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THE EVOLUTION OF DOMINICAN STRUCTURES
OF GOVERNMENT
III: THE EARLY DEVELOPMENT OF THE SECOND
DISTINCTION OF THE CONSTITUTIONS¹

BY
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Following our investigation of how Dominican provinces came into being and took shape, we need to see how their evolution is reflected in Dominican law. Since it is impossible to examine bits

¹ In what follows, I use the only known manuscript of the primitive constitutions ('PC'), AGOP XIV A 4 pp.55-93 (the Rodez manuscript); the only known manuscript of Raymund's constitutions, Porto, Bibl. Munic. 101 ff.86^r-115^v; the only known manuscript of the Sack Friars' constitutions, BL Cotton Nero A XII ff.155^r-174^v; and the only known manuscript of the constitutions of the Penitents of Mary Magdalen, Vienna, Nationalbibl. lat. 4724 ff.320^r-328^v; for the Rule of San Sisto, I use the same manuscript ff.311^v-317^v, and the text edited in ASOP 3 (1897-1898) 628-635 from Reg. Vat. 45 f.123. There have been several editions of PC: H.Denifle, 'Die Constitutionen des Prediger-Orders vom Jahre 1228', *Archiv für Literatur- und Kirchengeschichte des Mittelalters* 1 (1885) 165-227; H.C.Scheeben, *Die Konstitutionen des Predigerordens unter Jordan von Sachsen*, QF 38, Cologne 1939; A.H.Thomas, *De oudste Constituties van de Dominicanen*, Louvain 1965 (cited as 'Thomas'). Raymund's constitutions were edited by R.Creytens in AFP 18 (1948) 5-68. For Humbert's edition of the constitutions, I use AGOP XIV L 1 ff.37^r-40^v (printed in ASOP 3 [1897-1898] 31-60, 98-122, 162-181), and BL add. 23935 ff.74^r-80^v; two mid 14th-century texts are edited in G.R.Galbraith, *The Constitution of the Dominican Order*, Manchester 1925, 203-253, and W.Hood, *Fra Angelico at San Marco*, New Haven 1993, 279-290. The Sack Friars' constitutions are printed (unreliably) in G.M.Giacomozzi, *L'Ordine della Penitenza*, Rome 1962, 73-113; those of the Penitents are printed in A.Simon, *L'ordre des Pénitentes de Sainte Marie-Madeleine*, Fribourg 1918, 154-169. For the constitutions of the Crutched Friars, based on those of Raymund, I use the edition in A. van de Pasch, *De tekst van de constituties der Kruisheren van 1248*, Brussels 1952. For the mid 12th-century Praemonstratensian customary, I use Pl.F.Lefèvre - W.M.Grauwen, *Les Statuts de Prémontré au milieu du XII^e siècle*, Averbode 1978 (cited as 'Grauwen'). A text from c.1227 was edited in B.Krings, 'Das Ordensrecht der Prämonstratenser', *Analecta Praemonstratensia* 69 (1993) 107-242 (cited as 'Krings'). For the text from c.1236 (ed. Pl.F.Lefèvre, *Les Statuts de Prémontré réformés sur les ordres de Grégoire IX et d'Innocent IV au XIII^e siècle*, Louvain 1946, cited as 'Lefèvre'), I have used BNF lat. 9752 (which is incomplete), and Averbode, Norbertijnenabdiij IV 207; I am grateful to Fr Gareth Moore OP for photographing

of the constitutions in isolation, and most of the second distinction is relevant to the elaboration of the order's institutional structures in general, I have cast my net wide to take in the whole distinction except for the *regula conversorum*. We shall return in a subsequent article to some remaining questions concerning provinces in particular.

The Rodez manuscript, as we have noted, contains essentially the Dominican constitutions as updated and edited by the Most General Chapter of 1236 (cf. AFP 70 [2000] 15). It is impossible to identify exactly and with certainty all the ways in which the text had been expanded, rewritten and re-arranged since 1220; nevertheless, different strata are sometimes obvious, and shifts in practice and terminology provide useful clues. We need not despair of extracting valuable information from PC, though we shall sometimes have to skate on rather thin ice in pursuit of it.

There is a lamentable paucity of external evidence to guide us in dating different parts of PC. We can, however, be sure that nothing in the second distinction goes back before 1220: Jordan was at the general chapter of 1220 (*Lib.* 86), so he was in a position to know what was already in the constitutions then; this means that we can trust his account of what was decided in 1216 (*Lib.* 42):

Beati Augustini predicatoris egregii ipsi futuri predatores regulam elegerunt, quasdam sibi super hec in uictu et ieiuniis, in lectis et laneis artiores consuetudines assumentes. Proposuerunt etiam et instituerunt possessiones non habere ne predicationis impediretur officium sollicitudine terrenorum, sed tantum redditus recipere, unde possent sibi in uictui necessariis prouidere.

The only hint of original legislation lies in the rejection of *possesiones*; but PC II 26, which rejects *redditus* as well, is one of the few constitutions which can be dated with total certainty to 1220, on the evidence of Jordan himself (*Lib.* 87). Otherwise, the brethren adopted the Rule of St Augustine in 1216, together with *arctiores consuetudines* which can be recognised in the first distinction of PC, and that is all.

We can also be confident that nothing in PC was added later than the Most General Chapter of 1236. We possess the acta of 1236, which allow us to identify some passages which were added or con-

the latter for me, and for the Averbode archivist's permission for him to do so. Canon law texts I have taken from Æ. Friedberg, *Quinque compilationes antiquae*, repr. Graz 1956 (Friedberg¹), and *Corpus Iuris Canonici*, repr. Graz 1959 (Friedberg²).

firmed then. Thereafter, since no chapter was held in 1237 because of Jordan's death, and new constitutions took three years to come into force (Preamble, II 6b), nothing could have been added before 1240, by which time Raymund's revision of the constitutions was well on the way to confirmation (cf. MOPH III 11.22-23, 13.25-26);² we also have what seem to be fairly full *acta* from 1239 and 1240, and there was apparently only one inchoation made in 1238, and it was not confirmed in 1240 (MOPH III 10.19-20, 11.4-7, 13.17-18).

As their structure shows, the constitutions of the Sack Friars and those of the Penitents of St Mary Magdalen were based on PC, not on Raymund's revised edition, whereas the constitutions of the Crutched Friars were adapted from Raymund; all of these are sometimes valuable in establishing the text.³ The Sack Friars took over a version of PC which included the innovations made in 1236, so they cannot help us to date anything within PC. The constitutions of the Penitents, on the other hand, are almost certainly based on an earlier stage in the development of PC.

On 10 June 1227, Gregory IX issued a standard bull in support of the newly founded order, described as living 'secundum beati Benedicti regulam atque institutionem Cisterciensium fratrum'. On 23 Oct. 1232, at the sisters' request, he authorised them to adopt the Rule of St Augustine 'et institutiones ordinis monialium sancti Sixti de Urbe', and proceeded to quote the whole Rule of San Sisto; there is no mention of any other constitutions, which must make it doubtful whether Gregory even knew about, let alone provided, any further regulations. Where, then, do the Penitents' constitutions come from?

² It came into force in 1241 (MOPH III 18.26-27); the Provence provincial chapter accordingly decreed 'Priores faciant scribi novam ordinationem constitutionum' (C.Douais, *Acta capitulorum provincialium*, Toulouse 1894, 19). The new arrangement was so different from PC that it would have been impossible just to update an older manuscript.

³ It is important not to forget that we only have one manuscript (Porto) of Raymund's constitutions; it is therefore not sufficient to compare Rodez with Porto, as Thomas does in his *apparatus criticus*, since we can only eliminate accidental scribal variants from Porto by looking at later manuscripts, which sometimes validate the readings of Rodez against those of Porto. Raymund's constitutions were innovative enough to launch a fresh manuscript tradition, but the same is not true of Humbert's revision; this means that we also need to look beyond the major manuscripts of Humbert (AGOP XIV L 1 and BL add. 23935) to eliminate their eccentricities by reference to later texts. We can also use the Sack Friars and the Penitents as an extra check on the readings of Rodez, and the Crutched Friars as a check on Porto, but it is essential to remember that we are dealing with manuscripts of independent, though related works, not with different manuscripts of a single text.

There is nothing to suggest that the Dominicans directly had anything to do with the Penitents' desire to change rules, but there is evidence that by 1233 the *consuetudo* of the Dominican-influenced nuns of St Mark's, Strasbourg, described as 'ordinis sancti Sixti de Urbe', was being taken over by other communities of nuns in Germany.⁴ We do not have a text of their 'consuetudo', but it is by no means unlikely that it consisted of the Rule of San Sisto plus supplementary constitutions of the kind adopted by the Penitents.⁵ Simon (*L'ordre des Pénitentes* 37) suggested that the Penitents, together with the Rule of San Sisto, took over a text which had already been adapted from the Dominican constitutions to serve a community or communities of nuns, and this hypothesis was accepted by Dominican historians.⁶ If they espoused the constitutions at the same time as the Rule, the underlying Dominican text cannot possibly have included any modifications made after 1232; and, if I am right that the constitutions came, directly or indirectly, from St Mark's, Strasbourg,⁷ we must allow time for them to have become known and appreciated enough for the Penitents to want to borrow them, and for them to have been created for St Mark's in the first place. This suggests that even innovations made in 1231 are unlikely to have been incorporated; and the only Dominican chapter before 1231 which could have introduced new legislation was the Most General Chapter of 1228.⁸ The Penitents have an equivalent of PC II 14 which, as we shall see, there is reason to attribute to the Most General Chapter of 1228. With some confidence, then, we may conclude that their constitutions are evidence

⁴ Cf. H. Grundmann, *Religiöse Bewegungen im Mittelalter*, rev. ed. Darmstadt 1970, 233-236.

⁵ Grundmann, *Religiöse Bewegungen* 233-234, raises the question how the 'constitutions of St Mark's' differed from the Rule of San Sisto, and suggests that they must have dropped the latter's requirement that every monastery should have a resident male community of at least six; it is more likely, though, that this requirement was added by or for the Penitents.

⁶ Cf., for example, Vicaire, *Histoire*¹ II 387, and W.A. Hinnebusch, *History of the Dominican Order* I, Staten Island 1966, 380.

⁷ It seems that one of the Penitents' earliest foundations was made in Strasbourg—in 1227 according to A. Martínez Cuesta in *Dizionario degli Istituti di Perfezione* V 807.

⁸ As the preamble to PC shows, the Most General Chapter had complete authority to make or unmake constitutions, so there was nothing for the chapters of 1229 and 1230 to do except introduce or approve inchoations, which, under the three-year rule, would only have become law in 1231 or 1232.

for the Dominican constitutions as they were in 1228 or, at the outside, 1231.

I shall argue that the rule requiring changes in the constitutions to pass through three successive general chapters was introduced in 1225. If this is correct, the chapters of 1226 and 1227 could initiate the legislative process, but not complete it. After the Most General Chapter of 1228, changes could have been introduced at any chapter, but none could have become effective before 1231. Assuming that the surviving acts of the Most General Chapter of 1236 are complete, we can identify all the changes which were made then.⁹

In the course of this article I present a new edition of the whole of the second distinction except for the *regula conversorum*. I retain Thomas's numbering of the different sections, but introduce subdivisions of my own (II 1a etc.); I have also given a separate numbering to the extravagantes (X 1 etc.). I have not noted all divergences between the Rodez manuscript and related texts, but only those which have been or might be used to cast doubt on Rodez's accuracy. I also suggest conjectural reconstructions of earlier versions of some constitutions; where I have guessed at the content as well as the wording, I have used the Spanish double question mark (¿...?) to indicate the limits of the guess. Where I have not even ventured to make a guess, I have left a gap austerey filled with question marks (<??>).

1. *The 1216 'synopsis'*

The prologue to PC, like its Praemonstratensian model, includes an outline of the contents of the different distinctions (reduced to two by the Dominicans); there is also an index to the first distinction, but not to the second. Since these indications of what should be in the constitutions do not correspond to the actual contents of PC or of any version of the constitutions that is ever likely to have existed, it is probable that they go back to the oldest Dominican customary, compiled in 1216. Since the second distinction in particular consists of original Dominican legislation, such as the brethren did not produce in 1216, the outline of what it contains must represent a legislative programme which the brethren set

⁹ We have some acts from 1233-1235, but they only contain admonitions and shed no light on alterations made to the constitutions.

themselves in 1216 (cf. AFP 65 [1995] 32-35), when they transformed themselves into a religious order at Innocent III's suggestion.

The 'synopsis' of the second distinction is decidedly meagre:

Secunda distinctio de prouinciali capitulo et generali, et studio, et predicatione.

The text cannot be impugned, since the Sack Friars have exactly the same thing in their prologue. Nor is it plausible to suggest, as Thomas does (263 n.127), that *de prouinciali capitulo et generali* is an expansion of an earlier version which just had *de capitulo generali*; if this were the original wording, the least likely way of updating it would be to insert *prouinciali* before *capitulo* and *et* after it. If anything was added later, it was *et generali*.

When I argued in 1995 that it was quite credible that the Dominicans envisaged provincial as well as general chapters as early as 1216, I unfortunately oversimplified the purport of the 12th constitution of Lateran IV, as if it would necessarily oblige the Dominicans to hold provincial chapters as soon as they expanded into different territories. What Lateran IV actually called for was the holding of 'common' chapters 'in singulis regnis sive provinciis' by monasteries of monks or canons whose superiors were not in the habit of coming together for any kind of chapter; the model proposed by the council was the *general* chapter of the Cistercians, and the decree did not impose any new obligation on orders which already held general chapters, though this was perhaps not immediately clear to everyone. Evidently some Praemonstratensian abbots started holding chapters in particular ecclesiastical provinces, but they were firmly told to stop it by a general chapter (Krings 202):

De privatis capitulis et inordinatis

Sunt quidam,¹⁰ ut didicimus, patres abbates, qui per diversas provincias quedam solent conprovincialium suorum abbatum quasi generalia capitula convocare ... Ne igitur unitati Ordinis deformitatem pariat capitulum multitudo, inhibemus districte, ne huiusmodi capitula de cetero convocentur.

The ban on 'private chapters' was later incorporated into the customary (Lefèvre IV 3).

¹⁰ Krings prints *sunt quidem*.

In principle, then, Lateran IV did not oblige anyone to hold both regional and general chapters. As Humbert recognised, the Dominicans borrowed heavily from the Praemonstratensians in drawing up their own customary in 1216;¹¹ it is therefore not surprising that they envisaged themselves holding general chapters. Nevertheless, even if they realised that this would satisfy the requirements of Lateran IV, it would have been quite natural for them in 1216 to foresee a provincial chapter coming first. The order had grown out of a diocesan institute, but the diocesan institute itself had been devised as a way of giving permanent, if limited, form to the papal mission against heresy which had operated in the whole region, not just in the diocese of Toulouse;¹² Dominic himself had had particularly close ties with the diocese of Carcassonne,¹³ and his consultation of Simon de Montfort and Archbishop Arnaud in 1217 (*ACB* #26) shows that he had not forgotten his previous responsibilities in the larger mission. No one in 1216 can have foreseen the precipitate dispersal of the brethren which occurred in 1217; even if the nascent order hoped to spread far and wide, it would have been natural to assume that it would expand first into other dioceses involved in the anti-heretical mission from which it had sprung. If that had happened, the first chapter it held would, in all probability, have brought together brethren working in the ecclesiastical province of Narbonne, in a chapter which could be called 'provincial' by analogy with the provincial councils for which Lateran IV also called (const. 6).

It is possible that even in 1216 the brethren anticipated that their order would be organised in regions, like two other orders which existed to perform a public service and were present in Toulouse, the Templars and the Hospitallers;¹⁴ though they did not

¹¹ J.J.Berthier, ed., *Humberti de Romanis opera de vita regulari* II, Rome 1889, 2.

¹² Gerald de Frachet refers to 'about 40 years' elapsing between the founding of the order and the murder of the Avignonet inquisitors in 1242 (*MOPH* I 231), which only makes sense if the order was seen as the direct continuation of the old anti-heretical *predicatio*. Puy-laurens similarly believed that the order was founded to prevent the *predicatio* coming to a standstill (J.Duvernoy, ed., *Guillaume de Puy-laurens, Chronique*, Paris 1976, X 54).

¹³ Cf. Constantine #55, 62; as the Modena manuscript of the Languedoc canonization process shows, Montréal was one of the places where witnesses were interviewed, including those reported in *ACL* #22-25 (cf. V.J.Koudelka, *AFP* 42 [1972] 65).

¹⁴ On the strength of both orders in Languedoc, see E.Delaruelle, *CdF* 4 (1969) 315-334; Delaruelle convincingly argues that their failure to participate in the Albigensian crusade was due to their links with the local nobility. The prior of the Hospital in Toulouse was one of the people Count Raymund of Toulouse sent to the pope

use the term 'province',¹⁵ both already had well-developed structures of regional government, and the Templars, at least, were apparently already holding regional as well as general chapters.¹⁶ But such an hypothesis is not needed to explain the rubric 'de prouinciali capitulo et generali' in PC's 'synopsis'.

That study was on Dominic's mind as early as 1216 is shown by the fact that he took his recruits in Toulouse to theology classes there (Humbert, *Legenda s. Dominici* #40); and preaching was obviously central to the concerns of an 'ordo predicationis'.¹⁷ We may, then, accept the 'synopsis' of the second distinction as it stands, and see it as a programme for future legislation laid down in 1216. As such, it constituted an essential part of the agenda for the general chapter of 1220.

2. *Diffinitors*

Apart from Jordan's lamentably curt remarks in *Lib.* 86-87, our best external evidence on the 1220 chapter comes in the Bologna canonization process. Inter alia, we learn that Dominic got *diffinitores* appointed at it, who were to wield considerable power. Before we proceed to our detailed examination of the second distinction of PC, it will be useful to take a general look at these diffinitors.

As is to be expected, Dominican legislation on chapters was influenced by constitution 12 of Lateran IV, on 'common chapters' of religious 'in singulis regnis sive provinciis'. Although Lateran IV did not use the word 'diffinitor', it told religious who were new to this kind of exercise to invite two Cistercian abbots to help them,

in 1209 to try to avert the threat posed by the imminent crusade: *Chanson de la Croisade Albigeoise* laisse 10.11; Pierre des Vaux-de-Cernai, ed. P.Guébin and E.Lyon, *Petri Vallium Sarnaii monachi Hystoria Albigensis*, Paris 1926-1939, #68, with the editors' note. Regional major superiors of both orders were included among the witnesses to the formal abjuration of heresy by the consuls of Toulouse on 25 April 1214 ('... majoribus magistris militie Templi in Aragonia et Provincia, majore priore Jerosolimitani hospitalis in Aragonia ...') (Cl.Devic - J.Vaissète, *Histoire Générale de Languedoc*, Toulouse 1874-1892, VIII 650).

¹⁵ In a later article we shall see reason to believe that it was the Dominicans themselves who first gave *prouincia* the technical sense, which subsequently became universal, of an administrative territory within a religious order; but this did not happen until 1221.

¹⁶ Cf. Thomas 202-203; A.Gauthier, *Dizionario degli Istituti di Perfezione* VII 1059; A.J.Forey, *ibid.* IX 889-890.

¹⁷ It was probably in these terms that the 'order' was originally conceived even while it was still just a diocesan institute (cf. AFP 65 [1995] 23-28).

since the Cistercians were 'in huiusmodi capitulis celebrandis ex longa consuetudine plenius informati'; these two abbots were to choose two of the participating superiors, and the four of them were to preside over the chapter ('ipsi quatuor presint capitulo universo'). PC II 8a defines at least the judicial power of Dominican diffinitors in terms drawn from what Lateran IV said about the authority of these four presidents:

Lateran IV

Quod statutum fuerit illis quatuor approbantibus, ab omnibus inuolabiliter observetur, omni excusatione et contradictione ac appellatione remotis.

PC II 8

Et ipsorum sententia tam in hiis quam in aliis inuolabiliter obseruetur, ita quod ab ipsorum sententia a nemine liceat appellari.

There is not the slightest hint in any source that the Dominicans felt a need for Cistercian help in running their first general chapter in 1220. Nor can there be any doubt that Dominic had as much authority to preside at it as the abbots of Cîteaux and Prémontré had at their chapters. But, as we learn from the testimonies of Ventura and Rudolph (*ACB* #2 and 33), Dominic first subjected himself to the judgement of 'the brethren' (i.e. presumably the members of the chapter) by asking to be deposed; when they refused, he decided that diffinitors should be appointed who were to hold supreme authority. According to Ventura,

Tunc temporis ipse frater Dominicus habebat plenam potestatem et dispositionem et ordinationem et correctionem totius ordinis fratrum predicatorum a domino papa.¹⁸ Et eodem anno fuit celebratum primum generale capitulum ordinis ipso teste presente apud Bononiam. Et tunc placuit ipsi fratri Dominico quod diffinitores constituerentur in capitulo, qui haberent plenam potestatem super totum ordinem et super ipso magistro et ipsis diffinitoribus, scilicet diffiniendi, ordinandi, statuendi et puniendi, salua reuerentia magistrali.

According to Rudolph,

Tempore quo primum capitulum fratrum predicatorum fuit celebratum in ciuitate Bononiensi dictus frater Dominicus dixit inter fratres, Ego sum dignus depositione, quia ego sum inutilis et remissus, et

¹⁸ For this reading, see AFP 66 (1996) 79-85. On the textual tradition of *ACB*, see *ibid.* 59-62.

humiliauit se multum in omnibus. Et cum fratres nollent ipsum deponere, placuit ipsi fratri Dominico quod constituerentur diffinitores qui haberent potestatem tam super ipsum quam super alios et super totum capitulum statuendi, diffiniendi et ordinandi donec duraret capitulum.

It might seem from these testimonies that all legislative and disciplinary authority passed to the diffinitors alone, but this is clearly not true. Jordan, who was present at the 1220 chapter, tells us little enough about it, but he does mention one of its rulings: 'De communi fratrum consensu statutum est generale capitulum uno anno Bononie altero uero Parisius celebrari' (*Lib.* 87). If this decision was made 'de communi fratrum consensu', it was presumably not made by the diffinitors on their own. In fact, their rôle at the chapter must have been, by and large, not unlike that ascribed by Lateran IV to the four presidents: they presided and they had the final say over what was decided, or at least over its formulation, but they did not immediately go into a little huddle and make all the decisions themselves.

Lateran IV gave the two Cistercian abbots absolute freedom to choose the other two presidents of the chapter as they saw fit ('absque contradictione duos sibi de ipsis associant, quos viderint expedire'), but it is inconceivable that Dominic himself appointed the diffinitors at the 1220 chapter. Both Ventura and Rudolph say that he wanted diffinitors 'to be appointed (*constituerentur*)', which must mean 'appointed by someone else'.¹⁹ Furthermore, it would be highly peculiar for the Master to nominate diffinitors who were to have power over himself; *salua reuerentia magistrali*, they could even punish him. The appointing authority must therefore have been the chapter itself; and if the chapter appointed diffinitors, it must first have fixed a procedure for doing so. We may presume that, once a procedure was chosen, a note was made of it for future reference, in other words, it was written into the constitutions.²⁰

¹⁹ *Constituere* suggests an act of authority; compare the difference between *eligere* and *instituere* in PC II 24a and 25: 'Priores conuentuales a suis conuentibus *eligantur* ... prior autem conuentualis de consilio discretorum fratrum *instituat* subpriorem'.

²⁰ There is, perhaps, no actual proof that Dominican general chapters continued to use diffinitors in the sense under discussion. But it is unlikely that the order abandoned a practice sanctioned by Lateran IV and by Dominic; and, as we shall see, there are aspects of PC which strongly suggest that it was maintained, though a new kind of diffinitor was later introduced.

We do not know how the diffinitors were appointed in 1220. In principle, there are four possibilities: the chapter may have decided that certain officials were ex officio diffinitors; if so, these officials may have been given the right to coopt other diffinitors; or they may have been supplemented by other diffinitors chosen by a vote in chapter; or there may have been no ex officio diffinitors, and they were all chosen by vote.

Granted the special rôle of the diffinitors in disciplining the Master, the Dominicans might have adapted the Cistercians' way of dealing with a remiss abbot of Cîteaux: according to the *Carta caritatis posterior*, it was the responsibility of the abbots of the four senior daughter-houses of Cîteaux to admonish him and, if the worst came to the worst, to depose him at the general chapter.²¹ What is more, it seems that these four abbots had progressively acquired a right to preside at the chapter together with the abbot of Cîteaux. In 1185, the general chapter issued a regulation that 'qui praesidet Capitulo semper unum teneat secum de quatuor primis abbatibus in Capitulo, modo unum, modo alterum, per diversa spatia diei, dum definitiones fiunt, et duos de aliis discretioribus';²² this is presumably the inspiration of the four presidents of 'common' chapters in the Lateran IV constitution. By 1197, however, all four of the 'first abbots' seem to be involved: 'Ipse [sc. dominus abbas Cisterciensis] quatuor primos abbates et de aliis filiis suis quos magis discretos et aemulatores ordinis cognoverit assumat' (Canivez, *Statuta* I 221). The acta of 1214 contain a particularly solemn *decretum*, to which the seals of the four first abbots were appended together with that of the abbot of Cîteaux (Canivez, *Statuta* I 429-430).

The obvious Dominican candidates for the equivalent responsibility would be the provincials (and, fear not, we shall find compelling evidence that the legislation of 1220 did include reference to provincials); they might have been made ex officio diffinitors, on their own or with others who were coopted or elected. But there is one objection to this: provincials were originally appointed by the general chapter, as the first provincial of Lombardy and the second provincial of Provence were;²³ this makes it highly unlikely that provincial chapters had absolute power to discipline them—even

²¹ F.de Place et al., *Cîteaux, documents primitifs*, Cîteaux 1988, 84-86.

²² J.M.Canivez, ed., *Statuta Capitulum Generalium ordinis Cisterciensis* I, Louvain 1933, 99.

²³ Jordan, *Lib.* 88; Gerald de Frachet, AFP 70 (2000) 20.

when they received the right to elect provincials, they did not acquire the power to depose them, but only to suspend them until the next general chapter (PC II 3). This means that, at least if the matter was serious enough, the general chapter would have to deal with misbehaving provincials; if the provincials themselves were the official diffinitors of the chapter, this could be awkward.

In all probability, then, all the diffinitors were selected by a vote in chapter. If so, it makes good sense to believe, as Thomas suggests, that the procedures indicated in PC II 1ab for choosing diffinitors at the provincial chapter were adapted from those originally laid down for the choice of diffinitors at the general chapter; and, since Lateran IV established a system of four 'presidents', it is likely that the Dominicans, from the outset, opted for four diffinitors at chapters, as specified in PC II 1a.²⁴

The chapter which is most likely to have composed the order's earliest legislation on diffinitors is obviously that of 1220, since that chapter already needed to define at least how they were to be appointed. However, there is, at first sight, a terminological problem: the Rodez text on diffinitors (II 1-9) uses the word *diffinitor*, as do Ventura and Rudolph, but other legislation which surely goes back to 1220 seems to ascribe a similar function to people who are designated without the word (II 20-21). On the general principle that legislative language becomes more precise, not less, this might suggest that II 20-21 derives from a time before the order had absorbed the word *diffinitor* into its official vocabulary.

According to II 20-21, potential preachers, when they are presented to the chapter, must be examined 'ab ydoneis personis ob hoc et ob alias capituli questiones institutis', questions brought to the chapter are to be resolved 'ab hiis qui ad hoc statuti sunt', and, should there be quarrels over books or anything else, these are not to be settled in the chapter itself 'sed fratres eligantur qui in hoc periti fuerint et post refectionem in loco competenti extra capitulum discussa ueritate litem dirimant et inter fratres pacem restituant'. II 21d in particular seems to give wide-ranging authority to the *prelatus maior* 'cum aliis qui ad hoc instituti sunt'.

All this is reminiscent of diffinitors at Cistercian general chapters (cf. Thomas 193-195). Although the word *diffinitor* is not used,

²⁴ This seems to be the generally held view: cf. Thomas 194; Hinnebusch, *History of the Dominican Order* I 83; Vicaire, *Histoire* II 202.

their original function is clearly expressed in an early legislative text, found among the capitular decisions antedating 1134:

Si quelibet causa sponte confessa vel clamore exorta in generali capitulo cistercii nascatur, communi assensu omnium abbatum si possit concorditer fieri diffiniatur. Si autem pro capacitate sensus uniuscuiusque, quod sepe accidit, inter se dissenserint, pater cisterciensis monasterii quatuor abbatibus ad hoc idoneis hanc diffinire precipiat, et quod illi utilius iudicaverint omnis sancte multitudinis conventus sine retractatione teneat.²⁵

What began as an ad hoc measure became, with the passage of time, a regular feature of Cistercian general chapters. The chapter of 1197 (Canivez, *Statuta* I 221) apparently still leaves it to the abbot of Cîteaux to decide whether or not to appoint diffinitors ('Cum dominus abbas Cisterciensis voluerit definitores eligere ...'), but by 1206 it seems to be taken for granted that they will be appointed at every chapter, since the time is fixed for their nomination without any hint that such a nomination may not take place at all (Canivez, *Statuta* I 320): 'Secunda die Capituli nominentur Definitores ante tertiam'; similarly in 1210, when the time was altered (Canivez, *Statuta* I 369): '... in die Sanctae Crucis ... fiat sermo et in Capitulo et ante Sextam eius diei Definitores nominentur'.

The function of the diffinitors also expanded far beyond the judicial rôle with which they started. Already in the text cited above from 1185, *dum definitiones fiunt* seems to refer to the chapter's decision-making process as a whole; and the *libellus definitionum* which every abbot was told to acquire without delay in 1204 (Canivez, *Statuta* I 296) is plainly the collection of all the acts of general chapters. Similarly in 1212, abbots were severely warned not to be lax about obtaining a copy of the *definitiones generales* and getting them read in their monasteries when they returned home (Canivez, *Statuta* I 390). Every year from 1214 to 1217 the abbot of Cîteaux and the four first abbots were entrusted with *definitionum retractatio* (Canivez, *Statuta* I 423, 437, 460, 478), which evidently refers to a new edition of the collected decrees of general chapters. I do not know whether this use of *definitio* was caused by the enlarged rôle of the diffinitors or whether it was responsible for it; but by 1224, at any rate, there is explicit evidence that it was the

²⁵ Ph. Guignard, *Les monuments primitifs de la règle cistercienne*, Dijon 1878, 258; Canivez, *Statuta* I 19-20.

diffinitors who compiled the official text of any chapter's *definitiones*: the chapter of that year decreed that 'diffinitiones Capituli generalis omni anno ab omnibus uniformiter habeantur, sicut fuerint *ab originali Diffinitorum* transcriptae' (Canivez, *Statuta* II, Louvain 1934, 31).

As the diffinitors' function expanded to become co-extensive with the whole work of the chapter, it inevitably converged with that of the presidents of the chapter. This process was completed, for the Cistercians, on 7 June 1265, when Clement IV, in his bull, *Parvus fons*, issued new regulations on the selection of diffinitors:

Insuper statuimus et ordinamus quod in Ordine prædicto iuxta morem laudabilem hactenus obseruatum annis singulis generale Capitulum celebretur, in quo viginti quinque Definitores statuuntur hoc modo. Abbas Cisterciensis tamquam Pater primus nominet quatuor Definitores de generatione sua speciali, quos idoneos esse crediderit ad definitionis officium exercendum. Et exinde prædicti primi quatuor Abbates, scilicet quilibet eorum de generatione sua, quinque dicto Abbati Cistercii seorsum vel coram aliis nominabit. Ex quibus quinque Abbas Cistercii vno prætermisso quatuor eligat, quos sufficientes esse crediderit. Et sic viginti Definitores erunt suis quatuor cum ceteris numeratis. Quos et prædictos quatuor primos Abbates idem Abbas Cistercii in Capitulo die secunda Capituli nominabit et Definitores instituet, et ipse cum eis vigesimus quintus erit.²⁶

The traditional presidents of the chapter, including the abbot of Cîteaux, thus became diffinitors themselves, together with the twenty others whom they appointed between them. The abbot of Cîteaux's freedom to choose diffinitors was carefully preserved, but the rôle of the four first abbots in their selection was also formalised; previously, since the general chapter of 1197 (Canivez, *Statuta* I 221), the abbot of Cîteaux had been requested to consult them, but only as a matter of courtesy, not of obligation.

Before 1265, however close the diffinitors had come to the presidents of the chapter, the distinction between them was still

²⁶ The text of the bull has been printed several times; I quote from *Bullarium Romanum* I, Rome 1638, 128-129. Clairvaux and some other abbeys objected, so the pope appointed the bishop of Le Puy, the abbot of Case-Dieu, and Humbert of Romans to go to the Cistercian chapter and try to sort things out. At the chapter, however, the matter was taken out of their hands when the assembled abbots chose Cardinal Guido, a former abbot of Cîteaux, to act as arbitrator, and his settlement was confirmed by the pope on 23 Dec. 1265 (*Reg.* #181).

maintained, as can be seen from a decree of the 1234 chapter (Canivez, *Statuta* II 131-132), which entrusted the 'retractatio et compilatio diffinitionum et ordinatio' to four abbots, who, when their work was done, were to submit it 'ad dominum Cistercii et quatuor primos abbates', and they in turn were to pass it on to the diffinitors, 'et per Diffinitorum manus quod factum fuerit Capitulo generali referatur'.

However confusing the terminology may be, it is clear enough where the Dominicans fit into this pattern of evolution. They introduced two radical innovations: their diffinitors were, it seems, appointed by a vote in chapter and neither the Master nor anyone else had an *ex officio* right either to nominate or to be one; and, secondly, they had authority to discipline even the Master.²⁷ Apart from this, they gave the name 'diffinitor' to the people who were responsible, with the Master, for finalising all capitular decisions (a responsibility which the Cistercian diffinitors had almost certainly acquired by now); they also identified these diffinitors with the chapter presidents called for by Lateran IV, a development which had not yet occurred at Cistercian chapters.

At the same time, though, the Dominicans evidently felt the need for something more like the earlier Cistercian diffinitors, who would deal with certain specific questions; these are the people who feature in PC II 20-21, and their function is distinct from that of the *diffinitores*: the *diffinitores* 'cum magistro ordinis omnia diffinient et constituent et tractabunt' (II 7a); the others have a judicial and executive function, not a universal or legislative one, their remit being to deal, with the Master, 'de solutione et terminatione questionum, de correctione fratrum, de modo penitentiarum, et de predicatoribus et eorum sociis ob predicandum et studendum mittendis, et quando et ubi et per quantum tempus moraturis' (II 21d). The responsibilities given to *diffinitores* in II 7-9 correspond to those which Ventura and Rudolph attribute to the *diffinitores* whom Dominic got appointed in 1220, who had complete authority 'diffiniendi, ordinandi, statuendi et puniendi'. It would be unduly sceptical to suspect that Ventura and Rudolph were wrong about the function or title of the 1220 diffinitors.

²⁷ In his useful chapter on the operation of Cistercian general chapters in *L'ordre cistercien et son gouvernement des origines au milieu du XIII^e siècle*, Paris 1945, J.B.Mahn notes (p.187), 'Il est curieux de constater que jamais, durant toute notre période, une pénitence, si légère soit-elle, n'est imposée à un abbé de Cîteaux'.

The vague ways in which the second group is described, far from being evidence that II 20-21 comes from an earlier stratum of legislation in which the word *diffinitor* had not yet entered the order's vocabulary, actually implies the contrary. It would have been quite natural to call these people 'diffinitors'; the only reason for not doing so was that the word had already been applied to someone else. If, as is both likely and generally agreed, II 20-21 goes back to 1220, this confirms that it was indeed the 1220 chapter which introduced the use of the term *diffinitores*.

The simultaneity of diffinitors (new Cistercian sense) and diffinitors (old Cistercian sense) is both corroborated by and explanatory of Ventura's strange statement that the diffinitors whom Dominic got appointed in 1220 were to have authority 'super totum ordinem et super ipso magistro *et ipsis diffinitoribus*'. *Et ipsis diffinitoribus* is found only in the Venice manuscript, and it has no support except Carcassonne's *et ipsius ordinis diffinitoribus* (which makes little sense and is presumably a corruption of the Venice reading); all our other witnesses contrive to omit the words.²⁸ Nevertheless, in spite of its poor attestation, *et ipsis diffinitoribus* must be accepted as a genuine part of the text: it is easy to see why translators, excerptors and adaptors would omit it, but it is impossible to imagine why anyone would interpolate it; nor is there any obvious way in which it could have entered the text by accident. Ventura's point is that the diffinitors (new Cistercian sense) were to have authority even over the diffinitors (old Cistercian sense), in spite of the fact that the decisions of the latter were to be received without demur.

At least in their earliest legislation, the Dominicans managed to avoid ambiguous use of *diffinitor* by giving no specific title to diffinitors (old Cistercian sense). But at a later stage (in 1225, as we shall see), they created a fresh ambiguity of their own by introdu-

²⁸ They are missing in the Modena extracts, and even in the Madrid translation (f.50^v-51^r): 'Ally plogo a sancto Domingo que constituyessen difinidores en el capitulo para que touiessen plenario poderio sobre toda la orden e sobre el maestro et para difinir et statuir e ordenar e punir salua la reuerencia del oficio del maestro'. Dietrich does not quote the passage, and Flaminius's 'translation' omits the words (*Vitae Patrum* f.LXVI): 'Placuit ipsi magistro Dominico, ut instituerentur ii, qui diffinitores appellantur, qui ius in totum ordinem, ac in ipsum generalem magistrum, qui ius diffiniendi, ordinandi, ac puniendi, salua tamen magistrali reuerentia, haberent'. The Borselli abridgement omits the whole sentence.

cing a system under which the rôle of the diffinitors chosen at the general chapter was taken over by the representatives of the provinces: in two years out of three, provincial chapters were to elect 'capituli generalis diffinitores', and in the third year the provincials themselves were to go to the general chapter (PC II 5ac). Thus *diffinitor* acquired a new technical meaning, in as much as it refers to a delegate to a general chapter who is not a provincial prior; in this sense, *diffinitores* are distinguished from *priores provinciales*. Nevertheless, in every third year the provincials 'cum magistro ordinis omnia diffinient' (II 7a).

No doubt, the 1225 innovations resulted in more efficient representation of the order at general chapters, and they yielded a chapter sufficiently small to be able to operate as a diffinitorium; but in principle it was no longer appropriate to refer to *diffinitores*, since the word had always been used to denote a small group within the chapter, not the capitulars at large. And if the word was to be maintained, it is unfortunate that it was applied specifically to elected delegates who were not provincials, since *diffinitio* was the task of provincials too, when it was their turn. In as much as the function of the diffinitors (old Dominican sense) passed indifferently to provincials and to diffinitors (new Dominican sense), it is not surprising that the constitutions retained passages about *diffinitores* which must apply to provincials as much as to diffinitors (new Dominican sense), such as the section on the diffinitors' responsibility to discipline the Master (II 8-9). And it would have been extremely difficult to purge the constitutions of this ambiguity. When PC II 9 was revised in 1240-1242 (MOPH III 15, 20, 22), *diffinitores* was retained in its comprehensive sense, and it recurs in a new constitution created in 1241-1243, laying down the conditions under which the *diffinitores* might accept the Master's resignation (MOPH III 20, 22, 24-25).

The 1225 innovations generated a terminological muddle; but they do indirectly confirm that the practice of having diffinitors had been maintained since 1220. If the new legislation had been drafted from scratch, it would have been more natural to envisage it as altering the composition of general chapters; there was no reason to conceive it, as it plainly was conceived, as bringing in a new way of choosing diffinitors, unless there was an older way of doing so for it to supersede. This also increases the likelihood of the new text being to some extent an adaptation of an older text inherited from the 1220 chapter.

3. *The second distinction*

Since different parts of the second distinction shed light on each other, a degree of circularity is unavoidable in our examination of it. However, we can secure a beach-head from which to launch our operation by beginning with II 15-16.

(a) *Distinction II 15-16*

II 15-16, on provincials, introduce us to some particularly primitive terminology and are among the most obviously stratified sections in PC:

(15a) Statuimus ut prouinciarum priores uel regnorum in capitulo generali a magistro ordinis et diffinitoribus, premissa diligenti examinatione, confirmentur uel amoueantur. Nam eorum electio ad prouinciale capitulum pertinebit.

(b) Statuimus ut magister solus possit confirmare priorem prouincialem.

(c) Mortuo igitur priore prouinciali uel amoto, duo fratres de *quolibet*²⁹ conuentu illius prouincie eligantur qui cum suo priore conuentuali secundum formam superius positam electionem prioris prouincialis celebrabunt, hoc excepto quod eos includi sicut in electione magistri non oporteat.³⁰

(d) Item priore prouinciali mortuo³¹ uel amoto, prior qui locum eius optinet teneatur *conuocare* quam citius commode poterit electores,³²

²⁹ The Sack Friars and later Dominican texts have *quolibet*, but Rodez has *uno quolibet*, which ought to give the sense 'any one convent, it does not matter which', rather than 'any convent you care to mention, i.e. all of them' (cf. Quintilian XII 1.44, 'Multa dici possunt similia, sed vel unum ex iis quodlibet sufficit'). Assuming that Rodez's reading is due to textual rather than linguistic error, it would be simplest to emend it to *unoquoque*, but the parallel and derivative texts provide overwhelming support for *quolibet*.

³⁰ Rodez has *oportea* (sic), and the Sack Friars have *oporteat*; Raymund and later Dominican texts have *oportet*.

³¹ There is some uncertainty about the text: Rodez has *prouinciali priore mortuo*, and the Sack Friars have *mortuo priore prouinciali*, but the acta of 1236 apparently have *priore prouinciali mortuo*—at least this is what Reichert prints without noting any variants (MOPH III 8.22). This innovation comes immediately after a similar one about conventual priors, beginning 'priore conuentuali mortuo vel amoto', which makes it probable that the wording of 15d was meant to be parallel to it. It is, however, conceivable that *priore* was understood the second time round, and that the acta originally just had 'Item, prouinciali mortuo uel amoto', which is, as it happens, the reading of the Minerva manuscript of Bernard Gui (A.p.4 p.93); in this case *priore* could have been supplied either before or after *prouinciali* when the text was transferred to the constitutions.

³² It is unclear what the text should be, except that Rodez's *conuenire* (in place of *conuocare*) is entirely idiosyncratic. The 1236 acta alone support Rodez's *com-*

et tunc prior prouincialis eligatur et prouinciale capitulum celebrétur, nisi iam fuerit³³ celebratum. Quod si modo³⁴ non elegerint qui debent eligere, potestas eligendi³⁵ ad magistrum <ordinis>³⁶ transferatur.

(e) Item statuimus³⁷ quod electio prioris prouincialis spectet tantum ad priores conuenticuales cum duobus fratribus de quolibet conuentu <ad hoc>³⁸ electis, omnibus fratribus ad illum conuentum³⁹ pertinentibus, si commode potest fieri, conuocatis.

15d was added in 1236 (MOPH III 8.22-26), and 15e was confirmed then (MOPH III 7.27-28).⁴⁰ 15b is manifestly a subsequent modification added to 15a, and its equivalent is found in a quite different place in the Sack Friars' constitutions (after the first paragraph of II 4). 15a wears its prehistory on its sleeve: 'Nam eorum

mode, but in a different place: *conuocare quam citius poterit commode electores* (MOPH III 8.23); the Sack Friars have *conuocare electores quam citius poterit*, and later Dominican texts have *conuocare quam citius poterit electores*. *Commode* receives indirect support from Lateran IV const. 24, which refers to electors 'qui debent et volunt et possunt commode interesse'.

³³ Rodez has *iam fuit*, but the acta of 1236 have *iam fuerit* (MOPH III 8.25); the Sack Friars have *fuerit prius*, and later Dominican texts have *prius fuerit*.

³⁴ It is unclear what the correct reading is here: Rodez has *quod si modo*, the acta of 1236 have *si statim*, and later Dominican texts have *quod si tunc*; the Sack Friars substitute *quod si ... infra tres menses*.

³⁵ The acta of 1236 have *eligendi uel prouidendi*, Rodez and Porto have *prouidendi*, the Sack Friars, AGOP XIV L 1, BL add. 23935 and Prague VIII B 23 have *eligendi*. When the text was changed in 1270-1272, *prouidendi* prevailed (MOPH III 152.27, 157.12, 161.28). Strictly speaking, there is no one from whom 'potestas prouidendi' could be transferred to the Master, so *eligendi*, in the general sense of 'choosing', makes more sense; but in principle *eligere* is what electors do, and *prouidere* is what someone else does if the electors fail to elect, so either way the text is unsatisfactory. It is not clear whether *eligendi uel prouidendi* is part of what the 1236 capitulars put into the constitutions or whether some scribe (or Bernard Gui) intended to register the fact that a variant existed. I have opted for *eligendi* with little confidence.

³⁶ Rodez omits *ordinis*, but the word is in the 1236 acta and later Dominican texts.

³⁷ The confirmation of this in the acta of 1236 (MOPH III 7.27-30) is presented with no introductory verb except *confirmamus*; however, *confirmamus* in MOPH III 7.9 becomes *statuimus* in PC II 23c, so *statuimus* should probably be retained here, notwithstanding *uolumus* in Raymund and the Sack Friars.

³⁸ Rodez omits *ad hoc*, but the words are in the 1236 acta and in the Sack Friars' constitutions, and later Dominican texts have *ad hoc idem*.

³⁹ The 1236 acta just have *ad illum*; later Dominican texts have *ad conuentum illum*, and the Sack Friars support Rodez's *ad illum conuentum*, which look like alternative ways of incorporating the same capitular act into the text.

⁴⁰ The Sack Friars have 15e in 15a before 'Nam eorum electio ...'.

electio ad provinciale capitulum pertinebit' clearly announces a new practice which *will* be followed (i.e. previously there was a different procedure), and it is presented as the explanation of what precedes. We know that Jordan was appointed provincial of Lombardy by the general chapter in 1221 (*Lib.* 88), and both Gerald de Frachet and Bernard Gui say that this was how the second provincial of Provence was appointed;⁴¹ II 15a is patently an adaptation of an earlier text which stated that *prouinciarum priores uel regnorum* were actually nominated by the general chapter.

The title 'prouinciarum priores uel regnorum' was obviously inspired by Lateran IV's constitution requiring common chapters of religious to be held 'in singulis regnis sive provinciis' (const. 12). The Dominicans had plainly not yet thought of the more convenient phrase 'prior prouincialis', which tallies with the conclusion of our examination of the development of individual provinces (cf. AFP 70 [2000] 68). Since the provincial's jurisdiction is defined in terms of the territories within which common chapters were supposed to be held, it must be presumed that the holding of such chapters was an essential part of his task; it follows that, as we had surmised, provincial chapters were envisaged by the order even before they acquired the right to elect the provincial prior.

We know that Jordan was appointed provincial in 1221, and so, probably, was the first provincial of Rome (cf. AFP 70 [2000] 45-48); it is therefore reasonable to suppose that the original form of PC II 15a goes back to 1221, if not to 1220. I have argued that the second provincial of Provence was appointed in 1225, and that Bernard was appointed provincial of Germany in 1226 to hold a provincial chapter, and then immediately stood down so that a provincial could be elected (AFP 70 [2000] 39, 58-59);⁴² if so, provincial chapters must have been given the right to elect provincials in 1225 or 1226. Even if we leave conjectures out of consideration, we cannot extend the options much further in either direction. Bertrand seems to be last attested as provincial of Provence on 28 March 1223 (AFP 70 [2000] 39), so the second provincial cannot have been appointed before the chapter of 1223; this means that the

⁴¹ AFP 70 (2000) 20; E.Martène - U.Durand, *Veterum scriptorum et monumentorum ... amplissima collectio*, repr. New York 1968, VI 419.

⁴² Conrad of Höxter, the first provincial of whom the German province retained any memory, is not directly attested until late 1229 or early 1230 (Scheeben, QF 35 [1938] 156).

new legislation did not yet exist in 1223. Unfortunately we do not know when the third provincial of Provence was elected, but the fourth was already in office some time in 1229 (MOPH XXIV 32). The preamble to PC says that each province was represented in 1228 by its provincial and two diffinitors elected by its provincial chapter, and it is scarcely conceivable that provincial chapters acquired the right to elect diffinitors without having the right to elect provincials. The outer limits for the change in II 15a are therefore 1224 and 1227.

The revised text of 15a gives provincial chapters the right to elect provincials, but they were to be 'confirmed or removed' at the general chapter. It is clear that 'confirmed' is being used in a somewhat unusual sense—in general, the alternative is not 'removed' but 'cassated, not confirmed'. Church law generally required confirmation by the appropriate ecclesiastical superior before someone elected to any office could assume authority, though an exception was made in cases where papal confirmation was needed and might take a long time to arrive;⁴³ but the provincial chapter was held at Michaelmas (II 16e), and it would be absurd to make the province wait until the following Pentecost to have its provincial confirmed in this sense. 'Confirmed or removed' belong together; they refer to what will later be called 'retention or absolution' of the provincial (cf. MOPH III 168.4-5). If provincials were routinely discussed at every general chapter,⁴⁴ they could be dismissed, if need be, within less than a year of their election; in these circumstances, it was probably not deemed necessary at first for them to be confirmed in any other way. Even before the new text was introduced, the chapter of faults with which every chapter began (II 17) provided an occasion for provincials to be disciplined, and, since they were at first appointed by the general chapter, the general chapter obviously had the right to dismiss them.

15b allows the Master to confirm provincials on his own, but says nothing about removing them.⁴⁵ This must mean that the con-

⁴³ Cf. Raymund of Penyafort's lucid summary in *Summa* III 26.3, Rome 1603, 329-330.

⁴⁴ In his edition of the 13th-century Praemonstratensian customary, Lefèvre edited a 'forma capituli' from 1227 which shows that by then, at any rate, one of the main functions of Praemonstratensian diffinitors was to discuss whether any abbots should be deposed (Lefèvre 145).

⁴⁵ Raymund added 'uel amouere' when he included 15b in const. II 3, but the Sack Friars confirm that it was not in the original text.

firmation of provincials had become an issue in its own right, the only likely reason for which was a feeling that it was canonically dubious for them to operate for months on end before being confirmed. Unless they were elected during or just before a general chapter, the only possible source of prompt confirmation was the Master. There can be little doubt that this is why 15b was introduced, possibly quite soon after the revision of 15a.⁴⁶

Even without 15b, 15a+c does not form a coherent unit. 15a declares that it will be the business of the provincial chapter to elect the provincial, but 15c names an electorate which differs significantly from the provincial chapter as defined by II 1c ('capitulum provinciale appellamus priores conuentuales cum singulis sociis a capitulo suo electis et predicatores generales'), and it is unlikely to coincide with any earlier form of the chapter.⁴⁷

The first change, then, was to give the provincial chapter the right to elect the provincial. This occurred after 1223 and before 1228, the most likely date being 1225 or 1226. It can scarcely be later than, and probably happened at the same time as the changes which made provincial chapters responsible for electing diffinitors to the general chapter (II 5a), since it looks as if these were part of a radical reshaping of the order's legislation on chapters.

The second change, which defined the electorate more exactly (15c), obviously occurred before II 15e was introduced, which must have been at the chapter of 1234 or 1235 since it was confirmed in 1236. We have little to help us date 15c more precisely except a further question: how is the definition of the provincial's electors in II 15c related to the definition of the provincial chapter in II 1c? On the face of it, if 1c was already in place, then 15c was scarcely

⁴⁶ The fact that it begins 'Statuimus' proves nothing about its date. Since 1228 at the latest no single general chapter had *potestatem statuendi*, the right to make constitutions (Preamble, II 6b): according to Humbert, 'Ab initio quodlibet capitulum generale poterat statuere, sed tempore generalissimi capituli primi fuit facta ista constitutio' (on three chapters being required for any change in the constitutions) (ed. Berthier II 58). However, if *statuimus* in II 15e and 23c is a 'translation' of *confirmamus* in the acta of 1236 (MOPH III 7.27, 7.9), the same may be true of other constitutions formulated with 'statuimus', such as 15b, even where we do not have any acta to prove it. It is not unlikely that 15b was inserted at the same time as II 4a, which may well go back to 1228, as we shall see.

⁴⁷ We shall examine the original composition of provincial chapters in a later article.

compatible with the last sentence of 15a.⁴⁸ If 15c came into being before 1c, it need not be in quite such flagrant tension with 15a if, at the time, it was normal for priors to take several other people with them to the chapter anyway;⁴⁹ in that case the election would still, in a sense, be the responsibility of the chapter, even if only some of those present would have a vote in it.

The purpose of 15e must be to clarify the relationship between 15a, 15c and 1c: the definition of the provincial chapter in 1c should not be seen as giving a vote in the election of a provincial to anyone other than those specified in 15c ('Statuimus quod electio prioris prouincialis spectet *tantum* ad priores conuenticiales cum duobus fratribus de quolibet conuentu ad hoc electis ...').⁵⁰ 15c limits to two the number of priors' socii who have a vote in the election; 15e makes it explicit that preachers general do not have a vote, even though 1c makes them members of the provincial chapter.

15e was introduced in 1234 or 1235; in a later article I shall adduce reasons of a different kind for dating 1c, as it stands, to the early 1230s. If 15c was there before 1c acquired its present form, it is not unlikely that it goes back to the Most General Chapter of 1228.

