

SIMON TUGWELL O. P., *The evolution of Dominican structures of government.: IV: election, confirmation and 'absolution' of superiors*, in «Archivum Fratrum Praedicatorum»» (ISSN 0391-7320), 72, (2002), pp. 26-159.

Url: <https://heyjoe.fbk.eu/index.php/afp>

Questo articolo è stato digitalizzato della Biblioteca Fondazione Bruno Kessler, in collaborazione con l'Institutum Historicum Ordinis Praedicatorum all'interno del portale [HeyJoe](#) - *History, Religion and Philosophy Journals Online Access*. HeyJoe è un progetto di digitalizzazione di riviste storiche, delle discipline filosofico-religiose e affini per le quali non esiste una versione elettronica.

Il materiale sul sito [HeyJoe](#) è disponibile sotto licenza CC BY-NC-ND 4.0: può essere scaricato, stampato e condiviso per uso non commerciale, con attribuzione e senza modifiche.

This article was digitized by the Bruno Kessler Foundation Library in collaboration with the Institutum Historicum Ordinis Praedicatorum as part of the [HeyJoe](#) portal - *History, Religion, and Philosophy Journals Online Access*. HeyJoe is a project dedicated to digitizing historical journals in the fields of philosophy, religion, and related disciplines for which no electronic version exists.

The material on the [HeyJoe](#) site is available under the CC BY-NC-ND 4.0 license: it can be downloaded, printed, and shared for non-commercial use, with attribution and without modifications.



THE EVOLUTION
OF DOMINICAN STRUCTURES OF GOVERNMENT
IV: ELECTION, CONFIRMATION AND 'ABSOLUTION'
OF SUPERIORS¹

BY
SIMON TUGWELL OP

It has come to be a jealously guarded privilege of the Order of Preachers that the election of its Master needs no confirmation by anybody, not even the Holy See; since 1932 this claim has been written into the constitutions.² In this article I attempt to elucidate its thirteenth-century origins; it is beyond my competence to offer more than a cursory indication of what happened in between.

The story begins with an interaction between the system evolved by centralized religious orders and the procedures which the church had developed primarily for episcopal elections; we too must therefore start with these.

¹ In this article I use the text of the second distinction of the primitive Dominican constitutions ('PC') which I edited in AFP 71 (2001) 5-159. Raymund's constitutions were edited by R.Creytens from Porto, Bibl. Munic. 101 ff.86^v-115^v, in AFP 18 (1948) 5-68, and Humbert's constitutions were printed from AGOP XIV L 1 ff.37^r-40^v in ASOP 3 (1897-1898) 31-60, 98-122, 162-181; in each case I have consulted manuscripts for myself. For the mid 12th-century Praemonstratensian customary, see Pl.F.Lefèvre-W.M.Grauwen, *Les Statuts de Prémontré au milieu du XII^e siècle*, Averbode 1978 (cited as 'Grauwen'); a late 12th-century text was printed, probably from BNF lat. 14762, in E.Martène *De antiquis ecclesiae ritibus* III, Bassano 1788, 321-326 (cited as 'Martène'); a text from c.1227 was edited in B.Krings, 'Das Ordensrecht der Prämonstratenser', *Analecta Praemonstratensia* 69 (1993) 107-242 (cited as 'Krings'); a text from c.1236 was edited, with some related documents, by 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'), but, in addition to the printed text, I have consulted BNF lat. 9752 (incomplete), and Averbode, Norbertijnenabdij IV 27. The Sack Friars' constitutions were unreliably edited in G.M.Giacomozzi, *L'Ordine della Penitenza*, Rome 1962, 73-113, but I have taken the text from the manuscript, BL Cotton Nero A XII ff.155^r-174^v. Canon law texts I take from Æ.Friedberg, *Quinque compilationes antiquae*, repr. Graz 1956 (Friedberg¹), and *Corpus Iuris Canonici*, repr. Graz 1959 (Friedberg²).

² 'Magistri electio confirmatione non indiget' (Gillet const. 383); 'magistri ordinis electio confirmatione non indiget' (LCO 533).

1. *The general law of the church*

'Regarding elections I have a particular fear as well as dislike to them—it leads to much intrigue and human policy, which appointments do not'; this sentiment is ascribed to Mother Margaret Hallahan, the foundress of the Dominican sisters of Stone.³ The church of the early thirteenth century shared her misgivings, but, having largely won its fight to rescue ecclesiastical elections from the control of lay potentates, it was obliged to content itself with devising ways of minimizing the risk of them bringing unacceptable candidates to power.

The third Lateran council, in 1179, had already decreed that no one could become a bishop unless he was at least thirty years old, of legitimate birth, and '*vita et scientia commendabilis*'; anyone knowingly voting in contravention of these requirements forfeited his *potestas eligendi* (canon 3). The fourth Lateran council, in 1215, clarified the procedures to be followed in and after the actual election.

Apart from unanimous election '*quasi per inspirationem divinam*', which might be allowed to stand provided the proceedings had been in order (*absque vitio*), two methods of electing were recognized as valid, *per scrutinium* and *per compromissum* (Lateran IV const. 24).

In an election *per scrutinium*, all the votes were to be collected individually and secretly by three *fide digni* from the electoral body, who were then to announce the results to the assembly without delay, '*ut is collatione adhibita eligatur in quem omnes vel maior et sanior pars capituli consensit*'.⁴

Collatio meant, not just comparing the number of votes received by different people, but also assessing the weight to be given to each vote in terms of the voters' subjective motivation ('zeal') and objective standing.⁵ 'Zeal' was obviously open to diffe-

³ It is quoted in the record of the sisters' provincial chapter of 1873 (General Archives of Stone ACS/G 12 p.92).

⁴ Although *maior vel sanior* is sometimes found, it was clearly understood by now to have the same meaning as *maior et sanior*. It should be noted that *eligere* and *electio* properly refer to the actual choice, not to the procedure whereby it is made.

⁵ On 10 Nov. 1231, Gregory IX faulted an episcopal election at Bayeux on several grounds, one of which was that there had been no '*zeli ad zelum nec meriti ad meritum collatio*' (Reg. 741; X.1.6.55, Friedberg² II 94-95). In 1203 Innocent III gave his ruling on a disputed election of a provost of Cologne, the investigation of

rent interpretations: in the election of a provost of Cologne in 1203 even some of those who did not vote for the minority candidate considered him to be 'prudentiorem praesertim in spiritualibus', but the majority believed their own man to be 'magis utilem maxime circa temporalia'.⁶ In a particularly complicated disputed episcopal election at Châlons-sur-Marne, of which only a simplified version was included in the decretals, the majority argued that they should be recognized as the *sanior pars* 'quum, ubi maior numerus est, zelus melior praesumatur'; the opposition claimed 'meliorem zelum' particularly on the grounds that their candidate was superior (Gregory IX, Reg. 192; X.1.6.57, Friedberg² II 95-96).

The concept of *maior et sanior pars* was well established,⁷ but the relationship between *maior* and *sanior* was far from clear. Gregory IX declared the Châlons election procedurally invalid on the grounds that the *maior pars* and the *sanior pars* were not in agreement, but what did it mean for them to agree? In principle *maior pars* signified an absolute majority, but in both the cases included in the decretals to prove this a result had been presumed simply on the basis of vote-counting, without a proper *collatio* or a *communis electio* (X.1.6.48, X.1.6.55, Friedberg² II 91, 94-95), and Lateran IV const. 24 clearly required the election proper to follow the *collatio*. Questions could thus still be asked about the circumstances in which quality could outweigh quantity, and the extent to which *maior* could be taken closely with *sanior* in the sense of 'weightier'.⁸

which had involved an examination of the voters' consciences (*examinaverunt eligentium conscientias*) and an assessment of their *auctoritas* (the minority was found to consist of people who 'alios dignitate, aetate et tempore praecedebant') (PL 215:36-42; X.1.6.22, Friedberg² II 64-66). As Bernardus Parmensis explains in the gloss on X.1.6.57, 'Plura consideranda sunt in electione, auctoritas, zelus et numerus. Auctoritas consideratur in dignitatibus et meritis vitae. Zelus consistit in animo, ut sine carnali amore eligant, sed secundum meritum vitae personae sunt eligendae. ... Secundum ista tria debet fieri collatio zeli ad zelum, meriti ad meritum, numeri ad numerum, habito respectu ad dignitatem' (for the gloss, I use the edition of the decretals published Paris 1612).

⁶ Although the voters' consciences were examined, Innocent (at least as his verdict was included in the decretals) ruled that, if the canonical objections to their candidate evaporated, the majority should be judged to have elected 'bono zelo' (X.1.6.22, Friedberg² II 64-66).

⁷ Even while making an exception for papal elections, in which the result was to depend simply on one candidate obtaining at least a two-thirds majority, Lateran III expressly endorsed the general applicability of the principle that 'maioris et sanioris partis debet sententia praevalere' (canon 1).

⁸ In his comment on X.1.6.55 Bernardus Parmensis says, 'Sic patet quod in electionibus hodie zelus et merita electorum considerantur et dignitas eligentium, ut

The ideal of *maior et sanior pars* was no doubt excellent in theory—neither idealistic minorities nor incompetent majorities were to have it all their own way; but it had a considerable potential for disputes, appeals, enquiries and all the fun of the legal fair.

The method of electing *per compromissum* was, in principle, more straightforward: an individual or a number of people was appointed to elect on behalf of everyone, and the electoral college as a whole was obliged to accept the result. However, *compromissarii* had to abide by the terms of the *compromissum*: for example, they could be told that, if they could not all agree, a majority of them could elect (X.1.6.33, Friedberg² II 79); or life could be made harder for them by the requirement that they choose the person nominated by all the electors or by the *maior et sanior pars* (X.1.6.32, Friedberg² II 77-79), which meant that they were in effect given sole responsibility for the *collatio* and *electio* which should follow a scrutiny. It was also a matter of debate whether all the electors had to agree to an election *per compromissum* or whether it could be adopted by a majority decision.⁹

However the actual election was conducted, there was a further step to be taken: confirmation. Lateran IV took it for granted that confirmation was required before anyone was 'ad regimen animarum assumptus'; its contribution was to insist that the *confirmator* must examine 'et electionis processum et personam electi'; in particular, he must be sure not to confirm anyone 'insufficientis scientiae vel inhonestae vitae aut aetatis illegitimae' (Lateran IV const. 26). The suitability of the electus needed to be examined even if no objection had been raised against him (X.1.6.19, Friedberg² II 60); and an electus who pre-empted confirmation was liable to find his election quashed: in 1199 Innocent III invalidated an episcopal election at Penne because the electus (who lacked the necessary *donum scientiae* anyway) had started administering the diocese without waiting to be confirmed (PL 214:735), and this decision soon

ex omnibus istis maior et sanior pars censeatur ... Illa enim maior pars et sanior censeatur quae est iustior et maiori ratione nititur et aequitate'. However, he reckoned that this idea could only be invoked to discount a small numerical advantage: 'Non enim praeferenda est dignitas nisi cum numerus est par vel in modicum excedit' (gloss on X.1.6.22). Hostiensis refers to another opinion which might allow a single voter to constitute the *maior et sanior pars*: 'Maior dicitur qui maiori pietate movetur et meliori zelo' (*Aurea Summa*, Venice 1581, f.21'). Aubri of Trois-Fontaines says of the party which was numerically the minority in the Châlons election that 'maior et sanior videbatur' (MGH SS XXIII 917-918).

⁹ Cf. Bernardus Parmensis, gloss on X.1.6.42.

entered the law books (*Comp. III* 1.6.2, X.1.6.17; Friedberg¹ 106, Friedberg² II 58).

In principle, the need for confirmation applied at every level of the hierarchy beneath the pope: as Raymund of Penyafort explains, bishops confirm their subjects, metropolitans confirm their suffragans, patriarchs or primates confirm metropolitans, the pope confirms patriarchs and primates and those under his immediate jurisdiction; only the pope has no superior, so he is 'confirmed by being elected' ('ipse autem papa eligendo confirmatur, quia non habet superiorem a quo petat confirmationem').¹⁰

2. Religious superiors

The legislation of Lateran IV was aimed at elections and appointments to the hierarchy of the church and did not necessarily affect the procedures of religious at all. For instance, there was a long tradition of religious superiors being elected by the *sanior pars*, with no requirement that this should coincide with the *maior pars*, and Honorius III used a conventional formula unaffected by Lateran IV when he issued *Religiosam vitam* for the brethren of Saint-Romain in 1216: in the clause guaranteeing their freedom of election, he forbade anyone to attempt to impose a prior 'nisi quem fratres communi consensu vel fratrum pars maioris et sanioris consilii secundum Deum et beati Augustini regulam providerint eligendum' (MOPH XXV no. 77.95-99); when he issued it for Prouille in 1218, the same clause was included, but with 'pars sanioris consilii' (MOPH XXV no. 90.81-85). Either way, numerical majority was apparently irrelevant and only (superior and) sounder judgement was to count.

