. Iuste rationis causa illa fuit ne si alienigenam quis duceret in uxorem, et uxorismorem gereret, thurificare idolis cogeretur. Nunc autem, quia necessitas illa sublata est de medio que hoc fieri compellebat cessante causa pariter debet cessare quod urgebart, ut ergo caritas se latius extenderet, maxime cum illud uideatur fore misticum, et cum lege sopitum. Ut ergo latius se extenderet caritas, et sinus suos fortius explicaret, et bonis moribus receptum est, et censura canonum interdictum, ne quis in septimo gradu consanguineis uel affinibus iungeretur. Videndum est ergo quid sit consanguinitas et, quia in consanguinitate plures sunt linee, quid sit linea consanguinitatis et quot sint et, quia in linea plures sunt gradus, quid sit gradus in consanguinitate et quot persone faciunt gradum et et quot gradus computandi sunt qui matrimonium impedient.

Consanguinitas est uinculum diuersarum personarum ab eodem stipite descendentium carnali propagine contractum.

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25 Consanguinitas...34 filios] Cf. Simon Tornacensis, Institutiones, 73vb-74ra.

"Diuersarum personarum" dictum est ut remoueantur affines, inter quos, quamuis sit uinculum, non est tamen consanguinitas quia non ab eodem stipite descendunt. Verum si obicias omnes ab eodem stipite descendisse quia ab Adam, dicimus stipitem appellari in cuius lumbis fuerunt idem, nec septemum gradum ab eo descendentes excesserunt. "Carnali propagine contractum" dicimus ut remoueatur uiculum spirituale quod est inter compatres eorum uel filios, et ut remoueatur uiculum adoptionis quo ciuilis iuris artificium ligat naturales filios et adoptiuos.

Linea est ordinata collectio personarum consanguinitate coniunctarum, diuersos gradus continens, et eos ab unitate stipitis secundum numerum distinguens.

Assignantur autem in consanguinitate tres lineae: alia superior que est ascendentium; alia inferior, que est descendentium; alia ex transuerso, que dicitur ex latere uenientium.

Ea autem que dicitur ex transuerso duplex est: alia que incipit a nobis et extenditur in fratres nostros, eorumque filios ac nepotes; alia que incipit a superioribus nostris, ut a patribus, auis, et extenditur in patruos, auunculos, et similes eorumque sucessores. Nam in inferioribus nulla ex transuerso ueniens linea procedit, cum omnes qui ab inferioribus nostris nascuntur a nobis descendant et inferiores nostri sint.

Graduum autem alius canonicus, alius legalis, id est alio modo cumputatur gradus secundum canones, alio secundum leges. Canonicum gradum due persone faciunt; legalem una.

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Gradus canonicus est competens habitudo consanguinitatis personarum equaliter ab eodem stipite per eandem lineam distantium, ut qui primo loco a stipite distant primum gradum facere dicantur, qui secundo, secundum, et sic deinceps. | Et duos alicuius filios qui sibi fratres sunt ponunt canones in primo gradu, filios eorum in secundo, et sic de ceteris.

Gradus legalis est habitudo distantie personarum consanguinitate coniunctarum, que quarto generationis progressu distent. Agnoscitur, nam secundum leges gerantur quoque persona facit gradum. Unde et filius est patri in primo gradu, et nepos in secundo, et sic deinceps. Quod si opponatur quot filios quisque genuit tot gradus constituit, non est uerum. Non enim si decem filios habuit quis singuli faciunt singulos gradus, sed omnes unum, | sicut tres immersiones sunt unum sacramentum, et tres uoces sunt unum uerbum, et sic interdum unus lapis interdum plures eundem in scala gradum constituunt.

Gradus autem consanguinitatis dupliciter in canonibus computatur. QUIDAM autem AUCTORES, ponentes patrem pro stipite, filios in primo gradu constituunt et isti pertingunt usque in septimum gradum, post quem matrimonium non prohibetur, ut ALEXANDER et ZACHARIAS. ALII autem, filios pro stipite locantes, primum gradum nepotes appellant, et isti usque ad sextum gradum tantum currunt, postquam matrimonium permittunt, ut ISIDORUS, et ita contrarii non sunt superioribus. Illa namque persona que secundum istos in

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primo gradu inuenitur, secundum illos inuenitur in secundo, et que secundum istos inuenitur in tertio et ad extremum que secundum istos inuenitur in septimo gradu secundum illos inuenitur in sexto.