15b rather interrupts the flow of thought, which makes it tempting to suppose that it was inserted later than 15c. However, if it was going to be added to 15, where else could it be placed except after 15a? The Sack Friars have 15c immediately after 15a, with 15b inserted into their equivalent of II 4, which suggests that 15b and 15c were not created together. However, the *acta* of 1236 are arranged so chaotically that even corrections to the same part of the constitutions are not necessarily placed together; if earlier *acta* were arranged in the same way, 15b and 15c could have been created separately, but by the same general chapter.

The final step, taken in 1236, was to detach the election of the provincial from the provincial chapter (13d): an election must be

⁴⁸ Raymund seems to have been aware of the problem. It is not entirely clear what was in his constitutions at this point (const. II 3), but it looks as if he removed all reference to the chapter having responsibility for the election of the provincial (cf. AFP 18 [1948] 50).

⁴⁹ X 5 hints at an earlier practice which the brethren were perhaps reluctant to abandon, allowing priors to take several people of their own choice to the chapter.

⁵⁰ If it were the primary purpose of this regulation to specify how the electors were elected ('omnibus fratribus ad illum conuentum pertinentibus, si commode potest fieri, conuocatis'), it would surely not have been drafted in such a way that the main point was relegated to an ablative absolute at the end; and what would be the significance of *tantum*?

held as soon as possible after the death or removal of the provincial; there would only be a chapter at the same time if one had not already been held, i.e. if no provincial chapter had yet been celebrated since the last general chapter. If provincial chapters were still held at Michaelmas, as required by II 16e,⁵¹ the longest possible interval between them and the preceding general chapter was little more than four and a half months; this means that, in the case of provincials cut off by death rather than by absolution, there was a fair chance that the election of their successors would fall after the provincial chapter. This is presumably why, though electors of the Master progressively acquired the right to participate actively in the general chapter (II 11ef), no one troubled to give a corresponding right to electors of provincials to take part in the provincial chapter.

II 16 explains the authority and responsibilities of the provincial:

(16a) *Prouincialis autem prior eandem habeat potestatem in sua prouincia uel regno quam et magister ordinis, et eadem sibi reuerentia a prouincialibus exhibeatur que magistro exhibetur, nisi magister presens extiterit.*

(b) *Item priores prouinciales commissas sibi prouincias curent uisitare [perpensius].⁵² Cum tamen⁵³ commode non ualuerint, poterunt committere uices suas.*

(c) *Curet prior prouinciarum uel regnorum⁵⁴ ut, si habuerit aliquos*

⁵¹ It seems to have been Raymund's innovation to allow the provincial and diffinitors to decide when, as well as where, the next provincial chapter was to be (const. II 7).

⁵² Only Rodez has *perpensius*; it is not in the acta of 1236 (MOPH III 6.7-8), or in the Sack Friars' constitutions, or in later Dominican texts. The only gap in our information concerns Raymund's constitutions, since the relevant passage was erased in the Porto manuscript to make way for newer legislation, and there is no corresponding section in the constitutions of the Crutched Friars. However, since there is no reason to suppose that the text was changed between Raymund's revision and that of Humbert, it is unlikely that Raymund's text included *perpensius*; it must therefore be very doubtful whether the word was ever a genuine part of the Dominican constitutions.

⁵³ Rodez has *ceterum cum*, the 1236 acta have *cum tamen*, the Sack Friars have *quod si*, and later Dominican texts have *cum autem*. It is possible that the Rodez text was prompted by a misreading of abbreviated *tamen* as *cum*.

⁵⁴ The Rodez manuscript has *prior prouincialis uel regnorum*, which cannot be right, though it may be due to the incomplete absorption of a correction intended to substitute *prouincialis* for *prouinciarum uel regnorum*; in any case, the original text must have had *prior prouinciarum uel regnorum* here, as it does in 16e. The Sack Friars and Raymund just have *prior prouincialis*, but they both habitually substitute more modern terminology.

utiles ad docendum qui possint in breui apti <esse>⁵⁵ ad regendum, mittere ad studendum⁵⁶ ad loca ubi uiget studium;

(d) et in aliis illi ad quos mittuntur eos non audeant occupare, nec ad prouinciam <suam> remittere nisi fuerint reuocati.

(e) Capitulum prouinciale in festo sancti Michaelis in loco statuto in prouincia uel regno, ubi prior prouinciarum uel regnorum cum consilio diffinitorum elegerit celebretur.

(f) Nullus religiosus alterius ordinis uel professionis nullusque secularis cuiuscumque ordinis uel dignitatis uel professionis uel uite secretis uel tractatibus capituli aliquomodo admittatur.

(g) Et ea que dicta sunt de generali capitulo⁵⁷ in secunda feria post pentecosten debent inchoari.

16b was added in 1236 (MOPH III 6.7-8), and 16f might be an interloper; I see no reason why the rest should not all have been composed at the same time, except that the opening of 16a has surely been rewritten. One of the most bizarre features of the text is the strange title 'prior prouinciarum uel regnorum' (16ce), which is evidently an unsatisfactory singular generated from 'prioses prouinciarum uel regnorum'. If it had already occurred to the capitulars who drafted 16ce that they could use *prouincialis prior*, they would never have stooped to *prior prouinciarum uel regnorum*. The terminology of 'prior prouincialis' and 'prior conuentualis' is attested in Bologna early in 1223 (AFP 42 [1972] 14),⁵⁸ and, before that, Jordan was called 'prior prouincie' in Oct. 1221, and it looks

⁵⁵ Rodez lacks *esse* here and *suam* in 16d, but both words are in the Sack Friars' constitutions and in Raymund.

⁵⁶ Rodez's *studendum* has the support of AGOP XIV L 1, BL add. 23935 and most later Dominican texts, and it should be retained, although the Sack Friars and the Porto manuscript have *studium*.

⁵⁷ Raymund and later Dominican texts have *ea uero que de generali capitulo dicta sunt*; there is no way of confirming Rodez's reading.

⁵⁸ *Prior prouincialis* occurs twice, and *prouincialis prior* once, in the Rule of San Sisto (Vienna 4724 f.316), but only in passages adapted to the organisation of the Penitents, which are therefore evidence for Penitent terminology in 1232, not Dominican terminology in or before 1221: 'Nullus fratrum intret clausuram monialium nisi cum cardinali, episcopo uel legato sedis apostolice seu in casibus in regula ista concessis, et tunc intus cum aliqua non loquatur nisi hoc fecerit de licencia maioris prepositi uel prouincialis prioris. Prouincialis autem prior tantum semel in anno tempore uisitacionis intrare poterit nisi pro aliqua necessitate aliter prouideatur a preposito generali'; 'Si aliquae sorores cum litteris testimonialibus prepositi maioris uel prioris prouincialis ad aliquem conuentum eiusdem ordinis uenerint ...'. For *prior prouincialis* as part of Penitent terminology, cf. Simon, *L'Ordre des Pénitentes* 63.

as if it was under some such title that he was appointed provincial (AFP 70 [2000] 45); and we shall see reason to believe that it was precisely the 1221 chapter which pioneered the use of *prouincia* to mean a territory within a religious order. On the face of it, then, texts containing *prouincia* in a completely non-technical sense or phrases like 'piores prouinciarum uel regnorum' must go back to 1220.⁵⁹

Apart from the opening words, the language of 16a is entirely primitive. The order still had to describe the provincial's territory in terms taken from Lateran IV, and clearly *prouincia* in 'prouincia uel regno' still just means 'region'; *prouinciales* must therefore mean 'the people in the territory', not 'members of the province'. Since all of 15 except 15a consists of later additions, 16a must originally have come immediately after 15a, and it would have been sufficient for it to begin something like 'talīs autem prior'; it was presumably altered when 15b or 15c was added—by that time *prior prouincialis* had become normal, but it was not an immutable title. Apart from that, why should 16a not go back to 1220?

Thomas dates 16cd, like most of 16, to 1221, in deference to a dogma which should by now hold no terrors for us. As early as 1220 the order was in principle committed to making every house a school with its own *doctor* (PC II 23a; cf. AFP 66 [1996] 53), so it had urgent need of *doctores*; this urgency is reflected in 'qui possint *in breui* apti esse ad regendum'.⁶⁰ But the Dominicans certainly did not yet have the resources to provide the necessary training themselves, so 'mittere ad studium', even if it were the correct text, could

⁵⁹ Since one such text is II 15a, this incidentally confirms my suggestion that Bertrand become 'prior of the friars preachers in Provence' in 1219 (AFP 70 [2000] 38-39). There is no reason to doubt Gerald de Frachet's information that the first provincial of Provence was appointed by Dominic, and the second by the general chapter, even if he ascribes too early a date to the beginning of Bertrand's provincialate. After Dominic's departure from France in 1219, he would have had no opportunity to give Bertrand this rôle before the general chapter of 1220; if that chapter decreed that 'priors of provinces or kingdoms' were to be appointed by the general chapter (PC II 15), then Bertrand, like his successor, would have been nominated by the chapter, not by Dominic, unless he was already provincial before the chapter.

⁶⁰ It is interesting that the Dominicans used the term *regere* in the absolute sense that was only just becoming established in university terminology in this period (cf. O. Weijers, *Terminologie des universités au XIII^e siècle*, Rome 1987, 298-299). There was not yet any question of friars becoming regent masters in any university; but the teaching which the order intended its convents to provide was envisaged in terms of formal schools presided over by someone who could be described as *regens*, not just *docens*.

scarcely mean 'send to a (Dominican) studium',⁶¹ even if Dominican studia existed, 'loca ubi uiget studium' would be a peculiar way of referring to them.⁶² However, there were several places where the order had, or was hoping to have, convents which could provide access to theological education. There was obviously Saint-Jacques in Paris,⁶³ and the revival of the university at Palencia, where Dominic himself had studied theology (*Lib.* 6), must have been a major reason why the Dominicans went there in 1220 (cf. AFP 65 [1995] 45); Alexander Stavensby was probably already teaching theology in Bologna,⁶⁴ and there may have been functioning cathedral schools in some other places where the Dominicans had settled. It was presumably to convents like these that provincials were to send their

⁶¹ M.M. Mulchahey, *"First the bow is bent in study ..."*, Toronto 1998, 351, uses X 19 as evidence that even in 1220 Saint-Jacques was regarded as the order's studium; however, even if this text is early (from soon after 1220), it probably did not originally refer to provinces in general, and 'mittantur ad studium Parisius' only means 'be sent to study in Paris'.

⁶² Is it significant that the phrase echoes what Jordan says about Dominic being sent to Palencia 'ut ibi liberalibus informaretur scientiis quarum studium ea tempestate uigebat ibidem' (*Lib.* 6)? Did he help to draft II 16c? On the strength of his claim to know 'facta et institutiones et intentiones instituentium omnium capitulorum' (*Ep.* 49), Vicaire suggested that he must have been a diffinitor in 1220 (*Histoire* II 202); an even better argument could be based on 'omnibus capitulis et definitionibus semper interfui' in *Ep.* 48. Nevertheless, Jordan was not at the 1221 chapter (*Lib.* 88), so what he says must mean that he had been involved in the *diffinitio* of all the chapters held since he became Master; nothing can be inferred about his rôle in 1220.

⁶³ It had only just acquired its own master, who had perhaps not even begun to teach there (AFP 68 [1998] 29), but even in 1217 access to the university was one of the reasons for Dominic sending friars to Paris (cf. *ACB* #26).

⁶⁴ In 1222 the bishop of Padua deputed 'magister Alexander, doctor theologie' to resolve a dispute between the abbey of S. Stefano and the Crutched Friars in Bologna; the terms of the settlement were agreed on 31 March 1223 'in domo Guidolini Marchesii iuxta S. Nicholaum in porta sancti Proculi in qua commoratur infrascriptus magister Alixander (*sic*)' (*Chartularium Studii Bononiensis* III, Bologna 1916, 193, 197-199), which incidentally shows that magister Alexander lived near the Dominicans. He is almost certainly to be identified with the magister Alexander who was a 'clericus de camera domini papae' by mid 1224 when the pope appointed him bishop of Coventry and Lichfield (*Annales Monastici*, Rolls Series, London 1864-1869, II 299, III 90). A story reported by Bartholomew of Trent (Bologna, *Bibl. Univ.* 1794 ff. 83^v-84^r) and Gerald de Frachet (*MOPH* I 19-20) suggests that he was in contact with the Dominicans at or soon after the time when they took possession of the church of St Nicholas in Bologna, and Gerald adds that he 'fuit multo tempore doctor in theologia Bononie'. There was not yet a faculty of theology in the university, but there are periodic traces of 'doctors of theology' in Bologna, no doubt teaching under the auspices of the cathedral (cf. F. Ehrle, *I più antichi statuti della facoltà teologica dell'università di Bologna*, Bologna 1932, LXVI-LXIX).

prospective *doctores* 'ad studendum'; it is doubtful whether even a very early general chapter would have envisaged students going anywhere where the order did not have a house.

PC II 20-21 indicate that it was for a chapter to decide the duration and place of further studies to be undertaken by potential *predicatores*; but there is no reason why a different procedure should not have been followed in the case of that rarer breed, potential *doctores*.

'Ad prouinciam suam' in 16d does not necessarily have to be taken in any technical sense, it could just mean 'to their own part of the world'; however, we may wonder why it was apparently taken for granted that provincials would send their best students outside their own territories.⁶⁵ It is quite conceivable that, in the early years when the need for *doctores* was particularly acute, provincials had complete freedom to use the facilities of the whole order to get promising candidates trained, but that is not the same thing. We may also suspect that 'in aliis illi ad quos mittuntur eos non audeant occupare' was prompted by bad experience. It seems probable that 16d was added at a time when some houses were feeling swamped by students from other provinces whom they were tempted to exploit or send packing; the clause is formulated, not from the point of view of provincials looking for 'loca ubi uiget studium', but from the point of view of study-houses most of whose students came from other provinces.⁶⁶ But is there any reason why 16c should not go back to 1220?

For reasons which I do not really understand, Thomas dated 16e to 1224, apparently because he saw a connection between it and the development of Franciscan regional chapters (Thomas 272). The *Regula non bullata*, which evolved in the years up to 1221, does not use the word *capitulum*, but it does refer to assemblies held at Michaelmas (*Reg. non bullata* 18.1):⁶⁷

Quolibet anno unusquisque minister cum fratribus suis possit conuenire, ubicumque placuerit eis, in festo sancti Michaelis archangeli de his quae ad Deum pertinent tractaturus.

⁶⁵ It would surely be pushing our luck too far to suppose that 'ad prouinciam suam' could refer to a territory smaller than that of a 'prior prouinciarum uel regionum', so that the clause would cover, say, someone from Portugal sent to study in Palencia, or someone from Limoges sent to study in Paris.

⁶⁶ As I shall intimate in connection with II 26b, the use of *audeat* might suggest the handiwork of the Most General Chapter of 1228.

⁶⁷ I quote from T.Desbonnets et al., *François d'Assise, Écrits* (SC 285), Paris 1981. For a brief explanation of how the two *Regulae* took shape, see *ibid.* 25-28.

Thomas says that in the *Regula bullata*, promulgated by the pope on 29 Nov. 1223, this has become optional (*Reg. bull.* 8.5):

Post capitulum vero Pentecostes ministri et custodes possint singuli, si voluerint et eis expedire videbitur, eodem anno in suis custodiis semel fratres suos ad capitulum convocare.

He is, however, wrong to claim that the summoning of the brethren, as well as the date, was thus made optional; it was already optional in *Reg. non bull.* (*possit convenire*). Nor is it clear, as Thomas seems to imply, that what *Reg. bull.* leaves to the discretion of the superiors is the 'volksvergadering' of all the brethren, as distinct from the holding of a formal chapter. It is true that the word *capitulum*, which was not used in the earlier Rule, is used in *Reg. bull.*, but this does not necessarily signify that a different kind of assembly was envisaged; *Reg. bull.* was largely drawn up by professionals and, as a consequence, its language is more technical.

The only point of contact which I can see between PC II 16e and *Reg. bull.* 8 is the use of the word 'capitulum' for a regional assembly, and the Dominicans did not need to borrow that from the Franciscans. Otherwise, the only interesting parallel is the choice of Michaelmas as the time for regional gatherings, and that is only found in *Reg. non bull.*; so, if the Franciscan texts are relevant at all, they suggest an earlier rather than a later date for 16e.

The phrase 'prior prouinciarum uel regnorum' was inspired by Lateran IV's constitution on 'common chapters', which was also, as we have seen, the source of what PC II 8a says about the authority of diffinitors. The council called for 'common chapters' to be held 'aliquot certis diebus', and each such chapter was to determine the place where the next one was to be held; PC II 16e accordingly fixes the time for provincial chapters, but leaves it to the provincial 'cum consilio diffinitorum' to fix the place. The council envisaged triennial chapters in every kingdom or province; the Dominicans decided to hold annual general chapters; like the Cistercians and Praemonstratensians, but there is nothing in II 16 to indicate the frequency of provincial chapters. It is quite credible that the Dominicans did not originally establish any particular rhythm for them; the earlier we date 16e the more likely it is that they wanted to let the situation evolve before they produced more detailed legislation on provincial chapters.

Whether or not they were influenced by the Franciscans, I can see no reason why the Dominicans should not have made preliminary constitutional provision in 1220 for provincial chapters to be held at Michaelmas, complete with diffinitors.

16f was included by Raymund in his const. II 7, on provincial chapters, no doubt because of its placing in PC; but what motive could there be for debarring outsiders from the more intimate discussions of provincial chapters, which would not also apply to general chapters? It seems safe to assume that 16f was originally intended to cover both kinds of chapter, and that its native context did nothing to restrict *capituli* either way. If so, it must once have been part of a text dealing with all chapters, whether general or provincial, and it must have been in PC before the upheavals which left it stranded here.⁶⁸

This hypothesis is confirmed by 16g, which is incomprehensible as it stands, but would make sense in the context of legislation which dealt with all chapters but also contained some prescriptions applying only to general chapters and, it seems, relating specifically to things which were supposed to happen on the Monday before the chapter actually started, since the only day ever mentioned for beginning the chapter is the Wednesday after Pentecost (II 11c, 17). Its opening *et* also shows that it was not intended to stand on its own; but in the Rodez text it has no immediate companion except 16f, with which its content would seem to have no connection at all.

It is far from obvious what 'ea que dicta sunt de generali capitulo' is meant to refer to, but Raymund apparently understood it, since he retained it unchanged, and he appreciated that it belonged to the treatment of all chapters, since he put it at the end of his II 9, 'de sollempni celebratione capituli'; when the opening of the general chapter was brought forward to the Monday after Pentecost in 1252-1255, *feria secunda post pentecosten* was duly changed to *in vigilia pentecostes* (MOPH III 61.19-22, 67.8-11, 72.9-12). The practice of the order presumably ensured a continued awareness of just what was supposed to begin two days before the start of the chapter, so we need not worry that the capitulars of 1272-1274 may have misunderstood it when they moved our text to the beginning of const. II 9 and, at last, reformulated it in more explicit terms: 'Capitulum generale quantum ad auctoritatem diffinitorum in vigilia penthecostes incipit celebrari' (MOPH III 163.30-33, 167.1-5, 171.20-24).

⁶⁸ We shall see reason to believe that the chapters immediately after 1220 generally added their new constitutions at the end of PC II, without inserting them into the pre-existing text; if so, 16f must go back to 1220.

16fg, it seems, are survivors from an older block of legislation dealing mostly with all chapters, but also specifying certain things which diffinitors at general chapters had to do before the opening of the chapter. I have already argued that II 17-21 originally applied to all chapters (AFP 69 [1999] 48-52), but 16fg would hardly have ended up where they are now if they once followed 17-21. They are also, on the face of it, concerned with preliminary matters rather than the actual celebration and business of the chapter, which is what 17-21 are about. 16g implies that something has already been said about the date of the general chapter, but, in the nature of the case, the answers to such basic questions as when and where chapters were to be held and who was to go to them would have to be answered separately for general and provincial chapters. So what was there to say about all chapters? There must have been something more than 16f.

If 16g was correctly interpreted in 1272-1274, it seems most likely that what was legislated for in the older text with reference to all chapters concerned the choice and authority of diffinitors. In the Rodez text there are two parallel sets of constitutions regulating the choice of diffinitors at provincial and general chapters (II 1, 5), and indicating both their over-all competence (II 2, 7) and their disciplinary authority over the relevant major superior (II 3, 8-9). The sequence is slightly odd, in as much as the diffinitors at both kinds of chapter have to decide first whether the major superior's *excessus* are such that he is not fit to continue in office, and only then do they start 'defining' things with him or his substitute. The sequence actually followed would, however, be the obvious one if diffinitors at both kinds of chapter were originally treated together as far as possible, since it was only with regard to their authority over the major superior that their *modus operandi* needed to be presented separately.

The introduction of the new system, under which representatives of the provinces became diffinitors at general chapters, necessitated a parting of the ways between general and provincial chapters, and it provided the occasion for the order to produce more elaborate legislation on provincial chapters; the resulting upheaval in the constitutions is the most plausible explanation of how 16fg came to be dangling, as they are now, at the end of a treatment of provincials.⁶⁹ But before this, most of what had to be said about

⁶⁹ 16g must always have been preceded by an indication when general chapters began, just as it now comes soon after the indication when provincial chapters

diffinitors could probably have been said once with reference to all chapters. And the chapter which had most reason to legislate about diffinitors before the big changes was that of 1220, when Dominic first got them instituted.

The terminology of 'priors of provinces or kingdoms' only occurs in II 15-16, and it was, in principle, already out of date in 1221. We have found nothing to contradict the conclusion that the original forms of 15a and 16a, 16c (probably without 16d) and 16efg, go back to 1220. We may take it as confirmed, then, that provincials (however strangely named) and provincial chapters were recognised in Dominican law in 1220.

Further confirmation that II 15a, in its original form, goes back to 1220 is provided by Jordan's reaction to his own appointment in 1221. As we have already remarked, *Lib.* 88 was composed very soon after he received the news (cf. AFP 68 [1998] 22-24), and he shows no sign of being surprised either at the existence of the rôle he has been given or at its title (*prioratus super prouinciam Lombardie*). He does not sound like someone informed that he has just become Promotor of Permanent Peregrination in Polynesia ('What on earth does that mean?'), but like someone who regards himself as a junior and inexperienced friar and has just been given a senior post ('What, *me*?'). He would have known that Matthew was superior of a territory, not just a convent, but Matthew's title was 'abbot', not 'prior over the province of France'; if he used any title other than abbot, it must have been the very primitive one favoured even by his successors, 'prior of the Friars Preachers in France' (cf. AFP 70 [2000] 36).⁷⁰ Jordan could only have known that

were to be held. Since 'prios prouinciarum uel regnorum' were a precondition for holding provincial chapters, it is reasonable to suppose that 15a and 16ae (and why not 16c?) survive from an original text which specified when and where general and provincial chapters were to be held and who was to go to them, including a section on 'prios prouinciarum uel regnorum'; but this must at first have come before what was said about diffinitors. When the order revised its legislation on diffinitors, it moved it to the beginning of the second distinction, with all that depended on it; thus the older framework collapsed, leaving II 15-16 in much the shape they have now.

⁷⁰ When Dominic divided regional responsibilities between Matthew and Bernard in 1219, as I have suggested he did, it is quite likely that both of them were designated 'prior of the Friars Preachers in' the appropriate territory—after all, what did Dominic actually say to them? He must presumably have something like, 'Vos, frater Bertrande, eritis prior fratrum in Provincia; vos autem, frater Mathee, prior fratrum in Francia.' This would help to explain why the primitive title endured in

there was such a rôle as 'prior of a province' if the constitutions already provided for 'priors prouinciarum uel regnorum';⁷¹ and that can only mean constitutions drafted by the 1220 chapter, at which Jordan himself was present.

(b) *Distinction II 5*

We have been led to surmise that, once upon a time, the constitutions contained legislation covering diffinitors at all chapters, and that this was split in two when diffinitors chosen at general chapters were replaced by representatives of provinces (elected, in two years out of three, precisely as 'diffinitors of the general chapter'). The innovation is enshrined in II 5.

As we have seen, the Most General Chapter of 1228 gave all twelve provinces the right to be represented at all chapters, whether of provincials or of diffinitors; before this, eight provinces had this right, and the other four only attended provincials' chapters (AFP 70 [2000] 11-16). The eight provinces are listed in II 1a ('Yspanie, Prouincie, Francie, Lombardie, Romane prouincie, Ungarie, Theutonie, Anglie'), and II 5 explains the system in a way which allows us to distinguish clearly between the 1228 innovations and the order's practice before 1228:

(5a) Statuimus etiam ut per duos annos in dictarum octo⁷² prouinciarum capitulis aliquis de magis ydoneis a capitulo eligatur qui sit generalis capituli diffinitor. Cui socius competens a priore prouinciali et [a]⁷³ diffinitoribus assignetur ut, si medio tempore decesserit uel aliquo modo fuerit impeditus quod uenire non possit ad capitulum generale, ipso iure socius eius loco ipsius diffinitor habeatur.

(b) Statuimus quod quatuor prouincie, scilicet Ierosolimitana, Grecia, Polonia, Dacia, habeant singulis annis diffinitores in singulis capitulis generalibus.

France, and would also constitute another reason for Jordan's failure to appreciate that the title ousted by *abbas* was *prior*, not *magister*: Matthew continued to be *abbas* even after becoming *prior*.

⁷¹ He did not need to be aware of any further development in the use of the word *prouincia*, since Lombardy could be called a 'province' in perfectly ordinary parlance, and had long since ceased to be a 'kingdom'; but, unless he knew about *priors prouinciarum uel regnorum*, he would have identified his new position as 'prioratus super fratres Lombardie'.

⁷² Porto has the number before *dictarum*, but later texts support Rodez's word-order.

⁷³ Neither the Sack Friars nor later Dominican texts have *a*, and *diffinitoribus* without *a* is supported by II 23b.

(c) Tertio autem anno priores prouinciales duodecim⁷⁴ prouinciarum generale capitulum celebrabunt.

(d) Item statuimus quod priori prouinciali eunti ad capitulum generale detur socius a diffinitoribus capituli prouincialis.⁷⁵

5b was added in 1228, as we have seen. Thomas points out that 'item statuimus' in 5d shows it to be a later addition.⁷⁶ He also suggests that 'cui socius competens ... loco ipsius diffinitor habeatur' in 5a is a later insertion (Thomas 272-273), but the two situations are far from parallel: the appointment of a socius for the diffinitor is a way of ensuring that the province will be represented at the chapter even if the diffinitor is unable to go to it, whereas 5d is simply designed to suppress the provincial's freedom to take anyone he likes to the chapter with him. 'Cui socius competens ...' in 5a does not disrupt the flow of the text, and there is no reason why it should not be contemporary with the rest of it.

The pre-1228 system presupposes that the eight provinces listed in II 1a hold annual provincial chapters, while the other four do not, and that all twelve provinces have provincial priors. II 5ac, then, must have been composed at a time when only the eight provinces were in a position to hold annual provincial chapters. The definition of a provincial chapter given in II 1c ('priors conuentuales cum singulis sociis a capitulo suo electis et predicatoribus generales') is a later insertion; however, the constitution of Lateran IV makes it highly probable that, whoever else may have been summoned, a provincial chapter involved a meeting of superiors in a given region. This means that, when II 5a was composed, the eight

⁷⁴ Thomas regarded *duodecim* as a later insertion, presumably because he did not believe that the order had twelve provinces when this legislation was drafted; but this is an unwarranted assumption. We do not know when the province of Greece was launched, but there is no evidence that it did not exist in 1225 or at least that it was not founded then; the province of the Holy Land was initiated in 1225 at the latest (cf. AFP 70 [2000] 62).

⁷⁵ It is not entirely certain whether anything more than *diffinitoribus* was meant to be in PC. Where Rodez has *diffinitoribus capituli prouincialis*, the Sack Friars just have *diffinitoribus*, and Raymund and later Dominican texts have *diffinitoribus prouincialis capituli* (though, in the course of its passage through three chapters, an addition made to this text in 1551-1558 reversed the word order to *capituli prouincialis*, which thus found its way into the printed editions: MOPH IX 323.27, 343.10-11, X 6.10-11).

⁷⁶ It may have been added at the same time as 5b, in 1228, *statuimus* and *item statuimus* forming a sequence.

listed provinces must all have had at least two houses and, presumably, the other four did not.

In 1220 the order was nowhere near the situation envisaged in II 5, though we must assume that the constitutions contained some indication of who was to attend general chapters. If we do not apply the criterion of II 23a too rigorously (and we are in no position to apply it anyway),⁷⁷ we can identify fairly precisely how the different provinces stood with regard to II 5.

Spain and France had 'provincials' from the outset (AFP 70 [2000] 31-36); Spain's second convent was probably initiated soon after the general chapter of 1220 (AFP 65 [1995] 45, 66 [1996] 30), and France had embarked on a foundation in Limoges even before the chapter (AFP 65 [1995] 96-99). Provence had a provincial since 1219 (AFP 70 [2000] 39), and was at least taking the first steps towards establishing new convents by 1220 (MOPH XXIV 247, 251), possibly including Lyons (AFP 65 [1995] 141). Lombardy had four or five convents by the time the 1220 chapter met, even if we do not include Florence (AFP 66 [1996] 155-159, 70 [2000] 80-86), but it did not acquire its first provincial until the chapter of 1221 (Jordan, *Lib.* 88, AFP 70 [2000] 44-45). The Roman province acquired both its first provincial and its second house in 1221 (AFP 70 [2000] 46-48, 83). These five provinces could probably have complied with II 5 by 1221.

Cologne, the second house in the territory of Teutonia, was started in 1221, and several other houses were launched in 1224; but it was not until 1225 that the first steps were taken to form these houses into a coherent province, and the first provincial was only appointed in 1226, though, since he seems to disappear again immediately, it is likely that he stood down at the first provincial chapter, in 1226, so that a provincial could be elected (AFP 66 [1996] 163, 70 [2000] 55-59). This suggests that the legislation on provincial chapters, including their right to elect the provincial (PC II 15a), was in place by 1226, and that the need for a provincial became urgent in 1225.

⁷⁷ II 23a laid down the minimum requirements for 'sending a community', but it is unlikely that these immediately became the definition of a *conuentus* in such a way that a house which did not meet them would not count as a convent and its superior would not attend chapters. Lund, for instance, was not founded by the sending of a community (AFP 66 [1996] 164), but it could scarcely be considered a dependency of any other house even if some time elapsed before it attained twelve members.

The provinces of England and Hungary were both launched in 1221, with superiors who can be regarded as 'provincials' (Jordan, *Lib.* 88; AFP 68 [1998] 87). Gilbert and his party arrived in Oxford on 15 Aug. 1221;⁷⁸ they also had a house in London by the time the first Franciscans arrived there in September 1224, but it appears that they were only given it earlier in the same year.⁷⁹ In addition, two houses were initiated in Ireland (Dublin and Drogheda) in the same year.⁸⁰ England could probably have undertaken to comply with II 5 in 1224, and it could certainly have done so in 1225. About Hungary we are less well informed, but the province seems to have become established quite quickly: if we are to trust Suipert, it settled in Pannonia first, seemingly at Alba Regalis, then, 'numero fratrum accrescente', it undertook a mission to 'schismatics and heretics' in the banate of Szörényi,⁸¹ and then made a first, unsuccessful attempt to convert Cumans, followed by a second attempt which resulted in the conversion of two Cuman leaders (AFP 68 [1998] 87-89). Suipert says that it was Paul of Hungary who sent friars to Szörényi, and Paul apparently stopped being provincial no later than 1223 (AFP 70 [2000] 50);⁸² and the Dominicans' conversion of the second Cuman leader occurred in 1227, as we know from Gregory IX (BOP I 22) and Emo (MGH SS XXIII 511).⁸³ All this makes it probable that the Hungarian province could have complied with PC II 5 at least as soon as the English province.

⁷⁸ Trevet, *Annales*, ed. T.Hog, London 1845, 209.

⁷⁹ Thomas of Eccleston, *De adventu fratrum minorum in Angliam*, ed. A.G. Little, Paris 1909, 3, 8, 11; C.F.R.Palmer, 'The Friar-Preachers or Blackfriars of Holborn, London', *The Reliquary* 17 (1876-1877) 38-39; id., ASOP 3 (1897) 286; W.A.Hinnebusch, *The Early English Friars Preachers*, Rome 1951, 20.

⁸⁰ A.Gwynn and R.N.Hadcock, *Medieval Religious Houses in Ireland*, Blackrock 1988, 220.

⁸¹ The reading *Sceurinum*, which I adopted in my 1998 edition, is confirmed by an important manuscript which I had not then seen, BAV Reg. lat. 584 (the manuscript used by Bernard Gui).

⁸² The mission in Szörényi evidently lasted; on 16 May 1237 the brethren there received faculties for dealing with converted schismatics (A.L.Tautu, ed., *Acta Honorii III et Gregorii IX*, Pont. Comm. ad red. cod. iuris canonici orientalis, Fontes III iii, Vatican City 1950, 300-301). It is not known when they established what Gui calls *conventus Zeurinensis* (cf. QE I ix, where it is wrongly printed as *Zeuriensis*), presumably at Szörényvár (now Dobreta-Turnu-Severin) (cf. N.Pfeiffer, *Die ungarische Dominikanerordensprovinz*, Zürich 1913, 43).

⁸³ Cf. also Aubri of Trois-Fontaines (MGH SS XXIII 920), though he does not mention the Dominicans' involvement.

Assuming that *dictarum* in II 5 always referred to these eight provinces,⁸⁴ all eight of them probably had more than one convent by the time the general chapter met in 1224, but Germany did not yet have a provincial; if the new legislation had been created in 1224, it is scarcely conceivable that Jordan would have waited a whole year before taking steps to form the German houses into a province. On the other hand, if the newly organised province elected a provincial in 1226, the legislation must have been in place by then. This suggests that the new constitutions concerning provincial chapters must have been created in 1225 or 1226. This tallies exactly with the conclusion already drawn from our study of II 15a.

We have no information about the early development of the order in Greece. The province of the Holy Land seems to have been launched in 1225, or possibly 1224, and to have made its first foundation in Cyprus in 1226, followed soon afterwards by Acre (AFP 70 [2000] 61-62); even if it had a provincial from the outset, it was certainly not in a position to comply with II 5a in 1225 and probably not in 1226.

Dacia got its first provincial in 1226, though it rather looks as if Jordan had found his candidate for the job well before the 1226 chapter; the province apparently did not have a second house before 1228 (AFP 58 [1998] 111-116, 70 [2000] 54).

Poland was given its first provincial in 1225, and he immediately initiated five new foundations, at least one of which had already acquired a church by the beginning of May 1226 (cf. Loenertz, AFP 21 [1951] 15; Koudelka, AFP 26 [1956] 135). When the 1226 general chapter began on 10 June, the province could almost certainly have undertaken to meet the conditions of PC II 5a.

All told, we have excellent reasons to agree with Thomas that it was in 1225 that the order created the legislation which changed the way in which provinces were represented at general chapters, and clarified and enhanced the function of provincial chapters, not least by making them responsible for electing provincial priors. The inclusion of Teutonia in the list of eight makes 1224 very unlikely, and the exclusion of Poland militates against 1226.

⁸⁴ Thomas calls into question the dating both of *octo* in 5a and of the list of eight provinces in 1a, but this is unduly sceptical. There is no trace of any earlier version of the text referring to fewer provinces, and there does not seem to be any cause to doubt that, when this legislation was created, it made sense to divide the order's provinces into eight and four.

By 1225, then, *prior prouincialis* had become the normal way of referring to the provincial.

(c) *Distinction II 1*

Since we know that Dominic got diffinitors appointed at the 1220 chapter, and some procedure had to be instituted for their appointment, it is scarcely conceivable that the procedure was not included in the constitutions for future reference. II 5 relates to a completely different system; if anything survives from the 1220 constitutions on the subject, it must be sought in II 1, which is now only about the election of diffinitors at the provincial chapter:

(1a) Statuimus quod [in]⁸⁵ singulis annis in singulis capitulis prouincialibus Yspanie, Prouincie, Francie, Lombardie, Romane <*prouincie*>,⁸⁶ Ungarie, Theutonie, Anglie, quatuor fratres de discretioribus⁸⁷ et magis ydoneis a prouinciali capitulo, per disquisitionem prioris prouincialis et prioris et subprioris *eiusdem*⁸⁸ loci ubi capitulum celebratur, uel, si unus defuerit, per disquisitionem duorum, hoc modo eligantur.

(b) Predicti siquidem tres, uel duo si tertius defuerit, uoluntates singulorum singulatim et seorsum aliquantulum in eadem domo coram oculis omnium disquirant et conscribant fideliter, et sic incontinenti et in eodem loco, antequam fratres discedant uel adinuicem colloquantur, scripturam publicent in medium,⁸⁹ et in quibus maior pars capituli [prouincialis]⁹⁰ numero concordauerit illi pro diffinitoribus habeantur. Si autem partes fuerint pares, tunc eodem modo *disquisitionis*⁹¹ uoluntatum unus eligatur a capitulo, et cui parti ille consenserit illi pro diffinitoribus habeantur. Quod si adhuc discor-

⁸⁵ Rodez's *in singulis annis* is unconvincing; the Sack Friars and later Dominican texts just have *singulis annis*.

⁸⁶ Rodez lacks *prouincie*, which I have supplied from Raymund.

⁸⁷ Raymund and the Sack Friars have *discretioribus*, Rodez has *magis discretioribus*, which possibly implies that an earlier text did not have *discretioribus et*; if the words were in the margin of an ancestor of Rodez, a later copyist could have written *magis* before noticing them.

⁸⁸ Raymund and the Sack Friars have *eiusdem*; Rodez has *eius*.

⁸⁹ The Sack Friars add *nominatim*, but this does not seem to have been in the Dominican text in 1240-1242 when 'expressis nominibus eligentium et electorum' was added (MOPH III 13.35-36, 19.7-8, 21.17-18).

⁹⁰ Only Rodez has *prouincialis*, which is unnecessary in the context and should probably be regarded as an interpolation; the Sack Friars simply have *maior pars capituli numero*, and Raymund reformulated the whole clause.

⁹¹ This is the reading of Raymund and the Sack Friars; Rodez has *disquisitione*.

dauerint, alius eligatur et sic deinceps donec in parte altera maior possit numerus inueniri.⁹²

(c) Capitulum autem prouinciale appellamus priores conuentuales cum singulis <*sociis*>⁹³ a capitulo suo *electis*⁹⁴ et predicatoros generales.

(d) Predicatoros autem generales sunt qui per capitulum generale uel priorem prouincialem et diffinitores capituli prouincialis fuerint approbati.⁹⁵

(e) Accusationi uero et correctioni professi post triennium ab ingressu ordinis poterunt interesse.

(f) Item conuentus qui *mittit* accusationes ad capitulum prouinciale uel generale⁹⁶ *scribat*⁹⁷ de quolibet articulo numerum et nomina accusantium, et si accusant⁹⁸ de uisu uel auditu.

(g) Et nullus accuset de auditu nisi dicat a quo audierit,

(h) sed ubique⁹⁹ caueat ne malum <*quod*>¹⁰⁰ audierit de *alieno* facto¹⁰¹ referat aliquatenus nisi dicat a quo audiuerit.

⁹² The rather cryptic last sentence is clarified in Raymund's const. II 5 by the insertion of 'in electione istius' before 'adhuc discordauerint'. Obviously the first deadlock would be removed by the addition of an extra voter; so the second deadlock must relate to the election of the extra voter; if the first ballot in *this* election results in another deadlock, so that no one emerges as having been elected, then they must 'elect someone else', i.e. have another ballot, and go on until someone gets a majority. He then decides who is to be diffinitor.

⁹³ I have restored *sociis* from Raymund and the Sack Friars; the word is lacking in Rodez.

⁹⁴ Rodez has *electus*.

⁹⁵ Thomas adds X 5 here.

⁹⁶ The acta of 1236 (MOPH III 7.18-19) have *generale uel prouinciale*, and this is what we find in later texts of the constitutions, where this clause is found in const. II 9 (on the celebration of any kind of chapter); however, Rodez's *prouinciale uel generale* could represent a legitimate way of inserting 1f into the section of PC devoted to provincial chapters.

⁹⁷ Rodez has *mittunt ... scribant*, but the acta of 1236 (MOPH III 7.18-19) and later texts of the constitutions have *mittit ... scribat*.

⁹⁸ Rodez's *accusant* is fully supported by Raymund and subsequent versions of the constitutions; contrary to the impression given in Thomas's apparatus, it is only the 1236 acta which have *accusat* (MOPH III 7.20), and it is plainly wrong: the implied subject is *accusantes*, not *conuentus*; similarly *nullus* in what follows means 'no individual', not 'no community'.

⁹⁹ Denifle, Scheeben and Thomas all take Rodez to have *utique* here, which fits the context; but the abbreviation is exactly the same as that in I 8 and elsewhere which they all rightly interpret as *ubique*, so if *utique* was intended here, the Rodez scribe did not make himself clear.

¹⁰⁰ Rodez omits *quod*.

¹⁰¹ Rodez has *de alio facto*, which can scarcely be correct; I have, without much confidence, emended it to *de alieno facto*. Raymund has *de alio alteri*; the Sack Friars do not have this sentence. Denifle printed *de alio fratre* without comment, and this was adopted as a correction by Thomas.

(i) <Item quilibet prior cum conuentu scribat singulis annis priori suo prouinciali et diffinitoribus capituli prouincialis debita domus, ponentes nichilominus causas debitorum.>¹⁰²

II 5 refers back to II 1 and they undoubtedly form part of a single coherent block of legislation, going back to 1225, though there are clearly some later additions. If we remove 1c-i, the continuity is markedly improved, which suggests that they were not part of the original text. 1f and 1i, at any rate, were added in 1236 (MOPH III 7.18-21); 1g was also included in the acta of 1236,¹⁰³ but this raises problems for 1h, which is syntactically dependent on it.¹⁰⁴ 1e was emended in 1236, which substituted *post triennium ab ingressu ordinis* for *post annum sue professionis* (MOPH III 7.22-24), but it is not clear when the original version was introduced.¹⁰⁵ 1d is a clarification of 1c, though not necessarily introduced later. There must presumably always have been some indication of who should go to provincial chapters, but it could have been included in what is now II 16, which specifies when and where the provincial chapter should be held; 1cd, as we have seen, is not really compatible with 15a (as revised in 1225) plus 15c (added in 1228?), so, in its present form, it should probably be dated to 1231-1235.

This means that the most primitive nucleus of II 1 consists of 1ab. Since, as we have seen, the diffinitors at the general chapter of 1220 were probably elected, Thomas's suggestion is plausible that 1ab was adapted from an earlier text composed in 1220; nor does

¹⁰² 1i comes from the acta of 1236 (MOPH III 7.6-9), and is not in Rodez or the Sack Friars. In Raymund it follows 1e, but he shifted 1fgh elsewhere. After it, Thomas adds X 7, which follows it in Raymund.

¹⁰³ At much the same time, the Praemonstratensians created a new text (Lefèvre IV 8), which also contains 'Nullus accuset aliquem de auditu nisi dicat a quo ipse audierit', though in a different context.

¹⁰⁴ 1fg are included together in the 1236 acta (MOPH III 7.18-21), but there is no trace there of 1h. 1h, however, is not simply an interpolation: a version of 1gh was included by Raymund in his const. II 6. Apart from the textual corruption from which it has suffered in Rodez, 1h is puzzling in several regards: it cannot stand on its own, since it lacks a subject, so it should not antedate 1g, but Rodez ought not to contain anything added after 1236; and 1h has nothing to do with formal accusations of any kind, let alone accusations sent to a chapter, so it is out of place here—even to make it fit his const. II 6 (on the daily chapter) Raymund had to drop *ubique* and *aliquatenus*. All I can suggest is that 1gh was added at the same time as 1e, and that 1g was included in the 1236 acta to show where the new text, 1f, was to be inserted.

¹⁰⁵ The Sack Friars still have 'post annum sue professionis'. This, like the original version of 24c, may go back to 1228, but that is only a guess.

there seem to be any reason why this earlier text should not have instituted a single procedure for use at general and provincial chapters. II 19a refers back to the procedure indicated in 1ab; if I am right to date it to 1220, the essentials of II 1ab must also go back to 1220.

The basic electoral procedure is patently related to Lateran IV const. 24:

Statuimus ut cum electio fuerit celebranda, praesentibus omnibus qui debent et volunt et possunt commode interesse, assumantur tres de collegio fide digni qui secreto et singulatim vota cunctorum diligenter exquirant et in scriptis redacta mox publicent in communi, nullo prorsus appellationis obstaculo interiecto, ut is collatione adhibita eligatur in quem omnes vel maior et sanior pars capituli consentit.

The most interesting difference is that here and throughout PC *maior pars* goes unchallenged by any mention of *sanior pars*.

The choice of *ydonei* as diffinitors is a recurrent feature of Cis-tercian texts on the subject;¹⁰⁶ *de magis ydoneis* is the only point on which II 5 is still parallel to II 1, and it surely derives from the 1220 constitutions. The capitulars of 1225 may either have added *discretioribus* in II 1 or dropped it in II 5,¹⁰⁷ but the intrusive *magis* in Rodez does perhaps very mildly support the hypothesis that *discretioribus et* was added in 1225.

If we remove *prouincialis* from *capituli prouincialis* (and it is doubtful whether it should be in the text anyway), 1b could derive unchanged from the legislation of 1220, but the scrutators listed in 1a are specific to provincial chapters and use a term for the provincial (*prior prouincialis*) which was not yet available in 1220. If we substitute *maioris prelati* for *prioris prouincialis*, we should have a list applicable equally to general and provincial chapters, but not entirely suitable in the election of visitators which was supposed to follow the same procedure (19a), since there was no reason to anticipate that the local subprior would always be a member of a general or provincial chapter; and visitators were elected after non-capitulars had left (as required by 17). There is a similar problem about the scrutators in the election of the Master before 11a took

¹⁰⁶ I have already quoted two such texts; cf. also Thomas 194.

¹⁰⁷ The prior had probably always been told to appoint his subprior 'de consilio discretorum' (II 25), but the three brethren 'de discretioribus' without whose advice he could not embark on building projects (X 9c) were a later restriction on his freedom.

its final shape: in the new *forma electionis* introduced in 1236 they are the three provincials who first received the habit, but this cannot have been the case in the election of the provincial which, according to 15c (certainly added before 1236), was meant to follow the same procedure.

Lateran IV says that votes in an election should be collected by 'tres de collegio fide digni', and this is apparently included in the conditions which the council laid down for validity ('aliter electio facta non valeat'). The election of diffinitors and visitators is no doubt less serious than the election of a prelate, which is what Lateran IV had in mind; nevertheless, it is not unlikely that even there the Dominicans originally had a practice which could guarantee three scrutators, all of them 'de collegio', i.e., in this case, members of the chapter, and did not make provision for two of them to proceed in the absence of the third. Since the language of 1b is influenced by Lateran IV, I would hazard a guess that 1a and 11a did not originally specify who the scrutators should be, but echoed the council's 'tres de collegio fide digni' with something like 'per disquisitionem trium fratrum de capitulo fide dignorum' in 1a, and 'tres fratres de capitulo fide digni' in 11a.

1a was obviously reshaped in 1225 to serve its new purpose, but the 1220 text must have begun something like this:

In singulis capitulis quatuor fratres de discretioribus et? magis ydoneis, per disquisitionem <?trium fratrum de capitulo fide dignorum?>, hoc modo eligantur. Predicti siquidem tres uoluntates singulorum singulatim et seorsum aliquantulum in eadem domo coram oculis omnium disquirant et conscribant fideliter ...

Although it is not made clear, all three scrutators apparently went to each voter in turn; this, at least, was the later practice, judging by the Rodez 'directorium':¹⁰⁸

Prelatus cum priore <et> superiore in scrutinio procedat, assumptis duobus scriptoribus, uel uno ueloci, et tabulis pluribus ad hoc paratis, nisi predicti scirent scribere et secundum quod est in prouinciis consuetum.

If the three scrutators were going separately to the voters, two *scriptores* (or one fast *scriptor*) would not be sufficient. This text is also an interesting reminder that, in an age which did not have paper to

¹⁰⁸ AGOP XIV A 4 p.12, ed. Creytens, AFP 26 (1956) 110.

waste, writing was something which even educated people generally left to a specialist.

(d) *Distinction II 2, 7*

Although the first task of diffinitors was to deal with the faults of the major superior, the Rodez text does not proceed immediately to that point, presumably because the earlier version of the constitutions still had more to say about diffinitors at all chapters, before raising a matter on which there were special laws to be made about diffinitors at general chapters. Thus II 2 deals with the general rôle of diffinitors at provincial chapters:

(2) *Predicti igitur*¹⁰⁹ diffinitores tractabunt omnia et diffinient cum *priore*¹¹⁰ prouinciali. Quod si in suis diffinitionibus in partes equales se diuiserint, illorum sententia preualebit in quorum partem prior prouincialis concordauerit; alias autem¹¹¹ sententia plurium preualebit.¹¹²

This is parallel to II 7, which deals with diffinitors at general chapters:

(7a) *Isti autem duodecim diffinitores duobus annis, et duodecim priores prouinciales tertio anno, cum magistro ordinis omnia diffinient et constituent et tractabunt.*¹¹³

(b) *Quod si in partes equales se diuiserint, illorum sententia preualebit in quorum partem magister ordinis declinauerit, si uero in partes inequales, optineat sententia plurium.*¹¹⁴

(c) *Si autem per adiunctionem magistri partes fiant*¹¹⁵ *equales, unus eligatur secundum quod in electione diffinitorum prouincialium est statutum.*

(d) *Quod si ad capitulum aliquo casu prepediti predicti non omnes uenerint, illi quos ex ipsis uenire contigerit cum magistro ordinis omnia pertractabunt.*

¹⁰⁹ Porto has *ergo*, but *igitur* is supported by the Sack Friars, the Crutched Friars and later Dominican texts.

¹¹⁰ Rodez has *priori*, but the ablative of the noun is always *priore*.

¹¹¹ The Sack Friars lack everything after the first *preualebit*, so Rodez's *autem* is not confirmed; Porto has nothing, and later Dominican texts have *enim*.

¹¹² Porto has *optinebit*, but this is not corroborated by later Dominican texts or by the constitutions of the Crutched Friars, all of which have *preualebit*. The lacuna in the Sack Friars' constitutions also implies that *preualebit* was repeated.

¹¹³ Rodez inserts 7e here.

¹¹⁴ Rodez has *plurimorum*. Cf. below, note 122.

¹¹⁵ Porto has *fuertint*, but later Dominican texts support *fiant*.

(e) Quod si magistrum abesse aliqua occasione¹¹⁶ contigerit, nichilominus predicti diffinitores in diffinitione¹¹⁷ procedant.¹¹⁸

(f) Quod si non omnes in unam sententiam concordauerint, forma superius posita teneatur.

7a has obviously been revised to accommodate the changes made in 1228. Thomas proposed that it originally began 'Isti autem diffinitores cum magistro ordinis ...', and, except for this alteration, he dated the whole of II 7 to 1221—the need to divide primitive legislation on diffinitors between 1220 and 1221 is one of many inconvenient consequences of the unnecessary hypothesis that the title *magister ordinis* was only introduced in 1221. He dated the corresponding provision in II 2 to 1225.

On the theory we are exploring now, II 7 and 2 are twin substitutes for a single earlier text going back to 1220, and the verbal similarities between 7ab and 2 are sufficient to suggest that they at least have a common ancestor, though one or other (or both) must have been slightly rewritten. The substitution of *maior prelatus* for more specific titles could make either version applicable to general and provincial chapters.

7cd deal with a situation which could only arise at the general chapter, and only after the changes made in 1225; they cannot therefore derive from a pre-1225 text. At the provincial chapter, and at the general chapter until 1225, diffinitors were chosen at the chapter itself, so there could be no question of them failing to arrive, which is the possibility envisaged in 7d. And if there were four of them, there was no way in which their votes could become evenly divided 'per adiunctionem magistri', which is the situation addressed in 7c. Even after 1225 there were in principle eight or twelve delegates from the provinces serving as diffinitors (old sense); but if one or any odd number of them did not turn up, the eventuality to which 7c alludes could result.¹¹⁹

¹¹⁶ Rodez's word-order is supported by the Sack Friars; Porto has *abesse aliqua occasione*, and later Dominican texts have *aliqua occasione abesse*.

¹¹⁷ Rodez's *diffinitione* is supported by the Sack Friars and most later Dominican texts; Porto's *diffinitionem* is aberrant.

¹¹⁸ Rodez has 7e immediately after 7a.

¹¹⁹ The voting procedure is not explained as fully as one might like, but it is clear enough what it must have been: the diffinitors voted first; if their votes were evenly divided (two against two, say), the major superior's vote was decisive; if they were unevenly divided (three against one), the majority prevailed, even if the major superior sided with the minority. The only exception was that if there were, say,

The differences between 2 and 7ab could have been caused by movement in either direction, but there are features which suggest that II 7 has preserved the more primitive text:

II 2	II 7a
Tractabunt omnia et diffinient cum priori prouinciali.	Cum magistro ordinis omnia diffinient et constituent et trac- tabunt.