Election by *sanior pars* goes back to early monasticism. A law of Justinian required abbots and archimandrites to be elected by 'omnes monachi melioris opinionis' (*Novellae* 123.34), and, in a notoriously obscure passage on the appointment of abbots, the Rule of St Benedict laid down that 'hic constituatur quem sive omnis concors congregatio secundum timorem Dei sive etiam pars quamvis parva congregationis saniore consilio elegerit', with the further proviso that, should the whole community choose someone who would pander to its vices, the bishop or neighbouring abbots or Christians

¹⁰ *Summa de Poenitentia*, Rome 1593, 329.

should intervene to prevent 'pravorum praevalere consensum' (*Regula* 64.1, 3-5). Among canons regular, election by *sanior pars* even featured in their profession formula: they promised obedience to the superior (or the bishop) and his successors 'whom the *sanior pars* of the community elects'.¹¹

The customary of the canons regular of Marbach enshrined the principle of *sanioris consilii* in the procedure whereby a superior (*prelatus*) was chosen: the election was entrusted to 'tres sanioris consilii', and their choice was confirmed in advance by all the brethren and again when they announced their candidate; only then did they formally elect. In this way, a kind of *sanior pars* was identified by the brethren at the outset, but the three *compromissarii* had to check that their candidate was acceptable to everyone before formally electing him (ed. cit. 252-256 §338, 347-348). The only weakness is that it is not explained what should happen if the brethren cannot agree on who the 'tres sanioris consilii' are. A similar procedure was followed at St Victor and Springiersbach, with the election being entrusted to a few *compromissarii*, whose choice was then confirmed by the whole community, though there is no explicit reference to *sanius consilium*.¹²

Another procedure was to require elections to be held with the 'counsel' of someone authoritative.¹³ In every Cistercian monastery except Cîteaux the abbot was elected by the monks, together with the abbots of any daughter-houses within reach, 'consilio et voluntate patris abbatis' or 'eius presentis consilio' or 'ad arbitrium patris abbatis'; at Cîteaux itself, the brethren elected a new abbot with, or in the presence of, or with the agreement of, as many abbots of first-generation daughter-houses as could get there within a fort-

¹¹ Cf., for example, the formulae used at Maguelone (A. Carrier, ed., *Coutumier du XI siècle de l'ordre de Saint-Ruf en usage à la cathédrale de Maguelone*, Sherbrooke 1950, 59), Marbach (J. Siegwart, ed., *Die Consuetudines des Augustiner-Chorherrenstiftes Marbach im Elsass*, Fribourg 1965, 169), and Springiersbach (S. Weinfurter, ed., *Consuetudines canonicorum regularium Springirsbacenses-Rodenses*, CCCM 48, Turnhout 1978, §271), and that of the Praemonstratensians (Pl. F. Lefèvre, *Analecta Praemonstratensia* 8 [1932] 295; G. I. van den Broeck, *De professione solemnii in ordine Praemonstratensi*, Rome 1938, 92).

¹² L. Jocqué-L. Milis, edd., *Liber ordinis sancti Victoris Parisiensis*, CCCM 61, Turnhout 1984, 15-18; *Consuetudines Springirsbacenses*, ed. cit. 151-153.

¹³ 'Counsel' could be used as a way of putting pressure on episcopal electors too. On 20 Feb. 1229, for example, Gregory IX rejected an episcopal election at Besançon as procedurally defective, since the canons had not waited to hear the opinion of the two abbots and a Dominican with whose 'counsel' they had been told to elect (Reg. 274; X.1.6.52, Friedberg² II 92-93).

night.¹⁴ The mid and late twelfth-century Praemonstratensian customaries (Grauwen IV 8, Martène IV 8) say that, if the abbot of Prémontré dies, the abbots of the three first daughter-houses (Laon, Floreffe and Cuissy) and four others are to come 'ut per eorum consilium fratres communem electionem faciant'; if any other abbot dies, the abbot 'ad cuius curam defuncti specialiter pertinet locus', with two others, is to be summoned 'non ad aliquam uim aut potestatem, sed ad hoc solummodo ut, si fratres in electione sua concordés fuerint, laudabunt electionem et confirmabunt, si uero discordés fuerint, eos ad concordiam reuocabunt et partis sanioris consilium corroborabunt'. In 1210, Innocent III guaranteed the Poor Catholics' freedom to elect a superior, 'virum quidem idoneum, in fide recta, sana doctrina et honesta conversatione probatum', but they were to do so 'cum consilio dioecésani episcopi' (PL 216:274).

Where elections were not free, 'counsel' could be a euphemism for 'command'. The *Regularis concordia*, promulgated in England c.970, says that abbots and abbesses are to be elected 'cum regis consensu et consilio',¹⁵ and the Norman monarchy often did not even maintain the pretence of an election; when elections were held, the electors had little real freedom.¹⁶ In 1159, for example, Archbishop Theobald of Canterbury informed the monks of Evesham that he was sending them two bishops and two abbots, and told them to elect a new abbot on a particular day 'eorum consilio', with the rider that, even if one of the 'advisers' is unable to attend, 'obtineat apud uos consilium reliquorum', and the even less veiled comment, 'Scimus autem quod tam religioso, tam salubri consilio granter acquiescet quisquis in uobis non quaerit quae sua sunt sed quae Iesu Christi'. If the 'advisers' find that any of the monks is 'resisting the Holy Spirit and hindering his own salvation and that of others', his vote is invalidated in advance by the archbishop (in other words, anyone who votes in defiance of the *consilium* given by the 'advisers' will have his vote disqualified). Nor is it any good dreaming of an appeal to the king, the archbishop concludes, since

¹⁴ F. de Place, ed., *Cîteaux, documents primitifs*, Cîteaux 1988, 100-102, 122-123; *Analecta sacri ordinis Cisterciensis* 6 (1950) 21, 36.

¹⁵ Ed. T.Symons, London 1953, 6.

¹⁶ Cf. D.Knowles, *The monastic order in England*, Cambridge 1950, 395-401. Not until 1214 did King John guarantee the freedom of ecclesiastical elections, reserving to himself only the customary right to grant congé d'élire and to approve the result (W.Stubbs, *Select Charters*, 9th ed., Oxford 1913 etc., 284; C.R.Cheney-W.H.Semple, ed., *Selected Letters of Pope Innocent III concerning England*, London 1953, 198-201).

it is on the authority of the king that the election has been set up in this way.¹⁷

The 12th-century Praemonstratensian customary explicitly denies that the abbots who 'advise' the electors are there to exercise *aliquam vim aut potestatem*, so it is not clear how much authority they actually had in guiding the election to a satisfactory conclusion. By the early 1220s it was apparently felt necessary to give more power to the 'pater abbas': according to the new text, elections were to be held, as before, with the 'counsel' of the 'pater abbas', but there is no longer any talk of anyone reinforcing 'partis sanioris consilium'; instead, 'si inter fratres de eligendo abbate discordia fuerit vel scissura suborta, et ipsi facile ad concordiam et unitatem in persona idonea eligenda nequiverint revocari, pater abbas consilio coabbatum suorum provideat eis personam' (Krings IV 8).

It was already normal for monastic abbots to be confirmed as well as blessed, though the two were perhaps only separated in special circumstances;¹⁸ there was no reason why Lateran IV should make any difference on this point. Exempt monasteries had their abbots confirmed by the Holy See.¹⁹

¹⁷ W.J. Millor, H.E. Butler, C.N.L. Brooke, ed., *The letters of John of Salisbury* I, Oxford 1986, 173-174.

¹⁸ There is a detailed account of how Durandus became abbot of St Victor, Marseilles, in 1060 (before the abbey was granted exemption): the monks held an election 'in accordance with the Rule of St Benedict', then the bishop came and asked if they knew whom they wanted as their new abbot; he enquired into their candidate's suitability and, when he was satisfied, he 'consented' to their choice, led Durandus into the church and blessed him. This is confirmation in all but name (M. Guérard, ed., *Cartulaire de l'abbaye de Saint-Victor de Marseille* II, Paris 1857, 628-631 no. 1133). Things were rather more complicated at the abbey of St Martial, Limoges, in 1214: the abbot was incapacitated by sickness but would not resign; the papal legate, Robert Courçon, took it upon himself to depose him and substitute an ambitious monk called Alelmus, King John of England's confessor who had only just joined the monastery. The monks refused to accept Alelmus and elected Petrus la Girsas; the bishop of Limoges confirmed Petrus at once, 'sed benedictionem ei dare distulit'. Alelmus went to Lateran IV, and Petrus, who was unwell, sent a representative. Innocent cassated the monks' election and deprived them of the right to elect, but they still refused to accept Alelmus. After Innocent's death, Alelmus was bought off and a new abbot was elected *per compromissum*, and he was blessed a few days later. Thereafter, confirmation is not mentioned again until 1272, when we are told that Abbot Iacobus was elected on 30 April and confirmed and blessed by the bishop on the following day (H. Duplès-Agier, ed. *Chroniques de Saint-Martial de Limoges*, Paris 1874, 18-22). Cf. also *Comp.* IV 1.3.4, X.1.6.38 (Friedberg¹ 135, Friedberg² II 83-84).

¹⁹ Cf. PL 214:132, 162 (Innocent III); *Comp.* V 1.7.2, X.1.9.15 (Friedberg¹ 155, Friedberg² II 115) (Honorius III).

The canons of Saint-Victor in Paris had a charter, dating back to their foundation, which guaranteed the freedom of their elections from royal or any other interference; it was issued by King Louis VI in 1113 with the agreement of the archbishops, bishops and higher nobility of the realm (Mansi XXI 88-89):

Communi assensu definivimus quatinus praedicti canonici de grege suo vel de alia ecclesia quem vellent in abbatem eligerent, ita tamen quod in illa abbatis electione nec regis assensum quaerent nec regis auctoritatem ullatenus expectarent nulliusque alterius personae voluntatem vel laudem attenderent, sed quem Deus eis concederet inconsulto ut diximus rege vel qualibet alia persona canonice eligerent et Parisiensi episcopo irrefragabiliter consecrandum offerrent.

A new abbot was blessed by the bishop, but the *Liber ordinis* is explicit that 'ipsam electionem capituli nullus omnino alius, videlicet nec episcopus nec rex nec quisquam alius impedire habet aut contradicere, sicut in privilegiis nostris firmatum est' (ed. cit. 18-19). So the only confirmation involved was that of the community: when the *compromissarii* have made their choice, 'omnium consensu electio confirmabitur' (ed. cit. 16).

The customary of Springiersbach speaks of the canons 'consenting' to, rather than confirming, the choice made by their *compromissarii* ('quorum electioni annuentibus'). 'Post hec, cum opportunum fuerit, inuitatur episcopus ad consecrationem electi, a quo denuo inquisito omnium consensu et maxime spiritualium et audita unanimes continentia ... deducit eum in ecclesiam ad confirmandam electionem et constituit diem qua promoueat eum secundum statutam abbatibus benedictionem' (ed. cit. 153). Here it is the bishop who confirms the election, but apparently the only thing he has to examine before doing so is the brethren's consent, not the validity of the election or the suitability of the electus.

Where the superior was not an abbot and did not need to be blessed, it is not clear that there was any occasion for the bishop to be involved at all. The customary of Marbach, for example, appears to leave no room for any confirmation other than that of the canons themselves: once the election has been successfully completed, 'sic electus prelatu habetur', and that is the end of it (ed. cit. 256 §348).