Sed obiicitur istud Nicholaei et Carthaginensis concilii ubi dicitur quod tamdiu non debent aliqui per matrimonium coniungi quandiu eorum consanguinitas in memoria potest haber, ut xxxv q.ii | et iii c. De consanguinitate, In copulatione fidelium. Unde, cum in decimo gradu ultra possit retineri memoria consanguinitatis, patet quod nec in decimo gradu possunt aliqui copulari.

Sed scienendum quod omnis consanguinitas infra septimum gradum ita concluditur, nec ultra gradum septimum nulla inuenitur consanguinitas. Non enim iam consanguinei dicendi sunt qui limites septimi gradus | excedunt; | non ergo ultra istum gradum potest consanguinitas in memoria retineri. Quod itaque dicuntur abiecta copula de his intelligendum est qui septimum gradum non transcendunt.

Et nota, cum prohiberi dicitur copula consanguineorum usque ad septimum gradum, intelligendum esse in linea ex latere uenientium. Nam in linea recte ascendentium uel descendentium nullus potest alii copulari. Unde et si hodie Adam uiueret nullam uxorem vel ciuili iure uel ecclesiastico ducere posset. Si quis dicat nulla auctoritate hoc exprimi, responde hoc non fuit necesse auctoritatibus prohibi quoniam nullus tamdiu uiuit, uel si uiueret matrimonio contrahendo aptus non esset. Idem intelligendum est in recta linea

89 xxxv…consanguinitate] Decret. Grat., C.35 q.2 & 3 c.17 (Friedberg I, 1268). | In copulatione fidelium] Decret. Grat., C.35 q.2 c.18 (Friedberg I, 1268), attributed to Concilio Wormacensi, not Carthaginensi.

affinitatis. Si queras qua pena puniendi sunt qui cum eis iunguntur quibus attinent in septimo gradu, dicimus referre utrum scienter id fecerint uel ignoranter. Si scienter id fecerunt, debent excommunichi donec separantur. Separati autem sicut prius erunt infames, et ab accusacione et testificatione prohibentur. Filii quoque talium ab hereditate arceantur. Quod si ignoranter id fecerint, referunt utrum scienter id fecerint. Nam si ius quis igno- raerit, putans sibi licitam consanguineam copulari, nullatenus ei subuenit. Si uero factum, credens eam non consanguineam cum esset consanguinea, iusta ductus ignorantia a predictis penis excusatur, ita ut filii habeantur legitimi, qui tempore ignorantia nati sunt.

Et nota quod in legibus inuenti sunt gradus, ut hereditates ceteris personis referantur legitime, id est ut qui propinquior est in agnitione uel cognatione ad successionem uocetur. Hereditas autem uniu persone legitimmente competit, quare secundum leges una persona gradum facit. In canonibus autem ideo inuenti sunt gradus ut ostendatur que persona cui licite possit per matrimoniunm copulari, et quarum personarum nuptiis sit abstinendum. Nuptie autem non nisi inter duas personas tantum consistere possunt. Necessario ergo due persone secundum canones gradum efficiunt. Sed secundum quod dicitur duas personas gradum canonicum facere, non est intelligendum de ascendentiibus uel descendentibus inter se, et secundum ex latere unientibus.

Quorum computatio incipit a fratribus secundum quosdam, secundum alios a fratrum filiis. Pater enim meas uel auus,
uel quilibet superior, uel etiam ab eorum quolibet ex
transuerso uenientes, ut patruus, auunculus, et similes, non
sunt mecum in aliquo gradu, quamuis distent a me gradu,
sicut filius meus, nepos, pronepos nec in aliquo gradu
mecum sunt, sed aliquo gradu a me distant. Soli ergo ex
latere uenientes, licet non omnes in aliquo gradu canonico
sibi esse dicuntur. Illi namque in gradu sibi sunt, ut canonice
loquamur, qui a stipite, id est, a persona a qua processerunt,
equaliter distant, sicut sunt duo fratres, duo filii fratrum uel
filei siue filius et filia, et deinceps.