II 2 might seem to have the more logical order, in that *diffinire* should be the outcome of *tractare*; but, as their name shows, *diffinire* is the essential business of *diffinitores*, so it is not unnatural to mention it first. Both Ventura and Rudolph say that Dominic wanted the diffinitors in 1220 to have *potestas statuendi*, so it is likely that this was written into the 1220 constitutions; and it was not necessarily restricted to general chapters at first. In Humbert's view, provincial chapters did not formally lose the right to *facere constitutiones* until 1228 when, he believed, the Most General Chapter introduced the principle that constitutions could only be made by three successive general chapters (ed. Berthier II 60); there is also a suggestive use of *constitutio* in II 19a (which I date to 1220), where visitators are told to correct the members of the community, including the prior, 'absque constitutione et status domus mutatione'. If even visitators might be tempted to think they could indulge in *constitutio*, it is reasonable to suppose that provincial chapters did have the right to do so. The preamble to PC shows that *constitutio* had attained its technical meaning by 1228,¹²⁰ and it is not unlikely that the capitulars of 1225 already hesitated to give diffinitors at provincial chapters the power to *constituere* (hence its omission in II 2). However, the word actually employed in the legislation of 1225 and later general chapters is *statuimus*; Humbert never uses *constituere* in his discussion of constitution-making, which is couched largely in terms of *statuere*. We may suspect that *constituent* in 7a has survived from an earlier text.

seven diffinitors at a post-1225 general chapter, and they were divided into four and three, and the Master sided with the three, the result was a deadlock which had to be broken by bringing in another voter. In other words, the major superior's vote never counted for more than anyone else's.

¹²⁰ As the profession-formula in I 16 shows, the order's rules were thought of as *institutiones* at first, rather than *constitutiones*, so that *constituere* and *constitutio* could be used without the technical overtones they would acquire later.

II 2
... illorum sententia preualebit in
quorum partem prior prouincialis
concordauerit.

7b
... illorum sententia preualebit in
quorum partem magister ordinis
declinauerit.

'In quorum partem ... concordauerit' is not good Latin—*concordare in* with the accusative means to agree *on*, not to agree *with*; but the obvious way to correct it would be to change 'in quorum partem' to 'cum quibus'. 'In quorum partem declinauerit' is quite acceptable; but this use of *declinare in* ('side with') is rather recherché.¹²¹ Introducing *declinauerit* would be an eccentric way of remedying the text of II 2, but *concordauerit* might well result from a slightly maladroit attempt to make 7b easier.

II 2
Alias autem sententia plurium
preualebit.

7bc
Si uero in partes inequales, optineat
sententia plurium. Si autem per
adiunctionem magistri partes fiant
equales ...

Alias is, in principle, sufficient; but once 7c was introduced (not before 1225), it was necessary to spell out the second possibility ('in partes inequales'). We may therefore suspect that, on this point, 7b was rewritten when 7c was added.

Optineat sententia plurium, which recurs in II 9d (which I date to 1220), is a modestly legal expression.¹²² Once again, it looks as if II 2 has a simplified text;¹²³ on this point, then, 7b is more primitive.

¹²¹ The instruction to judges in Deut. 16:19, 'Nec in alteram partem declinent', could be understood this way; Niermeyer cites one 9th-century example of *declinare post* with the same meaning, and a 10th-century instance of *declinare* with the dative (*Mediae Latinitatis lexicon minus*, s.v. *declinare*).

¹²² Cf. Justinian, *Dig.* 42.1.36, 'Plurium sententia optineret'. Thomas draws attention to two early conciliar texts in Gratian d.65 c.1 and 3 (Friedberg² I 250), and a letter of Innocent III (PL 214:219) which entered the law books soon after 1215 (*Compilatio IV* 3.4, Friedberg¹ 142), which all have *plurimorum sententia*, though the underlying Greek has πλειόνων (cf. Nicaea I, can. 6) (Thomas 217). It is not clear which was intended in PC: here and in II 9 Rodez has *plurimorum*, but Raymund and the Sack Friars have *plurium*.

¹²³ If the Porto manuscript is to be trusted, Raymund tried to substitute the more legal word *obtinebit*; but it is more probably a scribal quirk.

II 2

Quod si in suis diffinitionibus in partes equales se diuiserint ...

7b

Quod si in partes equales se diuiserint ...

The meaning of 7b is quite clear, but 2 makes it explicit; if *in suis diffinitionibus* was already there, why should it have been suppressed in 7b? However, we cannot exclude the possibility that the original text did not have 'si in partes equales se diuiserint' at all, but 'si partes fuerint pares', as in 1b and 9 (both going back to 1220). If so, both 2 and 7b have a simplified text; if the latter part of 7b was rewritten to accommodate 7c, this was presumably also when the beginning of 7b took its present form.

We may surmise that the original, undivided text, ran something like this:

Predicti igitur diffinitores cum maiori prelato omnia diffinient et constituent et tractabunt. Quod si ζ partes fuerint pares?, illorum sententia preualebit in quorum partem maior prelatus declinauerit; alias optineat sententia plurium.

7ef pose several problems, not the least of which is the placing of 7e: Raymund and the Sack Friars have it between 7d and 7f, but Rodez has it between 7a and 7b, where it is most unhappily situated: if the opening of 7a was adapted in 1225 to do justice to the new meaning which that chapter gave to the word *diffinitor*, 7e would promptly spoil the effect by reintroducing its older use (there is no way in which 7e can be restricted to diffinitors in the new sense, excluding provincials); and it seems silly to tell the diffinitors to carry on even if the Master is absent, and then go on immediately to indicate how his presence affects their voting.

If 7f comes immediately after 7e, it is clear enough what it must mean, even if 'forma superius posita teneatur' is somewhat elliptical. Everything can proceed as usual in the Master's absence unless the diffinitors are evenly divided; in that case, an extra voter has to be brought in, as in II 1b (recalled in 7c). When similar provision was made in 1267-1269 for breaking a deadlock at the provincial chapter in the absence of the provincial, the procedure was spelled out more clearly: 'unus ab eisdem [sc. diffinitoribus] de capitulo eligatur et in quorum partem ille declinauerit, illorum sententia preualebit' (MOPH III 137.10-14, 141.16-20, 144-145).

Without 7e, 7f is almost completely otiose. After 7d, it would signify that the absence of one or more diffinitors or provincials

makes no procedural difference; why should anyone have thought that it would? If 7d was added later, 7f, coming after 7c, would presumably mean that the 'forma superius posita' was to be used to break a secondary deadlock in the choice of an extra voter to resolve a primary deadlock; but the procedure to be followed in such a case is already explained in II 1b, to which 7c expressly refers. If 7c is also a later addition, 7f would serve no purpose at all immediately after 7b. If even 7b was originally not there, 'forma superius posita' would have to refer to II 2, and 7a+f would mean that voting at the general chapter worked in the same way as at the provincial chapter. This is a possible interpretation of 7f, and the misplacing of 7e in Rodez is easily understood if 7b-d and 7e were two separate later additions (someone simply inserted them wrong).¹²⁴ However, if 7f was originally independent of 7e, 7e must also have been independent of 7f; in other words, legislative provision was made at some stage for the diffinitors to carry on even if the Master was not there, with no explanation of how they were to compensate for his absence in their voting. It would then presumably just be a happy coincidence that both Raymund and the Sack Friars remedied this lack by putting 7e before 7f.

This leaves the possibility that the original nucleus of II 7 consisted simply of 7aef; but to what would 'forma superius posita' refer? II 2 provides no remedy for the major superior's absence, and it is hardly to be imagined that the prior of Bologna or Paris took over the master's responsibility if he was not there, as would be suggested by II 4. If II 4 was not yet in the text, the 'forma superius posita' would in effect have to be constructed from II 2 and 1b.

Rodez notwithstanding, 7ef must belong together; and, although 7f is always going to be elliptical, the ellipse would be less puzzling if 7ef were originally part of the pre-1225 text (with *maiozem prelatum* instead of *magistrum*), in which they would have come straight after 1b. There would then be nothing else for 'forma superius posita' to refer to, and 'si non omnes in unam sententiam concordauerint' could fairly easily be seen as echoing 'si adhuc discordauerint' in 1b. It is by no means implausible to date 7ef to 1220, or perhaps 1221: Dominic had been forced to shelve his missionary ambitions when he was put in charge of the San Sisto project towards the end of 1219, but MOPH XXV #148 shows that he had

¹²⁴ *Predicti* in 7e is unlikely to be part of an isolated piece of capitular legislation, but it could have been added when the text was inserted into the constitutions.

something up his sleeve again in March 1221, perhaps a plan to lead a Dominican expedition to Estonia (AFP 65 [1995] 118-119, 68 [1998] 70-76); the possibility that a general chapter might have to be celebrated without the Master was perfectly real.

This still leaves Rodez's wrong arrangement of II 7 unexplained. The obvious hypothesis that 7e got separated from 7f when 7b-d were inserted runs into difficulties; but if our suspicion is correct that 7b was rewritten to accommodate 7c, whose insertion was made necessary by the eventuality envisaged in 7d, then we only need the further hypothesis that 7cd were added after 1225 to solve our problem: the whole block 7b-d could at one stage have been in the margin of a manuscript in which the 1225 changes had already been absorbed. It would then not be difficult for a subsequent copyist to incorporate the new text in the wrong place, after 7e instead of before it.

I see no reason why 7cd and the consequent rewriting of 7b should not be dated later than 1225. The risk of absentee diffinitors did not exist until the changes made in 1225 were implemented; it is a consequence of the new system which might not have occurred to anyone in 1225.

What I am suggesting, in sum, is that the capitulars of 1225 retained an old text, going back to 1220, but restricted its application to general chapters. Leaving aside, for the moment, the question of its opening words, it would have run like this:

... cum magistro ordinis omnia diffinient et constituent et tractabunt. Quod si partes fuerint pares, illorum sententia preualebit in quorum partem magister ordinis declinauerit; alias optineat sententia plurium. Quod si magistrum abesse aliqua occasione contigerit, nichilominus predicti diffinitores in diffinitione procedant. Quod si non omnes in unam sententiam concordauerint, forma superius posita teneatur.

This hypothesis, which might seem rather adventurous, allows us simultaneously to explain Rodez's error; to make sense of 7ef, and to attribute linguistic consistency to the 1220 constitutions in the use of 'si partes fuerint pares' and 'optineat sententia plurium'. It also suggests an answer to the one problem we have not so far tackled, inconsistent use of the word *diffinitor*.

II 5 initiates a new sense of *diffinitor*, which distinguishes between elected diffinitors and provincial priors, though both have the task of *diffinire* at general chapters. In 7e and 8, however, the word is applied to whoever *diffiniunt*, diffinitors (new sense) and provincials alike. 7a, as it stands, shows great sensitivity to the new

usage: 'Isti autem duodecim diffinitores duobus annis, et duodecim priores prouinciales tertio anno ...'; but this embodies a further development which did not occur until 1228, when 5b was added to the constitutions. 6, or at least 6a, was also added in 1228. 7a must have been at least mildly rewritten in 1228, and it could have been significantly reshaped then. *Predicti* in 7d refers indiscriminately to diffinitors (new sense) and provincials; since, unlike 7e, it scrupulously avoids calling them all *diffinitores*, it attests the same sensitivity to the new use of the word as the opening of 7a. The Most General Chapter obviously put the finishing touches to the system pioneered in 1225; may we not ascribe to it the whole revision of II 5-7—the insertion of 5b, 6 (at least 6a) and 7cd, and the re-writing of 7ab?

If this is correct, then all that we need to attribute to the 1225 chapter is the substitution of *magister (ordinis)* for *prelatus maior* in II 7. Since the capitulars of that year evidently saw themselves primarily as altering the way in which diffinitors at general chapters were chosen, not, as we might have expected, changing the manner in which provinces were represented, it is understandable that they might have seen no difficulty in passing straight from their own innovative legislation in II 5 to a pre-existing text on diffinitors (old sense). We may therefore accept Thomas's suggestion that 7a originally began 'Isti autem diffinitores', except that we can date it to 1220, not 1221; and we can leave it entirely to the Most General Chapter of 1228 to change it.

The ancestor responsible for Rodez's confusion would, on this hypothesis, have had an original text consisting of the 1225 text of 7ab followed at once by 7e and 7f; the new beginning of 7a would be in the margin, 7b would be cancelled and the new text written in the margin together with 7cd, but separated in some way from the new beginning of 7a. A scribe might well be tempted to insert the new block, 7bcd, in the wrong place, between 7e and 7f.

(e) *Distinction II 3*

II 16g shows that there was always something special about diffinitors at the general chapter, and there can be little doubt that it resided in their total authority over the Master, whom they could even depose if necessary; since it was precisely the issue of deposition which Dominic raised in 1220, it was surely in 1220 that the constitutions gave them this power. Before 1225, however, the provincial chapter could not even elect a provincial, so its diffinitors cannot have had the power to depose him, any more than they

did under the terms of II 3. It is at this point, then, that the 1220 legislation on diffinitors reached the parting of the ways.

(3) Isti autem quatuor diffinitores excessum prioris prouincialis confessi uel proclamati in capitulo prouinciali coram fratribus audiant et emendant, ei penitentiam iniungentes. Si autem, quod absit, incorrigibilis extiterit, ipsum usque ad capitulum generale suspendant ab officio prioratus, priorem loci ubi capitulum prouinciale celebratur loco eius substituentes, et excessum eius ad capitulum referant generale¹²⁵ scripto communiter sigillato.

Since there is no question of II 3 being adapted from an earlier text about diffinitors' disciplinary authority over indeterminate major superiors, it must always have been specifically about provincials. As we have seen, the title 'prior prouincialis' did not exist in 1220-1221. If there was anything equivalent to II 3 in the 1220 constitutions, it would have been expressed in the terms found in II 15-16; and since the language of 15-16 was not updated, why should it have been altered here? The diffinitors of the provincial chapter surely acquired the responsibility to deal with the provincial's *excessus* at the same time as the chapter was given the right to elect him. We have found good reason to believe that that development occurred at the same time as the change in the system of diffinitors at general chapters. In other words, II 3 was created in the course of the major reshaping of the constitutions which took place in 1225.¹²⁶ Before that, as I have already suggested, it was the general chapter which dealt with erring provincials.¹²⁷

The procedure indicated in II 3 was perhaps inspired by earlier practice. II 17 shows that all chapters began with the hearing of faults (*culpe*); at the general chapter this would no doubt include the faults of provincials. The main effect of II 3 was to give someone (the diffinitors) authority to hear the provincial's faults at the *provincial* chapter. Such a move was not just an enhancement of the provincial chapter's authority, it was a necessary consequence of the new system of general chapters: since two times out of three the provincials would not even be there, the general chapter could no longer be responsible for hearing their *culpe*.

¹²⁵ The correctness of Rodez's word-order is not guaranteed: the Sack Friars have *excessum eius ad capitulum generale referant*; Raymund and later Dominican texts have *eius excessum referant ad capitulum generale*.

¹²⁶ This is also the date which Thomas suggests for II 3.

¹²⁷ Until II 1a was reshaped in 1225, we do not know whether provincial chapters were even required to be held every year; if they were not, the disciplining of provincials could certainly not be left to them.

It is not known for certain who went to general chapters before the 1225 innovations came into effect, but it is unthinkable that provincials were not included, so their *culpe* could be heard each year. We shall find a hint elsewhere that at first all priors were there too, in which case there would always have been someone who could inform the general chapter that a provincial was guilty of *excessus* meriting deposition; the formal procedure provided in 1225 was not originally necessary.

Linguistically, the most interesting feature of II 3 is its use of *prioratus*: although *prior prouincialis* has already become the standard way of referring to the provincial, the actual title is still *prior*, so his office can be described as *prioratus*.¹²⁸ It took some time for *prouincialatus* to enter the order's language.

(f) *Distinction II 4*

When the older legislation on diffinitors was divided in 1225, no provision was apparently made in II 2 for the possible absence of the provincial. The equivalent of 7ef is found in II 4b:

(4a) Statuimus etiam ut, mortuo priore prouinciali <uel amoto>,¹²⁹ prior conuentualis illius loci in quo prouinciale capitulum in sequenti anno fuerit celebrandum uicem¹³⁰ eius optineat, donec prior eiusdem prouincie sit electus et confirmatus.

(b) Quod si ipsum abesse contigerit nec uicem suam alii¹³¹ commiserit, idem prior cum diffinitoribus capituli [prouincialis]¹³² in celebratione procedat eiusdem.

¹²⁸ Where it did not matter which kind of prior was involved, *prior* continued to be available as a generic term covering both conventual and provincial superiors. The constitutional provision for making profession in the hands of someone other than the Master simply says 'cum autem fit alii priori cuicumque sic facienda est' (PC I 16); a separate reference to provincials was first introduced in 1932 in the Gillet constitutions. In MD NS 29 (1998) 655 I was wrong to say that PC does not contain this provision.

¹²⁹ Rodez omits *uel amoto*, but it is in Raymund's constitutions and those of the Sack Friars; it was probably omitted by accident in Rodez. If 4a was only concerned with the provincial's *death*, it should not have been placed here at all; it would belong in II 15.

¹³⁰ Rodez's *uicem* is supported by the Sack Friars and by later Dominican texts; Porto's *uices* is eccentric.

¹³¹ Raymund and later Dominican texts have *alicui*, but Rodez's *alii* is supported by the Sack Friars.

¹³² Here, as in 1b, Rodez alone has a rather superfluous *prouincialis*; later Dominican texts have *capituli* on its own, and the Sack Friars have *illius capituli*.

(c) Prior provincialis etiam¹³³ cum suis diffinitoribus in capitulo provinciali semper locum determinet ubi sequens capitulum celebretur.

The symmetry between II 1-3 and II 5-8 might suggest that 4b ought to be in II 2; however the parallelism continues in II 4 and II 9. II 9 is an enigmatic text, but it is at least clear that it concerns the possibility of the Master being removed from office, and the consequences of his death or removal; II 3-4 cover the same ground at provincial level. 4b is placed where it is because of the asymmetry, on this point, between provincial and general chapters. The diffinitors of the general chapter had complete authority to preside on their own in the absence of the Master; they could tell the Master what to do, so he could scarcely impose on them a 'vice-master' of his own choosing. The 1225 chapter apparently did not wish to grant similar independence to the diffinitors of the provincial chapter, presumably because, in their view, the provincial was primarily answerable to the Master and the general chapter, not to the provincial chapter,¹³⁴ so that it was not inappropriate for him to appoint someone to take his place at the provincial chapter. If he was absent and had not deputed anyone, there should be someone who would automatically take control as a sort of pro-provincial; if this was to be the favoured procedure, it was quite logical for such pro-provincials to be introduced first in connection with the more durable rôle they might have to play if the provincial were suspended (or dead or deposed).

Thomas argues that 4a was inserted later than 4b, on the grounds that it interrupts the flow of thought (Thomas 270), but this is not entirely persuasive: II 3 raises the possibility of the provincial being suspended; it would not be illogical to move on to the even more radical eventuality of his being dead or deposed. It is true that, as it stands, 4a cannot go back to 1225: under the system indicated in II 15a, which does go back to 1225, there could be no confirmation of the election until the next general chapter; 'electus et confirmatus' presupposes the later development enshrined in 15b, which allowed the Master to confirm provincials on his own. In the Sack Friars' constitutions, 15b actually comes here, immedi-

¹³³ Since this clause was radically reworked in Raymund's constitutions, Rodez's word-order cannot be confirmed; the Sack Friars have *etiam provincialis*.

¹³⁴ The disciplinary authority given to diffinitors at the provincial chapter was more like that enjoyed by visitators with reference to the brethren of a convent, including the prior (II 19a), than to that of diffinitors at the general chapter.

ately after 4a, which suggests that possibly 'et confirmatus' was added to 4a by the chapter which produced 15b; without 'et confirmatus', there is nothing in 4a to prevent us dating it to 1225. On the other hand, it might be suggested that 4a as a whole was added at the same time as 15b.

Without 4a, there is no provision for the government of the province during an interregnum. It looks as if the 1225 chapter tried to make provision for the government of the order in such circumstances in II 9cd, and it would have been logical for it to do likewise with regard to provinces; but, as we shall see, II 9cd was originally concerned only with the immediate consequences of the Master's removal *for the chapter itself*, which would be adequately dealt with, at provincial level, by II 3+4b, and the 1225 chapter made only the most superficial adjustment of 9c to the new situation brought about by its major innovations.

4a's opening 'Statuimus etiam' might be considered strange in a later addition, and it fits admirably between 'Statuimus' in II 1 and 'Statuimus etiam' in II 5. Nevertheless, the preamble tells us that the capitulars of 1228 created some constitutions 'quas in locis suis inter constitutiones alias inserere procurarunt'; it is not unreasonable to suppose that, when appropriate, they provided suitable particles to integrate their new constitutions properly into the text. If 4a was added in 1228, its 'statuimus etiam' would be on a par with 'statuimus autem' in II 6a, which is certainly attributable to 1228.

4b is sufficiently similar to 7e to suggest that both derive from the 1220 text on diffinitors:

4b

Quod si ipsum abesse contigerit nec uicem suam alii commiserit, idem prior cum diffinitoribus capituli in celebratione procedat eiusdem.

7e

Quod si magistrum abesse aliqua occasione contigerit, nichilominus predicti diffinitores in diffinitione procedant.

If this is correct, then there can be little doubt that 4b goes back to 1225, as Thomas maintains, and that it was intended to deal with the same situation, *mutatis mutandis*, as 7e. In Raymund's constitutions (const. II 7) it unambiguously concerns any provincial chapter from which the provincial is absent and for which he has not deputed a vicar.

It makes little difference to the interpretation of 4b whether it comes after 3 or after 4a. Either way, *idem prior* will mean the prior

of the house where the chapter is being held. However, if 4b comes after 4a, *ipsum* should strictly refer to the newly elected provincial who is mentioned last, of whom it would be more natural to say 'si ipsum adesse non contigerit' and who could scarcely be expected to have nominated a vicar to represent him; it is not impossibly difficult to extend its range to include the provincial with whose hypothetical death or deposition 4a began, but if *ipsum* is meant to refer to any absentee provincial, not just the one mentioned at the end of 4a, it would do so more naturally and unambiguously if 4b came after 3.

It is no argument against Thomas's theory that it leaves 4b (with or without 4c) to form an unconvincing constitutional unit; it was only later that the second distinction was divided into sections with individual titles.¹³⁵

I conclude that 4b should be accepted as part of the legislation of 1225, but that 4a was added later, maybe together with 15b, very possibly in 1228.

Without *et confirmatus*, 4a would imply that a newly elected provincial assumed authority immediately, which is also implied by 15a. He could then play the provincial's part in the ensuing provincial chapter (and even 15d does not exclude the chance of an election leading straight into a chapter). In principle, this would not be true of 4a as it stands, unless the newly elected provincial could be confirmed at once, though I rather wonder whether this consequence was either perceived or intended. The order seems, surprisingly, to have waited until 1932 to provide a constitutional answer to the question what rôle a newly elected but unconfirmed provincial has if he is present at the chapter.¹³⁶

¹³⁵ Rodez and the Sack Friars have much the same sections, often with the same headings, so they are not due to the whim of an individual scribe. However, even the Most General Chapter of 1236 apparently had no way of identifying particular parts of the constitutions except by quoting them ('ubi dicitur', 'in constitutionibus ubi dicitur' etc.), so it is likely that all the divisions and headings, even in the first distinction, were introduced in the 'edition' of the constitutions which resulted from the 1236 Most General Chapter. The Penitents' constitutions include the equivalents of PC II 14, 35 and 36, but all with different headings from those found in Rodez, which confirms that the Rodez headings were not yet present in 1228.

¹³⁶ In a comment on const. II 3, Jandel noted that in some provinces a newly elected provincial assumed authority at once as vicar of the province (*Constitutiones*, Paris 1872, 361). The Gillet constitutions say that he is to preside at the chapter as vicar, unless he cannot easily get there, and to start ruling the province; however, in provinces where it was the custom for someone else to go on acting as vicar until the new provincial was confirmed 'haec consuetudo servari potest' (463-§III).

On any reading, 4c seems both out of place and superfluous, since the same point is made in 16e, which must go back to 1220, as its very primitive terminology shows;¹³⁷ one can see why Thomas refrained from suggesting a date for it. We may surmise that it was included here, not simply because it was the final responsibility of every provincial chapter to designate the place for the next one, but because the implementation of 4a depended on chapters remembering to do so; if so, it does not antedate the insertion of 4a.

Although *prior prouincialis* and *prior conuentualis* have evidently become standard terminology, 4a is a further reminder that the formal title of both was still *prior*, the particular competence of any individual *prior* being identified by an epithet such as *prouincialis*, *conuentualis*, *Bononiensis*; *prior eiusdem prouincie* was in no way anomalous.

(g) *Distinction II 6*

II 5 we have already considered. It establishes the order's 'bi-cameral' system of chapters, according to which there is a diffinitors' chapter two years running, followed by a provincials' chapter in the third year. II 6 regulates some possible consequences of this system:

(6a) Statuimus autem et in uirtute spiritus sancti et obedientie et sub interminatione anathematis districte prohibemus ne priores prouinciales fratribus diffinitoribus aut¹³⁸ fratres diffinitores prioribus prouincialibus per suas diffinitiones preiudicium aliquod audeant generare. Quod si facere attemptauerint, eadem districcione prohibemus ne in hoc eis aliquis presumat¹³⁹ obedire.

(b) Et ut multitudo constitutionum uitetur,¹⁴⁰ prohibemus ne aliquid decetero¹⁴¹ statuatur nisi per duo capitula continua fuerit approbatum,

¹³⁷ The Sack Friars have both 4c and 16e exactly where they are in Rodez; Raymund only retained 16e and put it, slightly adapted, at the beginning of his const. II 7.

¹³⁸ Rodez's *districte prohibemus* and *aut* are supported by the Sack Friars; later Dominican texts have *prohibemus districte* and *uel*.

¹³⁹ The word-order is not certain: the Sack Friars have *aliquis eis presumat*, and Raymund and later Dominican texts have *aliquis presumat eis*.

¹⁴⁰ Rodez's *uitetur* is otherwise unsupported; the Sack Friars do not have 6b, and Raymund and later Dominican texts have *euitetur*. Elsewhere *uitare* is used in II 31c and in the titles of II 6 (the Sack Friars also have *uitando*), II 14 (where the Sack Friars have *euitanda*), and II 33 (where Rodez just has *de scandalo predicationis*, but the Sack Friars add *uitando*); these obviously cannot confirm the correctness of *uitetur* in II 6b.

¹⁴¹ Again Rodez is on its own; later Dominican texts have *ne decetero aliquid*.

et tunc in tertio capitulo immediate sequente poterit confirmari uel deleri, siue per priores prouinciales siue per alios diffinitores ubicumque illud tertium capitulum *celebretur*.¹⁴²

It is obvious that II 6 cannot antedate II 5. 6a and 6b became separated in Raymund's constitutions, with 6a going into the prologue and 6b into II 8, with the result that Humbert only commented on 6a (ed. Berthier II 56-62); he ascribes it to the first Most General Chapter, that of 1228 (ibid. 58). 6a is one of the things declared to be immutable in 1228, and 6b was at the same time ruled to be changeable only by another Most General Chapter (Preamble); Thomas dated them both to 1228, though the fact that they are mentioned in the preamble does not of itself prove that they were only introduced in 1228.¹⁴³

6a is one of several vehemently expressed precepts, which are linked by overlapping lexical similarities. Commands or prohibitions are issued in *uirtute spiritus sancti* in II 6a, 9e, 14, and 27a, and obedience is also invoked in II 6a and 14. *Firmiter precipimus* or *precipimus firmiter* is found in II 10d, 11d and 14, and its counterpart, *districte prohibemus*, in II 6a and 27a, and *penitus prohibemus* in 8b. Except in the case of apostates from the order, *excommunicatio* is mentioned only in II 10d, 11d, 14 and 27a; *sub interminatione anathematis*, which comes to the same thing, is found in 6a and 8b. Although there is a slight textual problem, the phrase *pena grauiori(s) culpe debita* occurs in II 10d, 11d, 14 and 27a.¹⁴⁴

¹⁴² Rodez has *teneatur*, but all later Dominican texts have *celebretur*; *teneri* is normal in connection with the daily chapter (cf. I 1 etc.), but elsewhere in PC only *celebrari* is used of provincial and general chapters.

¹⁴³ One of the things declared immutable is 'de possessionibus et redditibus nullatenus recipiendis', which goes back to 1220.

¹⁴⁴ Rodez has the phrase with *grauioris* in 10d and 27a, but with *grauiori* in 11d and 14; in 35 (X 9) it just has *pene grauioris culpe* without *debite*. The Sack Friars have *grauioris* in 10d, 11d and 14, but in 27a they have *pene subiaceat grauiori*. The constitutions of the Penitents provide evidence only for 14, and there they have *pene grauioris culpe debite* (Vienna 4724 f.326^r). It is not entirely clear what should be in Raymund's text: in PC II 11d (his const. II 4) he evidently just retained *pene grauioris culpe*, and he dropped the whole phrase from PC II 14 (his const. II 8), though it re-appears in 14th-century manuscripts of the constitutions; in PC II 35 and 14 (const. II 1 and 8) the Porto manuscript has *grauiori culpe debite (debitam)*, but in the corresponding passages the Crutched Friars have *pena grauioris culpe debita* in the appropriate case. Judging from the 13th-century manuscripts I have looked at, Humbert always favoured *grauiori culpe debita*, but *grauioris* sometimes re-appears later; for example, the second text in BL add. 23935, from the mid 14th

Various arguments combine to make it probable that all the passages cited go back to 1228. Although it was only in 1234 or 1235 that the principle was explicitly enunciated that the Dominican constitutions were not binding on pain of sin 'nisi propter contemptum vel preceptum',¹⁴⁵ Humbert says he had been told *a maioribus* that this was the order's intention from the outset, and that Dominic himself had been most insistent on it (ed. Berthier II 46); constitutions framed as formal precepts are therefore somewhat anomalous.¹⁴⁶ There is, as we shall see, external evidence to prove that II 27a goes back to 1228, 6a and 8b are at least associated with 1228 by being mentioned in the preamble, and all the passages in question can without implausibility be dated to 1228. The preamble shows that the Most General Chapter of that year had unique legislative powers, going beyond even those of three ordinary chapters combined, not least the authority to make decisions which no subsequent general chapter could overturn; it would be in keeping with its special status for it to frame points which it deemed particularly vital as formal precepts. Once II 6b's three-year rule was in place, it would be awkward for any chapter to introduce a formal precept into the constitutions, since its implementation would necessarily be delayed and it could be rescinded in the mean time; it is scarcely in the nature of a formal precept for it to be conditional and delayed like this.¹⁴⁷ The Most General Chapter of 1236 does not appear to have had the same authority as that of 1228, and there is no trace in its acta of any of the passages from PC which we have been considering.¹⁴⁸ 1228 would seem, then, to be the latest plausible date for the precepts in PC; granted

century, favours *gravioris culpe debita*. Since we should expect either *pena gravioris culpe* or *pena grauiori culpe debita*, the persistence with which *pena gravioris culpe debita* appears suggests that it ought to be treated as the *lectio difficilior* and retained where it appears and restored where it does not, in PC and even in Raymund's constitutions; it makes sense as 'the due penalty of a more serious fault' (rather than 'the penalty due to a more serious fault').

¹⁴⁵ It was confirmed in 1236 (MOPH III 8.4-7).

¹⁴⁶ It is worth remarking that all the *precepta* which Humbert identified in the constitutions (ed. Berthier II 53) come from PC, which at least shows that chapters after 1236 did not give this status to any of their legislation.

¹⁴⁷ A formal precept was issued at the general chapter of 1233, but in the name of the Master, not the chapter, and it was meant to come into force immediately (MOPH III 4.15-20).

¹⁴⁸ The Penitents, whose constitutions derive from a Dominican model which certainly antedates 1236, as we have seen, include an equivalent of PC II 14 (Vienna 4724 f.326').

Dominic's insistence on the constitutions binding only *ad penam*, an earlier date is not likely. We may, then, with considerable confidence, agree with Thomas's suggestion and attribute all the texts in question to the Most General Chapter of 1228, and interpret them in the light of its responsibility to consolidate and reinforce the order's essential structures.

One of these essential structures was the system of different kinds of general chapter, and II 6a was plainly intended to shield it. It cannot be designed to stop provincials and diffinitors making constitutions against each other: if the three-year principle was already in force, it was impossible anyway—anything inchoated by provincials could only become law with the support of diffinitors, and vice versa; if it was not yet in force, then any single chapter could rescind constitutions it did not like, so diffinitors and provincials would be wasting their time waging legislative war.¹⁴⁹ The purpose of 6a must be to stop chapters issuing edicts with immediate effect which would in some way interfere with the working of the other kind of chapter. If diffinitors, for example, were to call a third diffinitors' chapter in the following year in place of a provincials' chapter, or if provincials were to attach a rider to an inchoation stating that it would be presumed to be confirmed unless it was rescinded by three successive chapters (so that, *de facto*, only the next provincials' chapter could suppress it), or if a chapter were to penance the diffinitors or provincials at the previous chapter for not confirming a particular piece of legislation, all such attempts would be automatically invalidated by 6a.

If it was, as I have suggested, the Most General Chapter of 1228 which rewrote the beginning of 7a and introduced 7d, its capitulars displayed a certain sensitivity to the new meaning of *diffinitor* pioneered in 1225; and the distinction between diffinitors (new sense) and provincials, which is crucial to 6a, is fittingly expressed by the use of *fratres diffinitores* to mean the former both in 6a itself and in

¹⁴⁹ Bandello's comment seems a bit confused on this point. He rightly points out that no *preiudicium* is generated by provincials and diffinitors refusing to confirm each other's inchoations, but all that is left is apparently a constitutional change which he considers impossible: 'Declaramus quod tunc solum diffinitores prioribus prouincialibus et priores prouinciales diffinitoribus per suas diffinitiones preiudicium generarent si in suis diffinitionibus aliquid statuerent per quod auctoritas prouincialium tolleretur vel minueretur vel limitaretur et econuerso. Hoc autem fieri non potest nec per tria capitula nec per vnum generalissimum, sed solum auctoritate pape' (*Constitutiones*, Milan 1505 f.lxxxiii).

the preamble. It is therefore rather surprising that 6b uses different terms when it says that a new constitution can be confirmed at the third chapter 'sive per priores prouinciales sive per *alios* diffinitores', in which *diffinitores* as such clearly covers provincials and diffinitors (new sense) alike.¹⁵⁰

Humbert includes 6b and 27b in his list of precepts in the constitutions, both of which use a simple *prohibemus*, though both come immediately after formal precepts couched in the vehement terms we have been considering. 27b was undoubtedly inserted in 1228,¹⁵¹ and it is unlikely that 27a and 27b were ever independent of one another. Nevertheless the lack of adverbial reinforcement suggests that *prohibemus* in 6b and 27b was intended to be weaker than 'eadem districtione prohibemus' (6a) or 'eadem districtione precipimus ne' (14b), and that Humbert was wrong to classify them among the formal precepts. Plain *prohibemus* is also found in X 4, 'Item in diebus dominicis seruilia opera, ut lapides portare, ligna aggregare et similia, fieri prohibemus';¹⁵² if such *seruilia opera* were considered sinful in themselves, there was no need for the order to legislate against them, and if they were not already sinful, it is improbable that any Dominican chapter wished to make them so by issuing a formal precept against them. 6b, then, need not be considered a formal precept and so it falls outside the scope of the arguments which made us date 6a to 1228.

Humbert explicitly dates 6b to 1228, but it does not look as if he had checked the acts of any general chapters; in fact, he justifies his statement by citing const. II 10, in which Raymund had incorporated the old preamble from PC: 'sicut patet infra capitulo de generalissimo capitulo' (ed. Berthier II 58). Humbert was already

¹⁵⁰ The Sack Friars have a different text to suit their own procedures; Raymund and Humbert confirm *alios*.

¹⁵¹ It clearly caused a panic among the nuns in Bologna, so Jordan wrote to soothe them (*Ep.* 48), and also to Stephen, provincial of Lombardy (*Ep.* 49). *Ep.* 49 mentions the three 'articuli qui in praeterito Parisiensi capitulo fuerant adeo firmiter stabiliti ut nec revocari possint nec dispensationem admittere', which can only refer to the chapter of 1228 (cf. Preamble); Jordan's travel plans show that he was in Italy and planning to return to France, so the letter must have been written in 1229. 27b was obviously new, otherwise why were the nuns so upset? But if it was only introduced in 1229, it would not have come into force until 1231, and the way Jordan speaks of it implies it was already a fully-fledged constitution. It must therefore be ascribed to the Most General Chapter in 1228.

¹⁵² This did not survive into Raymund's constitutions, so it was not there when Humbert was looking for precepts.

Master when he started the commentary on the constitutions,¹⁵³ and it is unlikely that he embarked on it until after he had completed his revision of the constitutions themselves, so he was probably writing some thirty years after the event; even if he remembered the Most General Chapter adding new emphasis to the principle enunciated in PC II 6b, we cannot place absolute reliance on his memory to assure us that it had not first been enunciated a few years earlier.¹⁵⁴

At some point in its legislation the chapter of 1225 left a potentially confusing transition between its new use of *diffinitores* and inherited texts in which the word retained its previous function. We have conjectured that the return to older usage occurred in II 7a. The use of *alios diffinitores* in 6b might well have been intended to ease the transition; but it could only do so before the changes were made in II 7 which we have attributed to the Most General Chapter of 1228.

No definite conclusion is possible, but I am inclined to believe that 6b goes back to 1225. Its introductory *et* would connect it perfectly well to 5c, better, perhaps, than to 6a.

We do not know why the new system was introduced in 1225, and it would be improper to assume a priori that its purpose was to involve more of the brethren in the order's government or to give greater representation to non-superiors; the changes might simply have been intended to spread more widely the burden of attendance at general chapters.¹⁵⁵ However, the beginning of the preamble

¹⁵³ This is shown by his insistence in the prologue that the work was not meant to be authoritative or to put anyone under any obligation (ed. Berthier II 1).

¹⁵⁴ Humbert joined the order in Paris, probably on 30 Nov. 1224, so it is unlikely that he was involved in the general chapter of 1225, which was not held in Paris anyway. We know from his *cronica ordinis* that he 'ingressus est ordinem antequam redisset ad patriam circa annum domini MCCXXV, prius domino Hugone cardinali, qui magister suus fuerat, cum eodem in eodem proposito concurrente' (MOPH I 337). This passage of the *cronica* shows that a long story added to book IV of *Vitas fratrum* in 1259 (MOPH I 170-173) is about Humbert himself; from it we learn that he joined the order in Paris on St Andrew's day, and Hugh of St Cher on the feast of the Chair of Peter the following Lent. If 'circa 1225' in the *cronica* covers his entry into the order as well as his return *ad patriam*, it must mean that he entered in 1224, and Hugh of St Cher on 22 Feb. 1225; the only other possible year in which 22 Feb. fell within Lent was 1222. If 'circa 1225' was only intended to refer to Humbert's return *ad patriam*, we cannot exclude the possibility that he entered the order in 1221; but this seems a less natural way of interpreting the *cronica*.

¹⁵⁵ In their equivalent of PC II 5, the Sack Friars, 'cupientes parcere fratrum laboribus ac distractionibus personarum', decree that general chapters are to be held only once every three years.

shows that, at least by 1228, there was a conviction that all power in the order belonged primarily to the brethren:

Anno ab incarnatione domini M^oCC^oXX^oVIII^o conuenerunt ... XII priores prouinciales una cum Iordano magistro ordinis nostri, singuli cum duobus diffinitoribus sibi a prouincialibus capitulis deputatis, ubi *fratres omnes uota sua unanimiter transtulerunt* eisdem potestatem plenariam concedentes ut quicquid ab ipsis fieret ... decetero firmum ac stabile permaneret.

This lends credence to Humbert's explanation of why the Dominicans required legislation to pass through three chapters. He remarks that in some orders, such as the Cistercians and Praemonstratensians, 'tota discretio est fere in praelatis maioribus', while in others, such as the Franciscans, 'est discretio apud praelatos et subditos eorumdem multos'; diffinitors in such orders are respectively either major superiors alone or major superiors with an equivalent number of subjects. In the Dominicans, however, 'est abundantia discretionis etiam in subditis', so there is a predominance of diffinitors who are not major superiors. The passage of new legislation through three chapters allows, not only for a longer period of reflection, but also for both kinds of diffinitor to take part in it (ed. Berthier II 61-62).

If this 'bi-cameral' interpretation of the Dominican system does reflect the order's sensibilities in 1228, there is no reason why it should not already have occurred to the capitulars of 1225.

Humbert does not seem convinced that 'multitudo constitutionum' is a bad thing in itself; he stresses rather the risk of confusion if constitutions could be made or unmade at the whim of a single chapter (or if changes could be made by three non-successive chapters), and the danger of creating constitutions after insufficient reflection. 6b, with its 'prohibemus ne aliquid *decetero* statuatur ...', implies that previous chapters had indulged in an orgy of legislative activity, and we may suspect that one of the purposes for which a Most General Chapter was convened in 1228 was to get the constitutions tidied up, not least by some judicious pruning; as we know from the preamble, the capitulars of 1228 were given full authority 'siue in constituendo siue in destituendo, mutando, addendo uel diminuendo', and we have no way of knowing how much was suppressed by their *destituere* and *diminuere*. This poses an insuperable barrier to any attempt to tell the whole story of the Dominican constitutions between 1220 and 1228.

One probable consequence of 6b's restriction on constitution-making which we can recognise is the distinction (on which Humbert also comments) between *constitutiones* and other kinds of regulation, such as *ordinationes*, which a provincial chapter could issue, and *admonitiones*, which a single general chapter could pronounce or rescind.

(h) *Distinction II 8-9*

II 7 we have already dealt with, and I have suggested that the 1225 chapter adapted it with only minimal changes from the 1220 text on all diffinitors. II 7-9 give the diffinitors at the general chapter precisely the powers which *ACB* #2 and 33 suggest they were given in 1220, but it is II 8-9 which spell out their authority over the Master, and this is the point at which the practice of the general chapter must always have diverged from that of the provincial chapter. It is presumably at II 8, then, that we reach 16g's 'ea que dicta sunt de generali capitulo', which 'in secunda feria post pentecosten debent inchoari'. Throughout II 8-9 *diffinitores* is used in its old sense and does not mean diffinitors *rather than provincials*.

II 8 begins with a general statement of the diffinitors' authority over the Master, and takes the occasion to insist on the unchallengeability of all their rulings:

(8a) Isti autem diffinitores plenariam habeant potestatem super excessum magistri ordinis corrigendum¹⁵⁶ uel de eo penitus remouendo. Et ipsorum sententia tam in hiis quam in aliis inuiolabiliter obseruetur, ita quod ab ipsorum sententia a nemine liceat appellari.

(b) Et si appellatum fuerit, friuola et nulla appellatio habeatur, appellationem enim fieri in nostro ordine sub interminatione anathematis penitus prohibemus, cum non uenerimus contendere sed potius delicta corrigere.

8b is formulated quite differently from 8a, and, as we have seen, it should very probably be ascribed to the Most General Chapter of 1228, like all such formal precepts. The ban on appeals was one of the things it declared to be absolutely immutable (Preamble).

¹⁵⁶ The Sack Friars support *super excessum ... corrigendum*, and it is entirely acceptable: the diffinitors have authority *over*, not just with regard to, the Master's misdemeanours. Porto has *super excessum ... corrigendo*, and AGOP XIV L 1, BL add. 23935 and later manuscripts generally have *super excessu ... corrigendo*.

8a, on the other hand, can only be dated to 1220.¹⁵⁷ The unchallengeable authority of the diffinitors, as we have already noted, is expressed in terms derived from Lateran IV; but, very remarkably, it is mentioned in PC with specific reference to their power to discipline the Master, and only casually extended to everything else. This is foreign to the perspective of Lateran IV, but intelligible in the light of Rudolph's testimony that in 1220, immediately after, and apparently because of, the brethren's refusal to depose him, Dominic got diffinitors appointed 'qui haberent potestatem tam super ipsum quam super alios et super totum capitulum' (ACB #33). The composition of 8a reflects these dramatic circumstances.

II 9 goes into more detail about how the diffinitors are to deal with the Master and in what circumstances they should depose him:

(9a) Diffinitores predicti excessum magistri seorsum inter se¹⁵⁸ corrigant et emendent.

(b) Si autem in tantum excesserit quod remoueri debeat, tunc non passim et indifferenter procedant, sed cautela maxima et *inquisitione*¹⁵⁹ diligentissima. Et non deponatur nisi pro crimine uel pro alio¹⁶⁰ criminali peccato quod non possit sine magno scandalo ordinis tollerari. De quo etiam si legitime conuictus fuerit uel confessus, uel si adeo fuerit negligens, inutilis et remissus¹⁶¹ *quod*¹⁶² ordinis dissolutionem et destructionem inducat, et tunc antequam deponatur inducatur a diffinitoribus ut magistratui cedat et sibi aliquem locum eligat ubi possit honeste conuersari.

Pro crimine was introduced into 9b in 1236 to replace *pro heresi* (MOPH III 7.25-26), which the Sack Friars retained.

Thomas naturally dates 9ab to 1221 because the terms *magister* and *magistratus* are used, but if the text is as old as that, it surely

¹⁵⁷ Thomas dates it to 1221, for the usual reason that it employs the term *magister ordinis*. He also divides 8 differently, taking 'et si appellatum ... habeatur' with 8a rather than 8b.

¹⁵⁸ Rodez's *seorsum inter se* is not guaranteed: the Sack Friars have *inter se seorsum*, and Raymund and later Dominican texts just have *seorsum*.

¹⁵⁹ Rodez has *inquisitio*.

¹⁶⁰ Where Rodez has *pro alio criminali peccato*, the Sack Friars have *pro peccato criminali*; Raymund's original text is irretrievable. *Alio* is not very convincing after *pro crimine*, but would not be out of place in the older text with *pro heresi*.

¹⁶¹ Raymund's original text is lost, and the new text introduced in 1240-1242 does not contain *inutilis* (MOPH III 15.3-8, 20.7-12, 22.21-26); the Sack Friars confirm the presence of the word, but not its placing, as they have *inutilis negligens et remissus*.

¹⁶² Rodez has *qui*.

goes back to 1220; it was, after all, that chapter's refusal to accept Dominic's request to be 'deposed' on the grounds that he was 'inutilis et remissus' which led to the appointment of diffinitors (ACB #33). But there are awkwardnesses in the text which suggest that II 9b did not reach its present shape all at once.

Editors and translators alike seem to have been baffled by the syntax of 'et non deponatur ... et tunc antequam deponatur ...'. Denifle, in his edition, puts a full stop after *tollerari*, a colon after *remissus*, and a comma followed by a dash after *inducatur*, which suggests that he considered the construction defective. Scheeben shows no such disquiet: he prints a comma after *tollerari* and thereafter nothing stronger than a comma until *inducatur*, after which he puts a semi-colon. Thomas does much the same, except that he has a full stop after *inducatur*. Neither Scheeben nor Thomas explains how the resulting text is to be construed. A clutch of translations take 'de quo etiam si legitime conuictus fuerit uel confessus' to mean 'on condition also that he has either been lawfully convicted or confessed', and treat *et tunc* as if it were just *tunc*.¹⁶³ The 1987 BAC *Santo Domingo* accepts that *tollerari* is the end of a sentence, and 'de quo etiam si ... inducat' is then treated as another sentence in its own right: 'Se procederá también así, si fuere también legítimamente convencido o lo haya confesado, o si por el contrario fuere tan negligente, ineficaz, o relajado, que lleve a la Orden a su ruina y abolición'; this respects *etiam si*, but introduces a verb ('se procederá') which is not there in the Latin. Of the translations I have seen, only Lehner's corresponds to the Latin text: 'He shall not be deposed except for heresy or for some other criminal fault which cannot be tolerated without great scandal to the Order. But whether he has been lawfully convicted of such a crime, or confessed it himself, or has been so negligent, unsolicitous and remiss as to threaten the decline and collapse of the Order; even then, before he is deposed ...'.¹⁶⁴

The most important structural feature of the text is that *etiam si* is picked up by *et tunc*: 'even if ... even then ...'. And 'uel si adeo fuerit negligens ... inducat' disrupts the structure. The fundamental flow of thought is this: 'He is not to be deposed except for heresy

¹⁶³ Thus Vicaire, *Saint Dominique de Caleruega*, Paris 1955; the old BAC *Santo Domingo*; Lippini, *San Domenico visto dai suoi contemporanei*, Bologna 1988.

¹⁶⁴ F.C. Lehner, *Saint Dominic, biographical documents*, Washington DC 1964, 236.

or some offence which cannot be tolerated without scandal; *even if* he is convicted of, or confesses, such an offense, he is *still* to be urged to resign before he is deposed'. *Et tunc* introduces a concession which is to be made *in spite of* the enormity of his sin: instead of just deposing him, the diffinitors are to give the Master the chance to resign. 'Vel si adeo fuerit negligens ...' inappropriately introduces into the *de quo* clause an alternative motive for deposition; it is a foreign body inserted where it does not belong.

Nevertheless, it is this foreign body which echoes the events of 1220. 'Vel si adeo fuerit negligens, inutilis et remissus ...' recalls the reasons Dominic gave for his own deposition: 'Ego sum inutilis et remissus' (ACB #33). If 'inutilis et remissus' was prompted by Dominic, the addition of *negligens* was perhaps inspired by church law.¹⁶⁵

If the whole clause, 'si adeo fuerit negligens, inutilis et remissus quod ordinis dissolutionem et destructionem inducat' goes back to 1220, then, in response to Dominic's suggestion that he should be deposed, the capitulars were in effect saying to him, 'You'll have to be a great deal more *inutilis et remissus* than that, if you want to get yourself deposed'. But this talk of the destruction of the order is reminiscent of the equally overblown statement in II 14 (datable to 1228) that anyone who reveals to outsiders such secrets as why the Master has been deposed 'tamquam excommunicatus et scismaticus et destructor nostri ordinis habeatur', and the similar description in II 11 of people who defy the order's rules for the election of the Master (also datable to 1228).

Dominic's humility in claiming to be *inutilis et remissus* is intelligible (cf. AFP 66 [1996] 103-104); but to exaggerate one's faults is, in its own way, as conceited as to overstate one's accomplishments, and it is highly improbable that Dominic presented himself as

¹⁶⁵ In a decretal included in the *Compilatio tertia* 3.27.2 (Friedberg¹ 124; cf. X 3.35.6, Friedberg² II 600), Innocent III warned that an abbot who 'praevaricator ordinis fuerit aut contemptor, seu negligens et remissus, pro certo se noverit non solum ab officio deponendum, sed et alio modo secundum regulam castigandum'. *Negligens et remissus* was used again in a similar context by Honorius III in a decretal included in the *Compilatio quinta* 3.20.4 (Friedberg¹ 177; cf. X 3.35.8, Friedberg² II 602). Both texts ought to have been familiar in academic circles in Bologna: the *Compilatio tertia* was dedicated to the law faculty there in 1210; and the *Compilatio quinta* was compiled by the Bologna canon lawyer, Tancred, in 1226 (cf. L.E.Boyle, 'The *Compilatio quinta* and the registers of Honorius III', *Bulletin of Medieval Canon Law* NS 8 [1978] 9-19; reprinted in *id.*, *Pastoral Care, Clerical Education and Canon Law, 1200-1400*, London 1981).

putting the order's very survival at risk, and there was certainly no question of his being guilty of heresy or any intolerable *criminale peccatum*. In asking to be deposed because he was *inutilis et remissus*, Dominic was implicitly suggesting that it ought to be fairly easy for the order to get rid of the Master; the whole tenor of II 9b, by contrast, is that it should be extremely difficult. There is no reason, in principle, why the chapter of 1220 should not have disagreed with Dominic on this point; nevertheless, the flavour of II 9b, as it stands, is quite different from the simplicity of 'uel de eo penitus remouendo' in II 8.

Another sign that II 8-9 has a prehistory is that two different words are used in rapid succession to designate the Master's office. 9b says that, before he is deposed, he is to be urged 'ut *magistratui cedat*', but 9c begins, 'Mortuo autem magistro uel a *magisterio remoto*'.

For what it is worth, I conjecture that II 9a and the nucleus of 9b do go back to 1220, in something like this form:

Diffinitores predicti excessum magistri seorsum inter se corrigant et emendent. Si autem in tantum excesserit quod remoueri debeat, tunc non passim et indifferenter procedant, sed cautela maxima et inquisitione diligentissima. Etiam si fuerit negligens, inutilis et remissus, et tunc antequam deponatur inducatur a diffinitoribus ut cedat et sibi aliquem locum eligat ubi possit honeste conuersari.

This would safeguard *reuerentia magistralis*, in accordance with what Ventura says in *ACB* #2. That the Master is '(negligens) inutilis et remissus', without further elaboration, would constitute sufficient grounds for deposition according to Innocent III's decretal, cited above. The rest would be inspired, directly or indirectly, by the procedures laid down in the *Carta caritatis posterior* for removing the abbot of Cîteaux, to which reference has already been made: if the abbot takes no notice of repeated warnings to mend his ways, the 'first four abbots' are to deal with him as other offending abbots are to be treated, 'excepto quod, si cedere sponte noluerit, nec eum deponere nec contumaci dicere anathema poterunt donec aut in generali capitulo aut, si illud forte jam visum fuerit exspectari non posse, in conventu alio convocatis abbatibus qui de Cistercio exierunt ... virum inutilem ab officio suo deponant'.¹⁶⁶

¹⁶⁶ De Place, *Cîteaux, documents* 96-98. The first sentence was also possibly influenced by the warning issued by the Cistercian general chapter in 1197: 'Caveant

The terminus ante quem for the rest of 9b is indicated by the substitution of *crimine* for *heresi* in 1236 (MOPH III 7.25-26). After 1220, so far as we know, none of the early chapters had any particular motive to brood on the possible deposition of the Master; but if, as seems probable, it was the 1228 Most General Chapter which added 7b and 14, it is not unlikely that, in the course of its general overhaul of the constitutions, it also tightened up the conditions for the deposition of the Master by inserting 'Non deponatur nisi pro heresi uel pro alio criminali peccato quod non possit sine magno scandalo ordinis tollerari', and then, rather ineptly, expanding the 'etiam si' clause to the form it has in Rodez. At the same time, *cedat* could have been made more explicit by the insertion of *magistratui*.