In principle, the blessing of an abbot involved a profession of obedience to the bishop. This was a natural source of conflict in the case of abbeys which belonged to an order with its own structure of obedience, such as the Praemonstratensians. Alexander III,

in *In apostolicae sedis* (27 April 1177), and Lucius III, in *In eminenti* (10 March 1184), made it quite clear that the profession made to the bishop gave no excuse for Praemonstratensian abbots to go against the constitutions of their order, and, in spite of the theory that it was the bishop who gave them 'plenitudinem officii', they required the brethren to promise obedience to the newly elected abbot before he was blessed, and they permitted him to exercise his authority to the full even without being blessed if the bishop twice refused to bless him. Honorius III re-issued *In eminenti* with exactly the same provisions:²⁰

Verum cum aliqua ecclesiarum uestrarum abbate proprio fuerit destituta uel cum ibi abbatis electio regulariter non fuerit celebrata sub patris abbatis potestate ac dispositione consistat et cum eiusdem consilio qui eligendus fuerit a canonicis eligatur. Electo autem fratres ecclesie statim obedientiam promittant ... Archiepiscopo uel episcopo in cuius dyocesi fuerit presentetur plenitudinem ab eo officii percepturus, ita tamen quod post factam archiepiscopo uel episcopo suo professionem occasione illa non transgrediatur constitutiones ordinis sui nec in aliquo eius preuaricator existat. Si quis etiam ex uobis canonicis electus in abbatem diocesano episcopo semel et iterum per abbates uestri ordinis presentatus benedictionem ab eo non poterit obtinere, ne ecclesia ad quam uocatus est destituta consilio periclitetur, officio et loco abbatis plenarie secundum ordinem fungatur in ea tam in exterioribus prouidendis quam in interioribus corrigendis donec aut interuentu generalis capituli uestri aut precepto Romani pontificis seu metropolitani suam benedictionem obtineat.

No allowance was made for the possibility that the bishop might have legitimate misgivings about the election or the electus, so it is clear that he was in no sense required or permitted to act as *confirmator*.

Since in effect a Praemonstratensian abbot could rule without being blessed, the bishop's blessing seems to have become little more than a formality. A 13th-century general chapter complained that abbots were deferring the blessing for too long, 'ita ut eam negligere vel contemnere videantur', and told them to get themselves

²⁰ I take the text from BNF lat. 9752 f.27^r. The manuscript has it at the head of a selection of papal *privilegia*; its placing suggests it is from Honorius II, but this cannot possibly be correct. It is dated 'apud Urbem Veterem V° kal. augusti pontificatus nostri anno quarto', but Honorius had already re-issued *In eminenti* on 11 May 1217 (Pressutti no. 575). For the earlier bulls, see PL 200:1105-1108, 201:1238-1244.

blessed within a year of their 'promotion' (Krings p.206), a prescription which was incorporated into the late 1230s customary, with the rider 'si hoc a suo diocesano poterit obtinere' (Lefèvre IV 6); there is no hint, though, that an unblessed abbot's rule was in any way illegitimate, or that anything worse than giving a bad impression was at stake.

On 4 July 1169 the Cistercians received a privilege which came to be enshrined in the law-books, allowing their new abbots to perform all normal abbatial functions without being blessed, if the bishop three times refused to bless them.²¹ On 23 Jan. 1234, Gregory IX forbade bishops to interfere in the election or removal of Cistercian abbots, specifically pointing out that it was not their business to examine or confirm Cistercian elections (Reg. 1732).

The reason why the appointment of hierarchs, whether secular or regular, was considered to require great circumspection is that 'spiritualia facilius construuntur quam destruantur' (X.1.7.2, Friedberg² II 97). As the Springiersbach customary explains, it is necessary to take special care over the election of an abbot because it is difficult to get rid of him if he is no good: 'In ceteris personis si quid, quod absit, reprehensibile fuerit, deprehensum corrigi ualet et ipsa persona amoueri; si quid in eo qui omnibus preest correctione dignum fuerit, difficulter ualet emendari uel persona, semel accepta, dignitate priuari' (ed. cit. 151 §283).

However, with the support of successive popes, the Cistercians and the Praemonstratensians developed an alternative self-contained, self-regulating system, which made the removal of superiors as easy as their appointment, with no reference to or possibility of appeal to anyone outside their own structures of government.

Every house, except the mother-house of the whole order, had a 'pater abbas' who was responsible, not just for guiding its abbatial elections, but for monitoring its religious life, personally or through visitators. If a Praemonstratensian abbot was found incorrigible, the visitators had to refer the matter to the general chapter, and the decision of the chapter was binding on everyone (Grauwen, Martène, Krings IV 6-7); by 1227 the deposition of abbots was apparently a regular item on the agenda of general chapters (Lefèvre p.145). *In apostolicae sedis* and *In eminenti* made the abbots of the

²¹ PL 200:593; *Comp. II* 1.6.1 (Friedberg¹ 68), X.1.10.1 (Friedberg² II 117). Cf. J.B.Mahn, *L'ordre cistercien et son gouvernement*, Paris 1945, 76-79.

first three daughter-houses responsible for visitating Prémontré itself, with at least a hint that they could report even the abbot to the general chapter; Innocent IV, in *Qui sunt loco* (12 March 1245), made it fully explicit that it fell within their remit to decide that the abbot should be deposed, though his actual deposition was a matter for the chapter (Reg. 1098). As in every other case, the decision of the chapter was final and unchallengeable. The Cistercians similarly made provision for abbots to be deposed by the abbot of Cîteaux or by their 'patres abbates', and for Cîteaux itself to be monitored by the its senior daughter-houses, whose abbots could, if need be, arrange for him to be deposed at the general chapter or at a special meeting of abbots (De Place, *Documents primitifs* 90-92, 96-98, 120-122).²²

By tightening up the rules for elections and reinforcing the conditions for their confirmation, Lateran IV const. 24 and 26 tried to ensure that unsuitable people were never admitted to *regimen animarum*; the alternative model developed by religious orders continued to flourish, though, in which the emphasis was placed rather on constant self-monitoring at every level, with even the highest superiors subject to scrutiny and, should the need arise, deposition.

Shortly before Lateran IV, in September 1215, Bishop William of Langres published the essential 'constitution' of the newly founded order of Val-des-Écoliers which closely followed this model, with annual general chapters, supreme authority vested in the prior of the mother-house, who was to have 'liberam potestatem per omnes ecclesias illius ordinis movendi et amovendi et excessus corrigendi', and provision for the three senior daughter-houses to deal with problems at the mother-house itself, including the power to depose the prior; the order was confirmed by Honorius III on 7 March 1219 (*Gallia Christiana* IV Instrumenta 199-202; Pressutti no. 1917).

The Franciscan *Regula bullata*, compiled with curial assistance, makes provision for the electors of the Minister General to replace him: if the provincial ministers assembled at the general chapter all think him 'non esse sufficientem ad servitium et communem utilitatem fratrum', they are obliged to elect someone else, by implication deposing the existing Minister General (*Reg. bull.* 8.4).

²² The Gilbertine constitutions made similar provision for the general chapter to depose the Master (W.Dugdale, *Monasticon Anglicanum* VI ii, London 1830, *xxxi-xxxii).

On 28 July 1231 Gregory IX attempted to bring Cluny into line with the same model by issuing new *statuta*, under which there would be annual general chapters, and each year the diffinitors would nominate two abbots and two priors to visitate Cluny, 'et si abbatis exigerint merita, non solum ad correctionem verum etiam ad amotionem ipsius, Cisterciensis ordinis more servato, appellatione remota procedent' (Reg. 745).

It is evident that the procedures for disciplining and, if need be, removing the highest superior were an aspect of the system which was particularly appreciated.

Although, when the Penitents of Mary Magdalen were re-organized into a distinct order in 1232, Gregory IX reserved confirmation of the election of their provost to himself,²³ there is no sign that he had any general desire that elections in religious orders should be brought into conformity with Lateran IV const. 24, or that they should regularly be confirmed in the manner indicated in const. 26.

What he was concerned about was abuse of power in the promotion or deposition of superiors. The *statuta* he wanted Cluny to adopt included the requirement that heads of houses should be removed only if they merited deposition or if they were to be promoted to a higher position; to ensure against malpractice, Cluny was to espouse the Cistercian practice of reviewing all changes of priors and abbots at the general chapter, and anyone found guilty of wrongly removing a prior or abbot was to be penanced (Reg. 745).

The 1220s version of the Praemonstratensian customary gave 'patres abbates' considerable power to impose abbots on their daughter-houses, and on 23 June 1232 Gregory complained that some elections were being conducted *minus canonice*, because 'ut dicitur ... pater abbas interdum carnem sequens et sanguinem, nonnunquam etiam mundano favore seu familiaritate devictus, electis a capitulis magis idoneis reprobatis, promovet minus dignos' (Lefèvre p.129).

Gregory did not expressly complain about the form of Praemonstratensian elections, only about an abuse, so there is no reason to assume that *minus canonice* was intended to mean 'not in accordance with Lateran IV const. 24'; nevertheless, when the Praemonstratensians revised their customary soon afterwards, they cre-

²³ A. Simon, *L'ordre des Pénitentes de sainte Marie-Madeleine en Allemagne*, Fribourg 1918, 192.

ated a new procedure for the election of abbots everywhere except at Prémontré, with explicit reference to const. 24 (Lefèvre IV 6, Averbode IV 207 f.63^v-64^r). Under the new procedure, the 'pater abbas' brings two or three other abbots with him, but their rôle is now to advise him, not the community. After the other preliminaries are over and the brethren are assembled, 'proponat eis tres formas electionis que in Lateranensi concilio sunt statute, unam uidelicet que fit per diuinam inspirationem, aliam que fit per scrutinium, et tertiam que fit per compromissum'. The election proceeds in the manner selected, then:

Tractatis que tractanda fuerint diligenter et ordinate, persona in quam fratres domus uel electores assumpti uice omnium siue maior aut sanior pars eorum canonicè consenserint patri abbati nominetur primitus in secreto; et electione diligenter examinata pater abbas, si personam inuenerit ydoneam, sine difficultate concedat eisdem. Quod si eum minus ydoneum inuenerit, poterit reprobare, dummodo iustam causam reprobationis ostendat. Si autem inter fratres de eligendo abbate discordia fuerit uel scissura suborta, et ipsi facile ad concordiam uel unitatem nequuerint reuocari, pater abbas de consilio coabatum eius ydoneam prouideat personam.

This goes far beyond calling the 'pater abbas' to order, as desired by Gregory IX, and it appears that Lateran IV const. 24 was taken as defining the canonical options available for the election of abbots; *sanior pars* accordingly reappears, but it is now accompanied by *maior*. What is more, the 'pater abbas' has clearly been given the rôle of *confirmator* as expounded in Lateran IV const. 26.

The assimilation of religious elections to the norms of Lateran IV const. 24 and 26 becomes more pronounced later on, especially under Innocent IV.²⁴

²⁴ It is suggestive, though I am insufficiently familiar with the history of canons in general to know whether it is really significant, that, in the Annals of the canons of Dunstable, the election of Richard, canon of Merton, to be their prior in 1202 is recorded (by Richard himself) without any reference to episcopal involvement (except that Richard, being a deacon at the time, was ordained priest), but the bishop's confirmation of his successors in 1242, 1262, 1274 and 1280 is invariably noted (*Annales Monastici*, ed. H.R.Luard, Rolls Series, London 1864-1869, III 28, 158, 220, 264, 284). The material assembled from a number of sources by A.Heales in *The records of Merton Priory*, London 1898, contains reports of the king's assent to the election of priors in 1218, 1222, 1231, 1249 and 1263—in 1231 the bishop was required to install the new prior, but apparently nothing more; it is not quite clear what happened in 1239 or whether more than royal assent was involved in 1263 (pp.75, 79-80, 92, 102, 115, 140). Prior Gilbert reigned from 1263 to 1292, and his

Early in his papacy various groups of hermits approached him with a view to being formed into a single order, and he set things in motion on 16 Dec. 1243 with two bulls calling for them to be united under a prior general chosen 'per electionem canonicam', and to convene for a meeting under the guidance and authority of Cardinal Riccardo Annibaldi.²⁵ The founding chapter of the Augustinian hermits took place in March 1244, and it apparently adopted a certain number of constitutions as well as the Rule of St Augustine, and these were approved by the pope.²⁶ They evidently included provision for the 'institutio et destitutio priorum' (cf. Luijk, *Bullarium* 108-109 no. 140), so this was presumably the origin of the practice explained and modified in Alexander IV's bull of 17 July 1255, *Solet annuere*: as the pope had been informed, the Prior General was elected for three years *and confirmed by the Holy See*; since it was not always easy for him to get to the Holy See, Alexander allowed him to assume office at once and present himself for confirmation as soon as possible (Luijk 110-111 no. 144). It is not clear exactly how the Prior General was elected, but on 26 April 1244 Innocent addressed a version of *Religiosam vitam* to the new order, in which the *obeunte* clause refers to election by 'fratres communi consensu vel fratrum maior pars consilii sanioris' (Luijk 42 no. 46), which combines *maior pars* and *sanior pars* in the way which Innocent seems generally to have favoured. In 1308, Clement V granted a further relaxation under which the newly elected Prior General was confirmed automatically as soon as he was elected, with the sole proviso that he must present himself to the pope within a year (Reg. 4115).²⁷

One of the modifications which Innocent IV made to the so-called *Regula Hugolini* of the Poor Clares in *Cum omnis vera* (6 Aug. 1247) was to add a clause on the election of the abbess and her confirmation by the Franciscan Minister General or provincial.²⁸ In her own 'rule', St Clare preferred to get the Minister General or provincial to assist at the actual election, and she says nothing about him confirming it; but she specifies that 'in electione abbatissae tenean-

successors were approved by the king *and confirmed by the bishop* in 1292 and 1296 (ibid. 178-180).