Item, nota quod eadem est secundum canones | et leges
computatio quantum ad rectam lineam ascendentium et
descendentium. Ascendendo sic computamus: pater, auus,
abauus, atauus, tritauus, tritaui pater. Descendendo sic: filius,
nepos, pronepos, abnepos, trinepos, trinepotis filius. Est ergo
pater filio in primo gradu, et filius patri. Non tamen sunt in
primo, quia pater est in primo | ascendentium, et filius in
primo descendentium. Similiter nepos est auo in secundo
descendentium, et auus nepoti in secundo ascendentium, et
ita non in eodem secundo et sic de ceteris.

[23] De affinitate et affinitatis generibus.

Primo uidendum est quid sit affinitas; | secundo, unde
dicatur; tertio quot sint genera affinitatis; quarto unde
nascatur, et usque ad quem gradum, et usque ad quotum
gradum in singulis generibus affinitatis abstinendum sit a
coniugio; quinto qualiter in affinitate gradus sint computandi.
"Affinitas est regularitas personarum ex nuptiis proueniens
omni carens parentela." Vocabulo nuptiarum non solum


Quoted in Simon Tornacensis, Institutiones, 74rb.

138 ueu[1] aut P1ToTr | ab eorum] abauorum P1 139 uenientes] ueniens P1
141 nepos] meus u add. P1 ne autem add. P2ToTr | pronepos] spat. uac.
quo To 144 namque] ergo P1 enim Tr 146 sunt duo| inv. To 147 siue]
P1 computatio add. Tr| leges] est add. P1 eadem est add. P2 152 abnepos]
add. P2 157 ita] idem sed corr. Tr 1 De...generibus] om. ToTr
Tr 6 in affinitate gradu] gradus in affinitate P2| gradus sint] inv. P1| sint|
sicut To 7 regularitas| raritas To 8 Vocabulo] nomine C| solum] uerum
add. sed exp. P2
matrimonium uerum etiam fornicarium communiter intelligimus. QUIDAM tamen asserunt hic tantum legitimam
et regularem affinitatem describi.

Et nota quod affinitas que est inter te et fratrem concubine tue, quamuis non sit legitima, eadem lege
inhibetur per singulos gradus. Dicitur autem affinitas eo quod duarum cognitionum altera tendit ad fines alterius.

Affinitatis autem tria sunt genera: primum, secundum, et tertium. Primum genus affinitatis constituunt michi omnes
consanguinei et omnes consanguniee uxoris mee, et econuerso omnes consanguniee mei et omnes consanguinee
mei sunt uxor mee in primo genere affinitatis.

Item, et ego sum affinis uxoribus et maritis consanguinearum et consanguniearum mearam. Ipsu autem
uir et uxor non sunt affines sed una caro.

Secundum genus affinitatis constituant michi uiri et
uxores consangunieorum uel consanguniearum uxoris mee,
et econuero mariti uxor uxor uxor uxor relictorum uel relictarum
consangunieorum uel consanguniearum uxoris mee, et econuero fit uxor mee.

Tertium genus affinitatis michi faciunt uiri uel uxor
uxores relictarum uel relictorum consangunieorum uel
consanguniearum uxoris mee, et econuero, fit uxor mee,
quod per exempla declarabitur. Nascontur autem hec tria
genera affinitatis de consanguinate iuxta regulam que dicit,
"persona addita persone per carnis copulam mutat genus et non gradum." Cum enim consanguinitas sit inter me et fratre meum, uxor fratri mei addita ei per carnis copulam mutat genus, quia non est michi consanguinea, sed affinis in primo gradu, mediante scilicet fratre meo, nec mutat gradum, quia sicut frater meus est mecum in primo gradu consanguin littatis, ita et uxor eius in primo gradu affinitatis, primi generis, sicut et frater meus fratri uxoris sue, ea mediante, in primo gradu primi generis attinere dicitur.

Secundum genus affinitatis duobus modis de consanguinitate nascitur: uno quidem cum apponitur affinitas ex una sola parte consanguinitatis, altero cum fit appositoio ex utraque parte propinquitatis. Verbi gratia dum primo consanguinitas inter me et fratre meum est, me sine coniuge permanente frater meus accipit uxorem, que, mediante fratre meo, attinet michi in primo gradu primi generis affinitatis. Mortuo fratre meo, illa copulatur alteri, qui secundum prefatam regulam mutat genus et non gradum, eritque michi in secundo genere et primo gradu medi antibus duabus personis, scilicet fratre meo et uxore eius.