The first part of II 9 corresponds to II 3, and its continuation corresponds to II 4; but there is a crucial difference which must not be forgotten: the diffinitors of the provincial chapter could suspend the provincial, but he could only be removed from office by the next general chapter; the Master, however, could be removed from office immediately.

(9c) Mortuo autem magistro uel a magisterio remoto,¹⁶⁷ priores dictarum prouinciarum in omnibus quousque magister fuerit¹⁶⁸ electus plenariam ipsius optineant potestatem, et eis omnes tamquam magistro teneantur obedire.

(d) Si autem inter se medio tempore¹⁶⁹ super aliquo discordauerint, optineat sententia *plurium*.¹⁷⁰ Quod si partes fuerint pares, assumant unum de fratribus illis qui uocem habent in electione magistri, et cui parti ille concordauerit uigorem optineat firmitatis. Quod si adhuc dis-

patres abbates ne in depositione filiorum abbatum nimis praecipitanter erumpant, nec sine magno et maturo consilio eos deponant. ... Ipse etiam dominus Cisterciensis cautelam magnam et diligentiam adhibeat, neque hoc ipsum sine maturo districtoque consilio faciat' (Canivez, *Statuta* I 210).

¹⁶⁷ The corresponding text in the Sack Friars' constitutions has *amoto*, but Raymund confirms *remoto* here.

¹⁶⁸ Raymund and later Dominican texts have *sit*, but the Sack Friars support *fuerit*.

¹⁶⁹ Rodez's *inter se medio tempore* is supported by later Dominican texts and by the Crutched Friars, so Porto's *medio tempore inter se* must be due to scribal accident, not Raymund's revision; the manuscript of the Sack Friars' constitutions has *interim medio tempore*, which is obviously a mistake.

¹⁷⁰ Rodez has *plurimorum*, but Raymund and the Sack Friars have *plurium*.

cordauerint, iterum alius eligatur, et sic deinceps donec in parte altera maior possit numerus inueniri.¹⁷¹

(e) Precipimus autem in uirtute spiritus sancti ut nullus ante electionem magistri circa statum ordinis audeat aliquid immutare.

Thomas dates 9e to 1228, and we have seen reason to concur.

The text of 9cd is essentially guaranteed by Raymund and the Sack Friars; nevertheless, 9c and 9d seem to be at cross purposes: unless the Master were to die during a general chapter at which the provincials were present, it would have to be in their own provinces that they took over his authority; 9d, however, only makes sense if they are all assembled together, with a reserve of electors who can be coopted if necessary as extra voters. The two prescriptions could be brought together on the assumption that the provincials and other electors all assembled as soon as the Master died, to elect his successor and, in the mean time, operate a collective presidency; but there is no trace anywhere in PC of a provision, equivalent to 15d, which would require an election to take place as soon as possible, and such a measure would be incompatible with II 13 (at least as modified in 1225), II 10 (created in 1225 and modified in 1228) and II 11ef (modified in 1236).

The retention of 9cd in Raymund's constitutions and even thereafter must mean that it was understood in some way that was thought to make sense, but it is not too clear what that sense was.

9c was updated in 1239-1241 to give the provinces of Poland, Dacia, Jerusalem and Greece the right to have two electors of the Master, and to share in the authority exercised by provincials if the Master dies or is removed, but no light is shed on the nature of this authority (MOPH III 11.8-11, 14.32-35, 18.20-24). When the change was confirmed, a rider was added saying that wherever the constitutions mention eight provinces, 'eight' should be changed to 'twelve'; Raymund's constitutions accordingly have *priores duodecim*

¹⁷¹ The text of 9d is unstable, but there are no serious grounds for doubting Rodez's accuracy. Porto has *in aliquo* for *super aliquo*, and it omits *illis* after *fratribus*, but it is not supported in this by other manuscripts. It has *habeat* for *habent*, and later Dominican manuscripts have *habuerint*, but the Sack Friars support *habent*. *Ille* is supported by the Sack Friars and one of the later Dominican manuscripts in which I have found the old form of this constitution (BL add. 23935); it is omitted in Porto, AGOP XIV L 1, and Prague, Univ. Knihovna VIII B 23. Rodez and Porto agree on *maior possit numerus inueniri*; the Sack Friars have *maior numerus possit inueniri*; the other three Dominican manuscripts have *possit maior numerus inueniri*.

prouinciarum for *priores dictarum prouinciarum* (const. II 4), and this was turned into *priores prouinciales* in 1249-1251, when an addition was made to the end of 9d, 'Quod si non omnes prouinciales ad electionem magistri convenerint, illi quos ex ipsis venire contigerit supradictam habeant potestatem' (MOPH III 45.3-10, 50.15-22, 55.33-36). *Supradictam potestatem* can only refer to the *potestas* indicated in 9c, so 9c was evidently understood to apply only at the elective chapter, and the number was presumably suppressed to allow fewer than twelve provincials to implement it if any of them failed to turn up.

In 1274-1276, 9cd was replaced by a procedure analogous to that in II 4a, under which the provincial who was to host the next general chapter automatically became vice-master if the Master died or was deposed (with some limitations, and a way of finding a vice-master if the province in question lacked a provincial) (MOPH III 172-173, 178.19-34, 182-183).

It appears, then, that 9cd was accepted as a single block, and, on the face of it, its purpose was to provide for the government of the order during an interregnum; and the arrangement of Raymond's const. II 4 suggests that this is exactly how he understood it, since he places it between the measures (taken from PC II 13) for informing the order of the Master's death (and, if necessary, postponing the general chapter till the following year), and the arrival of the electors at the general chapter.

The Sack Friars understood or applied 9c in a rather different way:

Mortuo autem rectore uel amoto, *priores prouinciales in suis prouinciis* in omnibus quousque rector fuerit electus plenariam habeant potestatem ...

This is intelligible, and it could be seen as an application of the principle expressed in II 16a, that the provincial, in his own territory, has the same authority as the Master, unless the Master himself is present; but it makes 9d (which the Sack Friars retained) completely incomprehensible. Nor, granted the presence of 16a (which was also in the Sack Friars' constitutions), would 9c taken in this sense give the provincials any powers they did not already possess; why should their authority in their own provinces be affected in any way by the death or deposition of the Master (or Rector, in the case of the Sack Friars)?

Anyway, whatever the Sack Friars chose to do with 9c, *dictarum* shows that the meaning which they gave it cannot be the correct

interpretation of 9c as it stands now in PC. If all that was meant was that each provincial inherited the Master's authority in his own province, there could be no conceivable reason to restrict 9c to the eight provinces listed in II 1a.¹⁷² The significance of *dictarum* must be that, when 9c received the form it has now, only these eight provinces sent their provincials to an elective chapter (a situation implied by II 10a, if 10b was added later).

The conclusion seems inescapable that 9c and 9d were meant for each other; but is it conceivable that any general chapter dreamt them up *ab ovo* as a way of coping with an interregnum, or that, if it did, it took so little trouble to express its meaning clearly? There has, after all, been no previous mention of an election—the electors are not even identified and told to assemble until II 10—so we are quite unprepared to find ourselves at an elective chapter in 9cd, and nothing is said to explain that this is the situation in which 9c is to operate; electors appear out of the blue in 9d. We should also have to imagine that the chapter responsible for 9cd deliberately devised a system under which, between the Master's death or removal and the beginning of the elective chapter (an interval which might be as long as a year or even more), supreme authority would be in the hands of an assembly which was not in session, and that it gave this assembly a way of resolving its differences which could only operate in its last few days—as II 11c shows, there was not even any question of the provincials beginning the general chapter before the election.

The only hope of making sense of 9cd is to proceed on the assumption that a pre-existing text has been rather ineptly altered; and there can be little doubt when it acquired its final form. *Dictarum* can only refer back to the list of provinces in II 1a, like *dictarum* in 5a and *predictarum* in 10a, and this list was not there before 1225. In 1228, however, another list was inserted in 5b, to which *dictarum* should refer if it were already present; the consequence would be to give the Master's authority to the provincials of the four minor provinces and exclude the other eight, which is patently not what was intended. II 9cd received its present form,

¹⁷² *Dictarum* can have no other reference. Apart from the fact that it was understood this way by the chapters which emended 9c to include the other four provinces, it would be pointless to say *dictarum* unless some provinces were originally meant to be excluded; and PC does not contain, and is not likely ever to have contained, any other list to which *dictarum* could plausibly be referred.

then, in 1225, 1226 or 1227;¹⁷³ and it is precisely the situation as it was before the changes introduced in 1225 which allows us to make sense of 9cd.

Before the new system of diffinitors came into effect, it is reasonable to assume that provincials were present at all general chapters. It is also a priori likely that it was the legislation of 1225 which gave provincial chapters the right to elect electors of the Master (II 10), just as it gave them the right to elect diffinitors for the general chapter; before 1225, then, it was presumably all or some of the people who were at the general chapter anyway who would elect a new Master if one was needed.¹⁷⁴ This means that, until 1225, the measures envisaged in 9cd could be activated at any general chapter.

As it stands now, 9c does not distinguish between a vacancy caused by the Master's death and one precipitated by his removal from office; but its placing in PC suggests that it was originally conceived as a measure to deal with the consequences of his removal. Apart from 9c, the Master's death is not mentioned until II 13, but his possible removal is an integral part of II 8-9ab. *Remoto* keeps the very language of II 8-9ab ('de eo penitus remouendo', 'si remoueri debeat'); later insertions, such as 4a and 15a, use *amouere*, not *remouere*. Even when PC was divided into sections with titles, 9cd was kept in the section 'de excessu magistri corrigendo'.¹⁷⁵ If the capitulars of 1220 took Dominic's request to be deposed seriously enough to make provision in their constitutions for the Master's deposition, it would surely have been logical for them to say what was to happen next if he was deposed; may we not take it that 9cd originally provided the answer to just that question?

On this hypothesis things become clearer. Up to 1225, if the diffinitors decided that the Master must be removed from office, his successor could be elected at the same chapter, since there was not yet any need to wait for electors to be elected by provincial chapters. II 9ab obliges the diffinitors to try to persuade the Master to resign before they depose him, but the decision to remove him from

¹⁷³ If I am right to date 6b to 1225, then only 1225 can be in question, since no legislation could have completed its passage through three consecutive chapters in 1226 or 1227.

¹⁷⁴ It is most unlikely that Jordan was elected only by the few provincials available in 1222.

¹⁷⁵ In the Sack Friars' constitutions, the equivalent of 9cd is similarly contained within 'De excessu rectoris corrigendo', which confirms Rodez's division of the text.

office one way or the other must have been taken first, and it was presumably at that point that he ceased to exercise authority as Master. Even if only a short time elapsed before the ensuing election, the Master's removal would inevitably become known throughout the convent, and it could be expected to cause pandemonium.¹⁷⁶ It was prudent to take precautions against anarchy; and what was needed was someone to whom magisterial authority in general could be automatically transferred,¹⁷⁷ not someone to take over the Master's rôle at the chapter, which was not yet even in session (and which could function without him anyway). In 1220, the small group of assembled provincials was the obvious choice. Together they could, for instance, make a decision, which would be binding on everyone, about who should be told what—unchecked gossip in the streets of Paris or Bologna would not do the order any good.

There was also probably another factor at work. Although it is legitimate to speak of Dominican 'democracy', we should not underestimate the importance of Dominican monarchy. It was to the Master that the brethren made profession, and it was on Dominic's authority that the general chapter was convened in 1220, and it was on his authority that its procedures were instituted, including the appointment of diffinitors with power even over the Master (*ACB* #2; *AFP* 66 [1996] 79-86). It was, paradoxically, on the Master's authority that the diffinitors could, if need be, remove him from office; if they did so, on whose authority was the chapter to proceed? *PC* II 9cd provide the answer.

In 1220, the beginning of 9c must have run something like this:

Magistro a magisterio remoto, priores prouinciarum uel regnorum in omnibus quousque magister fuerit electus plenariam ipsius optineant potestatem, et eis omnes tamquam magistro teneantur obedire. Si autem inter se medio tempore super aliquo discordauerint ...

As a result of the changes made in 1225, 9cd, as it had been, ceased to be viable. Provincials would not thereafter be present at

¹⁷⁶ When the diffinitors accepted Raymund of Penyafort's resignation, 'tanta turbatio orta est in ipso capitulo et per ordinem diffusa' that the constitutions had to be changed to make it harder for them to do such a thing in the future (Humbert, *Cronica ordinis*, *MOPH* I 331); we can imagine the furore that might follow if they ever decided to remove a Master from office.

¹⁷⁷ It should not be forgotten that, because of the impending chapter, there was a motley collection of people in the convent, from all over the order; no single prior or provincial, as such, had authority over all of them.

most general chapters, and electors of the Master, other than provincials, would only be available at an elective chapter, at which obviously there would be no Master for the diffinitors to remove from office; nor would it any longer be possible for one and the same chapter both to depose the Master and to elect his successor. Under the new system, 9d could only operate at an elective chapter, and the insertion of *dictarum* shows that this was appreciated, since its effect was to restrict 9c to provincials who would be at an elective chapter. It must surely have been the chapter of 1225 which gave 9c its final form.

It is likely, though, that it had already been modified in 1222. The 1220 text indicated on whose authority the chapter was to proceed if the Master was removed from office; in 1222 the chapter *began* without a Master because Dominic was dead. Is it not likely that it relied on 9cd to give it authority to operate *mortuo magistro*, and adapted the text accordingly? The aim was not to provide for the government of the order during an interregnum, but to ensure that the general chapter could function legitimately whether it was because of death or deposition that the order lacked a Master.

If so, 9cd, however misleading its wording, was still intended to serve its original purpose of ensuring that magisterial authority was not lacking at the general chapter which would, in due course, elect a new Master; and there is no reason to suppose that the 1225 capitulars had anything else in mind. Their only oversight, in that case, was that they failed to make any new provision for dealing with the immediate consequences of the Master's removal; perhaps they thought that the diffinitors, who would henceforth be identical with the chapter, had sufficient power already to deal with anything which might arise.

On this hypothesis, the 1225 chapter was not attempting to give anyone magisterial authority for the whole duration of an interregnum, and it was certainly a long time before the order felt the need for an effective pro-Master to fill the gap between the Master's death and the election of his successor. This tells us something about the Master's rôle. Dominic died in 1221; he would have been almost as inaccessible if he had survived and gone off to convert Cumans or Saracens or Estonians, as he had hoped to do once he got the order organised (ACB #32, 43, 47; AFP 68 [1998] 72-76). His seal still bore the inscription 'minister predicationis' (AFP 65 [1995] 24); he was head of a preaching mission, not a bureaucracy. There is no reason to suppose that the Master's function became any more administrative under Jordan.

The revised 9cd is clumsy,¹⁷⁸ but it is, after all, not as absurd as it appeared to be at first sight.

(i) *Distinction II 10-11*

If our reconstruction of the original form of II 9cd is correct, then originally any general chapter could serve as the occasion for electing a Master; this is likely to have been the case anyway before the introduction of the 'bi-cameral' system in 1225. 9d requires a distinction between those who have a vote and those who do not, but this need not necessarily mean that there were any capitulars who did not have a vote, since the distinction could coincide with that between members of the chapter and everybody else (including perhaps capitulars' socii). II 10, on this hypothesis, reflects a new procedure for electing the Master which must surely have been instituted at the same time as the new system of general chapters (it is certainly unlikely to antedate it, since it presupposes the holding of annual provincial chapters by precisely the provinces listed as doing so in II 1a).

(10a) *Predicti ergo priores prouinciales predictarum octo prouinciarum,¹⁷⁹ singuli cum duobus fratribus in capitulo prouinciali electis, in quos ceteri ad electionem magistri faciendam compromittant,¹⁸⁰*

¹⁷⁸ Anyone who doubts the Dominicans' carelessness in emending their legislation need look no further than the prologue to the constitutions and Humbert's commentary on it. The prologue was originally taken over from the Praemonstratensians, and it is a hymn to uniformity of observance, which is to be secured by having a written customary which no one is allowed to change off his own bat; this is intended to secure the unity and peace of the order. Probably in 1220, the Dominicans introduced the famous principle allowing for anyone to be dispensed from anything for the sake of study, preaching and the salvation of souls; this completely wrecks the point of the original prologue. As if this were not enough, in 1236 they confirmed an insertion which changed the whole meaning of the final sentence: 'Eapropter, ut unitati et paci totius ordinis prouideamus, librum istum quem librum consuetudinum appellamus, diligenter conscripsimus' becomes 'Eapropter, ut unitati et paci totius ordinis prouideamus, uolumus et declaramus ut constitutiones nostre non obligent nos ad culpam sed ad penam nisi propter contemptum uel precepti. Librum autem istum ...' (MOPH III 8.4-7). On this second point, Humbert comments (ed. Berthier II 45) that the 'continuatio sequentium cum praecedentibus' is better in the Praemonstratensian original, 'sed quando facta fuit ista constitutio, non fuit apposita cura diligens ubi insereretur, dummodo scripta esset, sicut factum est de multis aliis'.

¹⁷⁹ Rodez has "*prouinciarum* "viii"; editors have ignored the intended correction to *viii prouinciarum*.

¹⁸⁰ Rodez's *compromittant* is supported by Humbert's constitutions, so Porto's *compromiserint* is probably just a scribal variant.

(b) et quatuor priores prouinciales de superadditis prouinciis, scilicet Ierosolimitana, Grecia, Polonia, Dacia, singuli cum singulis ad hoc idem electis,

(c) ad capitulum ueniant generale. Qui postquam fuerint congregati in secunda feria post pentecosten, a prioribus conuentualibus illius prouincie et fratribus presentibus in loco in quo electio est facienda, in uno conclau firmiter includantur, ita quod inde nullatenus ualeant egredi,¹⁸¹ nec eis ullo modo aliqua alimenta ministrentur, quousque magister ordinis secundum formam canonicam¹⁸² sit electus.

(d) Et hoc tam ab electoribus quam a recludentibus precipimus firmiter obseruari, ita quod, si quis contraire presumpserit, ipso facto sit excommunicatus et penam grauioris culpe debitam sustinebit.

10b must be dated to 1228 (cf. AFP 70 [2000] 12-16) and, since it was evidently an innovation to allow the four 'added' provinces to participate in the election of the Master, 10a must be dated earlier, so it can scarcely be attributed to any other chapter than that of 1225. Although Dominican 'democracy' has sometimes been exaggerated, 10a confirms that by 1225 the order accepted the principle that power was vested primarily in the brethren; the Master was, in a sense, to be elected by the provincial chapters *per compromissum*: the members of the provincial chapter delegated certain people to wield their vote on their behalf.¹⁸³

10c, with its talk of *priores conuentuales*, cannot be dated earlier than 1225: until the changes introduced then, there was no need to speak here of people assembling for the chapter, since the election would take place at the chapter whose preliminary activities we have been following since II 8. The conclave is presupposed in the new text of 11a which the Most General Chapter of 1236 brought in, and there is no indication that it was itself first introduced then; it is also alluded to in 15c, which I have dated to 1228. Thomas regards 10c as an integral part of the new procedure introduced in

¹⁸¹ Rodez's reading receives some slight support from the Sack Friars, who have *nullus ualeat egredi*; Raymund and later Dominican texts have *nullatenus egredi ualeant*.

¹⁸² *Secundum formam canonicam* was introduced in 1236, together with a completely new text of the first part of II 11 (MOPH III 8.7-18); from the acta, we learn that the earlier text had *secundum formam inferius positam*. The Sack Friars combined the new text with the old: *secundum canonicam formam inferius positam*.

¹⁸³ A somewhat similar procedure is found in the Rule of San Sisto for the election of the prioress: 'Priorissa eligatur ab aliquibus senioribus et prudentioribus de conuentu sororum ad hoc a conuentu electis' (Vienna 4724 f.317^v).

1225, but it must be doubted whether things are quite as simple as that.

On the face of it, 10d is superfluous since 11d directs a similar, but more comprehensive, threat at anyone who offends against any of the rules concerning the Master's election. We can recognise in both of them the style which we have seen reason to attribute to the Most General Chapter of 1228, so we may agree with Thomas's dating of both of them to that year; but it is difficult to see why the Most General Chapter appended a formal precept to 10c in particular if it did not at the same time introduce some new measure to which it wished to give maximum weight—if it changed nothing in 10c, surely the precept in 11d would have been sufficient.

This must make it likely that some of what is now contained in 10c was actually instituted in 1228, and the reference to *includentes* in 10d suggests that the innovation consisted in the conclave. The election of the Dominican Master seems to be the first instance of a conclave being required as a matter of course, but the idea of putting pressure on electors in this way is attested early in the thirteenth century.¹⁸⁴ Unfortunately we know little about how Jordan was elected in 1222, but there is no reason to suspect that the election was in any way difficult or protracted; 1228 seems as plausible a date as any for the introduction of the conclave.

When the Most General Chapter of 1236 revised the text of II 10-11, it changed *inferius positam* to *canonicam*, then apparently passed, without a break, to its new version of 11a, and concluded 'cetera radantur usque Quod si aliquem' (11b) (MOPH III 8.8-18), which should mean that 10d was not yet in the text, or that it was somewhere else in PC,¹⁸⁵ or that it was meant to be scrapped. However, the text of the 1236 acta is problematic at this point, and it is almost certainly not as continuous as it purports to be, since at least *sit electus* is needed after *canonicam*, and the Rodez text also has 'Forma electionis hec est: electoribus supradicto modo inclusis' before 'cum per disquisitionem', and this is fully supported by Raymond and the Sack Friars; nor is it clear that the acta of 1236 were even intended to give the whole of the new text. It would be hazardous to infer that 10d was not yet in place, and, whatever it may

¹⁸⁴ Cf. Thomas 219-221.

¹⁸⁵ The Sack Friars, however, have it in the same place as Rodez, as does Raymond, notwithstanding his re-arrangement of the material which he included in his const. II 6.

have intended, the 1236 Most General Chapter did not succeed in suppressing it.

It is unlikely that the order waited until 1225 to make formal provision for the election of a Master. Even in 1220 it would have been illogical to envisage the possible deposition of the Master without at the same time envisaging the choice of his replacement, but 'quousque magister fuerit electus' in II 9c might have been deemed sufficient. The first chapter which needed an electoral procedure was that of 1222, at which Jordan was elected Master. II 10, as it stands, cannot antedate 1225, so we must look for pre-1225 legislation primarily in II 11. If, as seems probable, the electors before 1225 were simply the members of the general chapter, there was no need for anything like II 10.

(11a) Forma electionis hec est. Electoribus supradicto modo inclusis, cum¹⁸⁶ per disquisitionem uel scrutinium <uoluntatum>¹⁸⁷ procedet¹⁸⁸ electio, tres de prioribus prouincialibus qui inter alios prouinciales [priors]¹⁸⁹ primitus habitum nostre religionis¹⁹⁰ susceperunt, uoluntates singulorum singillatim et seorsum aliquantulum, tamen¹⁹¹ in eadem domo coram oculis omnium, disquirant <et conscribant>.¹⁹² Quod si gratia inspirante in unum aliquem omnes unanimiter concordauerint, ille uerus magister ordinis habeatur. Si uero <in>¹⁹³ partes

¹⁸⁶ The 1236 acta have *cum uero*, and omit *forma electionis ... inclusis*.

¹⁸⁷ Rodez lacks *uoluntatum*, but it is in the text of the 1236 acta, and both Raymund and the Sack Friars have it.

¹⁸⁸ The Porto manuscript (Raymund's constitutions) and the Sack Friars both have *procedat*, but the Crutched Friars (whose constitutions were inspired by those of Raymund) and later Dominican texts support Rodez's *procedet*.

¹⁸⁹ The 1236 acta and Raymund's constitutions just have *prouinciales*, and this passed to later Dominican texts; if it is correct, it is an early instance of the substantial use of *prouincialis*. The Sack Friars leave provincials out entirely, so the only dissenting voice is Rodez's not entirely convincing *prouinciales priores*. Since, on the face of it, *inter alios* would be sufficient on its own, we may suspect that the various versions of the text originate from a less than fully clear correction of an earlier text which referred to priors, not specifically priors provincial.

¹⁹⁰ This is the reading of Rodez and Porto; the 1236 acta have *nostre religionis habitum*, and the Sack Friars and later Dominican texts have *habitum religionis nostre*.

¹⁹¹ Rodez and the Sack Friars have *tamen*, but it is not in the 1236 acta or Raymund or later Dominican texts.

¹⁹² The parallel text in II 1b suggests that *et conscribant* should be in the text here; the Sack Friars have it, as do Raymund and later Dominican texts, but it is not in Rodez or the 1236 acta (which have *audiant et disquirant*).

¹⁹³ Rodez omits *in*.

inequales se diuiserint, *ille*¹⁹⁴ in quem plures medietate omnium qui *debeant*¹⁹⁵ eligere consenserint, ex ui talis electionis et huius constitutionis sit magister:

(b) Quod si aliquem uel aliquos de electoribus contigerit non uenire, nichilominus tamen per eos qui aduenerint *<electio>*¹⁹⁶ celebretur.

11b deals with an eventuality which could not have arisen before 1225; it was perhaps added in 1228, since it responds to the same worry as II 7d, which we have seen reason to date to the first Most General Chapter.

11a is essentially a new text introduced in 1236 (MOPH III 8.8-18). There are, however, considerable differences between Rodez's 11a and the acta of 1236, and Raymund and the Sack Friars contribute other variants; some uncertainty must remain over exactly what was meant to be in PC after 1236.

One point on which the Sack Friars' constitutions diverge from PC is not merely textual: in place of the last sentence of 11a, they have 'Si uero in partes inequales se diuiserint, ille in quem plures medietate omnium eligentium consenserint, facta collatione numeri ad numerum, zeli ad zelum et meriti ad meritum,¹⁹⁷ ex ui compromissionis et huius constitutionis uerus rector ordinis habeatur'. This is a way of reintroducing the idea of *maior et sanior pars*, so the result is achieved, not *ex ui talis electionis*, but *ex ui compromissionis*; the authority entrusted to the electors *per compromissum* included the responsibility to weigh up the merits of the candidates, not just to count votes. There is no trace of any such measure in Dominican legislation.

The most puzzling feature of the 1236 acta is that no mention is made of divinely inspired unanimity, and the nearest equivalent to 'Quod si gratia inspirante ... uerus magister habeatur' seems to be merely another way of expressing the 'alternative' which follows it:

... vota singulorum ... disquirant, et ille in quem maior pars medietate eligentium concordauerit uerus magister ordinis habeatur. Si uero in partes inequales se diuiserint, ille in quem plures medietate omnium

¹⁹⁴ Rodez omits *ille* here, and has it immediately before *ex ui*.

¹⁹⁵ Rodez has *debeat*; the 1236 acta have *debent*. The Sack Friars, like Raymund, substitute *omnium eligentium* for the whole phrase.

¹⁹⁶ Rodez omits *electio*; Raymund and later Dominican texts have *electio magistri*.

¹⁹⁷ For 'zeli ad zelum et meriti ad meritum', cf. Gregory IX's decretal, X.1.6.55 (Friedberg² II 94).

qui debent eligere consenserint, ex vi talis electionis et huius constitutionis sit magister.

These two sentences differ significantly only if there is a distinction between *eligentes* (those who are actually voting) and *omnes qui debent eligere* (all those who ought to be voting, including those who have not turned up); but on this reading they are incompatible.¹⁹⁸ If no such distinction was intended, they both point redundantly to the same procedure.

This might suggest that one of the two sentences was meant to replace the other, but such an hypothesis would require us to believe that the text of the acta is seriously garbled. We should also have to accept that the Most General Chapter failed in its purpose, since it is the second sentence which is found in the constitutions, and that is the one which is more likely to have survived from older legislation since, as it stands now, it does not make perfect sense.

What, after all, is the point of 'si uero in partes inequales se diuiserint'? The only alternative with which it could naturally be contrasted is an *equal* division of votes, as in PC II 1b, 2, 7b and 9d; it is silly to contrast it with unanimity, as in PC, or with an absolute majority, as in the 1236 acta. All versions of 11a agree that an absolute majority is required in the election of the Master, and that is impossible unless the votes are unequally divided; and in any scrutiny which does not result in an absolute majority, it makes not the slightest difference whether the votes are divided equally or unequally.

I see no way of salvaging the text of the 1236 acta as presented by Bernard Gui; but, rather than postulating that the whole section has gone radically awry, it is more prudent to suppose that somehow two different drafts of the same innovation or revision came to be included together, or that local corruption has affected the sentence with which we have been concerned.¹⁹⁹ The incongruity of 'si

¹⁹⁸ Let us imagine that, of the 32 electors who should be there, 28 were present. The first sentence would mean that a candidate who secured 15 votes became Master, whereas the second would require him to obtain 17 votes to win.

¹⁹⁹ We only have Gui's edition of these acta—AGOP XIV A 1, which is possibly independent of him, only contains the 1236 *admonitiones* (I am grateful to P. Ramón Hernández OP for checking this for me); what is more, judging from Bologna, Bibl. Univ. 1535, Gui was at first unable to find any acta from 1236, so it is likely that the text he later added was taken from a single manuscript. We are therefore not necessarily dealing with garbled acta, as such, but only with a (misunderstood?) copy of a rather mixed-up copy of the acta.

in partes inaequales' is a better guide to what may have been in the constitutions before 1236. By analogy with II 1b, may we not conjecture that in its earlier legislation the order did not require an absolute majority in the election,²⁰⁰ and that therefore the possibility of a tied vote had to be taken into account?

Another strange feature which straddles both the *acta* and the constitutions is 'cum per disquisitionem uel scrutinium uoluntatum procedet electio' (*cum uero* in the *acta*). 'When the election is going to proceed by asking people's wishes' implies that this is only one possible way of proceeding; but no other method is mentioned.²⁰¹

Presumably in response to Gregory IX's complaint in 1234 that some of their elections were being held 'minus canonicè', the Praemonstratensians rewrote the relevant section of their customary to specify that the president of the election should begin by putting to the electors the three forms laid down in Lateran IV const. 24, i.e. 'per divinam inspirationem, per scrutinium, per compromissum', and inviting them to choose one (Lefèvre 99, 129).²⁰² If we interpret 'secundum formam canonicam', which the Most General Chapter of 1236 put into PC II 10c, as meaning 'in one of the canonically recognised ways', as in Raymund's const. II 2 and the comment added in 1242 (MOPH III 21.21-25), the Dominicans could be envisaged as proceeding in the same way; 'cum (uero) per disquisitionem ...' would then mean, 'If they choose to do it *per disquisitionem*', and we could assume that the other two ways were not considered to require special legislation. However, if II 10a was still being taken seriously, the electors of the Master were themselves *compromissarii*, so it would be odd for them to subdelegate their responsibility

²⁰⁰ II 1b, as found in PC with 'maior pars capituli', is ambiguous as to whether an absolute or a relative majority was needed, but in Raymund's version ('in quibus plures concordauerint') it becomes clear that a relative majority sufficed, and it is far more likely that he was explicating the order's existing practice than that he took it upon himself to change it.

²⁰¹ The Sack Friars evaded this problem by dropping *cum* and turning *procedet* into *procedat*, so their constitutions simply say that the election is to proceed *per disquisitionem*. If the Porto manuscript is correct to have *cum ... procedat*, it is possible that Raymund intended it to mean 'Since the election is to proceed *per disquisitionem* ...'; if so, he failed to make any lasting impression on the constitutions.

²⁰² The council really only endorsed the last two, with a rather grudging acknowledgement that the first might be acceptable; however, when he incorporated its constitution into his edition of the decretals, Raymund of Penyafort gave it a heading which presents it as recognising three forms of election (X.1.6.42, Friedberg² II 88).

even further; and the only other alternative, divine inspiration, is presented in 11a as one possible outcome of a scrutiny, not as a different *forma electionis*.

Since inspired unanimity is not even mentioned in the 1236 acta, we may surmise that something like 'quod si gratia inspirante ...' was in the older text *before* 'cum (uero) per disquisitionem', and that it is missing from the acta for the same reason as 'electoribus supradicto modo inclusis': appearances notwithstanding, the text in the acta jumps from one change (the substitution of *formam canonicam* for *formam inferius positam*) to the next new bit of text, beginning 'Cum (uero) per disquisitionem', tacitly leaving the intervening words unaffected. In this way, we can make 11a mention two different electoral procedures; and such a conjecture receives some support from the different ways in which 11a formulates the results: in the case of grace-inspired unanimity, the sole candidate 'uerus magister ordinis habeatur', whereas in a divided election, the winner 'ex ui talis electionis et huius constitutionis sit magister'; by implication, if someone is chosen unanimously, he is Master, so to speak, by divine appointment, not as the result of an electoral process backed by the authority of the constitutions.²⁰³

We have already considered the question of scrutators in the earliest Dominican legislation, and the problem that the procedure for electing provincials was, barring the conclave, the same as in the election of the Master (15c). We may conjecture, without too much confidence, that the 1222 text of 11a went something like this:²⁰⁴

¿Forma electionis hec est?. Si gratia inspirante in unum aliquem omnes unanimiter concordauerint, ille uerus magister ordinis habeatur. Cum uero per disquisitionem uel scrutinium uoluntatum procedet electio, ¿tres fratres de capitulo fide digni? uoluntates singulorum singulatim et seorsum aliquantulum, ¿tamen? in eadem domo coram oculis omnium, disquirant et conscribant ¿fideliter?. Si partes fuerint pares, <???.>. Si uero in partes inequales se diuiserint, ille in quem maior pars concordauerit pro magistro habeatur.

²⁰³ According to the Limoges *Memorialia*, Jordan was elected *per divinam inspirationem*: 'Tunc uero inspirante Dei gratia, electus est concorditer et pacifice in Magistrum ordinis' (C.Douais, *Frères Prêcheurs de Limoges*, Toulouse 1892, 25); however, the text does not tell us whether there was a secret ballot or whether someone simply proposed Jordan and everyone else agreed.

²⁰⁴ Since II 11a and 1ab are verbally similar, I have drawn further on 1b to suggest how 11a's hypothetical ancestor was formulated.

I see no way of guessing what procedure was adopted for breaking a deadlock. The electors might have chosen one of their own number to wield a casting vote.²⁰⁵ Or they might have brought in an extra voter from among the brethren present in the house, either by electing one themselves (much as in II 1b, except that these brethren would not be capitulars), or by getting someone else—the assembled priors of the province, maybe—to elect one.²⁰⁶ Or a tied vote could simply be declared inconclusive, so that the same electors would have to try again.²⁰⁷

Since the 1225 text of 1a specifies who the scrutators are, 11a may have been adapted along similar lines either at the same time or, more probably, in 1228, when 10c was rewritten; the three senior priors, for example, could have been given the job both in the election of the Master and in the election of the provincial, and the textual uncertainty surrounding this part of 11a might point to an earlier version which simply referred to *priores*.²⁰⁸ In 1228, then, 11a may have been altered to read something like this:

Forma electionis hec est. Electoribus supradicto modo inclusis, si gratia inspirante in unum aliquem omnes unanimiter concordauerint, ille uerus magister ordinis habeatur. Cum uero per disquisitionem uel scrutinium uoluntatum procedet electio, tres de prioribus qui inter

²⁰⁵ One way of electing *per compromissum* was for the *compromissarii* to sound out the views of all the electors, but then determine the winner themselves; cf. X.1.6.32 (Friedberg² II 77-79), and this is in effect what the Sack Friars seem to have had in mind. Particularly if this part of PC II 11a was in place before 10a, it is not impossible that a deadlock in the election could have been resolved *per compromissum*.

²⁰⁶ One of Humbert's suggestions for breaking deadlock in a papal election was to bring in extra voters in this way; for example the notaries could elect a penitentiary to have a vote, or the penitentiaries could elect a notary (*Opus Tripartitum* III 2).

²⁰⁷ Conceivably the muddle in the 1236 acta contains fossils of an older system under which a tied vote had to be resolved by further scrutinies eventually giving one of the candidates an absolute majority, whereas, if the votes were unequally divided, a relative majority would suffice; but this would be a rather peculiar procedure: if there were 20 electors and two candidates received 10 votes each, one of them would have to get 11 votes to win; whereas if, say, the votes were divided between three candidates who got respectively 5, 7 and 8, the one with 8 votes would win outright.

²⁰⁸ It is, of course, possible that the three senior provincials were already specified in 1228 (or 1225) and that it was left to be understood that, in the case of the election of a provincial, this must be adapted, presumably to mean the three senior priors. This is certainly the case in Raymund's constitutions, which state that the election of a provincial follows the same procedures as the election of a Master, without explicating how they need to be adapted (const. II 3).

alios primitus habitum nostre religionis susceperunt? uoluntates singulorum singulatim et seorsum aliquantulum, ¿tamen? in eadem domo coram oculis omnium, disquirant et conscribant ¿fideliter?. Si partes fuerint pares, <???.>. Si uero in partes inequales se diuiserint, ille in quem maior pars concordauerit pro magistro habeatur.

In II 11c we return to solid ground:

(c) Et hoc ita fiat ut semper in quarta feria pentecostes²⁰⁹ magistrum habeat capitulum, antiquum uel nouum, presentem uel absentem, quia tunc incipit sollempniter celebrari, ne acephalum iudicetur.

11c must ante-date 1225: at no time thereafter could the *magister antiquus* be relevant to a chapter preceded by an election, so it would be pointless to say that, when the chapter begins, it must have a Master 'antiquum uel nouum, presentem uel absentem'. The *magister antiquus* can only be in question if 'hoc ita fiat' refers, not primarily to the election, but to everything that is dealt with in II 8-11a. Under the pre-1225 system, the diffinitors had to decide whether to keep the Master in office or not, and if they did not remove him from office, the order still had its *magistrum antiquum*; if they did remove him, the measures which resulted from this, including the election of a new Master, were to be expedited swiftly, so that, one way or another, the chapter would have a Master when it began on Wednesday, 'old or new, present or absent'.

11c, then, completes the section of the constitutions which began at II 8. This corroborates our reading of II 9: even II 11 is still primarily concerned with the consequences of the Master's removal by the diffinitors, not with his possible death. The capitulars of 1222 had to deal with the Master's death; but the only early chapter which had any particular incentive to deal with his deposition was that of 1220, at which Dominic had tried to get himself deposed. On the face of it, then, the original form of II 9-11 must go back to 1220.

There is a verbal discrepancy between *quarta feria Pentecostes* ('fourth day of Pentecost') in 11c and *secunda feria post Pentecosten* ('second day after Pentecost') in 10c and 16g. 16g concluded the

²⁰⁹ *Pentecostes* is the reading of Rodez and the Sack Friars. The Porto manuscript has *post Pentecosten*, but this seems to be a scribal quirk; when Raymund's constitutions were emended at this point in 1252-1255, the acta show that the previous text had *quarta feria pentecostes* (MOPH III 61.25, 67.14-15), and later versions of the constitutions have the new text as *secunda feria pentecostes*.

1220 legislation on diffinitors and it can hardly be ascribed to any chapter other than that of 1220; but in 1220 it was surely not necessary to explain why it was important to have a Master, old or new, present or absent, by the Wednesday after Pentecost. It was the reshaping of the second distinction in 1225 which removed the original indication of when general chapters were to begin, so that 11c ceased to be self-explanatory. It seems likely that 11c once simply indicated that there must be a Master *when* the chapter formally began:

Et hoc ita fiat ut semper magistrum habeat capitulum, antiquum uel nouum, presentem uel absentem, quando incipit sollempniter celebrari, ne acephalum iudicetur.

The text would have been adapted to its present form in 1225. The insistence that the chapter must not risk being deemed acephalous corroborates what we have already surmised, that, though the Master's presence is not necessary for it to operate, its legitimacy depends on the order having a Master.

Under the 1225 system, an elective chapter was prepared well in advance, and it had nothing to do before electing. Ex hypothesi, there was no existing Master for the diffinitors to discipline, so there was no reason why the election should not take place as soon as the electors were all assembled. II 10c, in its final form, would make it unnecessary to set them a deadline, as 11c does, since it requires the election to be held on the Monday before the chapter begins—which, incidentally, highlights how useless 9cd had by now become, since there would be almost no time for it to operate. However, if, as I have suggested, the conclave was not added to 10c until 1228, and if, as the linguistic discrepancy suggests, the reference to *secunda feria post Pentecosten* was also added then, we can see more clearly why the capitulars of 1225 saw no reason to make more radical changes to 9cd or to 10c: the electors could have gone about their business in a more leisurely fashion, so long as they met the deadline contained in 11c, and there might therefore be a chance for the assembled provincials to wield magisterial authority before the election, as prescribed in 9cd.

We may therefore conjecture that the 1225 version of 10c simply said 'ad capitulum ueniant generale', or perhaps something like:

... ad capitulum ueniant generale et magistrum ordinis eligant secundum formam inferius positam.

The rest of II 11 consists of later additions, beginning with a formal precept which we have already met and dated to 1228:

(11d) Et hec omnia que circa electionem magistri sunt instituta absque contradictione uolumus et firmiter precipimus²¹⁰ obseruari. Quicumque autem ausus fuerit contradicere pertinaciter uel etiam rebellare, tamquam excommunicatus et scismaticus et destructor nostri ordinis habeatur, et quousque satisfecerit a communione omnium sit penitus alienus et pene *grauioris*²¹¹ culpe debite subiaceat.

This is followed by two parallel measures which were, however, apparently not introduced together:

(11e) Statuimus autem ut si in anno diffinitionis priorum prouincialium electio magistri celebratur,²¹² unus de fratribus²¹³ electoribus de qualibet prouincia, qui in suo²¹⁴ prouinciali capitulo ad hoc electus fuerit, ad diffiniendum²¹⁵ cum eis pariter admittatur.

(f) Si uero in anno diffinitionum celebratur, tunc cum diffinitionibus <*priores*> prouinciales²¹⁶ conueniant et *utrorum*<*que*>²¹⁷ diffinitio sit communis.

11e was added in 1236, in a way which implies that 11f was already in place (MOPH III 7.12-17):

Item in constitutionibus ubi dicitur quod si in anno electionis magistri fratres sunt diffinitores, priores prouinciales²¹⁸ admittantur ad diffinitionem, addatur quod si priores illo anno habeant diffinire unus

²¹⁰ This is the Rodez reading; Raymund and the Sack Friars have *precipimus firmiter*. However, in II 14 the Sack Friars (but not Raymund) support Rodez's *firmiter precipimus*, as do the constitutions of the Penitents (Vienna 4724 f.326^v), so there is no way of knowing which should be in PC here.

²¹¹ Rodez has *grauiori*, but I have corrected it for the reason given above.

²¹² Raymund and later Dominican texts all have *celebretur* here and in 11f, so there is nothing to corroborate Rodez's *celebratur* in either place.

²¹³ Raymund and later Dominican texts have *illo anno* before *unus*, which could well be due to Raymund's editing, and is certainly not supported by the 1236 acta (MOPH III 7.15); *e fratribus* in the Porto manuscript is simply an aberration: the 1236 acta and all subsequent texts have *de fratribus*, like Rodez.

²¹⁴ Rodez's *suo*, which is not in Raymund or later texts, is corroborated by the 1236 acta (MOPH III 7.15).

²¹⁵ Rodez's *diffiniendum* is corroborated by the 1236 acta (MOPH III 7.16); later texts have *diffinitionem*.

²¹⁶ Rodez just has *prouinciales*, but Raymund and later texts have *priores prouinciales*.

²¹⁷ Rodez has *utrorum*.

²¹⁸ Reichert prints a superfluous *quod* before *priores prouinciales*; I have not checked other manuscripts, but Minerva A.p.4 does not have it.

de qualibet provincia de fratribus electoribus qui in suo provinciali capitulo ad hoc fuerit electus ad diffiniendum cum eis pariter admittatur.

It is unclear whether the first *quod* introduces the quotation or whether it is part of it: in the acta of 1236 there are nine other direct quotations from the constitutions, eight of which are introduced by *dicitur*, and one (MOPH III 7.22-25) by *dicitur quod*. There is no reason to suspect that, contrary to its normal practice, the Most General Chapter merely paraphrased the constitution it was altering, so we may take it that, before 1236, 11f was formulated as reported, which is, in any case, more appropriate than the Rodez version to the context of II 11:

(Quod) si in anno electionis magistri fratres sunt diffinitores, priores provinciales admittantur ad diffinitionem.

It must have been reformulated when the Most General Chapter's alteration was 'translated' for inclusion in the constitutions.

The pre-1236 version of 11f could go back to 1225, but 'si ... fratres sunt diffinitores' is reminiscent of 'fratres diffinitores' in II 6a, so we may suspect that it was actually inserted in 1228, at the same time as 11b and 11d.²¹⁹

(j) *Distinction II 12*

II 12 specifies that the members of the provincial chapter of the province hosting the general chapter should come to the latter, and are not obliged to hold any other chapter:

(12) Statuimus insuper quod omnes priores conuentuales cum sociis suis et predicatores generales illius prouincie in *qua*²²⁰ generale capitulum celebratur illo anno ad capitulum ueniant generale. Nec eodem anno in illa prouincia ad celebrandum aliud capitulum teneantur.

'Statuimus *insuper*' appears to have suggested to Thomas that II 12 was added at the same time as 11f (Thomas 289), but, on the face of it, it is more closely related to 10c, which requires the presence

²¹⁹ Thomas dates 11f between 1231 and 1235, and explains his terminus post quem with a reference to II 6b and its supposed date, 1228 (Thomas 289), i.e. if it was introduced after 1228, it could not have become law until 1231; but he does not explain why it could not go back to 1228 or even earlier.

²²⁰ Rodez has *quo*.

of the conventual priors of the province at least at an elective chapter. We must also ask how it is related to the definition of a provincial chapter in 1cd.

X 5 shows that there was a time when conventual priors took several people with them to chapters; the most obvious difference between 1c and 12 is that the former restricts priors to one elected socius each, whereas the latter does not; *cum sociis suis*, on the face of it, allows them to bring several *socii* of their own choosing.

12 presupposes that 'preachers general' are involved in provincial chapters, but who they are is defined in 1d. The title does not go back to the order's earliest years; 1d identifies as 'predicatores generales' the people appointed *predicatores* in the way prescribed in II 20, so it is not unlikely that the new terminology was actually introduced, or at least formalised, for the first time in 1d. If so, 1d cannot be later than 12.

Since 1cd are rather illogically placed (we need to know who is at the chapter before being told that they are to choose diffinitors), it is unlikely that they form part of the legislation of 1225; but a version of 1c closer to 12 could have been inserted at the same time as 12, together with the definition of preachers general in 1d:

*1c	12
Capitulum autem prouinciale appellamus priores conuentuales cum sociis suis et predicatorum generales.	Statuimus insuper quod omnes priores conuentuales cum sociis suis et predicatorum generales illius prouincie ...

If II 12 is interpreted literally, the host province would not need to hold a provincial chapter at all, but this would generally be incompatible with II 4, since it would leave the province without a diffinitor for the following general chapter (which would be held in a different province, as II 13c requires). The language of II 12 shows that it is not a survival from the order's oldest constitutions, so it must be understood in a way which makes it consistent with the legislation of 1225; in other words, it must mean that the members of the host province who came to the general chapter were empowered to carry out the essential business of the provincial chapter at the same time, with the assurance that no *other* provincial chapter would then be necessary.

It is inconceivable that the order was originally represented at general chapters only by provincials, and, until provincial structures

were fully operational, it must be likely that at first convents were directly represented, presumably by their priors, as well as 'provinces and kingdoms'.²²¹ If so, it would have been natural to celebrate at least a rudimentary chapter of the host province at the same time as the general chapter.

When the system of general chapters was changed in 1225, there was no reason for such a practice to continue, but II 10c requires at least the priors of the province to be present to enforce the conclave; if this measure was instituted in 1225, it would have been logical for the same chapter to take steps to ensure that they would be there, by, for example, legislating for a provincial chapter to coincide with the general chapter, as in II 12. Nevertheless, if II 12 is part of the legislation of 1225, there is no obvious reason why it should come where it does, sandwiched in between the election of the Master and the death of the Master; its position in PC is more comprehensible if it entered the text at the same time as II 11f. So we come back, after all, to Thomas's theory, except that we should probably date II 11f and 12 (and the original form of 1cd) to 1228, the Most General Chapter which we have already found tying up loose ends left by the capitulars of 1225, to which we have also seen reason to attribute the conclave of II 10c.

(k) *Distinction II 13*

As things stand in the Rodez text, II 13 comes rather awkwardly after II 9-11: why should the death of the Master be brought in *after* we have already been told how to elect his successor? But, as we have seen, II 8-11 was originally a continuous text dealing with the possibility and consequences of the Master being removed from office, and it was in this context that it was necessary at least to introduce the possibility of electing a new Master. Before other considerations were injected into this scheme and other refinements added, it was not too unnatural for II 13 to follow II 11.

²²¹ We know from the Limoges *Memorialia* (Douais, *Frères Prêcheurs de Limoges* 25) that Peter Seilhan, prior of Limoges, was present at the general chapter in both 1222 and 1224 with another friar, Briccius, whom he had recruited in Limoges; until 1224, Limoges belonged to the province of France (*ibid.*), so it is not clear whether Peter was there as an ordinary member of the general chapter, or as a member of a provincial chapter held to coincide with the general chapter. And was Briccius just his socius, or was he a member of one or other chapter too?

(13a) <Statuimus ut>²²² si ante festum sancti Michaelis magistrum mori contigerit, prior conuenualis uel prouincialis qui propinquior illi loco extiterit ubi magister decesserit Parisiensi uel Bononiensi conuentui,²²³ sibi propinquiori scilicet,²²⁴ cum festinatione denuntiet, et alteruter²²⁵ istorum conuentuum cui primo²²⁶ denuntiatum fuerit teneatur similiter *reliquo*²²⁷ nuntiare. Parisiensis prouincialibus Yspanie, Prouincie, Anglie, Theutonie; Bononiensis uero Ungarie, Romane prouincie et aliis quibus poterit teneatur quantocius²²⁸ intimare.

(b) Si autem post dictum festum magister decesserit, obitus magistri nichilominus denuntietur, ut supersedeatur²²⁹ illo anno a capitulo generali. Sequenti uero anno ibi capitulum celebretur ubi prius debuerat celebrari.

(c) Capitulum generale uno anno Parisius, alio anno Bononie celebretur.

We have already noted the light which II 13 sheds on the four 'added' provinces (AFP 70 [2000] 13-14): it points to a time when the order had more than eight provinces, but only eight of them sent an elector to take part in the election of the Master; this corresponds to the situation before 1228.

Whether or not *prouincialis* was in use by 1236 with the meaning 'provincial (prior)', it must certainly be taken here in the more primitive sense we have already encountered in II 16a: it is the com-

²²² Rodez lacks *statuimus ut*, but the words are in Raymund and later Dominican texts. They were presumably dropped in Rodez's ancestor when the relevant capitular ruling was transcribed into the constitutions. The Sack Friars have no equivalent to II 13.

²²³ Rodez's *Parisiensi uel Bononiensi conuentui* is confirmed by later Dominican texts; Porto's *Parisiensi conuentui uel Bononiensi* is an aberration.

²²⁴ Porto omits *scilicet*, but later texts have *sibi scilicet propinquiori*, which might be more correct than Rodez's *sibi propinquiori scilicet*.

²²⁵ Porto has *alterutrum* (sic) *autem*, and later texts have *alteruter autem*.

²²⁶ Rodez's *primo* is supported by later texts; Porto's *prius* is an aberration.

²²⁷ Rodez has *reliquis*, but Raymund has *reliquo*, as do Humbert (AGOP XIV L 1 does not have *reliquis*, as reported in ASOP 3, nor does BL add. 23935) and later texts, and this gives the sense that is required: the convent of Paris or Bologna is to be informed first; whichever receives the news must pass it on to the other (*reliquo*), and then both together are responsible for informing the rest of the order.

²²⁸ Although later texts have *quamcitus*, Rodez, rightly or wrongly, has *quamtocius*, so Denifle was right to print *quantocius*, against Scheeben and Thomas who print *quamcitus* without comment.

²²⁹ Later texts have *ipsius*, not *magistri*, and *nuntietur*, not *denuntietur*; on the other hand, they all agree on *ut supersedeatur: et supersedeatur* in Creyten's edition of Raymund is either a misprint or a misreading of the manuscript.

munity (*conuentus*) of Paris or Bologna which has to be informed of the Master's death first, and these two communities have to pass the news on to the brethren in the different provinces (*prouinciales*).

As it stands, 13ab is decidedly bizarre. Informing the order of the Master's death ought, in itself, to be unaffected by the date of his death, nor does 13ab suggest otherwise. The date is important for only one reason: the provincial chapter was held at Michaelmas (II 16e), and, after 1225, it was the provincial chapter which elected electors of the Master (II 10a); so, if the Master died, the next general chapter could only be held if provinces had already had a chance to elect their electors.