²⁵ The two bulls are edited in B. van Luijk, *Bullarium ordinis Eremitarum S. Augustini, periodus formationis 1187-1256*, Würzburg 1964, 32-33 nos. 32-33.

²⁶ See van Luijk, *Bullarium* 63 no. 72, and especially 91-92 no. 111.

²⁷ For the whole development, cf. *Dizionario degli Istituti di Perfezione* I 278-292, 315.

²⁸ C. Eubel, *Bullarii Franciscani Epitome*, Quaracchi 1908, 246.

tur sorores *formam canonicam* observare' (4.1-2, ed. M.F.Becker et al., SC 325, Paris 1875, 132).

The influence of Lateran IV const. 24 and 26 is particularly evident in the constitutions of the Sack Friars, who were founded in 1248, and formally recognized by Innocent IV in 1251 and given the Rule of St Augustine.²⁹ Although their procedure for electing the Rector of the Order was based on the primitive constitutions of the Dominicans (PC II 11), they adapted it in the light of the law which had grown up around Lateran IV's rules for electing *per scrutinium*: if the voters were divided, 'ille in quem plures medietate omnium eligentium consenserint, facta collatione numeri ad numerum, zeli ad zelum et meriti ad meritum ... uerus rector ordinis habeatur'. The Rector was confirmed by the pope, and the constitutions contain the formula for sending him the results of the election: the details of the voting are reported, then 'Hiis igitur nominatis et in[de] scriptis redactis, confestim etiam coram omnibus publicatis, facta collatione canonica numeri ad numerum, zeli ad zelum, meriti ad meritum, comperto quod maior pars et etiam sanior fratrem talem elegisset, in ipsum continuo uniuersi unanimiter et concorditer consenserunt' (BL Cotton Nero A XII 13 ff.165^v-166^r).

However, this assimilation of religious elections to those in the secular hierarchy does not seem to have had much lasting effect, perhaps because episcopal elections themselves were already being progressively superseded by direct papal provision.³⁰ The concept of *sanior pars* gradually faded away,³¹ and it is striking that the

²⁹ Cf. *Dizionario degli Istituti di Perfezione* VI 1399; Alexander IV, Reg. 659 (quoting earlier documents); *Gallia Christiana Novissima* Marseilles 143, Toulon 114.

³⁰ Cf. J.Gaudemet, *Le gouvernement de l'église à l'époque classique: le gouvernement local*, Paris 1979, 68-76. In the early fifteenth century, Dominic of San Gimignano seems to have regarded episcopal elections as a thing of the past: he commented on a decretal of Nicholas III that 'fuit multum utilis suo tempore, antequam Papa reservaret sibi provisiones episcopatum' (Friedberg² II 954).

³¹ Though it was not killed off by Boniface VIII, as Léo Moulin claimed (*Dizionario degli Istituti di Perfezione* III 1084): in the decretal from which he quotes, and which he prudently did not identify, 'decernimus ut non zeli ad zelum nec meriti ad meritum sed solum numeri ad numerum fiat collatio' applies exclusively to elections in nunneries, and Boniface explicitly limited its application to them: 'Ad haec licet praemissa, quae in multis a iure communi discrepare noscuntur, circa electiones in quibuslibet mulierum monasteriis faciendas ex certis causis rationabilibus specialiter duxerimus statuenda, intentionis tamen nostrae nequaquam exstitit ut per illa quoad electiones in aliis virorum monasteriis vel quibusvis ecclesiis celebrandas aliquid immutetur, sed iura praecedentia in sua omnino remaneant firmitate' (Liber Sextus 1.6.43, Friedberg² II 967-969).

Lateran canons, organized by the Holy See into a congregation in the fifteenth century and taking their name from the pope's own cathedral (though they were only intermittently allowed to occupy it), had their own version of the old religious system whereby it was easy to get rid of superiors, with nothing to suggest that even their superior general needed to be confirmed by the pope.³²

3. Dominican superiors in the constitutions of the order

Our information about the earliest Dominican election of superiors is extremely sparse. Jordan tells us that Matthew was elected abbot *canonice* in 1217 (*Lib.* 48), but we do not know how he was elected, and it is doubtful if he was ever blessed. I have argued that the 1220 constitutions already contained the statement that priors of convents were to be elected, but without any requirement that they be confirmed (PC II *24a, AFP 71 [2001] 116-118), and we may be confident that no method of electing was prescribed.³³ In 1225 it was decreed that provincial priors were to be elected by provincial chapters (PC II 15a), but it was probably not until 1228 at the earliest that any procedure was specified (II 15c), and, since the procedure was to be essentially the same as that followed in the election of the Master, and no *forma electionis* survives before that of 1236 (II 11a), we can only conjecture what the procedure was.

³² Rather than making provision for the deposition of superiors, they gave all superiors, including the general, a very short term of office (initially one year, later three years), with limited possibility of re-election. Cf. C.Egger, 'Canonici Regolari della Congregazione del SS. Salvatore Lateranensi', *Dizionario degli Istituti di Perfezione* II 101-107; N.Wiedlocher, *La congregazione dei Canonici Regolari Lateranensi, periodo di formazione (1402-1483)*, Gubbio 1929, 70-72, 152-153, 159-160.

³³ The 'Rule of San Sisto' requires the prioress to be elected *per compromissum*: 'Priorissa eligatur ab aliquibus senioribus et prudentioribus de conuentu sororum ad hoc a conuentu electis, et confirmetur per prepositum generalem' (Vienna, Nationalbibl. lat. 4724 f.317). It is doubtful whether this derives from the original text drawn up for San Sisto itself, and it was certainly not based on anything in PC; if PC had ever contained a procedure for electing conventual priors, it would have been maintained or modified, not simply dropped, so the fact that the 1236 text, found in the Rodez manuscript, contains no directives on how priors are to be elected is tantamount to proof that there had never been any such directives. PC II 10a presents the electors of the Master as *compromissarii* electing on behalf of the brethren in the provinces, and it is probable that electors of the provincial (PC II 15c) were viewed in a similar light; but nothing can be inferred from this about elections in convents, since in their case there was no practical reason why all the brethren should not take part directly.

The first sign of uneasiness about the canonicity of Dominican elections occurs in 1236 (MOPH III 8), when *secundum formam canonicam* was substituted for *secundum formam inferius positam* in PC II 10c, and some alteration was made to the procedure for electing a Master (PC II 11a). Since 'si in partes inequales se diuiserint' in the latter must have survived from an earlier version which dealt with the consequences of a tied vote—which would, of course, be irrelevant if an absolute majority were already required (cf. AFP 71 [2001] 84)—we may infer that the main purpose of the 1236 innovation was to make an absolute majority necessary and that this was the point on which the order was concerned to ensure that its *forma electionis* was *canonica*; it can be seen as a concession to Lateran IV const. 24.

In his revision of the constitutions, Raymund of Penyafort made a similar adjustment with regard to the election of conventual priors (in his const. II 2): 'Priores conuentuales a suis conuentibus secundum formam canonicam eligantur'. In 1240-1242 a comment was added to this which clearly alludes to Lateran IV const. 24, though severely restricting its application: 'videlicet a maiori parte medietate eligentium, vel per compromissionem, vel per communem inspirationem, aliis iuris subtilitatibus relegatis, quod similiter in electione magistri ordinis et priorum provincialium observetur' (MOPH III 14.3-7, 19.11-15, 21.21-25). *Maior pars* has its standard meaning (more than half those electing), but there is no trace of *sanior pars*, and, from what we have seen of the complexities generated by the requirement of *maior et sanior pars*, there can be little doubt what 'iuris subtilitates' the order wanted to avoid; it is likely that the point of the inserted comment was precisely to clarify that 'forma canonica' was not intended to burden the order with such 'subtleties'.

The Dominicans were clearly conscious of Lateran IV const. 24 even in 1220, if it is correct to recognize in PC II 1ab a procedure derived from the original legislation on the choice at diffinitors at all chapters: the mechanics of the scrutiny are precisely those prescribed in const. 24 (cf. AFP 71 [2001] 42-46). Nevertheless, the result is determined on purely quantitative grounds: those who secure a majority become diffinitors; if the votes are tied—which would appear to be par excellence the occasion to appeal to the principle of *sanior pars* (cf. the gloss on X.1.6.22)—an extra voter is coopted,³⁴

³⁴ In the election of the abbot of Saint-Victor in Paris the *compromissarii* could bring in 'alios de conuentu fratres religiosiores' if they could not agree among themselves; but these *alii fratres* were not given a vote, it seems, and it looks as if the

and he too is chosen on the basis of sheer numerical majority. The same system was used in the election of visitators (PC II 19a), and the principle of calling in an extra voter was used to resolve deadlocked disagreements between provincials if the Master was deposed (or dead) (PC II 9d); it was later invoked to break a deadlock in the diffinitory at the general chapter (PC II 7bc). It is striking that neither the Master at a general chapter nor the provincial at a provincial chapter has a privileged vote (PC II 2, 7bc), so *auctoritas* evidently does not add weight to their opinion; only quantity counts.

In the *forma electionis magistri* introduced in 1236 (PC II 11a), which was also to be followed in the election of provincials (PC II 15c), it seems that, once again, the result is to be calculated quantitatively; although, at a pinch, 'ille in quem plures medietate omnium qui debeant eligere consenserint ... sit magister' could be interpreted to refer to an *electio* made after a *collatio numeri ad numerum, zeli ad zelum, meriti ad meritum*, we should have expected some reference to *sanior pars* or *collatio* in the text, if this is what was intended.³⁵

There are similarities between PC II 11a and II 1bc which suggest that, when a procedure for electing the Master was first introduced (almost certainly in 1222), it was originally modelled on that already followed in the election of diffinitors. If so, there never was a *collatio* beyond the mere counting of votes, and the *sanior pars* was never part of the equation.³⁶

The earliest reference to confirmation probably comes in PC II 15a, which I have dated to 1225 (AFP 71 [2001] 24-25, 41): 'Sta-

outcome was still intended to be a unanimous decision: the *alii* were brought in 'ut eorum auxilio et consilio res pacifice ad finem perducatur' (ed. cit. 16).

³⁵ It is also suggestive that the legislation on Most General Chapters introduced in 1236 (PC 22) provides for such a chapter to be called if a majority of provinces want it, but any qualitative assessment of their reasons is explicitly ruled out: 'Prouincie que petunt scribant causas quare petunt; de hiis tamen capitulum generale non habebit iudicare utrum sufficientes sint uel non'.

³⁶ Humbert sneaks it back in again in a very reduced form in his account of the *officium electoris magistri* in the *tractatus de officiis ordinis*: if an elector realizes from the scrutiny that no election is likely to result unless he changes his vote, he should do so, if he can in good conscience; in such circumstances he should align himself with those he judges to be 'melioris et sanioris sententiae' (ed. Berthier II 347). Humbert himself uses the title *tractatus de officiis ordinis* in *De eruditione predicatorum VII v* (ed. J.J.Berthier, *Humberti de Romanis opera de vita regulari*, Rome 1888-1889, II 481; there are no manuscript variants); I give references to Berthier's edition, but I take the text from Berlin, Staatsbibl. theol. lat. fol. 164, and Siena, Bibl. Com. G.XI.36.

tuimus ut prouinciarum priores uel regnorum in capitulo generali a magistro ordinis et diffinitoribus, premissa diligenti examinatione, confirmentur uel amoueantur'. The 'diligent examination' echoes Lateran IV const. 26; nevertheless, confirmation clearly has a quite different meaning for the Dominicans. 'Vel amoueantur' only makes sense if the people under discussion were already holding office; 'confirmetur' must then mean 'they are to be confirmed in office', not 'their election is to be confirmed so that they may assume office'.