Ex utraque parte apponitur affinitas hoc modo: ego et frater meus consanguinei sumus in primo gradu. Adiungitur ei uxor | que illo mediante attinet michi, et ego illi in primo genere et eodem gradu. Item, et michi adiungitur uxor que secundum regulam mutat genus et non gradum, et attinet uxori fratri mei in secundo genere et primo gradu, cum ego in primo genere et primo gradu eidem uxorí fratri mei attineam.

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34 Decret. Grat., Declaratio Affinitatis (Friedberg I, 1435). Quoted in Simon Tornacensis, Institutiones, 74ra.
Similiter et tertium genus aliquando ex altera parte tantum, aliquando ex utraque. Ex altera parte tantum, ut sit Bertha uxor fratris mei que est michi in primo genere affinitatis. Mortuo fratre meo, accepit Titium. Secundum predictam regulam, Titius attinebit michi in secundo genere affinitatis. Item si, mortua Bertha, Titius accepi Galdadram, Galdadra erit michi in tertio genere affinitatis, tribus personis mediantibus, scilicet fratre meo, Titio, et Bertha, utique gradu non mutato.

Ex utraque parte apponitur hoc modo. Ego et frater meus sumus in primo gradu consanguinitatis; | Ergo uxores nostra in secundo genere affinitatis, sibi inuicem coniunguntur | me fratreuo mediante, quia uxores duorum consanguineorum uel uiri duarum consanguinearum semper sunt in secundo genere affinitatis inter se. Si ergo, defuncto fratre meo, eius uidua Titium acceperit, Titius uxori mee non mutato gradu in tertio genere affinitatis attinet secundum regulam superius dictam, et hic tribus personis mediantibus, me scilicet, fatreque meo, uxoreque eius.

Dicitur ergo primum genus affinitatis, quia primo loco et uno solo mediante ex consanguinitate oritur.

Secundum genus dicitur quia secundo loco et duobus mediantibus contrahitur. Tertium genus dicitur quia tertia loco tribus mediantibus personis propagatur.

Quomodo gradus in affinitate computentur aduerte: primum genus affinitatis per septem gradus extenditur, et equis passibus ambulant cum consanguinitate. Efficiuntur
autem hiis gradus secundum regulam que dicit "persona persone addita per carnis propagationem mutat gradum et non genus." "Persona addita persone," subaudi: ex parte consanguinitatis. Verbi gratia, consanguinitas est inter me et fratrem meum. Huic consanguinitati apponitur uxor mea, et
efficitur affinis fratri meo in primo genere affinitatis, et sic
frater meus est affinis uxor meee in primo gradu primi

generis. Ergo filius fratris mei est affinis uxor meee in
secundo gradu, nepos in terto, pronepos in quarto, abnepos
in quinto, atnepos in sexto, trinepos in septimo, seruato
semper eodem genere, scilicet primo, secundum regulam
predictam. Et hec regula locum habet in hiis personis que
adduntur ex parte consanguinitatis, scilicet ex parte
persone que consanguinea est medianti michi, scilicet quo
mediante fit affinitas, sed non optinet in hiis que adduntur ex
parte appositionis, id est ex parte eius persone que per carnis
copulam est apposita michi medianti, sicut est uxor mea,
cuius filiam ante meas nuptias de alio uiro genitam et
quilibet consanguineorum meorum, tamquam non sibi
attinente potest sibi ducere in uxorem. Si uero uxor mea me
defuncto ad secundas | nuptias transierit, et ex hiis sobolem
genuerit, non poterit illa proles copulari consanguineis usque
ad quartum gradum, sed proles prolix nulli de consanguineis
meis copulari prohibetur.

Sed queritur quare proles secundarum nuptiarum
consanguineis prioris uiri copulari prohibeatur, et an sit ibi
affinitas uel quasi affinitas. Probant quidem ibi esse
affinitatem primi generis sic: ait GREGORIUS quod "mortuo
uiro, affinitas in uxor superstite non deletur, et ideo proles

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89 Simon Tornacensis, Institutiones, 74vb. 116 Decret. Grat., C.35 q.10
c.1 (Friedberg I, 1287).