After 1225, in principle, all provinces needed to know if the general chapter was postponed, not just those which had to elect electors; otherwise they might turn up for a chapter which was not being held, as seems to have happened to the Poles in 1237 (Loenertz, AFP 21 [1951] 18-19). What is more, although all the eight provinces listed in II 1a are mentioned in 13a, they are not in the same order, even allowing for the fact that they have been split into two lists. This makes it unlikely that the lists in 13a were actually drawn up in or after 1225. On the other hand, England and Hungary are included, which excludes a date earlier than 1221. The first general chapter which had to deal with the aftermath of a Master's death was that of 1222, so it may be inferred that it was in 1222 that II 13 first took shape. Germany did not yet have any provincial structures, but there were Dominicans in the territory, so it had *prouinciales*.

The emphasis on informing the *brethren* (communities, people in provinces) shows that the original purpose of II 13 was not to set administrative measures in motion, but to ensure that as many members of the order as possible learned about the Master's death at once so that they could pray for him without delay. As it says in II 17, in connection with the recital of obits at chapters, 'indigentibus quantocius subueniendum est'.

The new electoral system introduced in 1225 meant that thereafter the Master's death would have administrative consequences which depended in part on when he died. It was presumably the 1225 chapter, then, which modified the text of II 13, and we can recognise the same rather careless style of revision which we have already noticed in II 9cd. Instead of creating a new constitution spelling out (1) that the brethren must be informed of the Master's death so that they could pray for him, and (2) that if he died too late for provincial chapters to elect electors, the general chapter

would be postponed for a year, the capitulars superimposed the new consideration on the pre-existing text by making superficial changes which were not, in fact, sufficient to meet all the needs of the new situation.

We may surmise, then, that II 13a originally began, 'Si magistrum mori contigerit, prior qui propinquior illo loco extiterit ubi magister decesserit ...', and that this was changed to its present form in 1225, and that 13b was added at the same time.

II 13c goes back to 1220 (*Lib.* 87), and its connection with the rest of 13 is extremely tenuous, and its placing in PC peculiar. It must have become displaced in the course of some revision of the constitutions, and there can be little doubt that the revision in question was that of 1225. We have recognised in II 8-11c a block of legislation on general chapters going back to 1220, to which 11a and 13 were attached for obvious reasons in 1222, and we have found convincing signs that II 1-7 were adapted from an earlier text about diffinitors at all chapters. It would have been normal for this to be preceded by something specifying when and where chapters were to be held and who was to go to them. The date of general chapters is alluded to in II 11c and again, even more casually in II 16g-17, but it is never simply announced in its own right; the date of provincial chapters is announced in II 16e. May we not conjecture that 13c (with an indication of when the chapter should begin and who should go to it) + 15a + 16 (in their original form) represent a block which once came at the beginning of the second distinction? The new system introduced in 1225 made it impossible to deal in a single text with diffinitors at both kinds of chapter, and, since diffinitors at general chapters were thenceforth to be generally dependent on choices made at provincial chapters, the new legislation on provincial chapters had to come first. II 5 constituted a direct link between provincial chapters and diffinitors at general chapters, so it led naturally into the inherited legislation which became II 7-13; in spite of alterations and additions to the text, one can see why II 1-13 was kept as a continuous block. It thus pushed 13c-16 into the place they occupy now.

II 1-16, then, took its present shape essentially in 1225, though a fair amount of earlier legislation was incorporated with only slight (sometimes too slight) modification. By then, *provincia* had taken secure possession of its technical significance; twelve provinces were formally recognised as existing in the order, and steps had

been taken or were being taken to establish their essential structures. The term *prior prouincialis* had become normal though not exclusive; the official title was still *prior*, so *prior prouincie* could be used when appropriate (as in 9c). Priors of convents could similarly be called *priores conuentuales*. There are occasional hints that, by 1236, *prouincialis* was beginning to serve as a noun meaning '(prior) provincial', but these are textually uncertain; its only surely attested substantival meaning is 'member of a province'. Thanks to the innovations of 1225, the word *diffinitores*, as well as its traditional significance (those responsible for *diffinire* at a chapter), might refer to a province's elected delegates to a general chapter as distinct from the provincial prior; the 1228 Most General Chapter called them *fratres diffinitores*.

(1) *Distinction II 14*

II 14 is another formal precept:

(14a) In uirtute spiritus sancti et obedientie firmiter precipimus obseruari ne quis causam depositionis magistri uel prioris prouincialis uel eius excessum uel correctionem uel secretum capituli seu *dissensiones*²³⁰ diffinitorum uel fratrum, unde ordo noster possit turbari uel infamari, audeat scienter extraneis publicare. Si quis autem ex deliberatione contrafecerit, tamquam excommunicatus et scismaticus *et*²³¹ destructor nostri ordinis habeatur et, quousque satisfecerit, a comunione omnium sit penitus alienus et pene *grauioris*²³² culpe debite subiaceat.

(b) Eadem districcione precipimus²³³ ne quis uerbo uel facto aliquomodo ad diuisionem nostri ordinis audeat laborare. Quod si fecerit, pene subiaceat supradicte.

Although 14a and 14b address different issues, their form and language suggest that we are not dealing with separate precepts issued by different chapters.

²³⁰ Rodez has *diffinitiones*, but the Sack Friars and Raymund have *dissensiones*, which also receives support from *sorum dissensiones uel fratrum* in the Penitents' constitutions (Vienna 4724 f.326').

²³¹ Rodez has *ac*, and this is supported by the Penitents (Vienna 4724 f.326'); but the Sack Friars and later Dominican texts all have *et*, and the parallel with 11d suggests that this should be preferred.

²³² Rodez has *grauiori*, but the Sack Friars and the Penitents have *grauioris*, and I have given my reasons above for accepting this.

²³³ Porto has *prohibemus*, but this is not supported by later Dominican texts.

14a is obviously related to concerns which could arise at any time. In c.1236 the Praemonstratensians added a very similar text to their customary (Lefèvre IV 24):²³⁴

Nullus professor nostri ordinis correctiones uel excessus seu secreta capitulorum nostrorum²³⁵ aut dissensiones interiores unde ordo uel²³⁶ persone possint infamari siue turbari scienter et ex deliberatione audeat quoquo modo extraneis publicare. Quod si qui de hoc conuicti uel confessi palam fuerint, per uiginti dies pene subiaceant culpe grauioris uel secundum quod eorum²³⁷ malitia fuerit deprehensa grauius puniantur. Nam huiusmodi destructores nostri ordinis reputamus.

There is no trace of PC II 14 in the acta of 1236, and we have seen reason to agree with Thomas that all such formal precepts in PC should be attributed to the Most General Chapter of 1228. If there is a direct link between PC II 14a and the Praemonstratensian text, the latter must have been influenced by the former.

14b, by contrast, looks like a response to a specific danger. I am not aware of any other evidence that the order's unity was under threat in 1228, but it would explain the preamble's insistence on the unanimity of the Most General Chapter's decisions ('*gratia spiritus sancti inuocata, quasdam constitutiones ad utilitatem et honestatem et conseruationem ordinis, premissa diligenti examinatione, unanimiter et concorditer ediderunt*').

There is perhaps a clue to the nature of the problem in the constitutions which the Most General Chapter declared to be changeable only by another chapter of similar authority; apart from the requirement that new legislation be approved by three general chapters, they concern the order's commitment to a poverty and austerity not normally demanded of canons: '*de non equitando, de expensis non portandis, de carnibus nisi causa infirmitatis non comedendis*'. There is, in fact, no constitution *de non equitando* except for the inclusion of *equitare* '*absque licentia et magna necessitate*' among the grave faults listed in I 22, but pedestrianism was a practice inherited from Diego (*Lib. 22*) and institutionalised in the Toulouse *predicatio* (MOPH XXV #63); travelling without 'expenses' had a similar history, except that Dominic succeeded in getting it written

²³⁴ BNF lat. 9752 ff.25^v-26^r; Averbode IV 207 f.77^v.

²³⁵ Averbode has *excessus ordinis uel capitulorum nostrorum secreta*.

²³⁶ Averbode has *et*.

²³⁷ Averbode has *secundum eorum quod*.

into the 1220 constitutions (PC II 31, ACB #38). Both practices had initially been abandoned by the brethren in Paris (ACB #26).

Perpetual abstinence from meat was one of the austerities taken over from the Praemonstratensian customary, presumably in 1216 (Grauwen and Krings IV 12), but it had been tempered, very possibly in 1220, by a realistic appraisal of what travelling without money entailed: 'Et fratribus nostris, ne sint hominibus honerosi, pulmenta cocta cum carnibus liceat comedere extra claustrum' (PC I 8). Canons regular were not generally bound to perpetual abstinence even in their monasteries,²³⁸ but Dominic had gone even further while he was in the Midi, and used extreme dietary austerity as a weapon against heresy (Ferr. 22; ACL #5, 15, 17, 18).

Under pressure from Dominic and, no doubt, Reginald, the Paris brethren had been persuaded to adopt the radical poverty on which Dominic was so keen (cf. AFP 65 [1995] 48-53);²³⁹ but when Matthew explained their decision in 1225, he did so in a way which suggests it had been made with little idealism (ibid. 50-51), and he seems to have been puzzled by Reginald's conversion to poverty (cf. *Lib.* 64). Had the old debate flared up again, with some people questioning whether it was really necessary for the order to maintain a way of life originally adopted in the peculiar circumstances of the mission against heresy in the Midi? The divergence between Toulouse and Paris had brought to light a fundamental ambiguity: was 'euangelica parsimonia et austeritas' a strategic option for a particular situation or a universally valid ideal (cf. CdF 34 [1999] 252-255)? It would not be surprising if the fault-line was still causing trouble in 1228.

(m) *Distinction II 17*

II 13c, I have suggested, brings us to what was originally a block of legislation at the beginning of the second distinction, which was pushed into its present arrangement by the upheavals of 1225 and some subsequent additions and modifications. II 15-16 we have already examined. 15a + 16ace belong with 13c. 16fg could either have followed 16e at the beginning of the distinction or come immediately before 17. 'Ea que dicta sunt' ought strictly to refer back to

²³⁸ E.g. A.Carrier, ed., *Coutumier du XI siècle de l'Ordre de Saint-Ruf en usage à la cathédrale de Maguelone*, Sherwood 1950, 71 #29; J.Siegwart, ed., *Die Consuetudines des Augustiner-Chorherrenstiftes Marbach im Elsass*, Fribourg 1965, 204 #223.

²³⁹ I offer a more precise interpretation of the brethren's renunciation of *possessiones* in 1216 in CdF 34 (1999) 252-253.

something which has been said, so we should probably take it that 16g came after the constitutions on diffinitors, and, since they lead naturally into the provisions made for dealing with the Master's removal from office, this suggests that 16g always came between II 9+11c and 17.²⁴⁰ This made it almost inevitable that, when provincial chapters were given their own extended treatment in 1225, 17 would be perceived as referring to general chapters; however, in its original setting, it would have signalled the end of the section on diffinitors and chapter preliminaries, so that 17 could be seen as the beginning a new section on chapters themselves, whether general or provincial.

II 17 describes the opening ceremonies and the first business of the chapter proper:

(17) Cum autem in quarta feria fratres in capitulum uenerint, primo omnium deuote inuocetur spiritus sanctus a quo filii dei aguntur, et dicatur uersus Emitte spiritum tuum et creabuntur, cum collecta de spiritu sancto. Deinde, residentibus fratribus et loca *sua tenentibus*²⁴¹ omnibus ut uerbo dei celi *firmentur*, uerbum *dei*²⁴² in commune fiat. Sermoni interesse *poterunt*²⁴³ qui ad *edificationem*²⁴⁴ interesse uoluerint. Finito sermone, quia indigentibus quantocius subueniendum est, obitus fratrum in anno defunctorum in communi recitentur,²⁴⁵ et fiat eis communis²⁴⁶ absolutio, et dicatur pro eis psalmus De

²⁴⁰ If 16g's initial *et* was intended to connect it with the preceding legislation on diffinitors, then 16f was presumably part of the text which originally preceded that legislation.

²⁴¹ Rodez has *loca suadentibus*, which might suggest the emendation *loca seruantibus*, but *locum tenere* is the usual phrase elsewhere in PC (I 24, II 19a); the Sack Friars have *loca sua tenentibus*, and this is supported by some later Dominican texts (e.g. AGOP XIV L 1, BL add. 23935, Florence BN conv. soppr. J IX 24, Siena Bibl. Com. F VI 3, Vienna 1507), though others have *sua loca tenentibus* (e.g. Porto, the 14th-cent. text at the end of BL add. 23935, Siena Bibl. Com. G XI 36).

²⁴² Rodez has *firmentur*, which obviously has to be emended. It also has *uerbum domini*, which is supported by the Sack Friars, but comes oddly after *uerbo dei*; Raymond and later Dominican texts have *uerbum dei*.

²⁴³ Rodez has *possunt*, but later Dominican texts have *poterunt* (the Sack Friars have reworded the clause); *poterunt* is frequently used like this in PC, and in I 17 it is the reading supported by the Penitents, even though Rodez has *possunt*. It seems likely that *poterunt* is more correct here.

²⁴⁴ Rodez has *edificandum*, but Raymond and later Dominican texts have *edificationem*; the word is not in the Sack Friars' constitutions.

²⁴⁵ Thomas prints *recitetur* without comment, but all the manuscripts have *recitentur*.

²⁴⁶ Rodez's *fiat eis communis* is supported by the Crutched Friars and later Dominican texts (the Sack Friars do not have the phrase); Porto's *fiat communis eis* is aberrant.

profundis. Et, si²⁴⁷ littere dande sunt, dentur et recipiantur²⁴⁸ et eis cum consilio suo tempore respondeatur.²⁴⁹ Et sic omnes qui non sunt de capitulo egrediantur. Quibus egressis, qui missi sunt ad excusandos eos qui non adsunt, ad quid uenerint loquantur. Deinde culpe audiantur.

As we have seen, the use of *prelatus maior* in II 20-21, and the situation envisaged in 20, and the insertion made at the beginning of 19, all show that this part of the constitutions was originally intended to apply to all chapters, not just general chapters (AFP 69 [1999] 48-53), so 'in quarta feria' is not part of the original text of II 17, and was presumably added in 1225; it is not in the Sack Friars' constitutions, but they had their own reasons for suppressing it. Apart from this, II 17 probably remained unchanged since 1220.

'Culpe audiantur' only takes two words to say, but there may have been a great deal at stake. The Master's *excessus* had already been dealt with by the diffinitors (II 8-9), but it was presumably at this point that the faults of superiors were heard, with the attendant possibility that they might even be removed from office (cf. II 3, 15a). Only the general chapter could dismiss provincials; PC says nothing about conventual priors, but we may assume that they too could be deposed, at least by the general chapter and quite possibly by the provincial chapter.²⁵⁰

When the general chapter of 1275 initiated the process which eventually resulted in the establishment of a set procedure for voting at the provincial chapter on the retention or dismissal of provincials and sending the result to the next general chapter, a parallel procedure was instituted for voting in the convent chapter on the retention of the prior and sending the results to the provincial chap-

²⁴⁷ Raymund and later Dominican texts have *postmodum si*, but there is no reason why this should not be an editorial change, even though it leaves Rodez's *et si* unsupported.

²⁴⁸ The corresponding text of the Sack Friars has 'Tradant litteras quicumque habent eas ostendendas et recipiantur ...', and Raymund has 'si littere legende sunt, legantur' (const. II 9), both of which mean the same as the Rodez text, though they express it more clearly; there is no need to emend 'dande sunt dentur' to 'legende sunt legantur', as Scheeben does.

²⁴⁹ Thomas inserts X 6 here.

²⁵⁰ The earliest surviving reference to the removal of conventual priors comes in the acta of 1236 (MOPH III 8.19), but they can never have been immune from deposition.

ter (MOPH III 180.14-30);²⁵¹ by then, at any rate, we must presume that the provincial chapter regularly discussed whether to keep conventual priors in office or not, just as the general chapter did with regard to provincial priors. The earliest surviving evidence from provincial chapters shows that in Dacia they were absolving priors (and subpriors) by 1254, and that by 1252 priors in Provence who wished to be relieved of their office appealed to the provincial chapter;²⁵² however, the very fact that no legislation was considered necessary to spell out the provincial chapter's power to dismiss conventual priors suggests that it had evolved naturally from a practice going back to the early days of the order.

(n) *Distinction II 18-19*

Once the non-capitulars have left and *culpe* have been heard, the first business of the chapter is to receive visitators' reports:

(18) Post hec uisitatores presentes uerbo, absentes scripto, referre debent de hiis quos uisitauerint fratribus, si in pace continui, in studio assidui, in predicatione feruentes, que de eis fama, quis fructus, si in uictu <et uestitu>²⁵³ et in aliis secundum tenorem institutionum ordo seruetur. Quod si alicubi minus inuenerint, ille ad quem pertinet hec audiens surgat sponte et ueniam petat et condignam penitentiam humiliter expectet.

There is nothing to suggest that this does not go back in its entirety to 1220, but it is not quite clear how the last sentence should be understood; it was not retained in Raymund's const. II 11. Denifle read the manuscript as having 'quorum si alicubi minus', but the first word is undoubtedly meant to be *quod*, not *quorum*. The corresponding passage in the Sack Friars' constitutions has 'quod si alicubi minus bene ...', from which Thomas adopted *bene* into his edition of PC. On the face of it, the resulting text ought to mean, 'If they were not completely successful in discovering this'

²⁵¹ On the difficult gestation of this constitution, cf. A. Duval, in J. Gaudemet, *Les élections dans l'Église latine*, Paris 1979, 332; G. Melville, 'Fiat secretum scrutinium. Zu einem Konflikt zwischen *praelati* und *subditi* bei den Dominikanern des 13. Jahrhunderts', in F. J. Felten - N. Jaspert, edd., *Vita religiosa im Mittelalter*, Berlin 1999, 441-460.

²⁵² G. Stephens, *Brotstücken av en Dominikaner-Ordens Statut- eller Capitel-Bok*, Copenhagen 1852, 7; Douais, *Acta cap. prov.* 47.

²⁵³ Thomas must be right to restore *et uestitu* from the corresponding texts of the Sack Friars and Raymund; it is missing in Rodez.

(with *quod* taken as a relative pronoun serving as the object of *inuenerint*, its antecedent being everything that visitors were supposed to report on); this does not seem very plausible, but on any other view the Sack Friars' text is as elliptical as that of Rodez and more misleading. It is possible, I think, to accept the Rodez text without emendation, and understand it as meaning, 'But if they have found less (than this) anywhere', i.e. if they have discovered that the brethren are not as constant in peace, as assiduous in study, and so on, as they should be.

It is also not at all clear who 'ille ad quem pertinet' is. The visitors might have to report the misdemeanours of identified individuals, but it is scarcely conceivable that all such individuals would invariably be present at the chapter. In any case, 'si alicubi minus inuenerint' suggests that the visitors were, at this point, commenting on whole communities, not single friars; and it would surely be more proper for the personal faults of people who were at the chapter to be dealt with at the beginning, when *culpe* were being heard. This suggests that 'ille ad quem pertinet' must be the person responsible for a whole convent, i.e. its prior. If this is correct, it shows, not only that priors had to be answerable for the failings of their communities, but also that they were all initially expected to be present at any kind of chapter.

II 19 begins with what is plainly a later addition, as it shown by its tell-tale *statuimus*:

(19a) Statuimus quod quatuor fratres ad uisitandam prouinciam in²⁵⁴ capitulo prouinciali predicto modo eligantur qui excessus priorum conuentualium et fratrum audiant et emendent, absque constitutione et status domus mutatione. Loca uero sua ubique teneant, nisi in capitulo dum ab eis sue correctionis officium exercetur, *quod* in tribus diebus continuis *terminetur*.²⁵⁵ Si qua autem graua et periculosa inuenerint, licet correctae fuerint, nichilominus cum testimonio maioris partis capituli eiusdem generali capitulo studeant denuntiare.

(b) Priores autem seu doctores in uisitatores nullatenus eligantur.

(c) Qui uero²⁵⁶ in presenti anno uisitare debuerant et non sicut *opor-*

²⁵⁴ Porto has *a*, but Rodez's *in* is supported by the Sack Friars and by later Dominican texts.

²⁵⁵ Rodez has *qui ... terminentur*, but *quod ... terminetur* may be confidently restored from Raymund and the Sack Friars.

²⁵⁶ The Sack Friars also have *uero*; later Dominican texts have *autem*.

*tuit*²⁵⁷ fecerint, culpam suam dicant et digne uindicte subiaceant. Tunc²⁵⁸ absentibus qui adesse debuerint, et hiis qui peccauerint nec satisfecerint, penitentia scripta mittatur.

The verbs in 19c seem to have caused considerable trouble, and there is little chance of establishing the intended text of PC with any certainty.

In the first sentence, Rodez has *debuerant ... oportuerit ... fecerint*, the Sack Friars have *debuerint ... oportuerit ... fecerint*, and Raymund and later Dominican texts have *debuerant ... oportuit ... fecerunt*. It would be difficult to defend *oportuerit*, but either *debuerant* or *debuerint* would be acceptable: *debuerant* would highlight the fact that the obligation preceded the failure to fulfil it ('they had been under an obligation to visitate during the year, but they did not do it'); *debuerint* would be another instance of the perfect subjunctive being used with an indefinite pronoun (like *fecerint*). The combination of *debuerant* with *fecerint* is not impossible: the relative has the effect of a conditional here, and the obligation was a fact, whereas the failure to fulfil it was merely a possibility.

In the second sentence, Rodez has *debuerint ... peccauerint ... satisfecerint*, but Raymund and later Dominican texts have *debuerant ... peccauerunt ... satisfecerunt*; the Sack Friars omit the clause. It is not illogical to have *debuerint* here and *debuerant* in the first clause, since the two situations are not the same: from the vantage point of the chapter, the obligation to visitate was in the past, while the obligation to be at the chapter was not. *Peccauerint* and *satisfecerint* would have to be given a past sense not required in *debuerint*, but in each case we are dealing with an indefinite pronoun used in an implicitly conditional sense, and the perfect subjunctive is frequently found in such a setting in PC and elsewhere.

Apart from *oportuerit*, I see no reason to emend Rodez. The Sack Friars may have *debuerint* through assimilation to the tense and mood of *fecerint* (and this must be the explanation of *oportuerit* in Rodez too). Raymund may have assimilated the second *debuerint* to the earlier *debuerant*; having done that, it seems that he preferred to remain in the indicative, hence *fecerunt*, *peccauerunt* and *satisfecerunt*.

²⁵⁷ Rodez and the Sack Friars have *oportuerit*; I have adopted *oportuit* from Raymund and later Dominican texts.

²⁵⁸ Raymund and later Dominican texts have *tunc etiam*.

Thomas dates II 19ab vaguely to '1225-1235', excluding 1236, no doubt, because it does not feature in the surviving acts of that chapter, and treating 1225 as the earliest possible date because of the reference to the provincial chapter; all that he ascribes to 1220 is 19c. However, 'qui uero in presenti anno' in 19c requires a contrast, not with visitators who have done their job or with the people they have found wanting (II 18), but with those appointed to visitate in the coming year, a contrast which is supplied by 19a. The appointment of visitators was enjoined on the 'common chapters' prescribed by const. 12 of Lateran IV, so it is a priori likely that the Dominican constitutions of 1220 made some provision corresponding to 19a, and it must have come between 18 and 19c.

There is no reason in principle why a section on chapters as such should not contain some provisions applying only to provincial chapters; but 18 implies that there were visitators' reports at all chapters, so it is unlikely that 19a was originally restricted to provincial chapters. This means that the earlier text of 19a did not contain the references to provincial chapters which are there now, and it was probably not necessary to specify that visitators were to deal with the misdemeanours of *conventual* priors.

19a was presumably left where it was because it only needed relatively superficial revision when it was adapted to suit a situation in which provincial chapters were to assume greater responsibilities. If it had been radically rewritten, we might have expected the procedure for choosing visitators to be indicated more clearly than by 'predicto modo', which must refer back to the choice of diffinitors in II 1;²⁵⁹ in an earlier version of PC, we may surmise, the ancestor of II 19 was not so widely separated from the ancestor of II 1. The ambiguity of 'capituli eiusdem'—which is certainly intended to refer back to the provincial chapter, though the most recently mentioned *capitulum* is that of the convent—also suggests that an earlier text, which already contained the reference to the *capitulum* of the convent, was revised with insufficient attentiveness.

Lateran IV called for people to be appointed to visitate monasteries *secundum formam sibi praefixam*. The Dominicans should, in principle, not merely have made provision for the nomination of vi-

²⁵⁹ This interpretation of *predicto modo* is corroborated by the substitution of 'secundum formam in electione diffinitorum provincialis capituli' in 1259-1261 (MOPH III 96.21-24, 102.10-13, 106.9-12).

sitators, they should also have specified how they were to operate. Much of 19a fulfils this requirement and can plausibly be dated to 1220. We cannot hope to retrieve the exact form of the original constitution, but I conjecture that the 1220 text ran something like this:

Post hec predicto modo eligantur fratres ad uisitandos conuentus in singulis regnis siue prouinciis, qui excessus priorum et fratrum audiant et emendent, absque constitutione et status domus mutatione. Loca uero sua ubique teneant, nisi in capitulo dum ab eis sue correctionis officium exercetur, quod in tribus diebus continuis terminetur. Si qua autem grauia et periculosa inuenerint, licet correctae fuerint, nichilominus generali capitulo studeant denuntiare.

The text of 19a was revised, in all probability, when the new legislation on provincial chapters in PC II 1-5 was created (every part of which begins with 'statuimus', just like 19a).

The procedure laid down for visitators confirms that, except in the case of the Master, the faults of superiors as well as subjects were traditionally dealt with by a competent authority in the context of a chapter of faults. 'Absque constitutione et status domus mutatione' restricts visitators to their proper function, as does 'loca sua ubique teneant nisi in capitulo ...': they were not to act as if they were superiors or interfere in the government of the house. Most of the translations I have looked at imply that the Latin has *constitutionis*, not *constitutione*; but the point is not that visitators may not change the 'constitution' of the house, but that they may not change the *status* (essential ordering) of the house by *constitutione* or by *mutatione*: in other words, they may not change or add to the basic rules by which it is governed.²⁶⁰

If 19a goes back to 1220, there is no obvious reason why 19b should not always have accompanied it. Priors and *doctores* were an essential part of any Dominican community (cf. II 23a), so it would make good sense to prevent them being given tasks which would require their absence. Nor is there anything to prevent us accepting Thomas's dating of 19c to 1220.

²⁶⁰ The phrasing and context make it most unlikely that *constitutio* refers to the appointment of convent officials. The use of the word is a further indication of the early date of 19a; once *constitutio* had come to mean a 'constitution' (such as only general chapters could make), it would have been inappropriate here. Notice *institutiones*, in the sense of 'constitutions', in 18.

(o) *Distinction II 20-22*

II 20-21 we have already considered in connection with their use of the phrase *maior prelatas* (AFP 69 [1999] 48-52).

(20) Post hec qui ydonei ad predicandum ab aliquibus estimantur presententur,²⁶¹ et illi qui de licentia et mandato sui prioris necdum <de>²⁶² licentia maioris prelati uel capituli predicationis officium receperunt.²⁶³ Quibus omnibus²⁶⁴ diligenter seorsum examinatis ab ydoneis personis ob hoc et ob alias capituli questiones institutis, et fratribus cum quibus conuersati sunt studiose inquisitis²⁶⁵ de gratia predicationis quam eis deus contulerit,²⁶⁶ et studio, et religione, et caritatis feruore, proposito ac²⁶⁷ intentione, et hiis de eis testimonium perhibentibus, consensu et consilio maioris prelati approbabunt quicquid ipsi utilius iudicabunt, utrum uidelicet ipsi fratres adhuc debeant in studio morari uel cum fratribus prouectoribus in predicatione exercitari, uel ydonei sint et utiles per se predicationis officium exercere.

(21a) Tunc qui habent questiones facere,²⁶⁸ siue proprias siue²⁶⁹ communes, ad ordinem uel ad predicationem²⁷⁰ pertinentes, proponant

²⁶¹ I see no reason to doubt that Rodez has preserved the original text here. The Sack Friars have *presententur capitulo generali uel prouinciali*; Porto has *capitulo uel diffinitoribus presententur*.

²⁶² Porto has *nondum de*. Since II 20 was suppressed before Humbert's revision (MOPH III 45-46, 51, 56), and the Sack Friars did not retain this sentence, and the Crutched Friars dropped the whole section, there is no evidence beyond that of Rodez and Porto; Rodez's *necdum* supplies a useful conjunction, but Porto's repeated *de* is convincing.

²⁶³ Rodez has *recepertint*, but after *estimantur* the indicative is more plausible, so I have accepted Porto's *recepertunt*.

²⁶⁴ Porto omits *omnibus*.

²⁶⁵ The Sack Friars apparently disapproved of this use of *inquirere* to mean 'question (someone)'; in their constitutions would-be preachers are to be brought to the chapter 'ubi diligenter inquiratur a fratribus cum quibus conuersati <sunt> de gratia predicationis ...'. However, Porto fully supports Rodez, so the Dominican text is not in doubt.

²⁶⁶ Rodez and the Sack Friars have *contulerit*, Porto has *contulit*.

²⁶⁷ Rodez has a conventional sign for *et*, but Raymund and the Sack Friars have *ac*; it is unlikely that they both substituted *ac* for *et*, so their reading should be preferred here.

²⁶⁸ Rodez's word-order is supported by the later Dominican tradition, the Sack Friars and the Crutched Friars; Porto's *facere questiones* is eccentric.

²⁶⁹ Rodez's reading is validated by later Dominican texts against Porto's *facere questiones proprias uel*.

²⁷⁰ The Sack Friars have *ad predicationem uel ad ordinem*; Porto and later Dominican texts generally have *ad ordinem uel predicationem*, which is to some extent supported by the Crutched Friars, who have *ad ordinem siue predicationem*.

ordinate unus post alium²⁷¹ et ab aliquo fratre diligenter notentur, ut suo loco et tempore ab hiis²⁷² qui ad hoc statuti sunt soluantur et terminentur. Et uno stante et loquente, alius non loquatur.

(b) Et ut in exeundo²⁷³ modus *seruetur*,²⁷⁴ nullus exeat sine licentia et necessitate. Egressus autem non discurrat, sed *expleta necessitate*²⁷⁵ citius reuertatur.

(c) Si qua uero dissensio inter fratres ordinis nostri,²⁷⁶ quod absit, emerit de libris uel [de] aliis rebus,²⁷⁷ cum preponenda sint spiritalia temporalibus, non inde agatur in capitulo,²⁷⁸ sed fratres eligantur qui in hoc periti fuerint et post refectionem in loco competenti extra capitulum discussa ueritate litem dirimant et inter fratres pacem restituant.

(d) De solutione et terminatione questionum, de correctione fratrum, de modo penitentiarum, et de²⁷⁹ predicatoribus et eorum sociis ob predicandum et studendum mittendis, et quando et ubi et per quantum tempus moraturis, prelatus maior cum aliis qui ad hoc instituti

²⁷¹ Raymund revised this clause, and it is not certain what his text was meant to be: Porto has *ordinate proponant*, but the Crutched Friars and later Dominican texts simply have *proponant*; the Sack Friars have *proponant unus post alium ordinate*. This guarantees the wording, but not the word-order of Rodez.

²⁷² Since Raymund rewrote this passage, this clause is found only in Rodez and the Sack Friars' constitutions. The latter have *aliis*, which might claim support from *aliis* in 21d; however, in 21d the point is that the issues will be decided by 'the major superior with others appointed for the purpose', but in 21a there is no one by reference to whom the people concerned could be 'other', so Rodez's *hiis* must be preferred.

²⁷³ Thomas prints *eundo* without comment, but all the manuscripts have *exeundo*.

²⁷⁴ Rodez has *obseruetur*, but the Sack Friars and later Dominican texts have *seruetur*.

²⁷⁵ This is the word-order in Porto and later Dominican texts, and it is supported by the Crutched Friars and by the Sack Friars' (corrupt) *expressa necessitate*; only Rodez has *necessitate expleta*.

²⁷⁶ Rodez has *ordinis nostri*, but the Sack Friars and later Dominican texts have *nostrum ordinis*; perhaps the text originally just had *ordinis*.

²⁷⁷ Rodez's *uel de aliis rebus* receives little support: the Sack Friars have *uel aliis rebus*, and later Dominican texts, including Porto and BL add. 23935, just have *uel aliis*, which suggests that AGOP XIV L 1's *uel de aliis* is an aberration.

²⁷⁸ Porto reverses the order of 'cum preponenda ...' and 'non inde agatur', but this is not supported by the Crutched Friars or later Dominican texts. AGOP XIV L 1 and BL add. 23935 have *agatur inde*, and this seems to be the prevalent reading thereafter; but Rodez's *inde agatur* is sufficiently validated by Porto and the Crutched Friars and by the Sack Friars' (corrupt) *tamen agatur*.

²⁷⁹ Raymund and later Dominican texts, supported by the Crutched Friars, omit *de*, and the Sack Friars' text is too different to be relevant; but there is no reason why there should not be another *de* here.

sunt [et] tractabit.²⁸⁰ Et quicquid inde donante spiritu sancto²⁸¹ ordinauerint, capitulum uniuersaliter et unanimiter et deuote suscipiat. Nullus murmuret, nullus reclamet, nullus contradicat.

(e) In fine communis fiat²⁸² confessio et absolutio, perseuerantibus benedictio, apostatis et profugis anathematis maledictio.

(f) Et hec eadem forma in capitulo prouinciali obseruetur.

(g) <Magister ordinis aut priores prouinciales non mutant acta capituli generalis uel prouincialis, nisi forte in speciali, causa necessaria et utili.>²⁸³

II 20 can certainly be attributed to the 1220 chapter, and there are no signs that it underwent any subsequent alteration. 21f was no doubt inserted when the beginning of 17 was adapted to restrict the application of this whole section to general chapters, and 21g was added in 1236; I see nothing to prevent us dating the rest of II 21 to 1220.

There is no need to say anything more about II 20 here, and we have already dealt with the most obvious question raised by II 21, namely the relationship between *diffinitores* and the various periphrastically described people who appear to be given a similar authority in II 21. We may wonder why special people were required to make decisions 'de correctione fratrum' and 'de modo penitentiary' (21d), since we might have expected them to be dealt with when *culpe* were heard; 21d presumably refers to the faults of people not present at the chapter, and, perhaps, to particularly grave matters brought to light when *culpe* were being heard.²⁸⁴

²⁸⁰ Rodez's *et tractabit* does not make sense; Raymund and the Sack Friars do not have the intrusive *et*.

²⁸¹ Raymund and later Dominican texts have *spiritu sancto donante*, but Rodez's *donante spiritu sancto* is supported by the Sack Friars.

²⁸² Raymund and later Dominican texts have *fiat communis*, but the Sack Friars support *communis fiat*.

²⁸³ Rodez does not have 21g, but it is in the acta of 1236 (MOPH III 6.2-3), and is found here in Raymund and the Sack Friars. The 1236 acta do not have *ordinis*; later Dominican texts preface 21g with *porro*, have *prouincialis capituli aut generalis*, and *ex causa*. For *nisi ... causa*, the Sack Friars have *sine causa speciali*. For *causa* without *ex*, cf. *causa legitima* in X 5. *In speciali* is a separate phrase, meaning 'in detail', 'on a point of detail'; under no circumstances was a major superior to make sweeping changes to the acts of a chapter.

²⁸⁴ This is rather suggested by the Rodez 'directorium', which lists among the things to be done at the end of the chapter, 'Penitentie que fuerunt suspense iniungantur' (ed. Creytens, AFP 26 [1956] 109).

II 17-21 are informative about how chapters dealt with issues whose resolution was entrusted to special committees; disappointingly, it was apparently not considered necessary to say anything about how they carried out their legislative function.

After II 21, the Rodez manuscript has a section entitled 'de anniuersariis' which has no fixed abode: the Sack Friars have it, also entitled 'de anniuersariis', between their equivalent of II 34 and a section partly inspired by II 6b, which is followed by their *regula conversorum*; the Penitents have it, entitled 'de suffragiis mortuorum', after their equivalent of the *regula conversorum*. Raymund moved it into the first distinction, where it became const. I 3, under the title 'de suffragiis mortuorum'. Thomas placed it immediately before the *regula conversorum* and numbered it II 36.

(36a) A festo sancti Dyonisii usque ad aduentum, pro anniuersario fratrum clericus psalterium, sacerdos tres missas,²⁸⁵ laici quingenta²⁸⁶ Pater noster.²⁸⁷

(b) Idem faciat quilibet fratrum pro defuncto fratre sui conuentus.

(c) Idem²⁸⁸ fiat per totum ordinem pro magistro ordinis, et a com-prouincialibus pro priore prouinciali defuncto.²⁸⁹

(d) Idem etiam fiat pro uisitatore a domibus quas uisitare debet, si in uisitatione moriatur.

(e) Idem etiam fiat pro diffinitoribus generalis capituli, siue prioribus prouincialibus siue aliis fratribus, et eorum sociis, si eos in uia mori contigerit, quod fit pro magistro ordinis mortuo.

(f) Item in unaquaque prouincia pro fratre illius prouincie defuncto quilibet sacerdos celebret unam missam, et quilibet conuentus unam in communi, et unusquisque aliorum septem psalmos.

²⁸⁵ Clerics come before priests in all Dominican versions of the text; the Penitents have *frater sacerdos ... soror ... conuersi et conuerse*, and the Sack Friars have *sacerdos ... clericus ... laicus frater*.

²⁸⁶ The corresponding texts of the Penitents and the Sack Friars have, respectively, *quinquaginta* and *CL*; Thomas accepted *quinquaginta* into his text, but Rodez's *quingenta* is supported by later Dominican texts, and there is no reason why the Penitents and the Sack Friars should not have altered the specifications to suit themselves.

²⁸⁷ The Penitents and later Dominican texts add *dicant*; however, the Sack Friars (who have *laicus frater* in the singular) add *persoluat*, which enhances the possibility that the original text of PC did not contain a verb. The prescribing of suffrages without a verb is found in chapter-acts (e.g. MOPH III 18.5-6, 21.1-2).

²⁸⁸ Raymund and later Dominican texts have *et idem*, but this is not supported by the Sack Friars.

²⁸⁹ Raymund and later Dominican texts have *defunctis*; the Sack Friars have a significantly different text.

(g) Anniuersarium patrum et matrum tertia die post purificationem sancte²⁹⁰ Marie, anniuersarium benefactorum <et>²⁹¹ familiarium tertia die post natiuitatem eiusdem est faciendum.

The uncertainty about where II 36 belongs shows that it does not go back to 1220; in any case, its language is not primitive enough for that, with *comprovincialibus* in 36c (in the sense for which II 13a and 16a use *prouinciales*), and *prioribus prouincialibus* in 36e. 36e also presupposes the new-style general chapters introduced in 1225, though its use of *diffinitores* as a generic term, embracing *priores prouinciales* and *alii fratres*, is more reminiscent of II 6b, which I have dated to 1225, than to the more scrupulous terminology employed in II 6a and in the revision of II 7 which I have attributed to the Most General Chapter of 1228.

There is no guarantee that II 36 came into being as a single whole; but the Penitents have an essentially identical text: they omit 36cde which do not apply to them, but otherwise nothing more has been changed than was necessary to make the text fit the nuns. This shows that 36abfg existed by 1232 at the very latest, and probably by 1228, and there is no reason to ascribe a different date to 36cde. II 36 can thus be plausibly dated to 1225 or to 1228; the language of 36e inclines me to favour the former.

The only reason I can think of for inserting it after 21 is that prayers for the dead (and the living) were ordered by chapters and came at the end of their acta, so it might have seemed appropriate to conclude the section of PC devoted to chapters with the suffrages that were generally prescribed; but it is possible that Rodez has 36 where it does simply because of the arrangement of the 1225 acta, if 21f and 36 were added at the same time.

Thomas, having moved 'de anniuersariis' out, inserted after II 21 a section on Most General Chapters which is not in Rodez or the Sack Friars' constitutions; it was added in 1236 (MOPH III 7-8) and follows the equivalent of PC II 21 in Raymund. There are some verbal differences between the acta of 1236 and the text found in later versions of the constitutions; there is no way of knowing how many of these are due to Raymund's editing.

²⁹⁰ Only Rodez has *sancte*; later Dominican texts all have *beate*. The Sack Friars do not have this prescription, and the Penitents just have *purificationem*.

²⁹¹ Rodez omits *et*.

(22) Generalissimum capitulum²⁹² non conuocetur nisi quando maior pars prouinciarum petierit uel magistro uisum fuerit expedire. Prouincie²⁹³ que petunt scribant causas quare petunt; de hiis tamen capitulum generale non habebit iudicare utrum sufficientes sint uel²⁹⁴ non, sed tamen²⁹⁵ scribantur ut ante capitulum fratres de hiis possint habere collationem.²⁹⁶ Priores autem prouinciales²⁹⁷ cum duobus fratribus²⁹⁸ a capitulo suo²⁹⁹ prouinciali electis tale capitulum celebrandi habeant potestatem,³⁰⁰ et duobus³⁰¹ annis ante pronuntietur nisi fuerit urgens³⁰² necessitas.

The only interesting textual question is whether *prouinciales* is correct, which would provide a further indication that the word was already in use as a substantive in 1236, or whether the original text had *priores autem prouinciales*, as in Raymund and later editions of the constitutions.

(p) *Distinction II 23-25*

If it is correct to maintain that the 'synopsis' of the second distinction found in the Rodez prologue is a programme for future legislation laid down in 1216, we must presume that it was implemented in 1220. We have already dealt with the primitive legislation 'de prouinciali capitulo et generali' which survives or can be recognised in II 1-21; 'de studio et predicatione' does not begin until II 28, which might suggest that II 23-27, as well as II 36 and 22, were inserted later than 1220. However, II 26a certainly goes back to 1220, and there is no reason to suspect that it ever occupied a different place in PC.³⁰³ Furthermore, Ferrandus was probably well-

²⁹² Raymund and later texts have *capitulum generalissimum*.

²⁹³ Raymund and later texts have *prouincie autem*.

²⁹⁴ The 1236 acta have *utrum sufficient*, but it is difficult to see why Raymund should have changed this if it was in PC. The Porto manuscript then has *aut*, but the acta and later texts of the constitutions have *uel*.

²⁹⁵ The acta lack *tamen*.

²⁹⁶ Raymund and later texts have *ut fratres de eis ante capitulum conferre ualeant*.

²⁹⁷ This is the reading of Raymund and later texts; the acta have *prouinciales autem* without *priores*.

²⁹⁸ Raymund and later texts have *sociis*, not *fratribus*.

²⁹⁹ The acta omit *suo*, but cf. II 1c and 11e.

³⁰⁰ Where the acta have *celebrandi habeant potestatem*, Raymund and later texts just have *celebrabunt*.

³⁰¹ Where the acta have *et duobus*, Raymund and later texts have *duobus etiam*.

³⁰² Raymund and later texts have *urgens fuerit*.

³⁰³ Although the Sack Friars have modified the text considerably, they clearly had a Dominican model in which II 26 came between 25 and 27-28; and the Penitents had one in which we can recognise the sequence II 24, 26b, 27.

informed when he said that some chapter established the titles for all Dominican superiors, *prior* and *subprior* as well as *magister ordinis* (Ferr. 32), and I have argued that *magister* at least must have been incorporated in the legislation of 1220 (AFP 69 [1999] 45-48); II 24-25 would be an ideal way of instituting *prior* and *subprior* (and, by implication, ousting *abbas*). If the 1220 chapter legislated about the superiors of convents, it would seem logical for it also to say something about the launching of new convents (II 23). There is thus reason to believe that II 23-25 go back, at least in germ, to 1220, as Thomas suggests. In any case, it would be strange for the order not to make any laws on the founding and government of its convents when it first completed its constitutions.

II 23 lays down the conditions for 'sending' a convent:

(23a) Conuentus citra numerum duodenarium, et sine licentia generalis capituli, et sine³⁰⁴ priore et doctore, non mittatur.

(b) Item nulla domus concedatur,³⁰⁵ nisi a priore prouinciali et diffinitoribus prouincialis capituli fuerit postulata, nec concessa ponatur nisi ubi predicti decreuerint³⁰⁶ expedire.

(c) Item statuimus ut *nulla domus*³⁰⁷ nostri ordinis transferatur de prouincia ad prouinciam, nisi per tria capitula fuerit approbatum.

II 23b was added and 23c was confirmed in 1236 (MOPH III 6.3-6, 7.9-11),³⁰⁸ but there are several reasons for agreeing with Thomas that 23a goes back to 1220.

In the first place, the fact that apparently provincial chapters had no part to play in 'sending convents' suggests at least a date before 1225. 23a leaves it completely unclear who might ask the general chapter for permission to 'send a convent'; there is nothing to exclude the possibility of one convent founding another.³⁰⁹

³⁰⁴ The Sack Friars lack II 23. Raymund and later Dominican texts have *absque*; the distinction between *sine licentia* and *absque priore* is nice, but there is no proof that it was not introduced by Raymund.

³⁰⁵ The acta of 1236 have *de cetero detur* (MOPH III 6.4), but later texts of the constitutions confirm *concedatur*.

³⁰⁶ The acta of 1236 confirm *decreuerint* here and *ad prouinciam* in 23c (MOPH III 6.6, 7.10); later Dominican texts have *uiderint* and *in prouinciam*.

³⁰⁷ Rodez has *nullam domum*, which is obviously incorrect.

³⁰⁸ I have suggested a context for them in AFP 70 (2000) 81-86.

³⁰⁹ Before the 1220 chapter it appears that convents in Bergamo, Florence, Milan and Verona had all been founded from Bologna (cf. AFP 66 [1996] 67, 156-159, 188-190).

Secondly, we have Jordan's contemporary testimony that *conuentus transmissus est* to England at the 1221 chapter *cum fratre Gilberto priore* (*Lib.* 88), which implies that the terminology of 23a was already in place by then.³¹⁰

Finally, the most unexpected element in 23a, the requirement of a *doctor*, must be related in some way to Conrad of Metz's conviction in April 1221 that if he acquired a Dominican house for his city he would *eo ipso* be getting a school of theology (MOPH XXV #157): if he did not know the terms of PC II 23a directly, he could have learned from a papal emissary who visited Dominic on the way to him in August 1220 that every Dominican house was also meant to be a school (cf. AFP 66 [1996] 52-53); either way the implication is that 23a was already in place, complete with its *doctor*, in which case it can only be attributed to the chapter of 1220.

23a does not formally preclude the possibility of sending a *conuentus* to a dependent *prioratus*, and it appears that the abbatial model lingered on for a while in France,³¹¹ but there can be little doubt that, in principle, 23a was intended to establish a procedure for founding communities which would exist in their own right, as seems to have been happening in Italy, not as *prioratus* of an abbey (cf. AFP 69 [1999] 25-30); there is no trace in PC of any residual provision for abbatial government, and the evidence of Ferrandus supports the belief that no such provision was present even in the most primitive constitutions.

In an early work, Vicaire questioned whether 'sine licentia generalis capituli' was part of the original text (Mandonnet-Vicaire II 289 n.19); but its inclusion makes more sense in the context of the early years than it would later on. It was particularly important for the order to retain central control of its manpower when it was still moving into completely new territories; how could it send a *conuentus* to England or launch modest missions to places like Poland and Hungary and Denmark, if at the same time individual priors were free to initiate foundations in their own neighbourhoods? There were not enough men to go round. Later on, when provincial structures were better established and the order was expanding

³¹⁰ Contrast the *fratres* first sent to Orléans and Bologna, with no mention of a *conuentus* or prior (*Lib.* 54-55).

³¹¹ We do not know when Matthew stopped calling himself 'abbot', and it is not unlikely that Fulk was thinking of a *prioratus* at Fanjeaux when he presented the church there to the order (cf. AFP 69 [1999] 27); Conrad of Metz explicitly envisaged a *prioratus* when he invited the Dominicans to Metz on 22 April 1221 (MOPH XXV #157).

chiefly within territories already colonised, it would have been appropriate to give more authority to provincial chapters, as had obviously happened by the time 23b was added.

Vicaire at one stage also questioned whether the minimum of twelve friars could be dated as early as 1220, and he quite properly raised a doubt about the probative value of Trevet's statement that Gilbert was sent to England in 1221 with twelve friars (*Annales* 209),³¹² since Trevet might have inferred the number from the word *conuentus* in the light of later constitutional requirements. Nevertheless, once the concept of dependent *prioratus* was abandoned, the nearest available parallel was the founding of one *abbey* from another, and in this connection both the Cistercians and the Praemonstratensians set twelve as the minimum number of religious,³¹³ and there is no reason why the Dominicans should not have followed suit in 1220.

Before he renounced his doubts, Vicaire said that such a 'prescription ... suppose l'ordre très développé', but this is only partly true. 23a, as it stands, deals with the launching of a new foundation by 'sending a convent', but it does not exclude other possibilities, such as despatching a handful of friars to Poland or Hungary in the hope that they will be able to *create* communities by recruiting people to the order. Nor was it necessarily intended as a restrictive definition of a *conuentus*, though it was evidently taken as such later, when a distinction was made between accepting a site (with a preliminary settlement of a few friars) and 'sending a convent';³¹⁴ *conuentus* is not an intrinsically technical term, it simply means 'community'. When Simon and Nicholas joined Solomon in Lund, followed by others sent from Paris and Bologna (AFP 66 [1996] 164), did they have to wait until there were twelve of them before they could claim to be a 'convent'? There was no other house of which they could plausibly be regarded as a dependency.

³¹² In *Histoire*¹ II 313 n.52 Vicaire called into question the date of the requirement of 12 friars, which is legitimate. In *Histoire*² II 303 n.52 he allowed the prescription to go back to 1220, but suggested that what happened in 1221 was merely the first step towards a foundation in England, not the sending of a *conuentus*; this is not legitimate, since it contradicts the formal and contemporary testimony of Jordan.

³¹³ *Capitula Cisterciensis ordinis* 9 (De Place, *Cîteaux, documents primitifs* 126); Grauwen IV 3, Krings IV 3.

³¹⁴ The Roman provincial chapter of 1245 distinguished between *loca* and *conuentus* (MOPH XX 5). In 1250 the provincial chapter of Provence accepted a site in Orthez, and in 1253 it assigned a *conuentus* there and nominated its first prior (Douais, *Acta cap. prov.* 41; MOPH XXIV 117); Figeac was begun in 1251 or 1252 with a vicar, and a convent with a prior was assigned there in 1254 (MOPH XXIV 130).

It is worth noticing that 'sending a convent' is the Dominican equivalent of the more traditional 'founding an abbey'. We have become accustomed to thinking of convents as buildings, but *conuentus* means the people, not the place where they live. *Conuentus Tolosanus* means the brethren in Toulouse, not any particular residence of the brethren in Toulouse; they can move house without becoming a different *conuentus*, and they can be a *conuentus* even if they have nowhere to live. Matthew was abbot of the brethren in Paris, and Gilbert was prior of the brethren going to England, even before they arrived at their destination, let alone acquiring their own residence (cf. AFP 69 [1999] 14-15); the *conuentus*, not the monastery, is the essential unit.

II 23 leads naturally to the subject of how convents are governed, and this is what we find in 24-25:

(24a) Priores conuentuales a suis conuentibus eligantur, et a priore prouinciali, si ei uisum fuerit, *confirmetur*;³¹⁵ sine cuius licentia de alio conuentu eligendi non habeant potestatem.

(b) Item fratres tantum³¹⁶ post annum sue professionis admittantur ad electionem prioris conuentualis.

(c) Si uero sunt de *alia* prouincia,³¹⁷ postquam per annum *steterint*³¹⁸ in *domo*³¹⁹ alterius³²⁰ prouincie ad quam missi sunt,³²¹ admittantur ad electionem [prioris conuentualis].³²²

³¹⁵ Rodez has *confirmetur*, but later Dominican texts have *confirmentur*, which must be right; the Sack Friars have a different formulation.

³¹⁶ Neither the Sack Friars nor Raymund or later Dominican texts have *tantum*; it is in the 1236 acta, but after *professionis* (MOPH III 7.31). Either position could be correct.

³¹⁷ The Sack Friars have *si uero sint de alia prouincia*, Raymund and later Dominican texts have *si de alia fuerint prouincia*. It is possible that, if the 1236 acta did not specify how 24b was to be inserted into the pre-existing text, different people resorted to different tactics, in which case there is no 'correct' reading. Rodez has *aliena prouincia*, but it is doubtful if this can stand against the united testimony of the others.

³¹⁸ The Sack Friars and later Dominican texts have *steterint*; Rodez has *steterant*. Thomas prints *steterunt*, which he claims to have taken from Raymund; but the Porto manuscript unambiguously has *steterint*.

³¹⁹ Rodez has *domum*, but Raymund and the Sack Friars have *domo*, which must be right.

³²⁰ *Alterius* is supported by the Sack Friars and by later Dominican texts; Porto's *illius* is aberrant.

³²¹ Rodez's *sunt* is supported by the Sack Friars; Raymund and later Dominican texts have *fuerint*.

³²² The Sack Friars just have *electionem*, Rodez has *electionem prioris conuen-*

(d) Item priore conuentuali mortuo uel amoto, conuentus eligat³²³ infra mensem postquam <ei>³²⁴ innotuerit, alioquin prior prouincialis eidem³²⁵ conuentui prouideat de priore.

(25) Prior autem conuentualis de consilio discretorum fratrum instituat subpriorem, cuius officium erit habere diligentiam et curam circa conuentum,³²⁶ et corripere delinquentes, et in aliis quantum prior ei³²⁷ assignauerit uel permiserit. Nec in cotidianis capitulis accusetur, nisi aliquando pro aliquo maiori excessu, secundum quod priori uisum fuerit, proclametur.