In 1228, I have suggested (AFP 71 [2001] 26), a new clause was added to PC II 15, 'Statuimus ut magister solus possit confirmare priorem prouincialem' (15b); in the Rodez manuscript this is inserted immediately after II 15a, so there is nothing to suggest that *confirmare* has changed its meaning. Nevertheless, a further addition made in 1236, requiring an election to be held as soon as possible after the demise or dismissal of a provincial (II 15d), shows that the order did not want provinces to be left too long without provincials, and *if* it had come to accept that confirmation was necessary *before* a provincial elect could assume office, it would obviously be sensible to provide for speedy confirmation too. The insertion of PC II 4a, also perhaps datable to 1228 (AFP 71 [2001] 59), seems to prove that this is indeed what was intended, since it designates the person who was to act as vice-provincial 'donec prior eiusdem prouincie sit *electus et confirmatus*'.

However, if PC II 4a was intended to bring the Dominicans into line with the church's normal practice of confirmation as a prerequisite for the assumption of office, Raymund's rewording of PC II 15ab in his const. II 3, 'De electione prioris prouincialis', suggests that it was not very effective:³⁷

PC	Raymund
<p>Statuimus ut prouinciarum priores uel regnorum in capitulo generali a magistro ordinis et diffinitoribus, premissa diligenti examinatione, confirmentur uel amoueantur. ... Statuimus ut magister solus possit confirmare priorem prouincialem</p>	<p>Statuimus autem ut prior prouincialis in capitulo generali a magistro et diffinitoribus, premissa diligenti examinatione, confirmetur uel amoueat. Poterit eum nichilominus magister ordinis confirmare uel amouere.</p>

³⁷ It should be borne in mind that Raymund's 'correctio et ordinatio et additio' (MOPH III 11.22-23, 13.25-26, 18.26-27) was a codification of existing Dominican law, just as his edition of the decretals was a codification of church law; his task in each case was to turn a rather chaotic accumulation of edicts into an orderly

Raymund's text is in the singular because it comes immediately after the laws governing the election of a provincial; this puts it beyond all doubt that 'prior prouincialis' here refers primarily to a newly elected provincial. The two other new features of the text, *nichilominus* and *uel amouere*, show that, as Raymund understood the order's practice, it was still the norm for provincials to be confirmed or removed at the general chapter, and that the powers granted to the Master by PC II 15b were exactly parallel to those generally exercised by the chapter.

If the purpose of allowing the Master to confirm provincials on his own was to expedite confirmation, seen as necessary before the man elected could assume office, Raymund appears to have been unaware of it, in that he has completely assimilated the Master's authority in the matter to that of the chapter, and he has unambiguously made it normative for the confirmation (or removal) of provincials to be left to the chapter. Exactly as before, then, confirmation means confirmation *in office*: a newly elected provincial merits the title even before he is confirmed, and must be in office already before the chapter (or the Master) decides his fate, since otherwise the question of removing him would not arise.

The same conclusion is forced on us in another way too: the requirement that the election of a new provincial be held as soon as possible was retained by Raymund, but it would be meaningless if confirmation was needed before the man elected could assume office *and* it was normally left to the following general chapter to confirm him. If he had seen confirmation in this light, Raymund could perfectly well have organized existing legislation to make it normative for newly elected provincials to be confirmed at once by the Master; the fact that he chose to go in the opposite direction strongly suggests that, in his view, the order had a different and legitimate practice of confirming superiors *in office* (or removing them from office) at every chapter, rather than confirming their election so that they could assume office.

and up-to-date body of law. As Humbert said, 'Per eius etiam diligentiam constitutiones nostre redacte sunt ad formam debitam sub certis distinctionibus et titulis, in qua sunt hodie, que sub multa confusione ante habebantur' (cf. MOPH I 331). The Master had no legislative power, and legislative innovations were passing through general chapters in the ordinary way in the period between Raymund's election in 1238 and the final adoption of his constitutions in 1241. The most that *additio* can cover, beyond the updating necessitated by recent capitular innovations, is explanatory amplification of the pre-existing text. We may take it, then, that Raymund believed himself to be reformulating the order's practice, not changing it.

The implications of Raymund's adaptation of PC II 15ab are, on the face of it, incompatible with those of PC II 4a which he placed at the beginning of his const. II 3:³⁸

PC	Raymund
<p>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.</p>	<p>Statuimus ut mortuo priore prouinciali uel amoto prior conuentualis illius loci in quo prouinciale capitulum fuerit celebrandum uicem eius obtineat, donec prior eiusdem prouincie sit electus et confirmatus.</p>

PC II 4a was originally inserted, rather clumsily perhaps, into the section of the constitutions dealing with provincial chapters; from this point of view the following chapter, by reference to which the person was identified who would act as vice-provincial, was necessarily that of the following year.³⁹ Raymund's text applies whenever a province finds itself without a provincial, whether or not it has already celebrated this year's chapter; otherwise he made no changes.

I see only one way of resolving the contradiction. Since the implications of Raymund's adaptation of PC II 15ab are highlighted precisely by his reformulation, they presumably carry more weight than those of PC II 4a; it rather looks, then, as if 'et confirmatus' was not taken, or at least not taken seriously, in its obvious sense.

A further sign that confirmation in its normal ecclesiastical sense was not taken too seriously is the fact that until 1258 the constitutions provided no way of getting provincials confirmed during an interregnum (MOPH III 90.8-16), even though the Master's death

³⁸ In the only manuscript, much of const. II 3 from 'donec prior' onwards has been erased to make way for more up-to-date legislation, but the relevant words are quoted by the general chapters of 1241-1243 (MOPH III 20.17-18, 22.32-33, 25.3-4), so they were certainly present in Raymund's constitutions; *uices* in the Porto manuscript is an aberration (cf. AFP 71 [2001] 56), so I have restored *uicem*.

³⁹ Since, according to PC II 15a, it was the responsibility of the provincial chapter to elect a provincial, the need for a vice-provincial underscores the significance of *et confirmatus*: the chapter which is meeting after the death or dismissal of the provincial should itself elect his successor, but even so the province will not have a functioning provincial until he has been confirmed (and for that it may have to wait until the next general chapter).

might mean postponement of the general chapter for a whole year (PC II 13b), entailing a considerable delay before an election could be confirmed by either a chapter or a Master.

This is particularly striking in as much as a procedure for getting provincials confirmed in such circumstances had been inchoated and approved in 1251-1252 (MOPH III 57.20-26, 61.1-9), but it was never confirmed. What is more, the problem had arisen in practice even earlier than this, though the cases in question are as puzzling as they are enlightening.

One of the people sent from the general chapter of 1238 to Barcelona to inform Raymund of his election was the provincial of Provence, Poncius de Sparra.⁴⁰ He was absolved in 1249, and Gui added a note to the effect that he had been provincial for twelve years (MOPH III 48.8-9 with app. crit.), which should mean that he was elected in 1237, when the order had no Master; in principle, therefore, he could not have been confirmed before the general chapter of 1238, yet he was clearly present at the chapter as provincial. Unfortunately, though, there is some uncertainty about the date of his election, and it is just possible that he had been confirmed by Jordan.⁴¹

If it was deemed important for provincials to be confirmed as quickly as possible so that they could assume office, the general

⁴⁰ Gui reports this in his *catalogus magistrorum*, and his information seems to have been very precise. The relevant text is edited in E. Martène-U. Durand, *Veterum scriptorum ... amplissima collectio*, Paris 1724 (hereafter cited as 'Martène-Durand') VI 406-407.

⁴¹ Gui's own uncertainty can be seen from changes he made to the text of his *catalogus provincialium Provinciae* (Martène — Durand VI 420-422). He never wavered in his conviction that Poncius was provincial for 12 years and that he was the provincial absolved in 1249 (Agen 3 f.54^v, Bordeaux 780 f.30^v, Toulouse 490 f.67^r, Barcelona 218 f.103^r). The natural inference was that he was elected in 1237 (as Gui noted in the margin in Agen 3 f.54^v), in which case his predecessor, Romeus, appointed in 1232, must have been provincial 'for about 5 years' (Agen 3 f.53^v). Later, however, Gui apparently learned that Romeus was only provincial for four years (Bordeaux 780 f.30^r, Toulouse 490 f.65^v, Barcelona 218 f.102^v), so he redated the beginning of Poncius's provincialate to 1236 (Bordeaux 780 f.30^r, Toulouse 490 f.66^v, Barcelona 218 f.103^r). It was precisely in 1236 that provinces were first told to elect provincials without delay (PC II 15d); it is possible that the Provence chapter was brought forward and that Poncius was elected in time to be confirmed before Jordan set off for the Holy Land—all we know of the chronology of his journey is that he was returning from the Holy Land when he was drowned in mid February 1237 (MOPH I 329; Thomas of Cantimpré, *De Apibus* II 57.51). It is also possible that the discrepancy in Gui's information was due to a long delay between Poncius's election in 1236 and reception of Jordan's confirmation from the Holy Land.

chapter of 1240 should certainly have been aware of the lacuna in the order's legislation. Having accepted Raymund's resignation, it knew full well that the order would be without a Master for the following year; it also apparently absolved at least two provincials, since both Germany and Poland are reported to have acquired new provincials in that year.

Our information about Germany is very limited: Hitto is said to have become provincial in 1240 and to have remained in office until 1249;⁴² according to Peter of Dacia, who met him many years later, he was provincial for nine years,⁴³ which implies that he did not wait until 1241 to take office.

We have rather more information about Poland: according to the seemingly reliable evidence of the 'chronicle of provincials', Henry (Heidenric) was absolved in 1240, and a German 'hospes' who came to the provincial chapter in the same year, Gerard of Cologne, was elected to replace him 'et ibidem confirmatus'; in 1243, at the request of the brethren, the general chapter sent two visitators to the province, who found Gerard's election *uiciosa* and absolved him (AFP 21 [1951] 18-20). We are not told in what way the election was flawed, but, if no convent could elect a prior from another house without the provincial's permission, it might be presumed *a fortiori* that a provincial could not be elected from another province without the Master's permission, so it is quite likely that this was the Polish chapter's mistake. Nor is there any clue as to how Gerard was 'ibidem confirmatus', assuming the chronicle's statement to be correct.

It was a provincials' chapter in 1240 (cf. AFP 70 [2000] 101), so, after Raymund's resignation, PC II 9cd could, for once, be put into effect for the remainder of the chapter, and the assembled provincials who jointly assumed the Master's authority could have made some special provision for elections to be confirmed in the period before the following general chapter; if so, Hitto was presumably confirmed in the same way as Gerard. Nevertheless, it seems extraordinary that no legislation was introduced at the same time to make permanent provision for such an eventuality, if prompt confirmation of provincials was deemed necessary and important.

It is tempting to speculate that 'et ibidem confirmatus' gives us a glimpse of a general practice whereby the Master's authority to

⁴² QF 1 (1907) 13, 31; *Archiv der deutschen Dominikaner* 4 (1951) 83.

⁴³ *Vita Christinae Stumbelensis* 42 (ed. J. Paulson, repr. Frankfurt 1985, 105-106).

confirm, vested in him by PC II 15b, was routinely delegated to someone on the spot, leaving the *real* confirmation, in the order's traditional sense of confirmation in office, to take place at the general chapter when all provincials were confirmed or removed. If there were such a practice, then the apparent contradiction in Raymond's const. II 3 disappears; but, of course, it would mean that the order was using the term 'confirmation' to signify two different things: an initial confirmation allowing an elected superior to take office, and a much more serious confirmation in office in the course of the annual review of superiors conducted at every chapter.