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89 autem| om. P1 | hiis P1ToTr 90 persone addita| inv. P1 | gradum |
gradus P1ToTr 91 addita persone| inv. P2 94 efficitur| afficitur To
affinitas siue add. P1 | fratri meo| fratri meis P1 | meo| mei To 95 est| s
add. sed del. P2 | primo...96 in| om. hom. To 96 mei| mee sed corr. C |
uxoris| uxori P2Tr 99 regulam predictam| inv. P2 102 consanguineae...
104 que| om. hom. To | medianti| medianti P1 103 affinitas| affinis P2 |
opinet| attinet P2 105 copulam| capulam| capulam To| est apposita| inv. Tr| michi
attinentem P2 | sibi| om. P1Tr 109 hiis| eis Tr 110 genuerit| genuit ToTr |
consanguineis| meis add. P1 113 proles| prolex(!) P2 114 an| tantum To
115 affinitas| probant add. sed exp. C probant add. P2 | quidem| quidam
To 117 uxor| affinitas P1
sumpta ex secundis nuptiis non potest ad consortium prioris uiri transire," affinate impediente, quia affinitas non deletur in superstite. Hec autem affinitas non est nisi primi generis. Prima ergo affinitas inuenitur inter sobolem sumptam ex secundis nuptiis, et prioris uiri consanguinitatem quandoquidem nec secunda nec tertia affinitas ibi est.

Item, proles ex secundis nuptiis orata est persona addita persone per carnis propagationem. Mutat ergo gradum et non genus. Est ergo in primo genere consanguineis prioris uiri. Non sequitur, quia eadem ratione proles prolis non posset coniugi consanguineis prioris uiri, quod falsum est quia regula illa graduum locum habet ex parte consanguinitatis, non ex parte appositionis. Nec primum argumentum sequitur, quia non est uerum quod impediente affinitate proles secundarum nuptiarum consanguineis prioris uiri coniungi prohibeatur. Omnis enim affinitas provenit ex nuptiis alicuius eorum qui affines eorum sunt sed esse potest.

Quia nec proles secundarum nuptiarum nec frater uiri premortui nuptias contraxerunt, ergo non sunt affines adinuicem.

Item, primum genus affinitatis non est ibi, quia tantummodo assignatur inter aliquem et consanguineos coniugalis sui, uel inter aliquem et coniuges consanguineorum suorum, nec secundum genus est ibi, quod nascitur ex primo addita persona persone per carnis copulam, nec tertium est ibi, quia tertium genus eodem modo nascitur ex secundo. Decretum tamen prohibet huiusmodi copulari.

De causa autem prohibitionis diuersitas est opinionum. QUIDAM dicunt quod ratione affinitatis emanauit hec prohibitio, que quidem affinitas respectu secundarum nuptiarum non extenditur nisi usque ad primam prolem. ALII
dicunt quod non ratione affinitatis sed quasi affinitatis emanavit hec prohibitio. ALII dicunt quod non ratione affinitatis sed propter dumtaxat | publicam honestatem prohibitum est illud.

Secundum genus affinitatis porrigitur usque ad quintum genus graduum, exclusiue intellectum. In quarto non debent coniungi, sed si inuenti fuerint coniuncti, non separantur.

Tertium genus non nisi usque ad secundum gradum prohibuit inuenitur. In terto non inuenitur prohibitum.


Coactio alia tradentis, alia rapientis. Coactio tradentis | alia est ad desponsationem, alia ad carnis commixtionem. Prima non debet fieri inuita puella, quia libera debent esse matrimonia. Secunda traditio debet fieri etiam inuita puella, si consensum expressit in desponsatione, ad instar eligendi episcopi. Nullus enim ordinandus est inuitus, ut d. lxxiiii, sed si sponte fuerit ordinatus, compellendus est ad ecclesiam ire, ut d. xcii Si quis episcopus. Non ergo, ut breuiter concludam, coniunganda cogatur, etiam si coacta fuerit in irritum reuocetur. Coniuncta ad desponsationem, cogatur ad carnis commixtionem, nisi transire uoluerit ad religionem. De coactione rapientis agitur causa xxxvi, sed hec teneas in summa, quod, acta penitentia de rapina, raptor potest rapte in matrimonio copulari, nisi alteri fuerit desponsata.

Et nota quod si quis eam quam desponsauit rapuerit, secundum canones non dicitur raptum committere, licet alias peccauerit quia iniuriam uidetur fecisse nuptiis quas per raptum preuenit, secus uero est secundum leges que etiam in re propria raptum et furtem dicitur posse committi, ut Institutionum li. iii lege i Interdum.


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