24b and 24d go back to 1236 (MOPH III 7.31-32, 8.19-21). 24c, as it stands, depends on 24b, but there is no trace of it in the acta of 1236, and it is unlikely that Rodez contains any prescriptions added later, so we may surmise that an earlier text beginning 'fratres de alia prouincia' was modified in 1236 to follow 24b.

The wording of 24a, as it stands, cannot go back to 1220. If the order was already using *prior conuentualis*, let alone *prior prouincialis*, it would never have stooped to phrases like *prior prouinciarum uel regnorum* in II 15-16. It is, in any case, impossible to believe that confirmation of the prior by the provincial was envisaged in 1220; after all, in 1220 the territory with the most convents was Italy, which did not yet have any provincial(s) (AFP 70 [2000] 42-48). Nor is it at all probable that conventual priors were confirmed by the provincial at a time when provincials were still being 'confirmed or removed' by the general chapter, as required by the 1225 version of II 15a. I have suggested that 15b, together with 4a, in which a more normal practice of confirmation is implied,

tualis, and Raymund and later Dominican texts have *electionem predictam*; since *electionem* suffices on its own, and would suffice even without 24b, it is probable that *prioris conuentualis* was wrongly imported into 24c from 24b in Rodez or one of its ancestors.

³²³ Rodez and the Sack Friars just have *eligat*; the 1236 acta have *eligat sibi priorem* (MOPH III 8.19). Raymund reformulated the whole clause.

³²⁴ Rodez lacks *ei*, but it is in the Sack Friars' constitutions and in the acta of 1236.

³²⁵ Neither the Sack Friars nor later Dominican texts have *eidem*, but it is in the acta of 1236 (MOPH III 8.20).

³²⁶ *Et curam circa conuentum* is supported by the Sack Friars; Raymund and later Dominican texts have *circa conuentum et curam*.

³²⁷ The placing of *ei* is uncertain: the Sack Friars have it before *prior*, Raymund and later Dominican texts have it after *assignauerit*.

were added in 1228, and it is likely that confirmation of the prior by the provincial was inserted into 24a at the same time, presumably together with the need to obtain the provincial's permission to elect a prior from another community; it was no doubt in the course of this revision that the modern terminology of 'prior conuentualis' and 'prior prouincialis' was first introduced into the text. Before 1228, we may take it that conventual priors, like provincial priors, were 'confirmed or removed' in the course of a general or provincial chapter.

'Si ei uisum fuerit' later caused some disquiet. In his comment on it, Bandello begins by citing a strict injunction of the general chapter of 1356 forbidding provincials to confirm any elected prior unless they were sure he was sufficient 'in scientia et moribus' and capable of attending effectively to 'correctioni et honestati et reformationi ordinis' (cf. MOPH IV 373-374). He then proceeds to another worry, and points out that *si ei uisum fuerit* 'non designat liberam potestatem sed discussionem rationis et arbitrium boni viri, et ideo non debet prouincialis secundum libitum sue voluntatis sed secundum iudicium rationis priorem electum confirmare' (1505 *Constitutiones* f.lxxiir). We may be sure that the authors of 24a did not mean to give provincials the right to act arbitrarily; nevertheless, 'si ei uisum fuerit' was probably intended to give them a greater freedom than was normally enjoyed by those responsible for confirming elections, whose sole task was, in principle, to determine whether the *electus* had the requisite qualities (cf. X.1.6.3, 1.6.22, Friedberg² II 49, 64-66). A Dominican provincial had to decide not only whether someone elected to be prior was up to the job, but also whether the job was suitable for the man (who might, for instance, be more use to the province in some other capacity, such as *doctor*).³²⁸

We have seen that provinces received the right to elect provincials in 1225, so by then at the latest convents must have been empowered to elect priors; but a precedent had been set as early as 1218, when Matthew was *elected* abbot of Paris even before he and

³²⁸ Duval quotes a nice illustration in Gaudemet, *Les élections ...* 355: early in 1295, Hermann von Minden, as vicar, confirmed the election of John of Freiberg as prior, but with evident reluctance, since John was needed as lector; he then referred the matter to the provincial, Dietrich of Freiberg. John quickly stopped being prior. See L. Sturlese, *Dokumente und Forschungen zu Leben und Werk Dietrichs von Freiberg*, Hamburg 1984, 163-164.

his *conuentus* started their journey to go there (Jordan, *Lib.* 48). If the 1220 chapter really envisaged convents as existing in their own right, not as dependencies of abbeys, it would be strange to deny them the freedom to elect their own superiors;³²⁹ it would also be contrary to the most natural interpretation of *Religiosam vitam* (MOPH XXV #77, 90).

Prior conuentualis in II 25 cannot go back to 1220, and it might seem strange that the subprior's function is described in so much more detail than that of any other superior; but his was the least self-evident rôle, and it would have been appropriate to specify from the outset what it involved. The revised version of 24a, with its reference to the prior provincial, perhaps made it necessary to specify that it was the *prior conuentualis* who appointed the subprior, so we may surmise that *conuentualis* was added to 25 in 1228; I see no reason see why the rest should not be attributed to the 1220 chapter.

I opine that the original text of 23-25 went something like this, and that it goes back to 1220.³³⁰

Conuentus citra numerum duodenarium et sine licentia generalis capituli et sine priore et doctore non mittatur. Priores a suis conuentibus eligantur. Prior autem de consilio discretorum fratrum instituat subpriorem *et cetera*.

The original form of 24c was probably inserted later; it is unlikely that anyone was too concerned in 1220 what province any-

³²⁹ We do not know when the brethren in Lund 'fratrem Simonem sibi priorem constituunt', but the foundation was started in 1222, and the two brethren who had failed to achieve anything in Sigtuna joined it, followed by others who joined the order in Paris or Bologna (and were presumably sent to Lund by Jordan when he visited these cities in 1223-1224) (AFP 66 [1996] 164); there is no reason to believe that they waited until 1225 to choose their prior. Nor do we know the circumstances which made Diana afraid that Jordan was going to 'make' Ventura prior of Padua some time before the general chapter of 1231 (Jordan, *Ep.* 21; for the date, see AFP 70 [2000] 66); John of Vicenza is first attested as prior of Padua shortly afterwards (C. Gasparotto, *Il convento e la chiesa di S. Agostino dei Domenicani in Padova*, Florence 1967, 58), but it is unclear whether he was the problem requiring Jordan's intervention or whether he was the solution to it.

³³⁰ Thomas seems to have been of the same mind: he dates 24a to 1220, but suggests that it did not originally speak of *prior conuentualis* (Thomas 259, 359); although he makes no comment on it, he cannot have believed that the earliest text referred to confirmation by the *prior prouincialis* since he did not believe that provincials even existed in 1220.

one belonged to. It might have been added in 1228, when 24a was revised.

(q) *Distinction II 26*

We have Jordan's evidence that at least II 26a goes back to 1220 (*Lib.* 87).

(26a) *Possessiones seu redditus nullo modo recipiantur.*

(b) *Nullus fratrum nostrorum instare audeat uel rogare pro beneficiis suis consanguineis optinendis.*

II 26b is certainly a later addition: the Sack Friars have it attached to II 32, and Raymund apparently omitted it entirely.³³¹ It is in the Penitents' constitutions, which, I have argued, suggests a date not later than 1228. It is also perhaps significant that this use of *audeat*, apart from one instance derived from the Praemonstratensians in II 23.26, seems to be characteristic of later additions to PC, including four of the vehement formal precepts we have ascribed to the Most General Chapter of 1228 (II 6a, 9e, 14ab); the other texts (I 12, II 16d, 32a and 37.29) are of less certain date, but in varying degrees they are all open to the suspicion of being modifications of or later additions to a more primitive version of PC, and I see no reason why they could not all be dated 1228.

Beneficia might mean any of four things: it could refer to the *beneficia* of the order in the technical sense involved in someone being received 'ad beneficia' and given letters of fraternity;³³² or to favours of a less specific kind, which someone might try to obtain from the order for his relatives; or to favours he might try to get from someone else for his relatives; or to ecclesiastical benefices.³³³ If the first of these was meant, we should have expected the point to be made more explicitly. It rather looks as if the Penitents had the second possibility in mind, since their version reads, 'Nulla

³³¹ It was reinstated with very slightly different wording in 1245-1247, MOPH III 31.26-27, 34.12-13, 38.4-6.

³³² Cf. F.M. Guerrini, ed., *Ordinarium juxta ritum sacri ordinis Fratrum Praedicatorum*, Rome 1921, 128-130, 'De modo recipiendi ad beneficia'.

³³³ I do not understand how Lehner thought that 26b could be translated 'Let none of our brethren dare to do the contrary or ask their relatives for donations'. *Instare pro* means 'press for' and goes closely with *rogare pro*, 'ask for'; and *suis consanguineis* cannot possibly be the object of *rogare*.

soror instare audeat uel rogare pro beneficiis suis consanguineis in seculo remanere uolentibus 'obtinendis' (Vienna 4724 f.327^v); but the extra words may have been added by the Penitents, and we cannot infer that this was how Dominican or Dominican-influenced sisters understood 26b. When a text almost identical to 26b was inchoated in 1245 (MOPH III 31.26-27), we may surely believe that the aim was to restore a piece of legislation which Raymund had accidentally omitted, and it is unlikely that its meaning had been forgotten in the interim; since it was placed immediately after the ban on accepting churches 'quibus animarum cura sit annexa' (derived from PC II 27c), we are almost forced to take *beneficia* in the sense of 'benefices'. This, then, is probably what 26b was intended to mean.³³⁴

If the capitulars of 1245 also remembered where 26b had originally been in the constitutions, their inchoation lends some support to its placing in Rodez, since they wanted it inserted immediately after the equivalent of 26a+27c. If this is where 26b belongs, we may suspect that its purpose was to stop the brethren trying to circumvent the order's poverty by exploiting relatives who owed them a favour.

Although the Sack Friars have a completely new text on poverty, it clearly corresponds to PC II 26a and it follows their equivalent of II 24-25, so it looks as if PC II 23-26 should be accepted as a coherent block of legislation. Once a convent is set up and its government established, it is not illogical to deal with its finances.

In 1216 the Dominicans renounced *possessiones* in the strict

³³⁴ The Sack Friars may have understood *beneficia* either in this way or more vaguely as favours they might use their position to obtain; in their constitutions 26b comes immediately after a ban on the brethren becoming resident members of the *familia* of prelates or princes without permission. It was not necessarily impossible for nuns to be concerned with *beneficia* in the sense of 'benefices', though in their case it would probably refer to sisters trying to get their clerical relatives put in charge of churches possessed by their monasteries, a situation which could certainly have arisen at Prouille from an early date—the nuns were given the church of St Martin, Limoux, in 1207, that of Bram in 1211 (MOPH XXV #5, 11), and that of Fanjeaux in 1227 (J. Guiraud, *Cartulaire de Notre-Dame de Prouille*, Paris 1907, II 77 #332); it is perhaps more likely, though, that sisters would be tempted to use their influence to secure *beneficia* in a more general sense for their kinsfolk.

sense of lands actually administered and exploited by the religious who hold them, but they retained *redditus*, properties held simply as a source of income, which could confusingly also be referred to as *possessiones* (cf. CdF 34 [1999] 252-253); at least as this decision was explained to Jordan, it was motivated by the practical concern 'ne predicationis impediretur officium sollicitudine terrenorum' (*Lib.* 42). Dominic's desire that even *redditus* should be given up seems to have sprung from his intensely felt ideal of poverty (cf. *ACB* #26, 32, 38, 42), but it is far from certain that, when the brethren in Paris decided to get rid of their *redditus*, they had all been converted to Dominic's idealism; in his comment on it in 1225, Matthew says that they considered 'statum paupertatis' to be 'et maioris meriti et sanioris consilii et minoris sollicitudinis' (AFP 65 [1995] 50-51), which allows for an essentially pragmatic view of PC II 26a. 'Minoris sollicitudinis' is the theme later taken up by St Thomas in his remarks on the sort of poverty best suited to an order like the Dominicans.³³⁵

The 1220 chapter endorsed the policy of having neither *possessiones* nor *redditus*, but there is no way of telling to what extent it shared Dominic's personal enthusiasm for poverty. The Most General Chapter of 1228 re-affirmed the policy with a certain emphasis, and we shall see reason to believe that it was then that II 35 (X 9) was added, with its stern insistence on modest buildings, and that it was supposed to come immediately after II 26. There is no call to doubt the sincerity of the 1228 capitulars; nevertheless, if they deliberately inserted II 27 here,³³⁶ the only possible link between it and II 26 is 'minoris sollicitudinis': the brethren are not to be distracted from their proper business by responsibility for properties (or by elaborate building works)—or by *having to look after nuns*.

³³⁵ 'Manifestum est quod maiorem sollicitudinem spiritualium requirit religio quae est instituta ad contemplandum et contemplata aliis tradendum per doctrinam et praedicationem quam illa quae est instituta ad contemplandum tantum; unde talem religionem decet paupertas talis quae minimam sollicitudinem ingerat' (*Summa Theol.* II.II 188.7).

³³⁶ Its placing is constant in Rodez, the Sack Friars and (mutatis mutandis) Raymund, and it receives some confirmation from the Penitents, who have II 27d in the same section of their constitutions as their equivalent of 35a, which comes soon after their version of 26b. If it was not seen as related to II 26, why was 27 not simply added at the end of the distinction?

(r) *Distinction II 27*

(27a) In uirtute spiritus sancti et sub pena excommunicationis districte prohibemus ne aliquis fratrum nostrorum decetero³³⁷ labore uel procuret ut cura uel custodia monialium seu³³⁸ quarumlibet aliarum³³⁹ mulierum nostris fratribus committatur. Et si quis contraire presumpserit, pene grauioris culpe debite subiaceat.

(b) Prohibemus etiam ne aliquis decetero aliquam tondeat³⁴⁰ uel induat uel ad professionem recipiat.

(c) Item ecclesias quibus annexa sit cura animarum non recipiant.

(d) Numerum quoque³⁴¹ missarum non admittant.

We have already noted that II 27b can only be dated to 1228, and that the nuns of S.Agnese felt threatened by it. In spite of Jordan's reassurances, they were right to worry: in Jordan's absence, the general chapter of 1235 took explicit steps to prevent recruiting for S.Agnese (AFP 65 [1995] 128 n.207; Jordan, *Ep.* 47). What is more, 27a looks suspiciously like a reaction to S.Agnese's formal acceptance into the order. As we have seen, in the latter half of 1226 Jordan sent Guala to the pope precisely to ask him to oblige the Dominicans to take responsibility for S.Agnese as a house of the order; Honorius issued a letter to this effect on 17 Dec. 1226, and, on the strength of it, in 1227, as the chronicle of S.Agnese says, 'magister Iordanis litteris sibi presentatis in generali capitulo quod tunc celebratum fuit Bononie ex uoluntate omnium diffinitorum recepit eandem domum' (AFP 70 [2000] 90-99).

The chronicle mentions the fact that there was some opposition to S.Agnese among the brethren:

Tempore autem procedente ceperunt quidam fratres questionem facere de predicta domo ac predictis sororibus molestiam inferre.

³³⁷ The Sack Friars do not have *decetero*; in Raymund and later Dominican texts it comes after *procuret*.

³³⁸ This is the reading of the Sack Friars and later Dominican texts; Rodez has *uel*, which makes the structure of the alternatives less clear (*cura uel custodia* goes with both *monialium* and *quarumlibet aliarum mulierum*).

³³⁹ Creytens omits *aliarum* in his edition of Raymund's constitutions, but it is in the Porto manuscript, as it is in later Dominican texts.

³⁴⁰ The Sack Friars have *feminam* before *tondeat*, and later Dominican texts have *mulierem* (only Porto has *mulierem* after *tondeat*); the discrepancy tends to corroborate Rodez's text which has neither.

³⁴¹ Neither the Penitents nor later Dominican texts have *quoque*, but this could be due to the different contexts they provide for 27d.

Unde predictus pater instanter capitulo generali apud Parisium una cum diffinitoribus habuit consilium cum magistris Parisiensibus. Qui simul tale dederunt responsum, uidelicet quod eandem domum non poterant a sua cura sequestrare absque mortali peccato. Extunc ipse beatus pater ualde duriter reprehendebat illos qui aliquam querimoniam siue questionem mouebant de predicta domo, et exortabatur eos ac monebat ualde presens et absens ut illam domum diligenter ac consolarentur, utpote domum ordinis.

This passage comes after the account of the nuns' acceptance into the order and their profession, after a general comment on Jordan's affection for the nuns, and before the death of Honorius III and the letter which Diana obtained from his successor, Gregory IX. Honorius died on 18 March 1227 (before the nuns' profession), but the sequence of events is tolerably clear. The masters' response to Jordan only makes sense after the reception of Honorius's letter, as does Jordan's insistence that the brethren must treat S.Agnese as a 'house of the order'; the Parisian chapter at which the issue was settled cannot therefore be earlier than the Most General Chapter of 1228. If the issue had been raised before Honorius's letter was received, it would not have been a question of separating S.Agnese from the Master's care, but of not accepting it in the first place; and if PC II 27a had already been in the constitutions, the diffinitors would have had every right to forbid Jordan to make any further attempt to get S.Agnese entrusted to the order. If the chronicle were referring to controversies which arose after 1228, it would have been more appropriate to mention Honorius's death first, and connect them with Gregory IX's letter. It must have been precisely in 1228, then, that Jordan raised the matter of S.Agnese with the Parisian masters.

The conclusion seems inescapable that 27ab entered the constitutions together in 1228. With the help of the chronicle of S.Agnese, we can see what lies behind it and appreciate the full significance of *decetero*. The emphatic tone of 27a shows that there must have been considerable opposition amongst the brethren to the order taking on responsibility for monasteries of nuns; a fortiori, they must have taken a dim view of anyone—such as the Master himself—actually trying to get monasteries committed to the order's care. In the case of S.Agnese, the capitulars of 1228 had to admit that what was done could not be undone; but they wanted to make sure it would not be done again. Was this perhaps another issue which threatened to split the order in the way hinted at in II 14b? In any case, the Most General Chapter made clear its decision

that looking after nuns was not a part of the order's task which should be developed.³⁴²

If the chapter accepted that S.Agnese could not be disowned, it obviously had to allow it to receive recruits; Jordan was right to re-assure the nuns that 27b had nothing to do with them, and to inform the provincial that it was not intended to prevent women joining them (*Epp.* 48-49). As he explained to the provincial, the constitution was made 'propter eos fratres qui in aliquibus provinciis velut in Teutonia et etiam alias, dum in praedicatione exirent, meretrices aut iuenculas virgines sive converti volentes ad paenitentiam, sive ad votum se continentiae offerentes, facile tondere, induere vel ad professionem recipere consueverunt'.

Humbert says that, before Raymund's revisions, the Dominican constitutions 'sub multa confusione habebantur' (*Cronica ordinis*, MOPH I 331), but the preamble assures us that the Most General Chapter of 1228 issued certain constitutions 'quas in locis suis inter constitutiones alias inserere procurarunt'. The Rodez text may not always be very good at inserting constitutions 'in locis suis', but its placing of 27ab is, on the whole, corroborated by the Sack Friars, who have it between their equivalents of II 24-26 and II 28, and by Raymund who incorporates 27a-c into his const. II 1 immediately after II 26 (though he puts 27c ahead of 27ab). The only question is whether II 35, which is among the extravagantes in Rodez, was not meant to be inserted into or after II 26. Either way, it looks as if II 26 (± 35) + 27 forms a coherent sequence which covers 'poverty and other measures to prevent the brethren being distracted from their task'.

If this is correct, then 27c is obviously at home in it. Because of its affinity to 27ab in this regard, Thomas dates it too to 1228, and I see no reason to dissent.

³⁴² We may wonder if the S.Agnese affair influenced other aspects of the legislation of 1228 too. Jordan's request for a papal letter commanding him to accept S.Agnese as a house of the order shows he was aware of opposition to it among the brethren, and he did in a sense appeal outside the order; in 1228 itself, did he have recourse to the Parisian masters to overturn a decision by the diffinitors to banish S.Agnese from the order? Is this why the Most General Chapter reinforced the ban on appeals both in the preamble and in II 8b? Was Jordan in so much trouble that there were calls for him to be deposed? Is this why the conditions for the Master's removal were tightened up (II 9b)? By accepting S.Agnese into the order, the diffinitors of 1227 had preempted the possibility of a provincials' chapter expressing an opinion; did this contribute to the vehemence of II 6a?

If *quoque* is a genuine part of the text, 27d, 'Numerum quoque missarum non admittant', is obviously not free-standing; 27d is in the Penitents' constitutions (though without *quoque*), which suggests that it goes back to 1228 like the rest of 27, and it is accompanied by bits from II 35, which confirms its placing in Rodez if we accept that 35 was meant to be inserted here. Raymund shifted it (without *quoque*) to his const. I 3: it comes at the end of 'de suffragiis mortuorum'. Its meaning is not immediately apparent. Modern translations generally take *numerum* to mean 'an excessive number',³⁴³ but this would be hard to justify. Bandello obviously found its interpretation difficult, but his comment is not without interest (1505 *Constitutiones* f.xxxiii):

Declaramus quod in primis constitutionibus editis per magistrum Iordanem predicta clausula posita erat in capitulo de domibus concedendis ubi sic dicebatur: Possessiones siue redditus nullo modo recipiant fratres nostri nec ecclesias quibus animarum cura est annexa et numerum missarum non admittant. Ex quibus patet quod per illam clausulam intendebat constitutio prohibere ne fratres obligarent contentum ad dicendum quotidie certum numerum missarum in perpetuum, ne posteri ex hoc nimis grauarentur, vel ne redditus perpetuos propter huiusmodi missas recipere cogerentur, vnde in capitulo Parisius celebrato M.cc.lvi. sic dicitur: Prohibemus ne fratres se obligent villo modo ad anniuersaria perpetua.³⁴⁴ Non autem intendit prohibere quin possimus numerum missarum que a laicis quotidie petuntur pro peccatis siue pro viuus siue pro mortuis vt missas gregorianas accipere, dummodo hoc discrete et sine superstitione fiat. Acceptare autem simul missas mille vel duo millia videtur esse indiscretum.

Magister vero Raymundus predictam clausulam reportauit ad istud capitulum de suffragiis hac forte ratione vt illud verbum amittant scriberetur sine .d. et sic intendebat quod numerus missarum qui hic statuitur dici sub certo numero fratres non amitterent.³⁴⁵

³⁴³ 'Un número excesivo de misas' (the BAC *Santo Domingo*, old and new); 'un trop grand nombre de fondations de messes' (Vicaire, *Saint Dominique de Caleruega*), 'troppe fondazioni di Messe' (Lippini).

³⁴⁴ The actual text does not say *perpetua*: 'Non se obligent ad aliqua anniuersaria ullo modo' (MOPH III 80.29). A similar decision was taken by the provincial chapter of Provence two years earlier, in 1254: 'Nolumus quod fratres se obligent ad anniuersaria facienda, set annotent nomina patronorum suorum et benefactorum suorum maiorum in aliquo caterno, ne sint ingrati' (Douais, *Acta cap. prov.* 60).

³⁴⁵ *Amittere* and *admittere* are often confused; Bandello had no doubt come across a manuscript with *amittant*, such as Florence, BN conv. soppr. J.IX.24, or with a choice of readings, like 'ammittant alias admittant' in Siena, Bibl. Com. G.XI.36.

Si vero illud verbum admittant scribi debeat cum .d. tunc hac ratione illam clausulam hic posuit ne forte si numerum missarum in perpetuum admitterent, cogerentur fratres dimittere numerum missarum quas in speciali vel in communi ex constitutione celebrare tenentur.

Item declaramus quod non est rationabile quod aliquis prior cum conuentu propter aliquam elemosinam quam de presenti recipit obliget posteros ad dicendum certum numerum missarum in perpetuum nisi forte elemosyna esset ita pinguis et redditus illius annuatim ita in perpetuum duraret quod merito ex gratitudine numerus edictarum missarum in perpetuum sibi assignari deberet. Quare prohibemus ne de cetero presidentes huiusmodi missas perpetuas acceptent nisi elemosina sit perpetua.

It is clear that Bandello had no idea what 27d really signified; and he cheated just as much as the modern translators who take *numerus* to mean 'an excessive number': there is nothing in the text (or in the acta of 1256) to justify his interpretation of it as referring to *perpetual* masses; and the ruling of the 1256 chapter shows that there was nothing already in the constitutions to forbid the acceptance of *anniversaria*. Bandello also gives a spurious plausibility to his suggestion that the ban on *numerus missarum* was related to the ban on *redditus* by ignoring 27ab.

Raymund presumably knew what he was doing when he moved 27d into the constitution on suffrages for the dead; but we must also respect its original context, which suggests that *numerus missarum* would in some way interfere with the brethren's proper work. This is rather corroborated by an edict of the Provence provincial chapter of 1257: 'Nullus frater suggerat quod misse vel anniversaria pro defunctis fiant ita quod studium impediatur' (Douais, *Acta cap. prov.* 72). It is difficult to see how study could be hampered unless the masses and anniversaries in question required the attendance of the community. Humbert indicates a limited number of occasions on which it might be necessary to celebrate more than one mass 'in conventu' (Guerrini, *Ordinarium* 136-137), and *missa* in PC and Raymund generally refers to a mass at which the community was expected to be present—there is no explicit phrase to distinguish a *missa in conventu* from any other mass. May we not suppose that *numerus missarum* in II 27d means a multiplicity of *conventual* masses, and that the point of 27d is to stop the brethren taking on obligations which would repeatedly interfere with their proper work by making them attend extra masses? Mutatis mutandis, the sisters would have the same reason for disallowing *numerus mis-*

sarum:³⁴⁶ they too were supposed to get on with their work, not attend one mass after another; the Penitents' constitutions expressly forbid the sisters to withdraw from work 'orandi gratia' (Vienna 4724 f.26').

I doubt if *numerus missarum* on its own could simply mean 'a plurality of masses (in any one day)'; the point presumably must be that the brethren may undertake to say one special mass for someone (*in conventu*), but not more than one (a *number* of masses).

We may conclude that II 27a-d entered the Dominican constitutions in 1228 as a whole, expressing part of the Most General Chapter's vision of the order: there was to be no going back on its renunciation of *possessiones* and *redditus* (II 26a), no expansion of its responsibility for nuns (27a), no acceptance of parochial duties (27c), no undertaking of multiple conventual masses for the dead (27d); nor was it appropriate for any of the brethren to acquire a following of semi-religious women (27b).

(s) *Distinction II 28-31b*

In II 28 we return to the agenda of the 'synopsis' with a section 'de studio':

(28a) Quoniam circa studentes diligens est adhibenda cautela, aliquem fratrem specialem³⁴⁷ habeant sine cuius licentia non scribant quater-nos nec audiant lectiones, et que circa eos in studio corrigenda uiderit corrigat; et, si uires excedant,³⁴⁸ prelato *proponat*.³⁴⁹

(b) In libris gentilium et philosophorum non studeant, etsi ad horam inspiciant; seculares scientias non addiscant nec etiam³⁵⁰ artes quas liberales uocant, nisi aliquando circa aliquos³⁵¹ magister ordinis uel capitulum generale uoluerit aliter dispensare, sed tantum libros theologicos tam iuuenes quam alii legant.

³⁴⁶ Which would not be the case if the purpose of 27d were simply to prevent the brethren becoming chantry priests.

³⁴⁷ The Sack Friars have rewritten this passage; Raymund and later Dominican texts have *specialem fratrem*.

³⁴⁸ Raymund and later Dominican texts have *uires eius*, but the Sack Friars support Rodez in not adding *eius*. In his edition of Raymund, Creytens printed *excedat*, which is the reading of AGOP XIV L 1, BL add. 23935, and later texts; but Porto actually has *excedant*, like Rodez and the Sack Friars (the subject being *corrigenda*).

³⁴⁹ Rodez has *proponat*.

³⁵⁰ Only Rodez has *etiam*; the Sack Friars did not retain this sentence, and later Dominican texts just have *nec*.

³⁵¹ Porto has *circa aliquos* after *capitulum generale*, but other later manuscripts support its placing in Rodez.

(c) Statuimus autem ut quelibet prouincia fratribus suis missis ad studium ad minus in tribus libris theologie prouidere teneatur.³⁵² Et fratres missi ad studium in ystoriis et sententiis, et textu et glosis, precipue studeant et intendant.³⁵³

The Most General Chapter of 1236 confirmed an *ordinatio studii* made in 1234 'excepto quod fratres bibliam perlegere non teneantur' (MOPH III 8); we do not have the 1234 *ordinatio*, but there can be little doubt that 28c is a result of its modified confirmation (cf. Thomas 284),³⁵⁴ especially as it does not make entirely satisfactory sense as it stands. Because of the reference to *three* books of theology, translators have generally succumbed to the temptation to find a third book in 'et textu et glosis', which they take to mean 'the (sacred) text and its glosses'. However, it is very doubtful whether *textus* on its own can mean 'the bible', and Raymund's rephrasing of 28c excludes any such interpretation: 'Quelibet prouincia fratribus suis missis ad studium ad minus in tribus libris theologie teneatur prouidere, uidelicet in biblia, hystoriis et sententiis, et ipsi in hiis, tam in textu quam in glosis, precipue studeant et intendant'. The three books are summed up in *hiis*, and *tam in textu quam in glosis* shows that PC's 'et textu et glosis' should be translated, 'both the text and the glosses'.³⁵⁵

The only problem is that *et textu et glosis*, understood like this, applies perfectly to the bible, which had a standard gloss, which was written in the margins and between the lines of the biblical text and was not a separate book; it is much less clear what it means with reference to Petrus Comestor's *Historia scholastica* or Peter Lombard's *Sententiae*, since there was no standard or, as yet, any par-

³⁵² The Sack Friars have *in tribus libris theologicis, uidelicet biblia, sententiis et hystoriis prouidere teneatur*; Raymund and later Dominican texts have *in tribus libris theologie teneatur prouidere, uidelicet in biblia, hystoriis et sententiis*. It does not necessarily follow that PC originally spelled out what the three 'books of theology' are, and the divergence in the word-order of the Sack Friars and Raymund suggests independent alteration of the text; so I have retained the reading of Rodez. Contrary to Creytens's edition of Raymund's constitutions, Porto has *teneatur prouidere*, like later Dominican texts, not *tenentur prouidere*; Rodez's word-order, *prouidere teneatur*, is supported by the Sack Friars.

³⁵³ Thomas adds here three of Rodez's extravagantes, X 3, 18, 19.

³⁵⁴ Here, as in II 23c, we may take it that *statuimus* is a 'translation' into constitutional terms of *confirmamus* in the acta (cf. MOPH III 7.9).

³⁵⁵ The Sack Friars confirm the correctness of Rodez's 'in ystoriis et sententiis, et textu et glosis', so it should not be emended to bring it closer to Raymund's version.

ticularly well known 'gloss' even on the Sentences, and commentaries would be separate works by distinct authors, such as Stephen Langton, not included in the 'three books' with which provinces were meant to equip their students. The explanation must surely be that the 1234 *ordinatio* required students to be given the three books and to study all three of them, including the bible (text and gloss), but the Most General Chapter cancelled the requirement 'bibliam perlegere', so the bible was dropped from the list of works to be studied, but *et textu et glosis* was not taken out with it. By substituting *hiis* for *in ystoriis et sententiis*, Raymund restored the bible to the list.

There is no reason why 28ab should go back to 1220, as suggested by Thomas.

Thomas also dates II 29 to 1220:

(29a) Circa eos qui student taliter dispensetur a prelato ne propter officium uel aliud de facili a studio retrahantur uel impediuntur.

(b) Et, secundum quod magistro studentium uidebitur, locus proprius statuatur in quo post *disputationem*³⁵⁶ uel uesperas, uel alio etiam tempore si uacauerint,³⁵⁷ ad dubitationes uel questiones proponendas ipso presente conueniant; et uno querente uel proponente³⁵⁸ alii taceant, ne loquentem impediunt. Et si aliquis inhoneste uel confuse uel clamose uel proterue querens uel opponens uel respondens offenderit, statim ab illo qui tunc inter eos³⁵⁹ preest corripiatur.

(c) Celle non omnibus studentibus sed quibus magistro eorum expedire uidebitur assignentur. Quod si aliquis infructuosus inueniatur in studio, cella eius detur alteri et ipse in aliis officiis occupetur. In cellis legere, scribere, orare, dormire et etiam de nocte uigilare <ad lumen> possunt³⁶⁰ qui uoluerint³⁶¹ propter studium.

³⁵⁶ This is the reading of the Sack Friars and later Dominican texts; Rodez has *disputationes*.

³⁵⁷ The Sack Friars confirm Rodez's *si uacauerint*; Raymund was evidently more concerned about the student master's time, so he substituted *prout uacauerit*, which remained in the constitutions thereafter.

³⁵⁸ Later Dominican texts have *seu proponente*, the Sack Friars have *uel respondente*.

³⁵⁹ Only Rodez has *illo ... eos*; later Dominican texts have *eo ... eos*, and the Sack Friars have *illo ... illos*.

³⁶⁰ This is the reading of the Sack Friars and later Dominican texts; Rodez omits *ad lumen* and has *possint*.

³⁶¹ Later Dominican texts have *uolunt*, but Rodez's *uoluerint* is supported by Porto's *uoluerit*; the Sack Friars omit *qui uoluerint*.

II 29a echoes the general principle of dispensation inserted into the prologue of the constitutions, almost certainly in 1220: 'Ad hec tamen in conuentu suo prelatus dispensandi cum fratribus habeat potestatem, cum sibi aliquando uidebitur expedire, in hiis precipue que studium uel predicationem uel animarum fructum uidebuntur impedire'; the content of 29a could therefore go back to 1220, but the question arises whether it was really necessary to reiterate the point here, when it was in principle adequately covered by what was said in the prologue. And why should a single chapter have used the word *studentes* in 28a, and then, almost immediately afterwards, prefer *eos qui student*?

29b takes the phrase *magister studentium* for granted; but 28a only speaks of a 'frater specialis'. It is also unlikely that Dominican studies were sufficiently well organised in 1220 for the *disputatio* to have a regular place in the horary, even if it was expected to be a normal part of the order's educational practice. In general, the situation implied by 29b seems far more evolved than that envisaged in 28a, in which the students' 'frater specialis' just supervises their attendance at lectures and decides what they may copy into their notebooks.

29c is consistent with Jordan's account of the cloister which the brethren constructed when they were given the church of Saint-Romain in Toulouse in 1216: 'Edificatum est claustrum, cellas habens ad studendum et dormiendum desuper satis aptas' (*Lib.* 44); nevertheless, *magister studentium* is taken for granted again, and we may surmise that the restriction on students' use of *celle* was prompted by longer experience than was yet available to the order in 1220.

If 28 and 29 were constructed as a single piece of legislation, it is difficult to see why 29b was not more closely connected with 28a, since both concern the student master's supervision of his charges' studies.

I conclude that it is very doubtful whether any of II 29 goes back to 1220. It seems more probable that it was part of the 1234 *ordinatio studii* confirmed in 1236. 28c on its own hardly amounts to an *ordinatio studii*; and if nothing else was being confirmed in 1236, why did the Most General Chapter not furnish an exact text to insert into the constitutions, as it did with its other confirmations?

If II 28c+29 contain the *ordinatio studii* of 1234, as modified in 1236, can we say the same of 30?

(30a) Nullus fiat publicus doctor nisi per quatuor annos ad minus theologiam audierit.³⁶²

(b) Item nullus fratrum nostrorum legat in psalmis uel prophetis alium sensum litteralem nisi *quem*³⁶³ sancti approbant et confirmant.

30b was added in 1236, independently of the *ordinatio studii* (MOPH III 6.12-13).

Doctores were certainly on the agenda in 1220; Dominic wanted every Dominican house to be a school, and this was understood, at least by Conrad of Metz, to mean a school open to non-Dominicans (cf. AFP 66 [1996] 53; MOPH XXV #157), whose *doctor* would therefore be a *publicus doctor*. Nevertheless, it was ambitious enough in 1220 to require every convent to have any kind of *doctor*; the question of *public* teachers as a distinct category, requiring longer training, can hardly have arisen until later. Thomas dates 30a vaguely to 1221-1235, but it would not be out of place in an *ordinatio studii*.

30a displays the same kind of concern as 31ab:

(31a) Statuimus ut nullus fiat predicator generalis antequam theologiam audierit per tres annos;

(b) ad exercitium uero predicationis postquam³⁶⁴ per annum audierint possunt admitti qui tales sunt³⁶⁵ de quorum predicatione scandalum non timetur.

31a, with its tell-tale *statuimus*, certainly cannot go back to 1220, and in any case its use of *predicator generalis* presupposes a development in Dominican terminology which we have seen reason to date to 1228.

³⁶² Raymund and later Dominican texts have a different word-order: *nisi ad minus theologiam per quatuor annos audierit*.

³⁶³ Rodez has *quam*.

³⁶⁴ Scheeben and Thomas read Rodez as having *postquam prius*, but it looks more like *postquam post*, so I agree with Denifle that what was intended was simply *postquam*, which is the reading of the Sack Friars and later Dominican texts.

³⁶⁵ Since 31b was suppressed in 1258-1260 (MOPH III 91.16-17, 95.12-14, 101.26-28), it barely had time to get established in Humbert's constitutions, which makes it all the harder to resolve two textual uncertainties. Where Rodez has *per annum audierint*, the Sack Friars have *per annum theologiam audierint*, Porto (Raymund) has *theologiam audierint per annum*, and AGOP XIV L 1 (Humbert) has *theologyam per annum audierint*. Rodez's *tales sunt* is supported by AGOP XIV L 1, but the Sack Friars and Porto have *tales fuerint*. The Sack Friars to some extent rewrote 31a. Since there is no agreement as to how *theologiam* should be inserted, and *sunt* would be likely to become *fuerint* after *audierint*, I see no reason why Rodez should not have preserved the original text of PC.

Thomas dates 31a any time from 1220 to 1235, while ascribing 31b to 1220. It is certainly true that the notion of *exercitium* is present in II 20, which does go back to 1220; but the two prescriptions in 31ab surely belong together,³⁶⁶ and 31b, with its fear of *scandalum*, reflects a different concern and a different mood from those expressed in II 20, quite apart from Dominic's willingness to trust his men before they were even prepared to trust themselves.³⁶⁷ I see no reason to believe that 31b contains anything surviving from 1220.

30a, 31a and 31b share an interest in fixing minimum periods of study for different qualifications. This does not prove that they were all conceived by the same general chapter, but they would all be at home in an *ordinatio studii*; and 31b's nervousness about fledgling preachers is akin to that underlying the 1234 admonition forbidding anyone except preachers general to preach or hear confessions *sine speciali licentia prioris sui* (i.e. specific authorisation for each occasion) (MOPH III 5.6-7).

Statuimus at the beginning of 31a is not necessarily an argument against 31ab being part of the 1234 *ordinatio studii*, nor does the insertion of 30b prevent us from believing that this *ordinatio* runs from 28c to 31b. The acta of 1236 present the Most General Chapter's legislation in a completely disorganised fashion, and we have seen several instances of its innovations or confirmations entering PC with a preliminary *statuimus* which is not in the acta; we have also noted that the acta themselves seem to have no way of identifying particular sections of the constitutions, though the combined testimony of Rodez and the Sack Friars shows that sections with titles were introduced at some stage. The conclusion seems inescapable that someone (perhaps a kind of 'technical com-

³⁶⁶ 31b is not formulated to be independent of 31a, especially if Rodez is right to have it without *theologiam*. The two categories envisaged in 31ab correspond to those mentioned in II 20: men who have *predicationis officium* in their own right (*predicatores generales* in later terminology) and those who must *in predicatione exercitari*; it is hard to see why minimum requirements should be set for the latter unless they were also set for the former.

³⁶⁷ John of Navarre testified that 'multum confidens de deo mittebat etiam simplices ad predicandum dicendo, Ite secure, quia dominus dabit uerbum predicationis uobis et erit uobiscum et nichil deerit uobis' (ACB #26). Buonviso recalled that 'quando ipse erat nouitius et non haberet aliquam peritiam predicandi quia nondum in sacra pagina studuisset, predictus frater Dominicus precepit ei Bononie existenti quod deberet ire Placentiam predicaturus ibidem; et cum ipse propter imperitiam se excusaret, dulcissimis uerbis eum induxit quod ire deberet, et dixit, Vade secure, quia dominus tecum erit et ponet uerbum predicationis in ore tuo' (ACB #24).

mission') incorporated the decisions of the Most General Chapter into a veritable edition of the constitutions, making some effort to incorporate new legislation in appropriate places, and dividing the text into distinct sections, each provided with a suitable heading. In the course of this operation, it would be natural for 31ab to be included with the rest of 31 in a distinct section 'de predicatoribus', and this could be how 31a acquired its initial *statuimus*.

We are, I submit, on fairly strong ground in regarding II 29 as part of the 1234 *ordinatio studii*. It is more doubtful whether 30a and 31ab derive from the same source; but it is a distinct possibility.

(t) *Distinction II 31c-33*

The next and final item on the agenda set by the 1216 'synopsis' is 'de predicatione'. If II 31ab do not go back to 1220, much of the rest of 31 may well survive from the order's earliest legislation on the subject:

(31c) Et hii qui apti sunt, cum in predicatione³⁶⁸ exire debuerint, eis socii dabuntur a priore, secundum quod moribus eorum et honestati iudicauerit expedire.³⁶⁹ Qui recepta³⁷⁰ benedictione exeuntes ubique, tamquam uiri qui suam et aliorum salutem procurare desiderant, honeste et religiose³⁷¹ se habeant, sicut uiri euangelici, sui sequentes uestigia saluatoris, cum deo uel de deo secum uel proximis loquendo. Vitabunt suspiciosi comitatus familiaritatem.

(d) Euntes uero ad iam dictum predicationis officium exercendum uel alias itinerantes aurum, argentum, pecuniam et³⁷² munera, excepto uictu et uestitu et necessariis indumentis³⁷³ et libris, nec accipient nec portabunt.

(e) Omnes qui ad officium predicationis uel studium sunt deputati nullam habeant curam seu administrationem³⁷⁴ temporalium, ut expe-

³⁶⁸ Rodez and the Sack Friars have *predicatione*, but Raymund and later Dominican texts have *predicationem*.

³⁶⁹ The Sack Friars, like Rodez, have *iudicauerit expedire*; Raymund and later Dominican texts have *expedire iudicauerit*.

³⁷⁰ The Sack Friars support *recepta*, but later Dominican texts have *accepta*.

³⁷¹ The Sack Friars support *honeste et religiose*; later Dominican texts have *religiose et honeste*.

³⁷² The Sack Friars support *et*; later Dominican texts have *aut*.

³⁷³ *Vestitu ... indumentis* seems pleonastic. That no difference in meaning was perceived is shown by the fact that the Sack Friars dropped *indumentis et*, and later Dominican texts dropped *et uestitu*; nevertheless this also shows that both words were in the original text of PC.

³⁷⁴ Later Dominican texts have *administrationem seu curam*; the Sack Friars do not have this sentence.

ditius et melius iniunctum ministerium sibi³⁷⁵ spiritualium ualeant adimplere, nisi forte <ubi>³⁷⁶ non sit aliquis alius qui necessaria procuret, cum in necessitatibus diei presentis oporteat aliquando occupari.

(f) Placitis et causis nisi pro fidei negotiis non intersint.

One of Thomas's major incentives for dating 31b to 1220 is undoubtedly the feeling that 'et hii qui apti sunt ...' is rather too abrupt a transition from 'de studio' to 'de predicatione'. From this point of view, it makes no difference whether 31c originally followed 28b or 29c. *Et* may have been added at the beginning of 31c when 31ab were edited into the text, but it is unlikely that the rest was seriously reworked; 31cd were obviously intended to apply to all preachers, not just those admitted *ad exercitium*, so 31c has only been superficially adjusted to its new setting.³⁷⁷ It is possible, of course, that some older text disappeared completely in the course of the constitutions' evolution, but I cannot believe that 'hii qui apti sunt' was ever introduced to replace an earlier 'predicatores'. *Apti* picks up *ydonei* in II 20 (as well as echoing the language of II 16c); it is not inconceivable that 'de predicatione' originally began simply 'Hii qui apti sunt, cum in predicatione exire debuerint ...'.

Thomas suggests that 31b + 'hii qui apti sunt' goes back to 1220, but that the rest of 31cde was already in the customary of 1216. This, however, cannot be right; from what Jordan says in *Lib.* 42, it is clear that in 1216 the brethren merely adopted (and adapted) parts of the Praemonstratensian customary, and did not create new legislation of their own. But there is no reason why 31cde should not go back to 1220.

31c and 31d contain principles which we know Dominic succeeded in getting into the constitutions in 1220 (cf. AFP 66 [1996] 71, 76, 125). 31e might seem slightly out of place, and it is omitted by the Sack Friars; but it accords with the policy Dominic espoused in Bologna after the Parisian brethren forced him to abandon the idea of leaving all responsibility for temporal administration in the

³⁷⁵ Later Dominican texts have *sibi ministerium*.

³⁷⁶ Rodez does not have *ubi*, but it is in all later Dominican texts and might well have dropped out accidentally in Rodez or one of its ancestors.

³⁷⁷ Thomas's theory requires *exercitium* to be taken quite generally (the 'exercise' of *predicationis officium*); but II 20 makes it more likely that it means 'exercise' in the sense of 'training'.

hands of the *conversi* (ibid. 63-64, 99-100), and it is formulated in a way which connects it more immediately with preachers than with students. I see no serious objection to our dating 31cde as a whole to 1220.

31f was already in the constitutions by 27 Feb. 1232; this is shown by a notarised copy of the deed whereby Bartholomew of Vicenza formally apologised for undertaking to act as mediator between Genoa and Alessandria notwithstanding the opposition of his superiors, who had expressly forbidden him to do so 'cum scriptum sit in constitutionibus nostris quod fratres nostri non intersint causis et litibus nisi pro fidei negociis'.³⁷⁸ Bartholomew was coopted as third mediator before 15 Jan. 1231 (ibid. 77), so in all probability the constitutional text was already there by then, i.e. it must have been inserted into the constitutions no later than 1230, in which case it must have been inchoated in 1228 at the latest; but 1228 was a Most General Chapter, which could have created the new constitution off its own bat. 1228 is thus the terminus ad quem for 31f. Its tenor is quite different from that of 31cd, which might make us suspect that it does not go back to 1220; on the other hand, Sueiro had already got into trouble in Portugal before then for attempting to interfere in civil matters (cf. AFP 70 [2000] 25-28, 69-70), and 31f follows on tolerably well from the end of 31e, so we should not exclude the possibility that it was part of the 1220 legislation.

II 32 we have already encountered, on the relationship between preachers and bishops (AFP 70 [2000] 29):

(32a) *Predicare non audeat*³⁷⁹ aliquis in dyocesi alicuius³⁸⁰ episcopi qui ei ne predicet interdixerit, nisi litteras et generale mandatum habeat summi pontificis.

(b) *Cum fratres nostri dyocesim alicuius episcopi ad predicandum intrauerint, primo si poterunt episcopum illum*³⁸¹ uisitabunt *ut*³⁸²

³⁷⁸ Ed. in A.Ferretto, *Documenti intorno alle relazioni fra Alba e Genova (1141-1270)*, Pinerolo 1906, 111-112 (where it is wrongly dated to 26 Feb., the editor having failed to take into account the fact that 1232 was a leap year).

³⁷⁹ Rodez has *audeant* and *qui enim*, which must obviously be corrected.

³⁸⁰ Later Dominican texts have *illius*, but *alicuius* is corroborated by the Sack Friars.

³⁸¹ Later Dominican texts just have *episcopum*; the Sack Friars have *illum episcopum*.

³⁸² Rodez has *et*, but the Sack Friars and later Dominican texts have *ut*.

secundum consilium eius in populo fructum faciant *quem*³⁸³ facere intendunt; et quamdiu in eius episcopatu³⁸⁴ fuerint, ipsi in hiis que contra ordinem non fuerint deuote obedientes erunt.

Thomas dates 32b to 1220, which is entirely plausible.

32a, however, as Thomas remarks (261), is formulated in different and more 'technical' terms than 32b. What is more, 'fratres nostri' in 32b follows on better from 31 than 32a's 'aliquis', and it is rather illogical to put 32a before 32b: the Dominicans' arrival in a diocese naturally precedes the possibility that the bishop may object to a particular friar.

Thomas dates 32a to c.1223 since an analogous caution appears in the Franciscan *Regula bullata* 9, which was not there in *Reg. non bullata* 17: 'Fratres non praedicent in episcopatu alicuius episcopi cum ab eo illis fuerit contradictum'; but the two rulings are not really parallel: *Reg. bullata* 9, on the face of it, envisages a bishop vetoing Franciscan preaching in general, whereas PC II 32a refers to an individual Dominican being forbidden to preach and the possibility that he might have a personal mandate from the pope which would outweigh the bishop's ban—as 32b implies, the Dominicans were well aware that their order, as such, had a *generale mandatum* from the pope which no bishop was entitled to oppose. The earliest known instance of the pope giving a personal preaching mission to an individual friar is probably Honorius's employment of John of Wildeshausen as a crusade-preacher (*Epitome Bullarii* #140, 11 Jan. 1227),³⁸⁵ perhaps the renewal of a commission given one or two years earlier.³⁸⁶

If the use of *audeat* is characteristic of the legislation of 1228, which is a possibility rather than a probability, it gives us a reason to date 32a to 1228.

II 33 raises the risk of *scandalum* in a quite different sense from II 31b:

(33a) Caueant fratres nostri ne *ponendo*³⁸⁷ os in celum suis predicationibus religiosos uel clericos scandalizent, sed ea que in ipsis

³⁸³ Rodez has *quam*.

³⁸⁴ Porto and the Sack Friars have *episcopatu eius*, but later Dominican texts, like Rodez, have *eius episcopatu*.

³⁸⁵ On the *Epitome*, see AFP 70 (2000) 24 n.35.

³⁸⁶ Cf. C.T.Maier, *Preaching the crusades*, Cambridge 1994, 32-33.

³⁸⁷ This is the reading of later Dominican texts, and it is supported by the Sack Friars' (corrupt) *proponendo*; Rodez has *ponentes*.

*emendanda*³⁸⁸ uiderint obsecrando ut patres seorsum emendare procurent.

(b) Nullus assumatur ad predicationis officium extra claustrum uel fratrum consortium infra XXV annos.³⁸⁹

II 33a follows on well from 32a and maintains the same tone as the original nucleus of 31-32, and we may confidently follow Thomas in attributing it to 1220.³⁹⁰ It is equally obvious that 33b belongs to a different type of discourse.³⁹¹ The only possible clue to its dating is that it was presumably inserted here deliberately to conclude the whole section 'de predicatione'.³⁹² We know that the Most General Chapter of 1228 took the trouble to place new laws 'in locis suis inter constitutiones' (cf. Preamble), and the Most General Chapter of 1236 seems to have done the same thing; other chapters appear to have been less conscientious in the matter. 33b does not appear in the acta of 1236, and it is unrelated to the concerns of the 1225 chapter, so we have a mild and far from compelling incentive to believe that it was inserted in 1228.

(u) *Distinction II 34*

Since most of the treatment of preachers in II 31-33 envisages them as itinerant, it would have been appropriate for the 1220 chapter to say something about travelling as such, even though it was not a distinct item on the agenda set for it in 1216. This could be what we find in II 34:

(34a) Predicatores uel itinerantes, cum in uia existunt, officium suum dicant prout sciunt et possunt, et sint contenti officio ecclesiarum ad quas³⁹³

³⁸⁸ Rodez has *emendando*.

³⁸⁹ Thomas adds X 1 here, which he takes to be an extravagan.

³⁹⁰ On the use of *ponere os in celum* (a phrase taken from Ps. 72:9) to mean criticising someone to whom you should look up, cf. Vicaire, *Histoire* II 222; *obsecrando ut patres* is inspired by 1 Tim. 5:1, 'Seniorem ne increpaueris sed obsecra ut patrem'.

³⁹¹ 33b raises the question what relationship the order saw, if any, between public preaching and major orders since, according to Raymund of Penyafort, 25 was the recognised minimum age for ordination to the priesthood (*Summa*, Rome 1603, 303). It must be presumed that all Dominican clerics were in fact clerics, at least in minor orders, so there is no question of Dominican lay preaching.

³⁹² The Sack Friars have it in the same place.

³⁹³ Porto has *illorum ad quos*, which is supported by the acta of 1240-1242 which suppressed the clause (MOPH III 14.11-12, 19.19-21, 21.29-31); however, the Crutched Friars support the reading of Rodez and the Sack Friars, *ecclesiarum ad quas*.

quandoque³⁹⁴ declinant, uel etiam agant officium uel audiant apud episcopos uel prelatos uel alios, secundum mores³⁹⁵ eorum cum quibus aliquando conuersantur.³⁹⁶

(b) Fratres *etiam*³⁹⁷ uiatores litteras testimoniales secum ferant, et in conuentibus ad quos declinauerint de excessibus *suis*³⁹⁸ ibidem corrigantur.³⁹⁹

(c) Prior in ordine *sit*⁴⁰⁰ prior in uia, nisi forte predicatori adiungatur, uel cum egrediuntur aliter prelatum cum ipsis ordinauerit.