Gui's comment on the seventh provincial of Provence, 'frater Stephanus dictus Aluernhatz', is suggestive in this connection: elected at the provincial chapter of 1249, 'erat tunc lector Montis Pessullani et absens a capitulo illo, sequens uero prouinciale capitulum ipse tenuit in Narbona anno domini MCCL' (Martène-Durand VI 422). This appears to imply that he would have presided over the 1249 chapter if he had been present at it; since there is no indication that the Master was in the vicinity, this must mean either that he could have assumed office without waiting to be confirmed or that there was some procedure whereby he could be confirmed at once.⁴⁴

The inchoation made in 1256 to provide a method for getting provincials confirmed in the absence of a Master, shows that, by then, magisterial confirmation had become normal and was being seen as a necessary prerequisite for the assumption of office. However, the procedure adopted was not, as we might have expected, to designate someone who would act as vice-master in this regard, but to authorize the three senior electors to confirm or cassate the election; it was this inchoation which became law in 1258 (MOPH III 80.10-18, 85.10-19, 90.8-16). This perhaps adds some weight to the suggestion that the order had already found a way of making confirmation more or less internal to the election itself.

What is more, if Gui's information about the election of Gerald de Frachet's successor in Provence is correct, Humbert retained

⁴⁴ Even if this inference is justified, it does not, of course, guarantee that Gui's words are based on a genuine memory of what used to happen; however, if confirmation by the Master or by the general chapter was a prerequisite for a newly elected provincial to assume office, it should not normally have made any difference whether the person elected was present or not at the provincial chapter at which he was elected, so it is probably significant that it was remembered that Stephanus was not present in 1249.

some such system, at least on this occasion: 'Frater Poncius de Sancto Egidio ... prior Tholosanus existens fuit *electus et confirmatus simul* in priorem provincialem in capitulo provinciali in Montepessulano in festo beati Dominici celebrato anno domini MCCLIX' (MOPH XXIV 51).⁴⁵

The confirmation of conventual priors seems to have a similar history.

In *Ne pro eo*, issued on 3 Dec. 1227 and many times thereafter, Gregory IX told the Dominicans that the obedience and reverence which they owed to the bishops should not make them do anything contrary to their own laws 'et maxime circa institutionem et destitutionem priorum uestrorum' (*Epitome Bullarii OP* no. 177).⁴⁶ Earlier in the same year, on 5 Sept., he had rebuked the bishop of Bologna for interfering, bidding him allow the brethren to follow their own practice of 'piores suos sine alicuius solemnitatis obseruantia instituere et destituere et etiam confirmare' (BOP I 24). He was evidently satisfied that the order had its own way of making, unmaking *and confirming* priors, but, at this time, this almost certainly meant that they were 'confirmed or removed' at provincial chapters, just as provincials were 'confirmed or removed' at general chapters. It is unlikely that the reference to confirmation by the provincial in PC II 24a antedates 1228 (AFP 71 [2001] 117-118), and even then the enlarged text does not make much sense if confirmation has its normal ecclesiastical sense:

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.

⁴⁵ Quite apart from the fact that there is no mention of Humbert being present at the chapter to administer immediate confirmation, it is exceedingly improbable that he was anywhere near Montpellier on 5 Aug. 1259. Some time in July he issued letters of confraternity in favour of the monastery of St Martin at Tournai (SOPMÆ II 294), and on 23 July Hugh of St Cher wrote to him bidding him implement the controversial transfer of the convents of Bruges and Gent to the province of France by giving the necessary instructions to the brethren of the two houses and to the provincial of France (M.D.Chapotin, *Histoire des Dominicains de la Province de France*, Rouen 1898, 525); there can surely be little doubt that he was fully occupied in the North at the time when Pons of Saint-Gilles was elected 'et confirmatus simul' in Montpellier.

⁴⁶ On the *Epitome*, see AFP 70 (2000) 24 n.35. This bull was the Dominicans' equivalent of the privileges granted long ago to the Cistercians and Praemonstratensians in connection with the bishop's blessing of their abbots.

Sine cuius is syntactically dependent on *priore prouinciali*, and the provincial is only mentioned in connection with confirmation; the 'sine cuius' clause must therefore have been added at the same time as 'a priore prouinciali ... confirmentur', if not later. But the two requirements sit ill with each other: if no one could take office as prior without being confirmed by the provincial, why was special permission needed before someone could be elected from a different community? If the provincial did not approve of a community's choice, all he had to do was cassate the election; it ought not to have made any difference which convent the person elected belonged to. However, it would make a difference if confirmation was understood as meaning 'confirmation *in office*' (non-removal from office): if communities could import priors from elsewhere simply by electing them, they would be intruding on the provincial's right to deploy his own men, which they would not be doing if they elected people from within their own ranks.

I have already suggested that the clause which troubled Bandedello, 'si ei uisum fuerit', was intended to give the provincial greater freedom that was generally enjoyed by a *confirmator* (AFP 71 [2001] 118); we must now envisage the more radical possibility that what it originally meant was simply that the provincial could, *if he wanted to*, anticipate the routine assessment of priors at the provincial chapter and confirm them on his own authority. If he did not wish to intervene, newly elected priors, like all the others, would operate unchallenged until the next chapter.

Apart from the insertion of 'secundum formam canonicam', Raymund retained PC II 24a unchanged in his const. II 2. But his interpretation of PC II 15b is relevant here too: since, in his own province, a provincial could do anything which the Master could do (const. II 3, derived from PC II 16a), his confirmation of priors was presumably analogous to the Master's confirmation of provincials; if the latter meant that the Master, on his own, could 'confirm or remove', the provincial too could presumably 'confirm or remove' conventual priors 'si ei uisum fuerit'.

It is suggestive that the Sack Friars and the Crutched Friars, whose constitutions generally follow those of the Dominicans closely, altered the text concerning the confirmation of priors. The Sack Friars, as we have seen, were under pressure to conform to current ecclesiastical norms in such matters; their adaptation of PC II 24 is in line with this, and makes it fully explicit that confirma-

tion was required before the assumption of office (BL Cotton Nero A XII f.169^v):

Priores conuentuales a suis conuentibus eligantur, quorum confirmatio ad rectorem uel priorem prouincialem pertinebit; ante confirmationem nullatenus ministrent.

The Crutched Friars, whose constitutions were based on those of Raymund, differ from his text most notably by omitting 'si ei uisum fuerit':⁴⁷

Priores a suis conventibus secundum formam canonicam eligantur. Ille in quem plures concordauerint pro priore habeatur, et a priore Hoyensi vel suo visitatore confirmetur.

This rather corroborates the suspicion that, even in the 1240s, 'si ei uisum fuerit' was understood to mean something out of line with current church law (such as making confirmation by the provincial optional).

Nevertheless, between Raymund's resignation in 1240 and John of Vercelli's death in 1283, a succession of constitutional changes attests a growing concern for clear and proper procedure, and a certain sensitivity to current church law.

The 1240 chapter introduced three 'canonical' inchoations, all of which were subsequently approved and confirmed.⁴⁸ First, the rules on the choice of diffinitors at the provincial chapter were clarified:⁴⁹ after the scrutators have collected the votes, 'scripturam publicent in medium' was made more explicit by the addition of 'expressis nominibus eligentium et electorum'.⁵⁰ Secondly, 'et confirmatus'

⁴⁷ A. van de Pasch, *De tekst van de constituties der Kruisheren van 1248*, Brussels 1952, 79.

⁴⁸ They appear among the approbations, but there is no sign that they were inchoated in 1239 and they were not confirmed until 1242.

⁴⁹ The election of these diffinitors was the first to be mentioned in PC (it came in PC II 1), so it constituted a model for all other elections; this is no doubt why it was this part of the text that was to be changed. However, by the time the inchoation was confirmed, Raymund's revision had come into force, in which the election of diffinitors came last (in const. II 5), not first, so the new text ended up in a rather inappropriate place.

⁵⁰ All that was explicitly required by Lateran IV const. 24 was that the written results of the scrutiny should be 'published' without delay; but it is clear that this was intended to include the names of the electors and their candidates, since, unless it was known who had voted for whom, it would be impossible to conduct the col-

was added to the constitution specifying that, if someone chosen to be a diffinitor at the general chapter was in the meantime elected provincial, his place was taken by his socius. Thirdly, as we have already noted, the precise meaning of 'secundum formam canonicam' was spelled out (MOPH III 13-14, 19.7-15, 21.17-25).

Church law required the electoral process to result in a *communis electio*—it was not enough for people to agree individually to the election of a particular candidate, as in that way there would be as many *electiones* as there were electors (X.1.6.55, Friedberg² II 94); as Bernardus Parmensis commented, the common *electio* had to be expressed either by one person or by several people speaking simultaneously (ed. cit. 193). The 1257 general chapter issued an admonition along these lines: 'Quando eligitur magister vel prior provincialis vel conventualis publicato scrutinio unus eligat vice omnium nominantium sive eligentium' (MOPH III 87.1-3). A more elaborate version of this was added to the constitutions in 1264-1266, though with no mention of the election of the Master (MOPH III 124.4-12, 127.24-32, 132.7-15); it entered the constitutions in this form:

Publicato autem scrutinio et facta collatione numeri ad numerum, si minor pars maiori consenserit, ille qui primam uocem habuit inter electores surgens dicat, Ego N. uice mea et omnium electorum presentium eligo N. in priorem talis conuentus, uel talis prouincie si prior prouincialis eligatur. Si uero non omnes consenserint sed maior pars, tunc sicut prius qui primam uocem habuit dicat, Ego N. pro me et pro hiis qui mecum consentiunt eligo N. et cetera ut prius.

According to Lateran IV const. 23, if a cathedral or regular church was without a superior, an election must be held within three months, otherwise it fell to the next highest superior to choose someone; the Dominicans' procedures for electing a new Master obviously did not comply with this requirement, nor would the election of provincials always fall within the required period. On the face of it, this did not matter since neither the Master nor the provincial was superior of a 'regular church'; however, on 16 March 1257, presumably at the request of Humbert of Romans,⁵¹ Alexan-

latio which was to result in the identification of the *sanior pars*. In principle, though, since Dominican elections were determined simply by the *maior pars*, all that was needed in their case was an indication of how many votes had been received by each candidate.

⁵¹ Since the general chapter that year was to take place in Florence, it is quite likely that Humbert was already in Italy, and he may have solicited the pope's inter-

der IV declared that, in the election of the Master or of a provincial, the Dominicans were not bound by the time-limits imposed by law (BOP I 331-332).

Even before Raymund's revision, the constitutions laid down who was to act as scrutator in the election of diffinitors at the provincial chapter and in the election of the Master (PC II 1a, 11a), but there was no such prescription with regard to other elections. The general chapter of 1266 proposed to change the scrutators for the election of diffinitors (MOPH III 133.25-28), but nothing came of it; otherwise things remained the same until the mid 1270s. The chapters of 1274-1276 specified that, in the election of a prior by scrutiny, the votes were to be collected by the subprior and the two senior brethren (MOPH III 173.31-35, 179.17-22, 183.31-35): A similar change was made in 1282-1285 to specify that, in the election of a provincial, the votes were to be collected by the three priors who were senior in the order (MOPH III 217.15-18, 221-222, 227.5-9). The last chapter held under John of Vercelli, in 1283, inchoated a change to const. II 2, specifying that in the election of electors of a provincial the votes were collected by the prior (or his vicar) and the two senior brethren, and this was approved and confirmed in 1285-1286 (MOPH III 222.20-23, 227.22-25, 231.7-10).

More importantly, vague references to people being 'chosen' (elected) for various tasks were expanded to include precise conditions for their choice. In 1249-1251 'a capitulo electis' with reference to the *socii* chosen to accompany their priors to the provincial chapter was expanded to 'a pluribus de capitulo suo etiam citra medietatem eligentium electis'; this makes it clear that election means election by the *maior pars*, even if, in this case, an absolute majority is not required. At the same time it was explained that diffinitors to the general chapter must be elected in the way laid down for the election of diffinitors at the provincial chapter (and there too a relative majority was sufficient) (MOPH III 45.28-34, 51.8-15, 56.5-8).

The chapters of 1257-1259 changed the rules on priors' *socii* to the provincial chapter so that thenceforth they had to be elected by

vention personally; however, there was no need for this, since he had already appointed a permanent procurator general. The first holder of this post, Troianus, is known from his memorandum to the Master, included in the acts of the 1257 chapter (MOPH III 89.5-29); its contents show that he had already been doing the job for some time by then.

an absolute majority (MOPH III 86.11-13, 90.25-28, 94.24-27). An inchoation was also introduced in 1257 requiring diffinitors to general chapters and their socii to be elected 'a maiori parte provincialis capituli' (MOPH III 86.6-10), but this got no further. However, a more modest inchoation was made in 1258, requiring the diffinitor to the general chapter (but not his socius) to be elected 'a maiori parte capituli provincialis', and this was confirmed in 1260 (MOPH III 90-91, 95.3-8, 101.20-25); another change made at the same time required electors of the provincial to be elected 'a maiori parte conventus' (MOPH III 91.29-31, 95.27-29, 102.1-3).

An addition made in 1259-1261 specified that, in the election of conventual and provincial priors, only electors who were actually present were taken into account. (MOPH III 96.30-34, 102.18-22, 106.17-21).

In 1260-1262 it was clarified that the person brought in to resolve a deadlock at the general chapter was elected *by the diffinitors* (MOPH III 104.5-7, 107.32-34, 113.25-28).

In 1269 another attempt was made to get the socius of the diffinitor to the general chapter elected by a majority (even a relative majority) of the chapter, rather than appointed by the provincial and diffinitors of the provincial chapter; this was approved in 1270 (MOPH III 146.23-27, 151.23-28), but not confirmed.

The chapters of 1279-1281 made it necessary for the two socii who were to accompany the provincial to a Most General Chapter to be elected by an absolute majority (MOPH III 201.33-35, 206.17-19, 211.19-21).

Const. II 4 contained a sentence inherited from PC II 10a saying that the provincial was to go to the election of the Master 'cum duobus fratribus, in capitulo prouinciali electis in quos ceteri de ipso prouinciali capitulo ad electionem magistri faciendam compromiserint'. An inchoation was introduced in 1252 which would have abandoned the idea of the electors being *compromissarii*, leaving the text to say simply that the provincial should go to the election 'cum duobus fratribus in capitulo provinciali electis ad electionem magistri faciendam' (MOPH III 62.21-25). This was not approved or confirmed. However a successful attempt was made to change the text in 1279-1281; as before, the idea that the electors were *compromissarii* was dropped, but this time there was also a concern to specify exactly how they themselves were elected: the provincial goes to the election 'cum duobus fratribus in capitulo prouinciali electis a pluribus medietate omnium eligentium' (MOPH III 201.15-18, 206.1-5, 211.4-8).

Developments concerning confirmation and its consequences suggest that confirmation by the higher superior gained ground, but not without some resistance.

In 1247-1249 an addition was made to const. II 2, suggesting that confirmation of priors by the provincial was being taken seriously. There is a discrepancy between the reported acts of the chapters and the text which actually entered the constitutions; as added in the margin of the Porto manuscript, it reads: 'Conuentus autem qui petit electi confirmationem in priorem numerum et nomina scribat eligentium', which accords with what we find in later versions of the constitutions.⁵² The point of this was presumably to enable the provincial to make a more informed assessment of the election before confirming it.

The chapter of 1251 inchoated a significant change to the text inherited from PC II 15a, which would have made it explicit that it was a provincial elect, not a provincial, who should be 'confirmed or removed' by the general chapter (MOPH III 57.17-19); this was not approved in 1252 and no further attempt was ever made to revive it, but its effect, on the face of it, would have been to strengthen the view that confirmation of provincials by the chapter was the norm, even though this would now have to mean that they did not assume office until they had been so confirmed.

An admonition of the 1255 general chapter suggests that provincials were, by then, taking their obligation to confirm priors seriously, and that some of them were enjoying the power it gave them rather too much: they were told to be careful 'ne electiones factas de prioribus conuentualibus sine causa rationabili repellant' (MOPH III 76.19-21).

In the 1260s and 1270s the order flirted with the idea of dividing provinces into *vicariae* largely governed by vicars;⁵³ it is of interest here because the language used suggests that the provincial's rôle in the making and unmaking of priors had come to be seen in a strangely authoritarian way: except in the presence of the provincial, his vicars were to exercise his authority to the full 'exceptis dumtaxat institutione et destitutione priorum et lectorum'.

⁵² The acta are reported to have had 'numerum et nomina eligentium scribat provinciali' (MOPH III 39.11-13, 41.30-33, 43.4-8).

⁵³ Legislation to this effect was unsuccessfully introduced in 1265 and 1271, but it was reintroduced, approved and confirmed in 1273-1275; however, the next three chapters took it out of the constitutions again (MOPH III 129.5-14, 158.5-20, 167.13-26, 171-172, 177.18-31, 185.23-27, 189-190, 194.22-27).

If priors and provincials really could not assume office until they had been confirmed, then it was more important than ever that everyone should know unambiguously who was in charge during the interregnum.

In 1241-1243 the constitution on the subprior was supplemented to deal with this problem at the level of the convent. There is, unfortunately, a slight textual problem; the form which prevailed in the actual constitutions is: 'Idem autem supprior mortuo priore uel amoto uices eius in omnibus plenarie optineat quousque prior sit electus et confirmatus et in domo presens extiterit, nisi prior prouincialis aliud ordinauerit'.⁵⁴ In the chapter acts, this innovation comes immediately after one affecting the corresponding authority of a vice-provincial, specifying that he remains in charge until the elected and confirmed provincial, or someone appointed by him to act as his vicar, *is present in the territory*. This suggests that the main concern of the capitulars was similarly to ensure that there was someone in charge in a convent until the new prior was actually present, and that 'et confirmatus' was brought in for the sake of symmetry; nevertheless, there it is, with its implication that the prior could not assume office until he had been confirmed. However, it is difficult to see why it was important at the same time to authorize the provincial to make other arrangements unless this included the possibility that he could allow newly elected priors to assume office immediately, without waiting to be confirmed, if they were already members of the community.⁵⁵

In 1248-1250 a change was made to const. II 3 to cover a situation in which the man acting as vice-provincial died or ceased to be prior of the convent which was to host the next provincial chapter (MOPH III 42.8-12, 43.9-14, 48.15-20); in 1249-1251 similar provision was made for someone to take command of a convent in the absence of a subprior (MOPH III 46.17-23, 51.29-35, 56.15-16).

⁵⁴ The text added in the margin of the Porto manuscript of Raymund's constitutions has *uel nisi for nisi*, and the relevant chapter acts are reported to have had simply *uel* (MOPH III 20.22-25, 22-23, 25.8-11).

⁵⁵ The text was further modified in 1260-1262 to deal with the absence of the prior as well as his death or removal. To accommodate this, 'uel conuentualis' was added to 'nisi prior prouincialis aliud ordinauerit' (MOPH III 103.16-20, 107.8-12, 113.4-8), which might suggest that the prior himself could make arrangements for the government of the house after the death or removal of the prior! There can be no doubt, though, that the capitulars only meant that a reigning prior could make his own arrangements to cover a period when he was going to be absent.

In 1261-1263 the Master was given authority to make other arrangements for the government of a province during an interregnum between provincials (MOPH III 108.14-18, 114.7-11, 117.25-29).

In the absence of a provincial, the prior of the house where the next chapter was to be held acted as vice-provincial. In 1270-1272 a clarification was added to const. II 3 to specify that if the next chapter was relocated to a different convent, then the prior of this convent became vice-provincial (MOPH III 153.6-10, 157.21-25, 162.5-9). The new text was expanded in 1273-1275 to provide for a vice-provincial if the relevant convent lacked a prior (MOPH III 168.25-37, 172.20-32, 178.6-18); a further loophole was closed in 1276-1278 to deal with the eventuality of the prior in question being out of the province at the time (MOPH III 185.17-22, 189.27-33, 194.15-21).

Humbert seems to have thought it important, not just to make sure that there was someone to govern during an interregnum, but that the process of replacing a prior or provincial should be expedited as quickly as possible. To this end, he secured a bull from Alexander IV on 31 Jan. 1255 (BOP I 270),⁵⁶ giving electors of pri-

⁵⁶ Humbert's moves after his election in Buda are not known for certain, but he was certainly at the papal court in Naples in March 1255 (AFP 44 [1974] 78-79), and we have the pope's word for it in *Quasi lignum vitae*, issued on 14 April, that he had been playing an active part there in getting the order's quarrel with the university of Paris settled (H. Denifle, *Chartularium Universitatis Parisiensis* I, Paris 1899, 282); there is also a story in the *Vitas fratrum* which indicates his presence in Rome at much the same time (MOPH I 44-45). Another story implies that he was fighting for the order in the papal curia even before Alexander revoked his predecessor's anti-mendicant letter on 31 Dec. 1254 (BOP I 267; MOPH I 215), and this is entirely credible. In his *tractatus de officiis* Humbert would urge the Master to visit the Roman curia both to show respect and to benefit the order, and 'si curiam turbatam inuenerit in aliquo contra ordinem uel fratres aliquos debet ad sedandam ipsam sollicite laborare' (ed. Berthier II 186); never was the Master's attendance on the pope more needed than in the latter half of 1254. On 2 Feb. 1255 Humbert and his Franciscan counterpart, John of Parma, sent out a joint encyclical (MOPH V 25-31), and it is probable that they had got together at or near the papal court—John was certainly in Ferrara in September 1254 and he was apparently in the neighbourhood of the curia (in Naples) at or soon after 21 Nov. when Innocent's anti-mendicant letter appeared (Salimbene, *Cronica*, ed. G. Scalia, CCCM CXXV, Turnout 1998-1999, 457, 635); it would be surprising if he had not remained within reach of the pope at such a critical time for his order. We may take it as very probable, then, that the bull of 31 Jan. 1255 was issued at Humbert's request, as, surely, was that of 26 Jan. allowing the Master to choose his own confessor (BOP I 269).

ors and provincials a chance to propose alternatives immediately should their elected candidate not be confirmed:⁵⁷

Ut ea que uobis interdum circa electionis negotium incumbunt expedienda pro tempore celerius et salubrius ualeant expediri, uobis auctoritate presentium de gratia concedimus speciali ut cum in aliquo uestri ordinis capitulo uel conuentu de prouinciali aut conuentuali priore occurrerit electio facienda, electores prioris huiusmodi eis qui pro confirmatione mittuntur ipsius, si ex aliqua causa electio huiusmodi non procedat, libere possint committere quod alium eligant in priorem. Superior quoque ad quem huiusmodi confirmatio pertinet illum de fratribus eiusdem ordinis quem ipsi electores per litteras suas ab eo petierint eis in priorem concedere ualeat si eodem modo electus ab ipsis forsitan non fuerit confirmatus.

This was apparently considered too elastic, so a revised version was issued on 16 March 1257 (BOP I 332):⁵⁸

... Si ex aliqua causa factam electionem ab ipsis fratribus eiusdem ordinis quorum interest non contingat forsitan confirmari, superior ad quem confirmatio huiusmodi pertinet aliquem de illis fratribus quos ipsi electores uel maior pars eorum per litteras suas ab eo petierint quando ad ipsum pro electi confirmatione transmittunt eis de nostra licentia concedere ualeat in priorem. Per hoc enim et discursus fratrum et alia impedimenta que possent occurrere credimus euitari.

Even if Alexander's 'concession' was used, it did not, of course, guarantee success. Const. II 3 was changed in 1274-1276 to specify that if the Master did not confirm any of the people proposed by the electors of a provincial, another election must be held as soon as possible (MOPH III 173.16-17, 179.2-3, 183.16-17).

The chapter of 1262 inchoated a far more drastic way of speeding up the replacement of priors by largely abandoning elections altogether: if any priors were absolved at a chapter, the provincial and diffinitors were to provide the affected convents

⁵⁷ I take the text from the original now in the Archives Nationales in Paris, L 249 no. 9. Humbert presumably wanted the pope to authorize this procedure lest it contravene the canonical principle that no new election could validly be held while the outcome of the first was still pending (X.1.6.10, Friedberg² II 53; Bernardus Parmensis, ed. cit. 114).

⁵⁸ I have checked the printed text against the copies found in AGOP XIV A 4 p.209 and AS Perugia, Corporaz. relig. soppr., S.Domenico, Miscell. 66, f.48^r.

with new priors (MOPH III 115.15-21). The province of Provence submitted a counter-proposal that the election of priors and their socii to provincial chapters should be entrusted to the nine senior brethren in the convent.⁵⁹ Nothing came of either suggestion, but the idea that successors to absolved priors should be provided by the provincial and diffinitors was revived in 1267, and this time it survived one more chapter (MOPH III 136-137, 141.2-7), but it was not confirmed.