(d) Socius datus predicatori ipsi ut priori suo *<in omnibus>*⁴⁰¹ obediatur.⁴⁰²

Rodez's arrangement of II 34 is supported by Raymund and later Dominican texts, but the Penitents have II 34acd suitably adapted, then the extravagans which Thomas inserts after 34a (X 14), and only then their version of 34b; the Sack Friars have 34a, then X 14, then the first half of 34b, then X 12, then the second half of 34b, then 34cd. This must raise a doubt as to whether 34b is not a later accretion to the text, a doubt which is rather reinforced by its language (*uiatores* rather than *itinerantes*) and its content—it seems to envisage a world with more Dominican convents in it than are implied by 34a, and a situation in which the order, as such, was well enough known for it not to be necessary for travelling friars to carry papal bulls of commendation with them, but only letters showing that they were who they claimed to be and that they were not fugitives.

Apart from 34b, I see no objection to accepting Thomas's dating of II 34 to 1220. 34b's concern for testimonial letters perhaps

³⁹⁴ The Sack Friars and the Porto manuscript have *aliquando*, but the Crutched Friars and later Dominican texts support Rodez's *quandoque*, so it should not be emended.

³⁹⁵ Rodez has *mores*, which is indirectly supported by the Sack Friars' corrupt *seniores*; Porto has *morem*. The sentence was suppressed in 1240-1242 (MOPH III 14.11-12, 19.19-21, 21.29-31), so there is no other evidence.

³⁹⁶ Thomas inserts X 14 here.

³⁹⁷ Rodez has *enim*.

³⁹⁸ Rodez has *excessibus factis*. The Porto manuscript just has *excessibus*, but the Crutched Friars have *excessibus suis*, which is also the reading of later Dominican texts, so I suspect that Rodez's *factis* is due to a misreading of *suis*.

³⁹⁹ Thomas inserts X 12 here.

⁴⁰⁰ Rodez has *fit*.

⁴⁰¹ Rodez lacks *in omnibus*, but the words are in the constitutions of the Sack Friars and the Penitents, and in Raymund, though they were excised in 1240-1242 (MOPH III 14.22-23, 19.32-33, 22.11-12).

⁴⁰² Thomas adds X 8, 15 and 16 here.

suggests a link with 32a, which perhaps suggests that it too might be ascribed to the Most General Chapter of 1228.

(v) *Rodez's extravagantes*

There is a clutch of odd bits of legislation after II 34d in Rodez which clearly do not continue the theme of II 34, so they are customarily regarded as extravagantes, though there is no major break in the manuscript, let alone a new heading. I give them continuous numbers of the form 'X 1' etc., as well as indicating where Thomas inserted them in his edition of PC.

The first item to follow 34d in the manuscript might have been meant to be there, so it is not clear whether it should be treated as an extravagans or not. Thomas felt free to move it to II 33, where Raymund put it (cf. Thomas 286); it is not in the Sack Friars' constitutions.⁴⁰³

(X 1 [II 33c]) Statuimus ne fratres nostri in predicationibus suis dari uel colligi pecuniam admoneant pro domo uel aliqua persona speciali.

Statuimus shows that it does not go back to 1220, but it could go back to 1221: the bull of recommendation which Dominic obtained from Honorius III in March 1221 warns bishops that, if anyone claiming to be a Dominican uses preaching as an occasion to beg for money, he should be arrested as a *falsarius* (MOPH XXV #147), and the same warning was transferred to the bull of recommendation favoured by Gregory IX (edited by Koudelka in AFP 34 [1964] 41-42); this clause was presumably suggested by Dominic, and it would have been sensible for him to get a corresponding instruction added to the constitutions, forbidding preachers to do anything which could be construed as 'questus pecuniarum'.

After X 1, there are seven more items before Rodez's next major break:

(X 2 [II 35e]) Item nullus faciat sibi⁴⁰⁴ scribi libros de rebus domus nisi ad communem utilitatem.

⁴⁰³ It may perhaps have inspired the final sentence in their section 'de predicatoribus': 'In predicationibus autem suis honeste indicant (*sic pro* inducant) populum ad decimas et oblationes et alia iura ecclesiastica persoluenda'.

⁴⁰⁴ Raymund and later Dominican texts do not have *sibi*, but it is supported by the Penitents' *non faciant sibi aliquid fieri de rebus domus nisi ad communem utilitatem* (Vienna 4724 f.326^v).

(X 3 [II 28d]) In diebus dominicis et festis precipuis a quaternis scribendis se *contineant*.⁴⁰⁵

(X 4 [II 35f]) Item in diebus dominicis seruilia opera, ut lapides portare, ligna aggregare et similia, fieri prohibemus.

(X 5 [II 1da]) Nullus prior conuentualis secum plures fratres ducat⁴⁰⁶ ad capitulum generale uel prouinciale nisi⁴⁰⁷ causa legitima. Et assumat quilibet prior socium sibi secundum electionem capituli sui.

(X 6 [in II 17]) Item nullus decetero petitiones diffinitoribus porrigat que per capitulum suum non fuerint approbate.

(X 7 [II 1i]) Item nulla petitio offeratur prouinciali capitulo nisi a conuentu, nec generali nisi a prouinciali.⁴⁰⁸

(X 8 [II 34e]) Fratres minores sicut et nostri caritatiue et ylariter recipiantur et secundum facultatem domus pie et honeste procurentur.

After X 8 Rodez has a new section, with a title:

(X 9 [II 35]) De edificiis.

(a) Mediocres domos et humiles habeant fratres nostri, ita quod murus domorum sine solarario non *excedat*⁴⁰⁹ in altitudine mensuram XII pedum, et⁴¹⁰ cum solarario XX, ecclesia XXX. Et non fiat lapidibus *testudinata*,⁴¹¹ nisi forte super chorum et sacristiam.

(b) Si quis decetero *contrafecerit*,⁴¹² pene grauioris culpe subiacebit.⁴¹³

(c) Item in quolibet conuentu tres fratres de discretioribus eligantur, sine quorum consilio edificia non fiant.⁴¹⁴

⁴⁰⁵ This is the reading of Raymund and later Dominican texts, and it is supported by 'Sorores nostre et fratres sicut regula precipit sollempnitates sanctorum obseruent et tunc ab operibus manualibus se contineant' (Vienna 4724 ff.326'-327'); Rodez has *se abstineant*.

⁴⁰⁶ Raymund and later Dominican texts have *ducat secum plures fratres*.

⁴⁰⁷ Raymund and later Dominican texts have *sine*.

⁴⁰⁸ Raymund incorporated X 7 into his const. II 7, but absorbed the end of X 6 as well: 'Item nulla petitio offeratur capitulo prouinciali nisi a conuentu, nec generali nisi a capitulo prouinciali fuerit approbata'.

⁴⁰⁹ Rodez has *excedant*.

⁴¹⁰ Raymund and later texts do not have *et* here.

⁴¹¹ Rodez has *testitudinata*.

⁴¹² Rodez has *contrafecit*.

⁴¹³ Porto has *subiaceat*, but the Crutched Friars and later Dominican texts support Rodez's *subiacebit*.

⁴¹⁴ Although X 9c did not pass into later versions of the constitutions, the practice of requiring the prior to do certain things only with the agreement of designated *consilarii* continued, as Humbert's comments on conventual priors show (ed. Berthier II 204): 'Debita magna contrahere, vel emptiones vel venditiones magnas, vel alia magna facere non debet sine consensu conventus *vel consiliariorum qui ex parte conventus ad hoc consueverunt assignari et quibus super his fuerit commissa potestas*'; he also devoted a special chapter to *consilarii* (ibid. 284-285).

Then there is another major break, but no title, followed by the remaining extravagantes:

(X 10 [II 35d]) Fratres non sint dispensatores alienarum rerum, uel pecuniarum, nec fideicommissarii; depositarii esse possunt.⁴¹⁵

(X 11 [in Prol.]) Piores utantur dispensationibus sicut et alii fratres.⁴¹⁶

(X 12 [II 34ba]) Prior priorem superuenientem honoret. Hospes per ciuitatem sine consilio suo⁴¹⁷ non discurrat nec moram faciat.

(X 13 [end of I 19]) Bote extra septa monasterii non portentur.

(X 14 [II 34aa]) <In>⁴¹⁸ inclinationibus conformemur⁴¹⁹ moribus eorum ad quos declinamus.

(X 15 [II 34f]) Nullus fratrum uadat ad curiam nisi de licentia magistri uel capituli generalis, sed mittatur garcio ad fratres qui ibi sunt, uel si quis secularis uoluerit procurare, ut tamquam per se et non per nos uideatur facere.

⁴¹⁵ X 10 survived in later Dominican const. II 13 without *nec fideicommissarii*. The relevant passage in the Porto manuscript was erased to make way for a new measure introduced in 1252-1255, restricting what could be deposited to books and vestments (things which would prove useful if left unclaimed) (MOPH III 63.5-7, 68.7-10, 73.12-15); the acts of these chapters show that *nec fideicommissarii* had already disappeared from the text, so the original reading in Raymund's constitutions was presumably the same as that adopted by the Crutched Friars, 'Item fratres non sint dispensatores alienarum rerum uel pecuniarum; depositarii tamen esse possunt'. The Penitents have a similar text without *nec fideicommissarii* (Vienna 4724 f.326'), 'Sorores nostre uel fratres non sint dispensatores alienarum rerum uel pecuniarum; depositorie esse possunt'. This shows conclusively that older editions which did not punctuate after *fideicommissarii* are mistaken. *Nec fideicommissarii* receives weak support from the Sack Friars, whose section on poverty includes 'Nec etiam pro secularibus fideiubere audeat'; nevertheless, it is unlikely to be an interpolation. The point is that Dominicans were not to take responsibility for administering other people's goods or money, or to accept bequests in trust for someone else; they could, however, look after property which someone wanted to deposit in their safe keeping. Before the change inchoated in 1252, various unsuccessful attempts were made to elaborate on the procedures for receiving and looking after *deposita* (MOPH III 42.1-7, 52-53, 58.1-9) or, in 1249, to forbid their reception entirely (MOPH III 45.11-12). It looks as if the hospitality of the brethren's strong room was appreciated, since Humbert includes two or three *depositarii* among the officials of a convent (ed. Berthier II 279-280).

⁴¹⁶ Later Dominican texts have *etiam* after *piores*, but they generally do not have *et*; these changes were probably introduced by Raymund when he incorporated X 11 into the prologue.

⁴¹⁷ Later Dominican texts have *eius*, but it is not clear whether this is Raymund's correction of *suo*, or whether *suo* in Rodez is due to scribal error. Contrary to Thomas's apparatus, Rodez, like later Dominican texts, has *nec moram*, not *uel moram*.

⁴¹⁸ Rodez omits *in*.

⁴¹⁹ Porto has *conformamur*, but Rodez's subjunctive is confirmed by the Sack Friars, the Penitents, the Crutched Friars and later Dominican texts.

(X 16 [II 34g]) Fratres non recipiant a mulieribus munuscula nec dent, et maxime confessores.⁴²⁰

(X 17 [end of I 8]) Si quid petitum fuerit ab uno priore, non petatur ab alio nisi causa exposita, sed⁴²¹ nec si a maiore petierit uadat⁴²² ad minorem.

(X 18 [II 28e]) Cum frater de prouincia ad prouinciam et⁴²³ ad regendum mittitur, omnes libros suos *glosatos*,⁴²⁴ bibliam et quaternos secum deferat. Si uero mittitur et non ad regendum, tantum⁴²⁵ bibliam et quaternos portet. Quod si in uia mori contigerit, conuentus ad quem mittendus fuerit⁴²⁶ sibi in missis et psalteriis⁴²⁷ tenebitur, et ad eundem libri quos habuit⁴²⁸ pertinebunt.

(X 19 [II 28f]) Tres fratres tantum mittantur ad studium Parisius⁴²⁹ de Prouincia.⁴³⁰

⁴²⁰ Porto has *accipiant* for *recipiant*, and omits *et*, but *recipiant* is confirmed by the constitutions of the Penitents and the Crutched Friars and later Dominican texts, all of which, except the Penitents, also confirm *et*.

⁴²¹ Porto omits *sed*, but its presence is guaranteed by the Sack Friars, the Crutched Friars and later Dominican texts.

⁴²² The Sack Friars have *postulatum fuerit ...*, but they have completely reshaped the sentence; Porto has *petitum fuerit uadat*, which leaves *uadat* without a subject. The only change supported by the Crutched Friars and later Dominican texts is *petierint ... uadant* for *petierit ... uadat*, but Porto supports Rodez's singular.

⁴²³ Raymund and later texts do not have *et* here. However, Porto supports *et non ad regendum* later on, though *et* is not in the revised text which is found in other manuscripts; it is not impossible that the original text had *et* both times.

⁴²⁴ This is the reading of Raymund and, allowing for the addition of *postillas* before *bibliam*, later Dominican texts; Rodez has *et glosatos et*.

⁴²⁵ Porto has *non tamen nisi ... portent*, which recurs in the later revised text, 'Idem dicimus de missis de prouincia ad prouinciam non ad regendum, non tamen portent nisi ...'. Although, judging by the microfilm, *non tamen nisi* appears not to be a correction, it is a most unappetising alternative to Rodez's *tantum*.

⁴²⁶ Porto has *fuerat*, but *fuerit* is supported by later texts.

⁴²⁷ Porto drops *sibi* and has *in missis et in psalteriis ei tenebitur*; later texts support the change from *sibi ... tenebitur* to *ei tenebitur* (which, since it improves the Latin, may be attributed to Raymund's revision), but not the insertion of *in* before *psalteriis*.

⁴²⁸ Porto has *habuerit*, but AGOP XIV L 1 and BL add. 23935 support Rodez's *habuit*.

⁴²⁹ The word-order is uncertain: Porto has *mittantur Parisius tantum ad studium*, but later texts have *tantum mittantur Parisius ad studium* (AGOP XIV L 1 does not have *studendum* as reported in ASOP 3).

⁴³⁰ It is not clear from Rodez whether this should be *prouincia* or *Prouincia* (Provence). The way X 19 is inserted into Raymund's const. II 14 shows that he took it as *prouincia*, meaning 'any province', but *de prouincia*, thus understood, is a curious phrase. *Ad prouinciam* in II 16d is not really parallel, and is in any case probably not the correct reading. We should expect *de qualibet prouincia*, as in II 11e and 28c.

(X 20 [in I 1]) In ferialibus diebus iacemus prostrati a Sanctus usque ad Agnus, in festis uero trium uel nouem lectionum⁴³¹ ab eleuatione corporis Christi usque ad Pater noster. In prostrationibus idem seruamus in festo trium uel nouem lectionum.

(X 21 [in I 1]) Ad Salue sancta parens et ad Veni sancte spiritus flectamus⁴³² genua.

(X 22 [in I 1]) Item si in ferialibus diebus dicimus missam de cruce, cadimus ad terram, ad missam de beata uirgine uel de spiritu sancto non.

(X 23 [in I 4]) Item numquam terminamus missam cum alleluia.

After this, with a new title, Rodez has the 'regula fratrum nostrorum conuersorum'.

Thomas dates II 35a to 1220, on the grounds that it corresponds to Dominic's known desire (he cites *ACB* #17, 32, 38; see Thomas 260). He takes X 2-8 to be stray bits of legislation, probably inserted in chronological order, running from 1220 to 1236, and X 10-23 to be another such collection, whose terminus ante quem, at least up to X 21, is furnished by the Penitents whose constitutions include X 21 (i.e., on his view, 1232, but, if my interpretation of the Penitents' constitutions is correct, more probably 1228) (Thomas 286-287). However, this adds up to an impossible theory: if X 9 (II 35) was part of the 1220 constitutions, there would certainly not have been a blank space before it in which extra laws could be inserted neatly in chronological order. Even if we allow that a gap was left before the *regula conuersorum* (which Thomas also dates to 1220), it would have followed, not preceded II 35, so there should not be two separate and chronologically overlapping sets of extravagantes.⁴³³ And, unless we are all completely mistaken about when the Penitents' constitutions parted company with those of the Dominicans, the extravagantes as a whole are not in chronological order, since X 7 was added in 1236

⁴³¹ The Penitents and later Dominican texts insert *iacemus* here; the Sack Friars reverse the order of the two clauses, but they support omitting *iacemus* in the second.

⁴³² Raymund and later Dominican texts have *flectimus*, but the Penitents support *flectamus* (Vienna 4724 f.320^r).

⁴³³ Or we may suppose that the Rodez scribe, realising that the *regula conuersorum* should come last, moved whatever bits and pieces he found added at the end of the constitutions so that they would come before it rather than after; there would still be the same problem.

(MOPH III 7.33-34), but the Penitents have several more, up to and including X 21, which must therefore have been in the text by 1232 on any reckoning.

To explain its muddle in II 7, we have conjectured that Rodez derives from an ancestor (not necessarily its immediate exemplar) in which the legislation of 1225 was fully integrated, but the changes made in 1228 were noted in the margins. On the same hypothesis, it is not unlikely that *extravagantes* added after 1225 were put in whatever margins were available on the last page or two, which would make it almost impossible to recognise their chronological sequence. It would be rash to assume that the order in which the *extravagantes* appear in Rodez is significant.

It is true that X 9a (II 35a) corresponds to a known desire of Dominic's; but no witness in the canonization process says that he actually got it into the constitutions. It is also, in all probability, misplaced in Rodez, which would be evidence of a date later than 1220. The Sack Friars follow their equivalent to II 25 with a long text 'de paupertate', in which we can recognise the influence of II 26a, X 9a (II 35a), possibly X 9c (35c) and X 10 (35d), certainly X 2 (35e), and possibly X 9b (35b):

Statuimus ut noster ordo nullas habeat possessiones agrorum uel uinearum, nutrimenta animalium, census, redditus, nec aliqua immobilia, nisi ortum et officinas (*cf. II 26a*) ... Domorum autem ac officinarum nostrarum opera sint humilia et mediocria, in quibus non sint sumptus superflui, nec uoluptuose et inutiles ymagines picturarum (*cf. II 35a*) ... Item precipimus firmiter et districte ut in singulis domibus duo fratres a conuentualibus eligantur, qui recipiant omnes elemosinas et in cartulario conscribant fideliter receptas pariter et expensas (*cf. II 35c?*) ... Precipimus etiam firmiter et districte ut duo fratres, ueritatis filii, a conuentualibus statuuntur, qui sub uno depositorio duarum clauium diuersarum omnia deposita conseruabunt. Unde, cum aliquis suis filiis aliqua uicissitudine uel aliqua occasione aut notitia ad se pertinentibus aliquid pro libris uel aliis contulerit, statim priori et predictis fratribus depositariis, expressa persona et occasione, plenius ostendatur. Et si pecunia huiusmodi summa fuerit desuper scripta, in depositorio reponatur. Quod depositum nec prior nec fratres depositarii aliqua necessitate pro aliquibus distrahere atemptabunt, nisi de uoluntate et assensu fratris ad usum cuius fuerit concessum, nec ipsi fratres sine licentia prioris depositum recuperabunt uel de ipso aliquid ordinabunt (*cf. X 10*) ... Item precipimus firmiter et districte ne aliquis siue prior siue conuentualis de rebus communibus libros uel quaternos scribere faciat speciales (*cf. X 2*). Nec etiam pro secularibus fideiubere audeat uel amicos ordinis fideiubere faciat

(*cf.* X 10) ... Si quis autem contrafecerit, pene grauioris culpe per unum mensem continuum subiacebit (*cf.* II 35b?).

This is followed by the equivalent of II 27-34, with X 3 (28d) incorporated into the equivalent of II 28.

The Penitents' constitutions do not have quite the same structure as PC; nevertheless, there is a suggestive sequence: the equivalent of II 14, nothing equivalent to II 15-23 (which would not apply to the nuns), the equivalent of II 24, a section 'de labore' including II 26b, then a section 'de domibus' including the equivalent of X 9a, X 10, 27d and X 2, then a section corresponding to X 3, nothing corresponding to II 28-33 (which would not apply), then the equivalent of II 34, then the equivalent of the *regula conversorum* (II 37).

Both the Sack Friars and the Penitents, then, seem to presuppose a text of PC in which X 9 (II 35) was closely connected with II 26, which is entirely logical. Its presence in the Penitents' constitutions implies a probable deadline of 1228, and it would be consistent with that Most General Chapter's reaffirmation of Dominican poverty and with its concern to tie up loose ends for it to have issued precise legislation on the size of Dominican buildings. If it was true to its policy of inserting new laws in their proper places, it should have indicated where X 9 was to go; although X 9 comes before II 26 in Raymund's const. II 1, the Penitents, with some support from the Sack Friars, suggest that it originally came between II 26 and 27.⁴³⁴ It would be consistent with what we have surmised about Rodez's ancestor for II 35 to be in the wrong place in Rodez if it was added in 1228.

On this hypothesis it is no longer necessary to make the rather arbitrary separation between X 9a and X 9b (35ab) which Thomas's theory requires; and there is no reason why X 9c (35c) should not have been added at the same time.

If X 9 should not be where it is in Rodez, what about the other extravagantes? Is it just a quirk of one manuscript to have them where they are, or does Rodez represent the genuine tradition of PC? There is reason to believe that it does.

In the first place, it is clear that some of the extravagantes were transmitted without any context. This is most evident in the case of

⁴³⁴ The heading 'de edificis' is not confirmed by the Sack Friars, so it is possible that X 9 should be part of II 26.

X 17, to which the Sack Friars gave a particular application by attaching it to their section 'de pulmentis', whereas Raymund took it in an unrestricted sense and placed it in his const. I 14 'de nouitiis et eorum instructione'. It is also suggestive that the Sack Friars incorporated X 6 into their equivalent of II 17, which is appropriate in as much as, even after the 1225 changes, II 17 was still relevant to provincial as well as to general chapters; Raymund, however, combined X 6 with X 7 and put it in his section on provincial chapters, which he surely would not have done if he had found either or both of them already inserted in what became his 'de sollempni celebratione capituli'.

Some extravagantes were evidently transmitted, not just with no context of their own, but situated exactly as they are in Rodez, after II 34 'de itinerantibus'. The Sack Friars sensibly included X 16 in their section 'de mulieribus' (expanded from PC I 3, which Raymund incorporated into his const. II 1); both the Penitents and Raymund, however, have it in 'de itinerantibus', where it does not belong—it is not travelling friars or nuns who are most likely to be exchanging *munuscula*. In Raymund, X 16 is followed by X 10, which is even less suitable: convents might be asked by other travellers to look after their affairs, but this has nothing to do with travelling Dominicans; both the Penitents and the Sack Friars found better places for it, in 'de domibus' and 'de paupertate' respectively. Raymund's 'de itinerantibus' concludes with X 8, which is also unsatisfactory, since X 8 concerns the welcome to be given to visiting Franciscans, and in the nature of the case this is the responsibility of Dominicans who are not travelling; this time the Sack Friars did no better.

Most of the extravagantes have fairly obvious places to go to, so it is not surprising that many of them found good homes in constitutions derived from PC; but the instances we have been considering are enough to show that the text of PC was transmitted with stray bits of unincorporated legislation, and that these were located in such a way that they appeared to belong to II 34, as in Rodez. This does not guarantee every detail of Rodez's arrangement, but it should deter editors from moving extravagantes without specific reasons for suspecting them to be misplaced (as we have found cause to believe in the case of X 9).

The only extravagans to which we can attach a precise date is X 7, which comes from the Most General Chapter of 1236 (MOPH III 7.33-35), and which was surely meant to supersede X 6, of which

it is a more precise formulation;⁴³⁵ it was presumably attracted to its place in the manuscript by X 6. X 6 itself seems to belong to a time before the order's legislation on diffinitors was divided into two, i.e. before 1225, *capitulum suum* being left deliberately vague so that it could apply equally to a house chapter or a provincial chapter.⁴³⁶

The Penitents give us a terminus ad quem for X 2, 3, 9, 10, 14, 16, 20 and 21, and I have suggested that it is probably 1228; but an earlier date is possible in every case.

Most of the extravagantes are found in Raymund's constitutions, but not X 4, the second half of X 5, X 6, X 22 or X 23. X 6 was superseded by X 7; the second half of X 5 was rendered otiose by II 1c. Had X 4, 22 and 23 been suppressed by some chapter, but not cancelled in Rodez's ancestor? If so, were they among the constitutions unmade by the Most General Chapter of 1228?

We are assured by the preamble that the new constitutions made in 1228 were inserted 'in locis suis inter constitutiones alias', and the same appears to have been done in 1236; this suggests that unintegrated legislation should derive from chapters before 1228 or, perhaps, between 1231 and 1235. The changes made in 1225 required a considerable restructuring of the first half of the second distinction, so it is doubtful whether the same chapter can be held responsible for unincorporated bits of text. The purpose of II 6b was to put a stop to excessive constitution-making; if I am right to date it to 1225, the chapters of 1226 and 1227 could not have created any new constitutions, so there is a fair chance that the extravagantes as such go back to 1221-1224. In this case, what Rodez gives us could well represent legislation accumulated in 1221-1224 and added without system between II 34 and the *regula conversorum*, plus a few modifications made after 1228, which were in the margins of Rodez's ancestor and so find themselves inserted quite randomly in Rodez.

We have already dated X 1 to 1221, and X 6 to before 1225; if it transpires that most of the other extravagantes are at least sus-

⁴³⁵ The Sack Friars retained an adapted version of X 6, 'Nullus autem aliquam petitionem offerat que per conuentuale capitulum non fuerit approbata et signata', in their version of II 17; they do not have X 7. Raymund retained X 7 in his const. II 7, incorporating 'fuerit approbata' from X 6.

⁴³⁶ Thomas suggests that 1225 is the earliest possible date, presumably because he took *capitulum suum* to refer to the provincial chapter, on which he believed the order had no legislation before 1225; but this is unwarranted.

ceptible of a similar dating, we shall probably have gone as far as we can towards establishing the plausibility of this thesis.

II 21c shows that the order recognised from the outset that the ownership of books was a subject particularly likely to generate disputes; its commitment to study and teaching made books an essential part of the equipment of individuals, not just communities. Dominic himself had his own copy of St Matthew and the Pauline epistles (*ACB* #29). It cannot have been long before the order's mendicant economy obliged it to distinguish between books received from personal benefactors and books paid for by the house; X 2 reflects this distinction.

Books were complemented by notebooks in which useful texts could be copied—Peter Seilhan had his notebook with some homilies of St Gregory in it, and little more (*MOPH* XXII 11). In as much as the material act of writing was considered a menial task,⁴³⁷ a doubt could be raised whether it was right to engage in it on Sundays and major feast days; X 3 provides the answer. The question might have been provoked by the more general ban on *seruilia opera* in X 4, or X 4 might be an expansion of X 3. There is nothing in X 2-4 which requires a date after 1225.

X 10 seems to be connected with X 9 in the constitutions of the Penitents and the Sack Friars, but it is far more significant that Raymund put it in his const. II 13 'de itinerantibus', where it is patently out of place; this suggests it is a genuine extravaganza, not part of II 35 (X 9). X 10 implies that the Dominicans have achieved a position of trust in the local community, but there is no reason why that should not have happened in some places well before 1225.

X 11 plugs an obvious hole in the text on dispensations which was added to the prologue almost certainly in 1220: if superiors can

⁴³⁷ It was deemed worthy of remark that St Ambrose 'nec operam declinabat scribendi propria manu libros' (Paulinus, *Vita s. Ambrosii* 38, PL 14 [1845] 40), or, as James of Varagine puts it (*Legenda aurea* LV 69, ed. G.P.Maggioni, Florence 1998, 383), 'Fuit ... tante humilitatis ac laboris ut libros quos dictabat propria manu scriberet'. In *Ep.* 31 (*MOPH* XXIII 37) Jordan draws attention to the fact that he has penned the letter himself: 'Haec manu propria tibi scripsi'. Humbert considered writing a chore which the brethren should be spared: he includes among conventual officials the 'gerens curam scriptorum', whose responsibility it is 'sic diligenter et sollicitè procurare scripta omnia, tam conventus quam fratrum singulorum, quod ab huiusmodi sollicitudine sint omnes alii expediti'; he would normally employ professional *scriptores* for the purpose, though sometimes one of the brethren would be deputed by the prior to 'scribere aliquid pro domo' (ed. Berthier II 266-268).

dispense their subjects from things likely to interfere with the order's primary task, who dispenses superiors? The issue must have been posed fairly quickly.

Questions of etiquette concerning travelling priors could have arisen very early, if priors originally came to general chapters; but the topics covered in X 12 are extremely basic—the visitor should be received with respect, but he should not go sightseeing or prolong his stay without consulting his host. It does not yet seem to have occurred to anyone to answer fussier questions about precedence and exactly how long a visitor is allowed to stay.

X 13 deals with another detail of monastic observance. If a big cowl does not make a monk, nor does 'bota rotunda',⁴³⁸ but *bote* were an indulgence which even the Cistercians permitted themselves, to keep their feet warm in winter—it was considered highly estimable that Peter, the eighth abbot of Clairvaux, did not wear all the permitted layers of clothing even in the most bitter cold, 'botis quoque rarissime utebatur' (Conrad of Clairvaux, *Exordium magnum* II 32, PL 185:1045). At least by Humbert's time, *bote* were considered winter wear, and on a fixed day the vestiarian collected them up (ed. Berthier II 326); and it seems that they were not meant to be worn even about the house during the daytime—the brethren were supposed to leave them under their beds (ibid. II 273, 535). Novices were to be taught 'quod ad extraneos cum bottis magnis numquam vadant, et de die sine magna necessitate nunquam ferant' (ibid. 221). The ban on wearing them *extra septa monasterii*, like Humbert's insistence that they should not be worn in the presence of outsiders, was almost certainly intended to maintain the brethren's public image of austerity.⁴³⁹

Although Raymund included X 14 in his const. II 2 'de inclinationibus', it is most unlikely that it was ever intended to mean that Dominican communities should follow local practice 'in inclinationibus'.⁴⁴⁰ The Penitents and the Sack Friars placed it among the

⁴³⁸ H. Walther, *Lateinische Sprichwörter und Sentenzen des Mittelalters*, Göttingen 1963, #1011: 'Ampla cuculla satis, cibus artus, bota rotunda / Non faciunt monachum, sed mens a crimine munda'.

⁴³⁹ I do not know what religious *bote* were made of. The *bote* with which Richard of Chichester miraculously cured his bailiff's gout were made of the 'skin of a dead animal' (Ralph Bocking, *Vita* 42; ed. D. Jones, *Saint Richard of Chichester*, Lewes 1995, 131-132); but I doubt whether the reference is to the same kind of boot.

⁴⁴⁰ Humbert says that they should conform to local expectations with regard to the *pax* in private masses, and the blessing at the end of mass (ed. Guerrini, *Ordinarium* 244-245).

rules for *itinerantes*, and it is surely of a piece with II 34a; it too emanates from a time when Dominican preachers typically travelled far and wide, with few Dominican houses to visit on their way. As convents multiplied and the brethren became more convent-based, there was less and less need for this kind of legislation.

Presumably in 1220, the Dominicans added some specifically Dominican grave faults to the list inherited from the Praemonstratensians, including 'Si ... cum femina solus non de confessione aut utilibus uel honestis locutus fuerit' (PC I 22). Dominic, whose virginity was famous even in his lifetime (ACB #14, 19, 29; ACL #3, 8, 12, 15-18, 21), and who 'rediens de Yspania attulit sororibus quasi pro munusculo coclearios cipressinos pro qualibet sorore unum' (Cecilia, *Mir.* 10), warned the brethren on his deathbed 'feminarum maxime iuuenularum suspecta uitare consortia' (Jordan, *Lib.* 92). The order could have forbidden exchanges of *munuscula* with women (X 16) at any time.

The Sack Friars reinterpreted X 17 as a ban on asking the sub-prior for something already refused by the prior, and, by incorporating it in 'de pulmentis fratrum in conuentibus', they implicitly connected it with what immediately precedes it there, 'Quicumque uoluerit bibere extra horam, licentiam petat a prelato et ab eodem unum socium accipiat'. Raymund, by contrast, gave it unlimited application by including it in his const. I 14 'de nouitiis et eorum instructione', and this is surely true to its original purpose. Its formulation looks decidedly primitive. The different priors involved must be the provincial (*maior*) and the conventual (*minor*) prior; the points being made are, first, that you may only ask the (provincial) prior for something already refused by your (conventual) prior if you tell him all about it, and, secondly, that you may never ask your (conventual) prior for something already refused by the (provincial) prior. Once *prior prouincialis* and *conuentualis* had established themselves in the order's language, they would surely have been used to make these points; X 17 takes us back to a time when the issue was still thought of in terms of, say, 'the prior of Segovia' and 'the prior of Spain', and that age was past by 1225.

X 20-23 cover small points of liturgy not dealt with in II 1; they would have been inserted there if they had been devised in 1220. Liturgical historians might be able to identify a more precise context for them, but, so far as I can see, they could have been added at any time. The Penitents provide a deadline (1228?) for X 20-21, and X 22-23 may have been suppressed (in 1228?), so an early date is plausible.

There are good reasons for dating X 1, X 6 and X 17 before 1225, some considerations favouring a similar date for X 22-23, and, it appears, nothing to exclude an equally early date for X 2-4, 10-14, 16 and 20-21. We do not know how much was expelled from the constitutions in 1228, but if these extravagantes are a sample of the sort of thing which the chapters of 1221-1224 were tacking on at the end, the capitulars of 1225 were right to foresee that the constitutions would soon become intolerably overloaded. Most of the issues involved would, in later practice, merit only a capitular admonition, not a change in the constitutions.

If X 8 is read as meaning no more than it says, it too is an admonition before its time and can be dated to 1221-1224. It is not clear how quickly the Dominicans and Franciscans came to be seen as kindred orders, but it is suggestive that, when they first arrived in London in 1224, the Franciscans stayed with the Dominicans.⁴⁴¹ If X 8 was intended to counteract the state of feud which developed between the two orders, it should probably be dated rather later: things had got so bad by 1233 that systematic measures were introduced to keep the peace (MOPH III 5.16-20), but I doubt if there was sufficient antagonism to require legislation before 1225; on this view, then, X 8 might be dated after 1228. But the more innocent interpretation, with the possibility of an earlier date, is at least as plausible.

Since *de prouincia* is a peculiar way of saying 'from any province', I suspect that X 19 was conceived as a ban on the province of Provence sending more than three students to Paris (*de Prouincia*); if so, it could be very primitive, and it should certainly not be in the constitutions. Until Roland of Cremona arrived in Toulouse,⁴⁴² it is more than likely that the province, following the

⁴⁴¹ Eccleston, *De adventu fratrum minorum*, ed. cit. 3, 8, 11. J. Moorman apparently accepted Angelo Claren's story that Francis was so shocked by the *domus* of the Franciscans in Bologna in 1221 that he went to stay with the Dominicans instead (*History of the Franciscan Order*, Oxford 1968, 50-51); but it is decisively refuted by the testimony which Thomas of Celano reports in his second life of Francis, which shows that Francis did not even go to Bologna (*Analecta Franciscana* X 166 #58).

⁴⁴² Pelhisson gives the impression that he was there by 1231 (J. Duvernoy, ed., *Guillaume Pelhisson, Chronique*, Paris 1994, 40-44), but he can hardly have arrived before 1230 if it is true that he graduated in Paris 'in absentia magistrorum' (H. Denifle - E. Chatelain, *Chartularium Universitatis Parisiensis* I, Paris 1899, 253), i.e. during the 'strike' of 1229-1231 (on which see H. Rashdall, *The universities of Europe*, new ed. Oxford 1936, I 334-339).

precedent set by Dominic in 1217, tended to regard Paris as its regular study-house, at least for potential *doctores*. If this is what X 19 originally meant, it can surely be dated to 1221-1224. However, the situation changed once the Dominicans had acquired their own university chairs in the faculty of theology in Paris through Roland's graduation in 1229/1230 and John of St Giles's entry into the order;⁴⁴³ and provinces might want to send as many students there as possible; this would provide the most natural context for the re-interpretation of X 19, or for its inchoation some time in the early 1230s if it always referred to provinces in general.

X 5's reference to conventual priors attending general chapters could be related either to the order's primitive practice or to the more evolved situation reflected in II 12. In so far as it concerns provincial chapters, it looks like a step in the direction of II 1c, or possibly a comment on it (1c should not be read as allowing priors to bring anyone to chapters in addition to their elected *socii*); if it pre-existed 1225 or was created in 1225, we should have expected it to be incorporated in II 1. If, as I have argued, *1c was inserted in 1228, X 5 must come later. If it was an earlier version of 1c, it must be dated c.1231, to allow for 1c to come later; if it was a comment on 1c, it must be dated to 1232-1235.

X 15 takes it for granted that there will always be Dominicans at the papal curia. Dominic set a precedent when he left William of Monferrato with the pope in 1219/1220 (AFP 66 [1996] 115-120), but there does not seem to have been any plan to keep a man regularly at the curia. In the 1230s curial Dominicans certainly served as an important link in the order's communications: in 1234 it was Raymund of Penyafort and Geoffrey who told Jordan and the Strasbourg brethren respectively that Dominic had been canonized (Jordan, *Ep.* 43), and it was Geoffrey and another papal penitentiary who informed the brethren in Paris of Jordan's death in 1237 (MOPH I 130). I suspect that we should not date X 15 before the early 1230s.

X 18 reflects an educational system too advanced to be attributed to 1221-1224; it also presupposes the suffrages prescribed in

⁴⁴³ John was a regent master when he became a Dominican shortly after Roland's inception, probably in 1231 (cf. Scheeben, QF 35 [1938] 123 n.5). Perhaps in 1229/1230 Robert Bacon entered the order as a Master of Theology in Oxford (cf. A.B.Emden, *Biographical Register of the University of Oxford*, Oxford 1957, 87), but no Dominican seems to have incepted there before Richard Fishacre c.1240 (R.J.Long-M.O'Carroll, *The Life and Works of Richard Fishacre OP*, Munich 1999, 24).

II 36b, which seem to belong to a text which cannot be dated earlier than 1225. It is presumably not part of the 1234 *ordinatio studii*, but we may well imagine that it was not until the early 1230s that Dominican education had become structured enough for rules like X 18 to be introduced, and for it to be both appropriate and feasible to envisage an *ordinatio studii* for the whole order.

The dating of most individual extravagantes remains uncertain, but we have solid reasons for believing that it is a genuine feature of PC to have extravagantes between II 34 and the *regula conversorum*; and there is much to be said for, and, it seems, no serious objection against the hypothesis that they took shape essentially in 1221-1224, with a few additions from 1231-1235. X 9 does not belong among them, but there appear to be no grounds for disputing Rodez's placing of the others, except that their sequence is to some extent accidental and due to random insertion of marginal additions.⁴⁴⁴

If this is the correct interpretation of the extravagantes, it means that, except where inherited legislation was being organically developed (as when *9c was emended and *11a and *13a added in 1222, and when *1c was rewritten between 1231 and 1235), the chapters of 1221-1224, and probably those of 1231-1235 as well, appended new regulations at the end of PC and did not attempt to insert them systematically into the pre-existing text. This provides an extra argument in favour of attributing to the chapters of 1225 or 1228 any fully integrated innovations consisting of new constitutions which could have been left to stand on their own, and which are not in the acta of 1236, such as *1c, 1d, *1e, 1gh, 4ac, 6b, 9e, *11f, 12, 15bc, 26b, 27cd, (31f), 32a, 33b, 34b.

4. *Some conclusions*

At the end of this laborious exercise, we have quite a good idea of how the second distinction took shape.

The 1220 chapter implemented the programme laid down for it and devised legislation on chapters (some of it applicable to provincial and general chapters, some restricted to general chap-

⁴⁴⁴ There is no guarantee that even the original series had not suffered from this in Rodez's ancestor.

ters), study and preaching; it also provided some basic rules for the 'sending', government and economy of convents.

The chapters of 1221-1224 engaged in what was soon considered to be excessive constitution-making. We do not know how much of their legislation fell victim to the Most General Chapter's pruning in 1228, but it looks as if we have at least a sample of it in the *extravagantes*. The most substantial development occurred in 1222, in response to Dominic's death and the need to elect his successor.

Provinces came of age, constitutionally, in 1225. Provincial chapters were made responsible for choosing the diffinitors of general chapters, whether these were provincial priors (henceforth to be elected by the provincial chapter) or specially elected brethren. This necessitated the division of what had previously been united legislation on diffinitors, so a whole new section was created on diffinitors at provincial chapters. The 'bi-cameral' system of general chapters which was introduced at the same time provided the opportunity to slow down the process of constitution-making and, at least implicitly, make a distinction between constitutions and other kinds of capitular edict.

As the order found its feet, certain tensions became apparent which called for an emphatic response; to this end, a special chapter was convened in 1228. This was not just three chapters in one; although it was later identified as the first Most General Chapter, it had a quite unique authority: as the preamble makes clear, the brethren in the provinces formally empowered their representatives to make, unmake or alter constitutions, and gave them the right to take decisions which no subsequent chapter could overturn, not even a Most General Chapter. The order was really attempting to take stock of itself and equip itself with a firm body of law to which all provinces and individuals owed allegiance.

We must infer from the *acta* of 1228 what the fundamental points at issue were. One, probably, was poverty—the chapter reaffirmed the option made in 1220; another, certainly, was responsibility for nuns, and the chapter took a strong line against anyone trying to get more nuns committed to the order's charge. We do not know how much, if anything, was removed from the constitutions in 1228, but several loose ends were tied up, especially with regard to provinces; and the 'minor' provinces were drawn more fully into the running of the order.

We have found little to ascribe to the years between 1228 and the Most General Chapter of 1236, which suggests that the 1228

chapter had been effective. The most important innovation that can be identified is the *ordinatio studii* of 1234, which was perhaps not introduced as a constitution, but was confirmed in 1236; it makes sense to believe that it was in the early 1230s that the order began to consolidate its educational system, especially as it now had its own Masters of Theology in Paris. It was also probably in these years that the composition of the provincial chapter was finally settled.

A Most General Chapter was held in 1236, but its acta do not suggest that it was a response to any sort of crisis. Its main concern seems to have been to tidy up some details in the order's procedures (the placing of houses, provincial boundaries, elections, the conditions for a Most General Chapter etc.). We do not know how or when it was summoned, but it may have been Jordan's personal decision to hold a Most General Chapter in 1236, perhaps because he had been forced by ill health to miss the chapters of 1234 and 1235 (Scheeben, QF 35 [1938] 73).

The evolution of Dominican law on provinces is entirely consistent with our enquiry into their historical development in last year's article. When the 1220 chapter met, there were regional superiors in Spain, France and Provence, and Dominic himself was filling a similar rôle in Italy, but no title had emerged except 'prior of the preachers in Spain (France, Provence)'; the only generic term which the capitulars could think of, apparently, was inspired by Lateran IV's constitution on regional chapters, 'piores prouinciarum uel regnorum', from which an even more awkward indefinite singular was generated, 'prior prouinciarum uel regnorum'. 'Prior prouincie' seems to have been used in 1221, when Jordan was appointed 'prior of the province of Lombardy', but by 1225 *prior prouincialis*, with the corresponding possibility of *prior conuentualis*, had already become normal.

We have found no incentive to regret the suggestion that *magister ordinis*, together with *prior* and *subprior*, were given official standing by being used in the constitutions of 1220. There is evidence of *prouincialis* emerging as a distinct title by 1236, but the text in each case is open to doubt.

Until the mid 1220s provincial structures were undeveloped or scarcely present at all in some territories, so it is not surprising that we find no trace of any detailed legislation on provinces in the earliest stratum of the constitutions. Provincial chapters received their essential charter in 1225, but it seems to have been left until later to determine exactly who was to go to them, and, possibly, how fre-

quently they were to be held; the first question no doubt became more pressing as convents became more numerous.

The rôle of the Master seems to have been taken for granted, as it received no constitutional clarification; and the authority of provincials is defined simply by reference to that of the Master (II 16a). It appears to be more important that there should be a Master than that he should always be within reach; even the general chapter can go ahead without him, provided that there *is* a Master (II 7e, 11c). In part, this presumably reflects an awareness that, between 1216 and 1220, the order had been held together by the fealty owed by all the brethren to Dominic, a situation perpetuated in the formula of profession (I 16), which is nothing but a promise of obedience to the Master. The preamble and II 10a show a clear sense that power resides primarily in the people (the brethren); but we should not underestimate the monarchical aspect of early Dominican government—it was on the authority which Dominic had from the pope that the diffinitors of the general chapter were given power over the order, including the Master himself.

Annual chapters were apparently regarded at first as an adequate alternative to the customary ecclesiastical procedure whereby elected officials were confirmed by higher prelates. Instead of this, the order seems to have given the general chapter the right routinely to dismiss or confirm (i.e. not dismiss) priors of convents or provinces; with regard to conventual priors, provincial chapters may have had the same power from the outset. Since the general chapter could even dismiss the Master, he too was, in this sense, confirmed by not being dismissed. II 24a provides for a more conventional confirmation of conventual priors, and this probably soon became normative. II 15b and especially 4a suggest that the same thing happened with regard to provincials, but in their case we may wonder how important confirmation was at first: until 1258 (MOPH III 90.8-16) there was no provision for confirming provincials during an interregnum between Masters, and 'confirmation or removal' by the general chapter remained in the constitutions as the primary procedure, though ('nichilominus') provincials could be confirmed by the Master.⁴⁴⁵

⁴⁴⁵ The text in the printed constitutions gives pride of place to confirmation by the Master, so that 'confirmation or removal' by the general chapter refers solely to its response to the routine vote on the retention of the provincial; so far as I can see, this text was created by Bandello in his 1505 edition of the constitutions, f.xii^f, since the old text survived into 15th-century manuscripts, and there does not seem to be any evidence that any chapter had changed it in the interim.

No procedure was envisaged for confirmation of the Master except by annual non-dismissal, but the Most General Chapter of 1236 seems to have been conscious that this was an unusual situation; its solution was, in effect, to give the constitutions the power to confirm: the candidate who won an absolute majority was Master 'ui talis electionis et huius constitutionis' (II 11a). We may defer until later a discussion of subsequent papal comments on the order's practice in this regard.

The order committed itself in 1220 to an ambitious educational ideal, which meant that it had an urgent need of *doctores* (cf. II 16c). Before 1236, though probably not before the 1230s, it was able to insist on a qualification of at least four years' study for its *publici doctores* (II 30a), and it had teachers and students scuttling between provinces with sufficient frequency to need their own legislation (II 16d, 28c; X 18). All these men needed books, so disputes over ownership were an ever-present risk; the constitutions of 1220 high-mindedly refused to let chapters themselves become involved 'cum preponenda sint spiritualia temporalibus' (II 21c), but before long a more realistic approach appears, and principles begin to be laid down to determine ownership and regulate the use of community funds in the acquisition of books (X 2, X 18).

With regard to preaching too we can observe how the order's first fervour became tempered by experience. In 1220 it was concerned about the *gratia predicationis* of potential preachers (II 20); the mood was changing by the time it insisted on a minimum period of theological training and the assurance that they would not cause scandal (II 31ab).

It rather looks as if the term *predicator generalis* was introduced in 1228 (in 1d).

Chronological résumé

- 1 1ab: 1220, revised 1225. 1c: 1228, revised 1231-1235. 1d: 1228. 1e: 1228, revised 1236. 1f: 1236. 1gh: 1228. 1i: 1236.
- 2-3 2-3: 1225.
- 4 4a: 1228. 4b: 1225. 4c: 1225 or 1228.
- 5 5a: 1225. 5b: 1228. 5c: 1225. 5d: 1236.
- 6 6a: 1228. 6b: 1225.
- 7 7a: 1220, revised 1225 and 1228. 7b: 1220, revised 1225 and 1228. 7cd: 1228. 7e: 1220, revised 1225. 7f: 1220.
- 8 8a: 1220, revised 1225. 8b: 1228.

- 9 9a: 1220. 9b: 1220, revised 1228 and 1236. 9c: 1220, revised 1222 and 1225. 9d: 1220. 9e: 1228.
- 10 10a: 1225. 10b: 1228. 10c: 1225, revised 1228 and 1236. 10d: 1228.
- 11 11a: 1222, revised 1228 and 1236. 11b: 1228. 11c: 1220, revised 1225. 11d: 1228. 11e: 1236. 11f: 1228, revised 1236.
- 12 12: 1228.
- 13 13a: 1222, revised 1225. 13b: 1225. 13c: 1220, revised 1225.
- 14 14ab: 1228.
- 15 15a: 1220, revised 1225. 15bc: 1228. 15de: 1236.
- 16 16a: 1220, revised 1228. 16b: 1236. 16c: 1220. 16d: 1228. 16e: 1220, revised 1228. 16fg: 1220.
- 17 17: 1220, revised 1225.
- 18 18: 1220.
- 19 19a: 1220, revised 1225. 19bc: 1220.
- 20 20: 1220.
- 21 21abcde: 1220. 21f: 1225. 21g: 1236.
- 22 22: 1236.
- 23 23a: 1220. 23bc: 1236.
- 24 24a: 1220, revised 1228. 24b: 1236. 24c: 1228, revised 1236. 24d: 1236.
- 25 25: 1220, revised 1228.
- 26 26a: 1220. 26b: 1228.
- 27 27abcd: 1228.
- 28 28ab: 1220. 28c: (1234) 1236.
- 29 29abc: (1234) 1236.
- 30 30a: (1234) 1236. 30b: 1236.
- 31 31ab: (1234) 1236. 31cde: 1220. 31f: 1220, 1225 or 1228.
- 32 32a: 1228. 32b: 1220.
- 33 33a: 1220. 33b: 1228.
- 34 34a: 1220. 34b: 1228. 34cd: 1220.
- 35 35abc: 1228.
- X The extravagantes as a group go back to 1221-1224. X 7 was added in 1236, probably to replace X 6. X 5 was added in 1231-1235. X 9 should not be among the extravagantes. X 15 and X 18 go back to 1231-1235. Otherwise they can all be dated to 1221-1224. X 4, X 22-23 were perhaps suppressed in 1228.
- 36 It is not certain that the whole of 36 was added at the same time, but it could all go back to 1225; it is also uncertain where it should go.

APPENDIX

The text of PC II: a résumé of its development

In the course of the article I have suggested how the second distinction of the primitive constitutions evolved. Here, by way of a résumé, I offer a schematic reconstruction of what it contained at each stage in its development from 1220 to 1236, but, of course, it is no more solid than the arguments and suggestions on which it is based.

Although I am not trying to bring dinosaurs back to life, I, like the scientists of Jurassic Park, have filled in some missing bits by guessing; they are identified by angular brackets (<...>). Where I have guessed the content as well as the wording, I indicate the area of extra doubt with a Spanish double question mark (<¿...?>); where I am not prepared even to guess at the content, I leave question marks (<???>). I have also used the double question mark to indicate bits of text which may or may not have been present at the relevant time. A number with an asterisk designates an earlier version of the passage identified by the number, and, if there are several earlier versions, the second is identified by a suprascript 2 as well as an asterisk; thus, for instance, there were two earlier versions of 11a, the first being *11a, the second *11a². I have ignored the *regula conversorum*.

I have taken the *extravagantes* as strong evidence that the chapters of 1221-1224 made new constitutions without giving them a place within the 1220 text. Apart from its creation of 'de anniuersariis' (36), the 1225 chapter seems to have been preoccupied with the implications of its new system of diffinitors at general chapters. Although there may have been legislation of which we know nothing because it was excised in 1228, we can estimate fairly confidently how much of the Rodez text goes back to 1220, 1221-1224, and 1225, and we can generally get a tolerably good idea of its form.

If I am right that 6a goes back to 1225, the next legislative changes must have been made in 1228. The existence of *extravagantes* which seem to derive from 1231-1235 suggests that the chapters in those years followed the practice of 1221-1224 and did not insert new constitutions into the pre-existing text, though they may have made changes to it. If this is correct, then much of the legislation of 1228 can be identified with a fair degree of certainty, though some of the fine-tuning of earlier legislation may have been done in 1231-1235 rather than in 1228.

Since we have the *acta* of 1236, we are, on the whole, well informed about the innovations made by the second Most General Chapter.

1220

- (*13c) <¿Omnes priores ordinis nostri? ueniant singulis annis ad capitulum generale, quod in quarta feria post pentecosten incipiat sollempniter celebrari.> Uno anno Parisius, alio anno Bononie celebretur.
- (*15a) Prouinciarum priores uel regnorum <a capitulo generali instituantur.>
- (*16a) <Talis? autem prior eandem habeat potestatem in sua prouincia uel regno quam et magister ordinis, et eadem sibi reuerentia a prouincialibus exhibeatur que magistro exhibetur, nisi magister presens extiterit.>
- (16c) Curet prior prouinciarum uel regnorum ut, si habuerit aliquos utiles ad docendum qui possint in breui apti esse ad regendum, mittere ad studendum ad loca ubi uiget studium.
- (*16e) Capitulum prouinciale in festo sancti Michaelis in loco statuto in prouincia uel regno ubi prior prouinciarum uel regnorum cum consilio diffinitorum elegerit celebretur. <Capitulum autem prouinciale appellamus ¿prios conuentuum cum sociis suis et predicatoribus? in singulis prouinciis uel regnis.>
- (16f) Nullus religiosus alterius ordinis uel professionis nullusque secularis cuiuscumque ordinis uel dignitatis uel professionis uel uite secretis uel tractatibus capituli aliquomodo admittatur.
- (*1a) In singulis capitulis quatuor fratres de ¿discretioribus et? magis ydoneis, per disquisitionem <¿trium fratrum de capitulo fide dignorum?>, hoc modo eligantur.
- (*1b) Predicti siquidem tres uoluntates singulorum singulatim et seorsum aliquantulum in eadem domo coram oculis omnium disquirant et conscribant fideliter, et sic incontinenti et in eodem loco, antequam fratres discedant uel adinuicem colloquantur, scripturam publicent in medium, et in quibus maior pars capituli numero concordauerit illi pro diffinitoribus habeantur. Si autem partes fuerint pares, tunc eodem modo disquisitionis uoluntatum unus eligatur a capitulo, et cui parti ille consenserit illi pro diffinitoribus habeantur. Quod si adhuc discordauerint, alius eligatur et sic deinceps donec in parte altera maior possit numerus inueniri.
- (*7a) <Predicti igitur diffinitores cum maiori prelato> omnia diffinient et constituent et tractabunt.
- (*7b) Quod si <partes fuerint pares>, illorum sententia preualebit in quorum partem <maior prelatus> declinauerit; <alias optineat sententia plurium.>
- (*7e) Quod si <maiolem prelatus> abesse aliqua occasione contigerit, nichilominus predicti diffinitores in diffinitione procedant.
- (7f) Quod si non omnes in unam sententiam concordauerint, forma superius posita teneatur.

- (*8a) <Generalis autem capituli diffinitores> plenariam habeant potestatem super excessum magistri ordinis corrigendum uel de eo penitus remouendo. Et ipsorum sententia tam in hiis quam in aliis inuolabiliter obseruetur, ita quod ab ipsorum sententia a nemine liceat appellari.
- (9a) Diffinitores predicti excessum magistri seorsum inter se corrigant et emendent.
- (*9b) Si autem in tantum excesserit quod remoueri debeat, tunc non passim et indifferenter procedant, sed cautela maxima et inquisitione diligentissima. Etiam si fuerit negligens?, inutilis et remissus, et tunc antequam deponatur inducatur a diffinitoribus ut cedat et sibi aliquem locum eligat ubi possit honeste conuersari.
- (*9c) Magistro autem a magisterio remoto, priores <prouinciarum uel regnorum> in omnibus quousque magister fuerit electus plenariam ipsius optineant potestatem, et eis omnes tamquam magistro teneantur obedire.
- (9d) Si autem inter se medio tempore super aliquo discordauerint, optineat sententia plurium. Quod si partes fuerint pares, assumant unum de fratribus illis qui uocem habent in electione magistri, et cui parti ille concordauerit uigorem optineat firmitatis. Quod si adhuc discordauerint, iterum alius eligatur, et sic deinceps donec in parte altera maior possit numerus inueniri.
- (*11c) Et hoc ita fiat ut semper magistrum habeat capitulum, antiquum uel nouum, presentem uel absentem, <quando> incipit sollempniter celebrari, ne acephalum iudicetur.
- (16g) Et ea que dicta sunt de generali capitulo in secunda feria post pentecosten debent inchoari.
- (*17) Cum autem fratres in capitulum uenerint, primo omnium deuote inuocetur spiritus sanctus a quo filii dei aguntur, et dicatur uersus Emitte spiritum tuum et creabuntur, cum collecta de spiritu sancto. Deinde, residentibus fratribus et loca sua tenentibus omnibus ut uerbo dei celi firmentur, uerbum dei in commune fiat. Sermoni interesse poterunt qui ad edificationem interesse uoluerint. Finito sermone, quia indigentibus quantocius subueniendum est, obitus fratrum in anno defunctorum in communi recitentur, et fiat eis communis absolutio, et dicatur pro eis psalmus De profundis. Et, si littere dande sunt, dentur et recipiantur et eis cum consilio suo tempore respondeatur. Et sic omnes qui non sunt de capitulo egrediantur. Quibus egressis, qui missi sunt ad excusandos eos qui non adsunt, ad quid uenerint loquantur. Deinde culpe audiantur.
- (18) Post hec uisitatores presentes uerbo, absentes scripto, referre debent de hiis quos uisitauerint fratribus, si in pace continui, in studio assidui, in predicatione feruentes, que de eis fama, quis fructus, si in uictu et uestitu et in aliis secundum tenorem institutionum ordo

seruetur. Quod si alicubi minus inuenerint, ille ad quem pertinet hec audiens surgat sponte et ueniam petat et condignam penitentiam humiliter expectet.

- (*19a) <Post hec predicto modo eligantur fratres ad uisitandos conuentus in singulis regnis siue prouinciis>, qui excessus priorum et fratrum audiant et emendent, absque constitutione et status domus mutatione. Loca uero sua ubique teneant, nisi in capitulo dum ab eis sue correctionis officium exercetur, quod in tribus diebus continuis terminetur. Si qua autem graui et periculosa inuenerint, licet correcta fuerint, nichilominus generali capitulo studeant denuntiare.
- (19b) Priores autem seu doctores in uisitatores nullatenus eligantur.
- (19c) Qui uero in presenti anno uisitare debuerant et non sicut oportuit fecerint, culpam suam dicant et digne uindictae subiaceant. Tunc absentibus qui adesse debuerint, et hiis qui peccauerint nec satisfecerint, penitentia scripta mittatur.
- (20) Post hec qui ydonei ad predicandum ab aliquibus estimantur presententur, et illi qui de licentia et mandato sui prioris necdum de licentia maioris prelati uel capituli predicationis officium receperunt. Quibus omnibus diligenter seorsum examinatis ab ydoneis personis ob hoc et ob alias capituli questiones institutis, et fratribus cum quibus conuersati sunt studiose inquisitis de gratia predicationis quam eis deus contulerit, et studio, et religione, et caritatis feruore, proposito ac intentione, et hiis de eis testimonium perhibentibus, consensu et consilio maioris prelati approbabunt quicquid ipsi utilius iudicabunt, utrum uidelicet ipsi fratres adhuc debeant in studio morari uel cum fratribus prouectoribus in predicatione exercitari, uel ydonei sint et utiles per se predicationis officium exercere.
- (21a) Tunc qui habent questiones facere, siue proprias siue communes, ad ordinem uel ad predicationem pertinentes, proponant ordinate unus post alium et ab aliquo fratre diligenter notentur, ut suo loco et tempore ab hiis qui ad hoc statuti sunt soluantur et terminentur. Et uno stante et loquente, alius non loquatur.
- (21b) Et ut in exeundo modus seruetur, nullus exeat sine licentia et necessitate. Egressus autem non discurrat, sed expleta necessitate citius reuertatur.
- (21c) Si qua uero dissensio inter fratres ordinis nostri, quod absit, emerit de libris uel aliis rebus, cum preponenda sint spiritualia temporalibus, non inde agatur in capitulo, sed fratres eligantur qui in hoc periti fuerint et post refectionem in loco competenti extra capitulum discussa ueritate litem dirimant et inter fratres pacem restituant.
- (21d) De solutione et terminatione questionum, de correctione fratrum, de modo penitentiarum, et de predicatoribus et eorum sociis ob predicandum et studendum mittendis, et quando et ubi et per quantum tempus moraturis, prelati maior cum aliis qui ad hoc instituti sunt

- tractabit. Et quicquid inde donante spiritu sancto ordinauerint, capitulum uniuersaliter et unanimiter et deuote suscipiat. Nullus murmure, nullus reclamet, nullus contradicat.
- (21e) In fine communis fiat confessio et absolutio, perseuerantibus benedictio, apostatis et profugis anathematis maledictio.
- (23a) Conuentus citra numerum duodenarium, et sine licentia generalis capituli, et sine priore et doctore, non mittatur.
- (*24a) Priores a suis conuentibus eligantur.
- (*25) Prior autem de consilio discretorum fratrum instituat subpriorem, cuius officium erit habere diligentiam et curam circa conuentum, et corripere delinquentes, et in aliis quantum prior ei assignauerit uel permiserit. Nec in cotidianis capitulis accusetur, nisi aliquando pro aliquo maiori excessu, secundum quod priori uisum fuerit, proclametur.
- (26a) Possessiones seu redditus nullo modo recipiantur.
- (28a) Quoniam circa studentes diligens est adhibenda cautela, aliquem fratrem specialem habeant sine cuius licentia non scribant quaternos nec audiant lectiones, et que circa eos in studio corrigenda uiderit corrigat; et, si uires excedant, prelato proponat.
- (28b) In libris gentilium et philosophorum non studeant, etsi ad horam inspiciant; seculares scientias non addiscant nec etiam artes quas liberales uocant, nisi aliquando circa aliquos magister ordinis uel capitulum generale uoluerit aliter dispensare, sed tantum libros theologicos tam iuuenes quam alii legant.
- (31c) ¿Et? hii qui apti sunt, cum in predicatione exire debuerint, eis socii dabuntur a priore, secundum quod moribus eorum et honestati iudicauerit expedire. Qui recepta benedictione exeuntes ubique, tamquam uiri qui suam et aliorum salutem procurare desiderant, honeste et religiose se habeant, sicut uiri euangelici, sui sequentes uestigia saluatoris, cum deo uel de deo secum uel proximis loquendo. Vitabunt suspiciosi comitatus familiaritatem.
- (31d) Euntes uero ad iam dictum predicationis officium exercendum uel alias itinerantes aurum, argentum, pecuniam et munera, excepto uictu et uestitu et necessariis indumentis et libris, nec accipient nec portabunt.
- (31e) Omnes qui ad officium predicationis uel studium sunt deputati nullam habeant curam seu administrationem temporalium, ut expeditius et melius iniunctum ministerium sibi spiritualium ualeant adimplere, nisi forte ubi non sit aliquis alius qui necessaria procuraret, cum in necessitatibus diei presentis oporteat aliquando occupari.
- (31f) ¿Placitis et causis nisi pro fidei negotiis non intersint.?
- (32b) Cum fratres nostri dyocesim alicuius episcopi ad predicandum intrauerint, primo si poterunt episcopum illum uisitabunt ut secun-

dum consilium eius in populo fructum faciant quem facere intendunt; et quamdiu in eius episcopatu fuerint, ipsi in hiis que contra ordinem non fuerint deuote obedientes erunt.

- (33a) Caueant fratres nostri ne ponendo os in celum suis predicationibus religiosos uel clericos scandalizent, sed ea que in ipsis emendanda uiderint obsecrando ut patres seorsum emendare procurent.
- (34a) Predicatores uel itinerantes, cum in uia existunt, officium suum dicant prout sciunt et possunt, et sint contenti officio ecclesiarum ad quas quandoque declinant, uel etiam agant officium uel audiant apud episcopos uel prelatos uel alios, secundum mores eorum cum quibus aliquando conuersantur.
- (34c) Prior in ordine sit prior in uia, nisi forte predicatori adiungatur, uel cum egrediuntur aliter prelatum cum ipsis ordinauerit.
- (34d) Socius datus predicatori ipsi ut priori suo in omnibus obediat.

1221-1224

There is excellent reason to believe that the chapters of these years were responsible for the extravagantes as a group, certainly including X 1, X 6 and X 17, probably also X 2, X 8, X 11, X 12, X 14, X 19, and quite possibly X 3-4, X 10, X 13, X 16, X 20-23 as well, though not necessarily in the order in which they appear in Rodez.

1222

In 1222, the beginning of *9c was modified to read 'Mortuo autem magistro uel a magisterio remoto' (*9c²), and *11a and *13a were created and probably inserted after 9d; otherwise they were integrated into the text in 1225.

- (*11a) ¿Forma electionis hec est.? Si gratia inspirante in unum aliquem omnes unanimiter concordauerint, ille uerus magister ordinis habeatur. Cum uero per disquisitionem uel scrutinium uoluntatum procedet electio, <¿tres fratres de capitulo fide digni?> uoluntates singulorum singulatim et seorsum aliquantulum, ¿tamen? in eadem domo coram oculis omnium, disquirant et conscribant ¿fideliter?. <Si partes fuerint pares, ???>. Si uero in partes inequales se diuiserint, ille in quem <¿maior pars? concordauerit pro magistro habeatur>.
- (*11c) Et hoc ita fiat *et cetera*.
- (*13a) ¿Statuimus ut? si magistrum mori contigerit, prior qui propinquior illi loco extiterit ubi magister decesserit Parisiensi uel Bononiensi conuentui, sibi propinquiori scilicet, cum festinatione denuntiet, et alteruter istorum conuentuum cui primo denuntiatum fuerit teneatur similiter reliquo nuntiare. Parisiensis prouincialibus Yspanie, Prouincie, Anglie, Theutonie; Bononiensis uero Ungarie, Romane prouincie et aliis quibus poterit teneatur quantocius intimare.

The 1224 chapter thus left the second distinction looking like this: *13c, *15a, *16a, 16c, *16e, 16f, *1ab, *7abef, *8a, 9a, *9b, *9c², 9d, *11a, *11c, *13a, 16g, *17, 18, *19a, 19bc, 20, 21abcde, 23a, *24a, *25, 26a, 28ab, 31cde, (31f?), 32b, 33a, 34acd, then:

- (X 1) Statuimus ne fratres nostri in predicationibus suis dari uel colligi pecuniam admoneant pro domo uel aliqua persona speciali.
- (X 2) Item nullus faciat sibi scribi libros de rebus domus nisi ad comunem utilitatem.
- (X 3) In diebus dominicis et festis precipuis a quaternis scribendis se contineant.
- (X 4) Item in diebus dominicis seruilia opera, ut lapides portare, ligna aggregare et similia, fieri prohibemus.
- (X 6) Item nullus decetero petitiones diffinitoribus porrigat que per capitulum suum non fuerint approbate.
- (X 8) Fratres minores sicut et nostri caritatiue et ylariter recipiantur et secundum facultatem domus pie et honeste procurentur.
- (X 10) Fratres non sint dispensatores alienarum rerum uel pecuniarum, nec fideicommissarii; depositarii esse possunt.
- (X 11) Priores utantur dispensationibus sicut et alii fratres.
- (X 12) Prior priorem superuenientem honoret. Hospes per ciuitatem sine consilio suo non discurrat nec moram faciat.
- (X 13) Bote extra septa monasterii non portentur.
- (X 14) In inclinationibus conformemur moribus eorum ad quos declinamus.
- (X 16) Fratres non recipiant a mulieribus munuscula nec dent, et maxime confessores.
- (X 17) Si quid petatum fuerit ab uno priore, non petatur ab alio nisi causa exposita, sed nec si a maiore petierit uadat ad minorem.
- (*X 19) Tres fratres tantum mittantur ad studium Parisius de Prouincia.
- (X 20) In ferialibus diebus iacemus prostrati a Sanctus usque ad Agnus, in festis uero trium uel nouem lectionum ab eleuatione corporis Christi usque ad Pater noster. In prostrationibus idem seruamus in festo trium uel nouem lectionum.
- (X 21) Ad Salue sancta parens et ad Veni sancte spiritus flectamus genua.
- (X 22) Item si in ferialibus diebus dicimus missam de cruce, cadimus ad terram, ad missam de beata uirgine uel de spiritu sancto non.
- (X 23) Item numquam terminamus missam cum alleluia.

1225

- (1a) Statuimus quod singulis annis in singulis capitulis prouincialibus Yspanie, Prouincie, Francie, Lombardie, Romane prouincie, Ungarie, Theutonie, Anglie, quatuor fratres de discretioribus et magis ydoneis a prouinciali capitulo, per disquisitionem prioris prouincialis et prioris et subprioris eiusdem loci ubi capitulum celebratur, uel, si unus defuerit, per disquisitionem duorum, hoc modo eligantur.

- (1b) Predicti siquidem tres, uel duo si tertius defuerit, uoluntates singulorum *et cetera*.
- (2) Predicti igitur diffinitores tractabunt omnia et diffinient cum priore prouinciali. Quod si in suis diffinitionibus in partes equales se diuiserint, illorum sententia preualebit in quorum partem prior prouincialis concordauerit; alias autem sententia plurium preualebit.
- (3) Isti autem quatuor diffinitores excessum prioris prouincialis confessi uel proclamati in capitulo prouinciali coram fratribus audiant et emendant, ei penitentiam iniungentes. Si autem, quod absit, incorrigibilis extiterit, ipsum usque ad capitulum generale suspendant ab officio prioratus, priorem loci ubi capitulum prouinciale celebratur loco eius substituentes, et excessum eius ad capitulum referant generale scripto communiter sigillato.
- (4b) Quod si ipsum abesse contigerit nec uicem suam alii commiserit, idem prior cum diffinitoribus capituli in celebratione procedat eiusdem.
- (4c) ¿Prior prouincialis etiam cum suis diffinitoribus in capitulo prouinciali semper locum determinet ubi sequens capitulum celebretur?
- (5a) Statuimus etiam ut per duos annos in dictarum octo prouinciarum capitulis aliquis de magis ydoneis a capitulo eligatur qui sit generalis capituli diffinitor. Cui socius competens a priore prouinciali et diffinitoribus assignetur ut, si medio tempore decesserit uel aliquo modo fuerit impeditus quod uenire non possit ad capitulum generale, ipso iure socius eius loco ipsius diffinitor habeatur.
- (5c) Tertio autem anno priores prouinciales duodecim prouinciarum generale capitulum celebrabunt.
- (6b) Et ut multitudo constitutionum uitetur, prohibemus ne aliquid de cetero statuatur nisi per duo capitula continua fuerit approbatum, et tunc in tertio capitulo immediate sequente poterit confirmari uel deleri, siue per priores prouinciales siue per alios diffinitores ubicumque illud tertium capitulum celebretur.
- (*7a²) <Predicti igitur> diffinitores cum magistro ordinis omnia diffinient et constituent et tractabunt.
- (*7b²) Quod si <partes fuerint pares>, illorum sententia preualebit in quorum partem magister ordinis declinauerit; <alias optineat sententia plurium>.
- (7e) Quod si magistrum abesse aliqua occasione contigerit *et cetera*.
- (7f) Quod si non omnes *et cetera*.
- (8a) Isti autem diffinitores plenariam habeant potestatem *et cetera*.
- (9a) Diffinitores predicti *et cetera*.
- (*9b) Si autem in tantum excesserit *et cetera*.
- (9c) Mortuo autem magistro uel a magisterio remoto, priores dictarum prouinciarum in omnibus *et cetera*.
- (9d) Si autem inter se *et cetera*.

- (10a) Predicti ergo priores prouinciales predictarum octo prouinciarum, singuli cum duobus fratribus in capitulo prouinciali electis, in quos ceteri ad electionem magistri faciendam compromittant,
- (*10c) ad capitulum ueniant generale ζ<et magistrum ordinis eligant secundum formam inferius positam>?.
- (*11a) ζForma electionis hec est.? Si gratia inspirante *et cetera*.
- (11c) Et hoc ita fiat ut semper in quarta feria pentecostes magistrum habeat capitulum, antiquum uel nouum, presentem uel absentem, quia tunc incipit sollempniter celebrari, ne acephalum iudicetur.
- (13a) Statuimus ut si ante festum sancti Michaelis magistrum mori contigerit, prior conuentualis uel prouincialis qui propinquior illi loco extiterit *et cetera*.
- (13b) Si autem post dictum festum magister decesserit, obitus magistri nichilominus denuntietur, ut supersedeatur illo anno a capitulo generali. Sequenti uero anno ibi capitulum celebretur ubi prius debuerat celebrari.
- (13c) Capitulum generale uno anno Parisius, alio anno Bononie celebretur.
- (15a) Statuimus ut prouinciarum priores uel regnorum in capitulo generali a magistro ordinis et diffinitoribus, premissa diligenti examinatione, confirmentur uel amoueantur. Nam eorum electio ad prouinciale capitulum pertinebit.
- (*16a) <Talis> autem prior *et cetera*.
- (16c) Curet prior prouinciarum uel regnorum *et cetera*.
- (*16e) Capitulum prouinciale *et cetera* ... <Capitulum autem prouinciale appellamus *et cetera*.>
- (16f) Nullus religiosus alterius ordinis *et cetera*.
- (16g) Et ea que dicta sunt de generali capitulo *et cetera*.
- (17) Cum autem in quarta feria fratres in capitulum uenerint *et cetera*.
- (18) Post hec uisitatores *et cetera*.
- (19a) Statuimus quod quatuor fratres ad uisitandam prouinciam in capitulo prouinciali predicto modo eligantur qui excessus priorum conuentualium et fratrum audiant et emendent, absque constitutione et status domus mutatione. Loca uero sua ubique teneant, nisi in capitulo dum ab eis sue correctionis officium exercetur, quod in tribus diebus continuis terminetur. Si qua autem grauia et periculosa inuenerint, licet correcta fuerint, nichilominus cum testimonio maioris partis capituli eiusdem generali capitulo studeant denuntiare.
- (19b) Priores autem *et cetera*.
- (19c) Qui uero in presenti anno *et cetera*.
- (20) Post hec qui ydonei ad predicandum *et cetera*.
- (21a) Tunc qui habent questiones facere *et cetera*.

- (21b) Et ut in exeundo *et cetera*.
(21c) Si qua uero dissensio *et cetera*.
(21d) De solutione et terminatione questionum *et cetera*.
(21e) In fine *et cetera*.
(21f) Et hec eadem forma in capitulo prouinciali obseruetur.
- (23a) Conuentus citra numerum duodenarium *et cetera*.
(*24a) Priores *et cetera*.
(*25) Prior autem de consilio *et cetera*.
(26a) Possessiones *et cetera*.
- (28a) Quoniam circa studentes *et cetera*.
(28b) In libris gentilium *et cetera*.
- (31c) ¿Et? hii qui apti sunt *et cetera*.
(31d) Euntis uero *et cetera*.
(31e) Omnes qui ad officium predicationis *et cetera*.
(31f) ¿Placitis et causis *et cetera*?
(32b) Cum fratres nostri dyocesim *et cetera*.
(33a) Caueant fratres nostri *et cetera*.
- (34a) Predicatores uel itinerantes *et cetera*.
(34c) Prior in ordine *et cetera*.
(34d) Socius datus predicatori *et cetera*.
- (X 1) Statuimus ne fratres nostri *et cetera*.
(X 2) Item nullus faciat sibi scribi *et cetera*.
(X 3) In diebus dominicis *et cetera*.
(X 4) Item in diebus dominicis *et cetera*.
(X 6) Item nullus decetero petitiones *et cetera*.
(X 8) Fratres minores *et cetera*.
(X 10) Fratres non sint dispensatores *et cetera*.
(X 11) Priores utantur dispensationibus *et cetera*.
(X 12) Prior priorem superuenientem *et cetera*.
(X 13) Bote extra septa *et cetera*.
(X 14) In inclinationibus conformemur *et cetera*.
(X 16) Fratres non recipiant *et cetera*.
(X 17) Si quid petatum fuerit *et cetera*.
(*X 19) Tres fratres tantum *et cetera*.
(X 20) In ferialibus diebus *et cetera*.
(X 21) Ad Salue sancta parens *et cetera*.
(X 22) Item si in ferialibus diebus *et cetera*.
(X 23) Item numquam terminamus *et cetera*.
- (36a) A festo sancti Dyonisii usque ad aduentum, pro anniuersario fratrum clericus psalterium, sacerdos tres missas, laici quingenta Pater noster.
(36b) Idem faciat quilibet fratrum pro defuncto fratre sui conuentus.
(36c) Idem fiat per totum ordinem pro magistro ordinis, et a comprouincialibus pro priore prouinciali defuncto.

- (36d) Idem etiam fiat pro uisitatores a domibus quas uisitare debet, si in uisitatione moriatur.
- (36e) Idem etiam fiat pro diffinitoribus generalis capituli siue prioribus prouincialibus siue aliis fratribus et eorum sociis, si eos in uia mori contigerit, quod fit pro magistro ordinis mortuo.
- (36f) Item in unaquaque prouincia pro fratre illius prouincie defuncto quilibet sacerdos celebret unam missam, et quilibet conuentus unam in communi, et unusquisque aliorum septem psalmos.
- (36g) Anniuersarium patrum et matrum tertia die post purificationem sancte Marie, anniuersarium benefactorum et familiarium tertia die post natiuitatem eiusdem est faciendum.

1228

- (1a) Statuimus quod singulis annis *et cetera*.
- (1b) Predicti siquidem tres *et cetera*.
- (*1c) Capitulum autem prouinciale appellamus <priores conuentuales cum sociis suis et predicatoribus generales>.
- (1d) Predicatoribus autem generales sunt qui per capitulum generale uel priorem prouincialem et diffinitores capituli prouincialis fuerint approbati.
- (*1e) Accusationi uero et correctioni professi post annum sue professionis poterunt interesse.
- (1gh) Et nullus accuset de auditu nisi dicat a quo audierit, sed ubique caueat ne malum quod audierit de alieno facto referat aliquatenus nisi dicat a quo audiuerit.
- (2) Predicti igitur diffinitores *et cetera*.
- (3) Isti autem quatuor diffinitores *et cetera*.
- (4a) Statuimus etiam ut, mortuo priore prouinciali uel amoto, prior conuentualis illius loci in quo prouinciale capitulum in sequenti anno fuerit celebrandum uicem eius optineat, donec prior eiusdem prouincie sit electus et confirmatus.
- (4b) Quod si ipsum abesse *et cetera*.
- (4c) Prior prouincialis etiam *et cetera*.
- (5a) Statuimus etiam ut per duos annos *et cetera*.
- (5b) Statuimus quod quatuor prouincie, scilicet Ierosolimitana, Grecia, Polonia, Dacia, habeant singulis annis diffinitores in singulis capitulis generalibus.
- (5c) Tertio autem anno *et cetera*.
- (6a) Statuimus autem et in uirtute spiritus sancti et obedientie et sub interminatione anathematis districte prohibemus ne priores prouinciales fratribus diffinitoribus aut fratres diffinitores prioribus prouincialibus per suas diffinitiones preiudicium aliquod audeant generare. Quod si facere attemptauerint, eadem districcione prohibemus ne in hoc eis aliquis presumat obedire.

- (6b) Et ut multitudo constitutionum *et cetera*.
- (7a) Isti autem duodecim diffinitores duobus annis, et duodecim priores prouinciales tertio anno, cum magistro ordinis omnia diffinient et constituent et tractabunt.
- (7b) Quod si in partes equales se diuiserint, illorum sententia preualebit in quorum partem magister ordinis declinauerit, si uero in partes inequales, optineat sententia plurium.
- (7c) Si autem per adiunctionem magistri partes fiant equales, unus eligatur secundum quod in electione diffinitorum prouincialium est statutum.
- (7d) Quod si ad capitulum aliquo casu prepediti predicti non omnes uenerint, illi quos ex ipsis uenire contigerit cum magistro ordinis omnia pertractabunt.
- (7e) Quod si magistrum abesse *et cetera*.
- (7f) Quod si non omnes *et cetera*.
- (8a) Isti autem diffinitores *et cetera*.
- (8b) Et si appellatum fuerit, friuola et nulla appellatio habeatur, appellationem enim fieri in nostro ordine sub interminatione anathematis penitus prohibemus, cum non uenerimus contendere sed potius delicta corrigere.
- (9a) Diffinitores predicti excessum magistri *et cetera*.
- (*9b²) Si autem in tantum excesserit quod remoueri debeat, tunc non passim et indifferenter procedant, sed cautela maxima et inquisitione diligentissima. Et non deponatur nisi pro heresi uel pro alio criminali peccato quod non possit sine magno scandalo ordinis tollerari. De quo etiam si legitime conuictus fuerit uel confessus, uel si adeo fuerit negligens, inutilis et remissus quod ordinis dissolutionem et destructionem inducat, et tunc antequam deponatur inducatur a diffinitoribus ut magistratui cedat et sibi aliquem locum eligat ubi possit honeste conuersari.
- (9c) Mortuo autem magistro *et cetera*.
- (9d) Si autem inter se *et cetera*.
- (9e) Precipimus autem in uirtute spiritus sancti ut nullus ante electionem magistri circa statum ordinis audeat aliquid immutare.
- (10a) Predicti ergo priores prouinciales *et cetera*.
- (10b) et quatuor priores prouinciales de superadditis prouinciis, scilicet Ierosolimitana, Grecia, Polonia, Dacia, singuli cum singulis ad hoc idem electis,
- (*10c²) ad capitulum ueniant generale. Qui postquam fuerint congregati in secunda feria post pentecosten, a prioribus conuentualibus illius prouincie et fratribus presentibus in loco in quo electio est facienda, in uno conclaui firmiter includantur, ita quod inde nullatenus ualeant egredi, nec eis ullo modo aliqua alimenta ministrentur, quousque magister ordinis secundum formam inferius positam sit electus.

- (10d) Et hoc tam ab electoribus quam a recludentibus precipimus firmiter obseruari, ita quod, si quis contraire presumpserit, ipso facto sit excommunicatus et penam grauioris culpe debitam sustinebit.
- (*11a²) Forma electionis hec est. Electoribus supradicto modo inclusis, si gratia inspirante in unum aliquem omnes unanimiter concordauerint, ille uerus magister ordinis habeatur. Cum uero per disquisitionem uel scrutinium uoluntatum procedet electio, ¿tres de prioribus qui inter alios primitus habitum nostre religionis susceperunt? uoluntates singulorum singulatim et seorsum aliquantum, ¿tamen? in eadem domo coram oculis omnium, disquirant et conscribant ¿fideliter?. <Si partes fuerint pares, ???>. Si uero in partes inequales se diuiserint, <ille in quem ¿maior pars? concordauerit pro magistro habeatur>.
- (11b) Quod si aliquem uel aliquos de electoribus contigerit non uenire, nichilominus tamen per eos qui aduenerint electio celebretur.
- (11c) Et hoc ita fiat *et cetera*.
- (11d) Et hec omnia que circa electionem magistri sunt instituta absque contradictione uolumus et firmiter precipimus obseruari. Quicumque autem ausus fuerit contradicere pertinaciter uel etiam rebellare, tamquam excommunicatus et scismaticus et destructor nostri ordinis habeatur, et quousque satisfecerit a communione omnium sit penitus alienus et pene grauioris culpe debite subiaceat.
- (*11f) ¿Quod? si in anno electionis magistri fratres sunt diffinitores, priores provinciales admittantur ad diffinitionem.
- (12) Statuimus insuper quod omnes priores conuentuales cum sociis suis et predicatoribus generales illius prouincie in qua generale capitulum celebratur illo anno ad capitulum ueniant generale. Nec eodem anno in illa prouincia ad celebrandum aliud capitulum teneantur.
- (13a) Statuimus ut si ante festum *et cetera*.
- (13b) Si autem post dictum festum *et cetera*.
- (13c) Capitulum generale uno anno *et cetera*.
- (14a) In uirtute spiritus sancti et obedientie firmiter precipimus obseruari ne quis causam depositionis magistri uel prioris prouincialis uel eius excessum uel correctionem uel secretum capituli seu dissensiones diffinitorum uel fratrum, unde ordo noster possit turbari uel infamari, audeat scienter extraneis publicare. Si quis autem ex deliberatione contrafecerit, tamquam excommunicatus et scismaticus et destructor nostri ordinis habeatur et, quousque satisfecerit, a communione omnium sit penitus alienus et pene grauioris culpe debite subiaceat.
- (14b) Eadem distinctione precipimus ne quis uerbo uel facto aliquomodo ad diuisionem nostri ordinis audeat laborare. Quod si fecerit, pene subiaceat supradicte.
- (15a) Statuimus ut prouinciarum priores *et cetera*.
- (15b) Statuimus ut magister solus possit confirmare priorem prouincialem.

- (15c) Mortuo igitur priore prouinciali uel amoto, duo fratres de quolibet conuentu illius prouincie eligantur qui cum suo priore conuentuali secundum formam superius positam electionem prioris prouincialis celebrabunt, hoc excepto quod eos includi sicut in electione magistris non oporteat.
- (16a) Prouincialis autem prior eandem habeat potestatem *et cetera*.
- (16c) Curet prior prouinciarum uel regnorum *et cetera*.
- (16d) et in aliis illi ad quos mittuntur eos non audeant occupare, nec ad prouinciam suam remittere nisi fuerint reuocati.
- (16e) Capitulum prouinciale *et cetera* ... celebretur.
- (16f) Nullus religiosus alterius ordinis *et cetera*.
- (16g) Et ea que dicta sunt *et cetera*.
- (17) Cum autem in quarta feria *et cetera*.
- (18) Post hec uisitatores *et cetera*.
- (19a) Statuimus quod quatuor fratres *et cetera*.
- (19b) Priores autem *et cetera*.
- (19c) Qui uero in presenti anno *et cetera*.
- (20) Post hec qui ydonei ad predicandum *et cetera*.
- (21a) Tunc qui habent questiones facere *et cetera*.
- (21b) Et ut in exeundo *et cetera*.
- (21c) Si qua uero dissensio *et cetera*.
- (21d) De solutione et terminatione questionum *et cetera*.
- (21e) In fine *et cetera*.
- (21f) Et hec eadem forma *et cetera*.
- (23a) Conuentus citra numerum duodenarium *et cetera*.
- (24a) Priores conuentuales a suis conuentibus eligantur, et a priore prouinciali, si ei uisum fuerit, confirmentur; sine cuius licentia de alio conuentu eligendi non habeant potestatem.
- (*24c) <Fratres> de alia prouincia, postquam per annum steterint in domo alterius prouincie ad quam missi sunt, admittantur ad electionem.
- (25) Prior autem conuentualis de consilio *et cetera*.
- (26a) Possessiones *et cetera*.
- (26b) Nullus fratrum nostrorum instare audeat uel rogare pro beneficiis suis consanguineis optinendis.
- (35a) Mediocres domos et humiles habeant fratres nostri, ita quod murus domorum sine solario non excedat in altitudine mensuram XII pedum, et cum solario XX, ecclesia XXX. Et non fiat lapidibus testudinata, nisi forte super chorum et sacristiam.
- (35b) Si quis decetero contrafecerit, pene grauioris culpe subiacebit.
- (35c) Item in quolibet conuentu tres fratres de discretioribus eligantur, sine quorum consilio edificia non fiant.
- (27a) In uirtute spiritus sancti et sub pena excommunicationis districte prohibemus ne aliquis fratrum nostrorum decetero laboret uel pro-

- curet ut cura uel custodia monialium seu quarumlibet aliarum mulierum nostris fratribus committatur. Et si quis contraire presumpserit, pene grauioris culpe debite subiaceat.
- (27b) Prohibemus etiam ne aliquis decetero aliquam tondeat uel induat uel ad professionem recipiat.
- (27c) Item ecclesias quibus annexa sit cura animarum non recipiant.
- (27d) Numerum quoque missarum non admittant.
- (28a) Quoniam circa studentes *et cetera*.
- (28b) In libris gentilium *et cetera*.
- (31c) ¿Et? hii qui apti sunt *et cetera*.
- (31d) Euntes uero *et cetera*.
- (31e) Omnes qui ad officium predicationis *et cetera*.
- (31f) Placitis et causis *et cetera*.
- (32a) Predicare non audeat aliquis in dyocesi alicuius episcopi qui ei ne predicet interdixerit, nisi litteras et generale mandatum habeat summi pontificis.
- (32b) Cum fratres nostri dyocesim *et cetera*.
- (33a) Caueant fratres nostri *et cetera*.
- (33b) Nullus assumatur ad predicationis officium extra claustrum uel fratrum consortium infra XXV annos.
- (34a) Predicatores uel itinerantes *et cetera*.
- (34b) Fratres etiam uiatores litteras testimoniales secum ferant, et in conuentibus ad quos declinauerint de excessibus suis ibidem corrigantur.
- (34c) Prior in ordine *et cetera*.
- (34d) Socius datus predicatori *et cetera*.
- (X 1) Statuimus ne fratres nostri *et cetera*.
- (X 2) Item nullus faciat sibi scribi *et cetera*.
- (X 3) In diebus dominicis *et cetera*.
- (X 4) ¿Item in diebus dominicis *et cetera*.?
- (X 6) Item nullus decetero petitiones *et cetera*.
- (X 8) Fratres minores *et cetera*.
- (X 10) Fratres non sint dispensatores *et cetera*.
- (X 11) Priores utantur dispensationibus *et cetera*.
- (X 12) Prior priorem superuenientem *et cetera*.
- (X 13) Bote extra septa *et cetera*.
- (X 14) In inclinationibus conformemur *et cetera*.
- (X 16) Fratres non recipiant *et cetera*.
- (X 17) Si quid petatum fuerit *et cetera*.
- (*X 19) Tres fratres tantum *et cetera*.
- (X 20) In ferialibus diebus *et cetera*.
- (X 21) Ad Salue sancta parens *et cetera*.
- (X 22) ¿Item si in ferialibus diebus *et cetera*.?
- (X 23) ¿Item numquam terminamus *et cetera*.?
- (36a-g) A festo sancti Dyonisii *et cetera* ... est faciendum.

1231-1235

An *ordinatio studii* was created in 1234, but it did not enter the constitutions until 1236. In 1231-1235 *1c was revised, three extravagantes were added, and X 19 acquired a new meaning:

- (1c) Capitulum autem prouinciale appellamus priores conuentuales cum singulis sociis a capitulo suo electis et predicatorum generales.
- (X 19) Tres fratres tantum mittantur ad studium Parisius de prouincia.
- (X 5) Nullus prior conuentualis secum plures fratres ducat ad capitulum generale uel prouinciale nisi causa legitima. Et assumat quilibet prior socium sibi secundum electionem capituli sui.
- (X 15) Nullus fratrum uadat ad curiam nisi de licentia magistri uel capituli generalis, sed mittatur garcio ad fratres qui ibi sunt, uel si quis secularis uoluerit procurare, ut tamquam per se et non per nos uideatur facere.
- (X 18) Cum frater de prouincia ad prouinciam et ad regendum mittitur, omnes libros suos glosatos, bibliam et quaternos secum deferat. Si uero mittitur et non ad regendum, tantum bibliam et quaternos portet. Quod si in uia mori contigerit, conuentus ad quem mittendus fuerit sibi in missis et psalteriis tenebitur, et ad eundem libri quos habuit pertinebunt.

By 1235, then, the distinction had the following shape: 1abcd, *1e, 1gh, 2, 3, 4abc, 5abc, 6ab, 7abcdef, 8ab, 9a, *9b², 9cde, 10ab, *10c², 10d, *11a², 11bcd, *11f, 12, 13abc, 14ab, 15abc, 16acdefg, 17, 18, 19abc, 20, 21abcdef, 23a, 24a, *24c, 25, 26ab, 35abc, 27abcd, 28ab, 31cdef, 32ab, 33ab, 34abcd, X 1-3, (X 4?), X 6, X 8, X 10-14, X 16-17, X 19-21, (X 22-23?), X 5, X 15, X 18, 36.

1236

The Most General Chapter of 1236 was responsible for the division of the second distinction into sections with individual titles; allowing for inevitable changes (such as *rector* for *magister*), the Sack Friars have the same titles as Rodez at 2, 4, 6, 9-12, 15, 17-21, 36, 25, 29, 31. The whole distinction was thus shaped like this:

De capitulo prouinciali¹

- (1a) Statuimus quod singulis annis *et cetera*.
- (1b) Predicti siquidem tres, uel duo si tertius defuerit, uoluntates singulorum *et cetera*.
- (1c) Capitulum autem prouinciale appellamus *et cetera*.

¹ The Sack Friars have *de electione diffinitorum capituli prouincialis*.

- (1d) Predicatores autem generales sunt *et cetera*.
 (1e) Accusationi uero et correctioni professi post triennium ab ingressu ordinis poterunt interesse.
 (1f) Item conuentus qui mittit accusationes ad capitulum prouinciale uel generale scribat de quolibet articulo numerum et nomina accusantium, et si accusant de uisu uel auditu.
 (1gh) Et nullus accuset de auditu *et cetera* ... nisi dicat a quo audiuerit.
 (1i) Item quilibet prior cum conuentu scribat singulis annis priori suo prouinciali et diffinitoribus capituli prouincialis debita domus, ponentes nichilominus causas debitorum.

De diffinitoribus capituli prouincialis

- (2) Predicti igitur diffinitores *et cetera*.

De potestate horum diffinitorum²

- (3) Isti autem quatuor diffinitores *et cetera*.

Quis obtineat uicem prioris prouincialis

- (4a) Statuimus etiam ut mortuo *et cetera*.
 (4b) Quod si ipsum abesse *et cetera*.
 (4c) Prior prouincialis etiam *et cetera*.

De electione diffinitoris capituli generalis³

- (5a) Statuimus etiam ut per duos annos *et cetera*.
 (5b) Statuimus quod quatuor prouincie *et cetera*.
 (5c) Tertio autem anno *et cetera*.
 (5d) Item statuimus quod priori prouinciali eunti ad capitulum generale detur socius a diffinitoribus capituli prouincialis.

De preiudicio uitando

- (6a) Statuimus autem *et cetera*.
 (6b) Et ut multitudo constitutionum *et cetera*.

De diffinitoribus generalis capituli⁴

- (7a) Isti autem duodecim diffinitores *et cetera*.
 (7b) Quod si in partes equales se diuiserint *et cetera*.

² The Sack Friars have *de potestate eorundem*.

³ Rodez has *generalis diffinitoris* corrected to *diffinitoris capituli generalis*, but editors except for Denifle have not fully respected the corrector's intentions. The Sack Friars have *de tempore capituli generalis et electione diffinitorum*.

⁴ The Sack Friars have *de prioribus prouincialibus et diffinitoribus capituli generalis* here, and *de potestate priorum prouincialium et diffinitorum* as the next title; the changes reflect their system of general chapters, which combined provincials and diffinitors.

- (7c) Si autem per adiunctionem magistri *et cetera*.
- (7d) Quod si ad capitulum *et cetera*.
- (7e) Quod si magistrum abesse *et cetera*.
- (7f) Quod si non omnes *et cetera*.

De potestate diffinitorum

- (8a) Isti autem diffinitores plenariam habeant potestatem *et cetera*.
- (8b) Et si appellatum fuerit *et cetera*.

De excessu magistri corrigendo

- (9a) Diffinitores predicti excessum magistri *et cetera*.
- (9b) Si autem in tantum excesserit *et cetera* ... Et non deponatur nisi pro crimine uel pro alio criminali peccato *et cetera*.
- (9c) Mortuo autem magistro *et cetera*.
- (9d) Si autem inter se *et cetera*.
- (9e) Precipimus autem *et cetera*.

De electione magistri ordinis

- (10a) Predicti ergo priores prouinciales *et cetera*.
- (10b) et quatuor priores prouinciales *et cetera*.
- (10c) ad capitulum ueniens generale *et cetera* ... quousque magister ordinis secundum formam canonicam sit electus.
- (10d) Et hoc tam ab electoribus *et cetera*.

De forma electionis

- (11a) Forma electionis hec est. Electoribus supradicto modo inclusis, cum per disquisitionem uel scrutinium uoluntatum procedet electio, tres de prioribus prouincialibus qui inter alios prouinciales primitus habitum nostre religionis susceperunt, uoluntates singulorum singillatim et seorsum aliquantulum, tamen in eadem domo coram oculis omnium, disquirant et conscribant. Quod si gratia inspirante in unum aliquem omnes unanimiter concordauerint, ille uerus magister ordinis habeatur. Si uero in partes inequales se diuiserint, ille in quem plures medietate omnium qui debeant eligere consenserint, ex ui talis electionis et huius constitutionis sit magister.
- (11b) Quod si aliquem *et cetera*.
- (11c) Et hoc ita fiat *et cetera*.
- (11d) Et hec omnia que circa electionem *et cetera*.
- (11e) Statuimus autem ut si in anno diffinitionis priorum prouincialium electio magistri celebratur, unus de fratribus electoribus de qualibet prouincia, qui in suo prouinciali capitulo ad hoc electus fuerit, ad diffiniendum cum eis pariter admittatur.
- (11f) Si uero in anno diffinitorum celebratur, tunc cum diffinitoribus priores prouinciales conueniant et utrorumque diffinitio sit communis.

Qui uenire debeant ad capitulum generale

- (12) Statuimus insuper *et cetera*.

De morte magistri⁵

- (13a) Statuimus ut si ante festum *et cetera*.
 (13b) Si autem post dictum festum *et cetera*.
 (13c) Capitulum generale uno anno *et cetera*.

De infamatione ordinis uitanda⁶

- (14a) In uirtute spiritus sancti *et cetera*.
 (14b) Eadem districtione *et cetera*.

De electione priorum prouincialium

- (15a) Statuimus ut prouinciarum priores *et cetera*.
 (15b) Statuimus ut magister solus *et cetera*.
 (15c) Mortuo igitur priore prouinciali *et cetera*.
 (15d) Item priore prouinciali mortuo uel amoto, prior qui locum eius optinet teneatur conuocare quam citius commode poterit electores, et tunc prior prouincialis eligatur et prouinciale capitulum celebretur, nisi iam fuerit celebratum. Quod si modo non elegerint qui debent eligere, potestas eligendi ad magistrum ordinis transferatur.
 (15e) Item statuimus quod electio prioris prouincialis spectet tantum ad priores conuentuales cum duobus fratribus de quolibet conuentu ad hoc electis, omnibus fratribus ad illum conuentum pertinentibus, si commode potest fieri, conuocatis.

De potestate prioris prouincialis⁷

- (16a) Prouincialis autem prior *et cetera*.
 (16b) Item priores prouinciales commissas sibi prouincias curent uisitare. Cum tamen commode non ualuerint, poterunt committere uices suas.
 (16c) Curet prior prouinciarum uel regnorum *et cetera*.
 (16d) et in aliis *et cetera*.
 (16e) Capitulum prouinciale *et cetera*.
 (16f) Nullus religiosus alterius ordinis *et cetera*.
 (16g) Et ea que dicta sunt *et cetera*.

De capitulo generali

- (17) Cum autem in quarta feria *et cetera*.

De uisitoribus

- (18) Post hec uisitatores *et cetera*.

⁵ The Sack Friars lack this section.

⁶ The Sack Friars have the same title except for *euitanda* at the end.

⁷ The Sack Friars have *de potestate priorum prouincialium*.

De electione uisitorum

- (19a) Statuimus quod quatuor fratres *et cetera*.
- (19b) Priores autem *et cetera*.
- (19c) Qui uero in presenti anno *et cetera*.

* De ydoneis ad predicandum

- (20) Post hec qui ydonei ad predicandum *et cetera*.

De questionibus

- (21a) Tunc qui habent questiones facere *et cetera*.
- (21b) Et ut in exeundo *et cetera*.
- (21c) Si qua uero dissensio *et cetera*.
- (21d) De solutione et terminatione questionum *et cetera*.
- (21e) In fine *et cetera*.
- (21f) Et hec eadem forma *et cetera*.
- (21g) Magister ordinis aut priores prouinciales non mutant acta capituli generalis uel prouincialis, nisi forte in speciali, causa necessaria et utili.

<De capitulo generalissimo>⁸

- (22) Generalissimum capitulum non conuocetur nisi quando maior pars prouinciarum petierit uel magistro uisum fuerit expedire. Prouincie que petunt scribant causas quare petunt; de hiis tamen capitulum generale non habebit iudicare utrum sufficientes sint uel non, sed tamen scribantur ut ante capitulum fratres de hiis possint habere collationem. Priores autem prouinciales cum duobus fratribus a capitulo suo prouinciali electis tale capitulum celebrandi habeant potestatem, et duobus annis ante pronuntietur nisi fuerit urgens necessitas.

De conuentu mittendo⁹

- (23a) Conuentus citra numerum duodenarium *et cetera*.
- (23b) Item nulla domus concedatur, nisi a priore prouinciali et diffinitoribus prouincialis capituli fuerit postulata, nec concessa ponatur nisi ubi predicti decreuerint expedire.
- (23c) Item statuimus ut nulla domus nostri ordinis transferatur de prouincia ad prouinciam, nisi per tria capitula fuerit approbatum.

De electione priorum conuentualium¹⁰

- (24a) Priores conuentuales *et cetera*.

⁸ Rodez and the Sack Friars have neither the title nor the section.

⁹ The Sack Friars lack this section.

¹⁰ The Sack Friars have *de electione prioris conuentualis*, as do later Dominican texts.

- (24b) Item fratres tantum post annum sue professionis admittantur ad electionem priors conuentualis.
- (24c) Si uero sunt de alia prouincia, postquam per annum steterint in domo alterius prouincie ad quam missi sunt, admittantur ad electionem.
- (24d) Item priore conuentuali mortuo uel amoto, conuentus eligat infra mensem postquam ei innotuerit, alioquin prior prouincialis eidem conuentui prouideat de priore.

De subpriore

- (25) Prior autem conuentualis *et cetera*.

De possessionibus non recipiendis¹¹

- (26a) Possessiones *et cetera*.
- (26b) Nullus fratrum nostrorum instare audeat *et cetera*.
- (35a) Mediocres domos et humiles *et cetera*.
- (35b) Si quis decetero contrafecerit *et cetera*.
- (35c) Item in quolibet conuentu *et cetera*.

De cura monialium non procuranda¹²

- (27a) In uirtute spiritus sancti *et cetera*.
- (27b) Prohibemus etiam ne aliquis *et cetera*.
- (27c) Item ecclesias *et cetera*.
- (27d) Numerum quoque missarum *et cetera*.

De magistro studentium¹³

- (28a) Quoniam circa studentes *et cetera*.
- (28b) In libris gentilium *et cetera*.
- (28c) Statuimus autem ut quelibet prouincia fratribus suis missis ad studium ad minus in tribus libris theologie prouidere teneatur. Et fratres missi ad studium in ystoriis et sententiis, et textu et glosis, precipue studeant et intendant.

De dispensatione studentium.

- (29a) Circa eos qui student taliter dispensetur a prelato ne propter officium uel aliud de facili a studio retrahantur uel impediantur.
- (29b) Et, secundum quod magistro studentium uidebitur, locus proprius statuatur in quo post disputationem uel uesperas, uel alio etiam tempore si uacauerint, ad dubitationes uel questiones proponendas ipso

¹¹ The Sack Friars have a long section entitled *de paupertate*, which incorporates II 35 as well as II 26. In Rodez, II 35 has the heading 'De edificiiis', but this is not confirmed by the Sack Friars and may or may not be genuine.

¹² The Sack Friars have *de cura monialium et quarumlibet mulierum non curanda* (sic).

¹³ The Sack Friars have *de studio et magistro studentium*.

presente conueniant; et uno querente uel proponente alii taceant, ne loquentem impediunt. Et si aliquis inhoneste uel confuse uel clamose uel proterue querens uel opponens uel respondens offenderit, statim ab illo qui tunc inter eos preest corripiatur.

- (29c) Celle non omnibus studentibus sed quibus magistro eorum expedire uidebitur assignentur. Quod si aliquis infructuosus inueniatur in studio, cella eius detur alteri et ipse in aliis officiis occupetur. In cellis legere, scribere, orare, dormire et etiam de nocte uigilare ad lumen possunt qui uoluerint propter studium.

De doctore¹⁴.

- (30a) Nullus fiat publicus doctor nisi per quatuor annos ad minus theologiam audierit.
(30b) Item nullus fratrum nostrorum legat in psalmis uel prophetis alium sensum litteralem nisi quem sancti approbant et confirmant.

De predicatoribus

- (31a) Statuimus ut nullus fiat predicator generalis antequam theologiam audierit per tres annos;
(31b) ad exercitium uero predicationis postquam per annum audierint possunt admitti qui tales sunt de quorum predicatione scandalum non timetur.
(31c) Et hii qui apti sunt *et cetera*.
(31d) Euntis uero *et cetera*.
(31e) Omnes qui ad officium predicationis *et cetera*.
(31f) Placitis et causis *et cetera*.

Ubi non audeant predicare fratres¹⁵

- (32a) Predicare non audeat *et cetera*.
(32b) Cum fratres nostri dyocesim *et cetera*.

De scandalo predicationis¹⁶

- (33a) Caueant fratres nostri *et cetera*.
(33b) Nullus assumatur *et cetera*.

De itinerantibus fratribus¹⁷

- (34a) Predicadores uel itinerantes *et cetera*.
(34b) Fratres etiam uiatores *et cetera*.
(34c) Prior in ordine *et cetera*.

¹⁴ The Sack Friars lack this section.

¹⁵ The Sack Friars have *ubi fratres non audeant predicare*.

¹⁶ The Sack Friars add *uitando* at the end.

¹⁷ The Sack Friars just have *de itinerantibus*, as does Raymund.

- (34d) Socius datus predicatori *et cetera*.
 (X 1) Statuimus ne fratres nostri *et cetera*.
 (X 2) Item nullus faciat sibi scribi *et cetera*.
 (X 3) In diebus dominicis *et cetera*.
 (X 4) ¿Item in diebus dominicis *et cetera*.?
 (X 6) ¿Item nullus decetero petitiones *et cetera*.?
 (X 7) Item nulla petitio offeratur prouinciali capitulo nisi a conuentu, nec generali nisi a prouinciali.
 (X 8) Fratres minores *et cetera*.
 (X 10) Fratres non sint dispensatores *et cetera*.
 (X 11) Priores utantur dispensationibus *et cetera*.
 (X 12) Prior priorem superuenientem *et cetera*.
 (X 13) Bote extra septa *et cetera*.
 (X 14) In inclinationibus conformemur *et cetera*.
 (X 16) Fratres non recipiant *et cetera*.
 (X 17) Si quid petitum fuerit *et cetera*.
 (X 19) Tres fratres tantum *et cetera*.
 (X 20) In ferialibus diebus *et cetera*.
 (X 21) Ad Salue sancta parens *et cetera*.
 (X 22) ¿Item si in ferialibus diebus *et cetera*.?
 (X 23) ¿Item numquam terminamus *et cetera*.?
 (X 5) Nullus prior conuentualis *et cetera*.
 (X 15) Nullus fratrum uadat *et cetera*.
 (X 18) Cum frater de prouincia ad prouinciam *et cetera*.

De anniuersariis

(36a-g) A festo sancti Dyonisii *et cetera* ... est faciendum.