Canon law distinguished between simple election and postulation, the latter being involved when there was an obstacle which could only be overcome by asking someone to do something—such as get himself ordained so that he would be eligible as a bishop, or grant a dispensation so that an irregularity in the candidate would cease to matter, or allow one of his subjects to move somewhere else (cf. Raymund of Penyafort, *Summa*, ed. cit. 328-329).

As early as 1239, the general chapter forbade convents to 'elect or postulate priors unless their previous priors had already been removed' (MOPH III 11.24-26), but we are left to guess what sort of impediments would necessitate postulation: the only constitutional restriction on the election of priors was the requirement to obtain the provincial's permission before electing someone from a different convent (PC TI 24a), and, by implication, such permission authorized the community to *elect*, with no need for postulation.

The order seems not have been too concerned about the distinction: an inchoation was made in 1257 adding 'vel postulaverint' to the statement in const. II 2 that, if convents fail to elect within a month, the provincial is to provide a prior; this was approved in 1258 (MOPH III 86.1-2, 90.23-24), but not confirmed.

However, in 1270-1272 the by now thoroughly anomalous text inherited from PC II 24a was at last emended, and the distinction between priors elected from within their own communities and those elected from elsewhere was reformulated in terms of a distinction between election (of someone within the community) and postulation (of someone from elsewhere); special permission for the latter was no longer required, and the procedure in either case was to be the same: 'sine cuius licentia de alio conuentu eligendi non habeant potestatem' was replaced by 'idem etiam fiat si aliquis

⁵⁹ C. Douais, *Acta Capitulum Provincialium*, Toulouse 1894 (hereafter cited as *Acta cap. prov.*) 95.

a maiori parte illorum ad quos spectat electio de alio conventu fuerit postulatus' (MOPH III 153.1-3, 157.15-18, 161-162).⁶⁰ 'Si infra mensem non elegerint' in const. II 2 was now successfully expanded to 'elegerint vel postulaverint' (MOPH III 153.4-5, 157.19-20, 162.3-4), and there are similar references to postulation in the new text concerning the election of provincials in const. II 3 (MOPH III 152.9-27, 157.5-13, 161.21-29), though there too no procedural difference is involved.

The only 'impediment' explicitly alluded to is the fact that the desired prior belonged to a different house (and by analogy, we may presume, that the desired provincial belonged to a different province), and the person competent to grant the postulation was identical with the person who was supposed to confirm an election anyway in such circumstances—which does incidentally show that, by then, confirmation by the provincial was an established reality; this means that the distinction between election and postulation served no useful purpose. It appears to be nothing but a bit of pointless canonical decoration, justified at most by a residual feeling that it was mildly irregular to elect a superior from elsewhere. The only practical result was to generate scruples, which the provincial chapter of Provence tried to deal with in 1275: 'Ad tollendum scrupulum in electionibus monemus quod cum electio fuerit facienda, si prior de alio conventu fuerit postulatus, ille qui primam vocem in electione habuerit dicat expresse, Ego talem postulo, postulando eligo, vel Eligendo postulo talem in priorem etc.' (Douais, *Acta cap. prov* 198-199). It did not take the order very long to con-

⁶⁰ No special majority was required for a postulation—though Innocent III remarked that the Holy See was not accustomed to grant postulations made by less than a third of the voters (X.1.5.3, Friedberg² II 44). The only situation in which a two-thirds majority was significant was one in which two rival candidates for the same post were presented simultaneously, one *electus*, the other *postulatus*; Innocent III ruled that the postulation outweighed the election, other things being equal, if it was backed by a two-thirds majority (X.1.6.40, Friedberg II 84-88). This passed into the 1918 codex, can. 180 §1, in the form 'ut postulatio vim habeat, pro ea stet oportet maior suffragiorum pars, imo, si cum electione concurrat, saltem duae tertiae partes requiruntur', and this was duly adopted by the Dominicans (Gillet constitutions, const. 328). I cannot help suspecting that it was because this was misunderstood (its original meaning having long been forgotten) that it was changed in the new codex to 'Ut postulatio vim habeat, requiruntur saltem duae tertiae partes suffragiorum' (canon 181 §1); in 1986 the Dominicans duly altered LCO 450 §1V (which had previously had exactly the same text as the 1918 codex) to 'Quando agitur de postulatione, semper requiruntur saltem duae tertiae partes suffragiorum' (Avila general chapter §279).

clude that all this was rather silly, as can be seen from a declaration of the 1310 chapter: 'Declaramus quod in omni ordinis electione canonica undecumque vel in quocumque statu persona eligenda existat, semper dicatur Eligo et numquam dicatur Postulo in formatione decreti' (MOPH IV 48.25-27). To all intents and purposes, that was the end of the matter.⁶¹

4. *Humbert of Romans and his immediate successors*

It seems clear that, by the time Humbert was elected Master in 1254, the confirmation of priors and provincials by the appropriate superior was being taken seriously, and that he himself was sensitive, perhaps even scrupulous, about the need for the order's practices to conform to current canon law. Nevertheless, what he says, or rather what he fails to say, about confirmation in his *tractatus de officiis ordinis*, composed in the late 1250s or early 1260s,⁶²

⁶¹ All that Bandello has to say on it in his commentary on const. II 2 is: 'Declaramus quod licet alias quando quis erat de alieno conuentu uel in alio prioratu existens non eligeretur sed postularetur, tamen postea in capitulo Placentie celebrato anno domini 1310 sic fuit declaratum, Declaramus quod in omni electione ...' (f. lxxi'). However, the Dominicans subsequently found a new use for 'postulation': inspired by 'petierint' in Alexander IV's bull, *Ut ea*, they designated as 'postulatus' the alternative whom the electors of a prior or provincial could propose in case their elected candidate was not confirmed. I do not know when this usage originated, but it is found in the index to the *Tabula privilegiorum* (Venice 1504) under 'Confirmatio vel confirmatus', in Bandello's comment on const. II 3 (f. lxxvi^v) which passed into later editions of the constitutions (II 3.4 decl. c), and in standard works such as P.M. Festa (Urceanus), *Summarium constitutionum*, Paris 1619, 256-257; V.M. Fontana, *Constitutiones, Declarationes et Ordinationes*, Rome 1655, 483; P.M. Passerini, *De electione canonica*, Rome 1661, 350-352; A.González, *Summarium privilegiorum*, Rome 1670, 22. The only difference in Jandel's edition of the constitutions is that this use of postulation is distinguished from 'postulatio ex jure comuni' (required when a dispensation of some sort is needed before someone can lawfully be elected) (1872 ed. 294-296). Only the latter survived into the Gillet constitutions (const. 326). Innocent III's decretal on the 'concurrence' of a postulation with an election naturally did not apply to either of the kinds of postulation recognized by the Dominicans in the 19th century, nor do the Jandel constitutions suggest that it did—there is no mention of a two-thirds majority being required. Under the Gillet constitutions, postulation could only occur as an alternative to election (since the desired candidate could not be elected, he had to be postulated); since 'imo si cum electione concurrat' is nevertheless quoted, it seems clear that it was already being misunderstood.

⁶² On the dating, cf. E.T. Brett, *Humbert of Romans*, Toronto 1984, 134-135.

suggests that he did not consider it important either as an instrument of government or as a responsibility.

He insists on the importance of good provincials, but says nothing about the Master's confirmation of them; instead, he suggests ways in which the Master may influence their election ('ideo debet interdum electoribus priorum prouincialium litteras ad hoc pertinentes dirigere, interdum etiam concedere eisdem quod possint eligere de aliis prouinciis, interdum etiam circa personam eligendam eos dirigere'), and, if the Master has to appoint a provincial himself, he should 'cum diligenti discussione prout utilius poterit prouidere (ed. Berthier II 183). There is not a single word about confirmation.

In the chapter on provincials, there is a whole section devoted to conventual priors; once again, confirmation is ignored and the emphasis is entirely on the removal of priors and the possibility of influencing the election (ed. Berthier II 197-198).⁶³

Circa absolutiones priorum qui boni reputantur non debet esse facilis neque propter eorum instantiam neque propter fratrum aliquorum importunitatem ... Priores uero minus ydoneos facile debet absoluere cum speratur quod meliores possint haberi, et, ut possint sibi fratres utilius prouidere, concedere potestatem eligendi aliquos fratres de quibus potest fieri bono modo.

Confirmation is mentioned only at the end, among measures the provincial may take at the provincial chapter (ed. Berthier II 201). The relevant sentence is not entirely perspicuous (and Berthier rewrote it), but the text does not seem to be in doubt:

Expedit tunc ordinare propter discursus euitandos quod conuentus qui carent prioribus habeant potestatem eligendi prout sibi uisum fuerit aliunde, et confirmare in domo uel in uicino conuentu aliquo interdum.

It is clear that this involves giving general permission in advance for communities to elect priors from elsewhere. *Et confirmare* is elliptical, but Humbert appears to be advising the provincial to confirm elections locally or, occasionally, in a neighbouring convent, which presumably means that he should arrange for elections to be confirmed there in his name.

⁶³ Is it significant that the first general chapter after Humbert's resignation warned provincials to be careful 'ne conuentibus priore carentibus aliquem fratrem qui non sit de illo conuentu offerant eligibilem nisi prius ab illo conuentu fuerint requisiti' (MOPH III 124.34-36)?

In Humbert's view, apparently, the right to confirm or cassate elections was an insignificant weapon in a superior's arsenal, and, though someone had to do it, it was not a task worth expatiating on. Preventing the brethren gadding about (*discursus fratrum*) was rather more important.

It would go far beyond the scope of this article to investigate the order's practice in detail, but there is some readily available evidence which can give us an idea of how things actually worked under Humbert's immediate successors.

The dossier on Ulrich of Strasbourg's election as provincial of Germany in 1272 has survived, and it is clear that he became provincial by virtue of the Master's confirmation: the diffinitors of the provincial chapter informed John of Vercelli of the procedure they had followed and the result of the scrutinies, and they asked him to confirm their election. He wrote to Ulrich, 'lectori conventus Argentinensis', bidding him accept 'prioratus provincialis officium'. Ulrich evidently asked to be spared the burden, but John wrote back denying his request and encouraging 'confirmatum Ulricum provinciale' to gird up his loins like a man.⁶⁴

From a few years later we have two instances of a German provincial cassating the election of a conventual prior, the second of which hints at a certain regret that the *sanior pars* played no part in Dominican practice. In the first, from c. 1277, the person chosen was engaged in preaching the crusade and the provincial, with the backing of the Master, thought he should continue to do so, especially as it had already been decided at the provincial chapter that he should not be elected or postulated prior for the next two years; 'proinde electionem de ipso factam et michi per fratres vestros exhibitam et oblatam ad confirmacionis beneficium non promovi set sufficienti deliberacione fretus eandem cassavi et cassam pronuntio per presentes'. In the second, from c. 1280, an election at Würzburg was cassated because it had been won by a single vote, cast by someone who 'caret dilucida racione', and the minority had not, as was usual, consented to the election, which caused concern to the people the provincial consulted 'presertim cum eadem pars, minor computo, bene maior auctoritate, zelo et merito videretur, si hoc ordo advertere consuevisset'; he declared

⁶⁴ H. Finke, *Ungedruckte Dominikanerbrieife des 13. Jahrhunderts*, Paderborn 1891, 78-80.

the election uncanonical (Finke, *op. cit.* 104-105, 107). In both cases it seems clear that the provincial was preventing the election from taking effect, not annulling a consequence of it which had already occurred.

In a Dijon manuscript to which we shall have occasion to return later, Archives départementales de la Côte d'Or H 221, there is a series of model letters requesting the confirmation of elections (ff. 137^r-141^v); these were so minimally adapted that many of the original details are still intact, though unfortunately the text is very corrupt. Apart from the first, the originals had evidently been brought back from the Holy Land, and they concern the postulation of a prior in Acre in 1279 and in some other convent in 1280, and the election of a provincial in 1277.⁶⁵ The first letter concerns the postulation of a prior somewhere in the province of France; it is undated, but must come from a few years earlier.⁶⁶ There are several points of interest.

In the first place, all four letters contain a detailed account of how the election unfolded, and all but the first also comment on the good qualities of the person elected. This suggests that the relevant superior was now expected, like any other *confirmator*, to examine the canonicity of the election and the merits of the candidate.

Secondly, the distinction between election and postulation does not seem to mean very much: although strictly speaking they call for different responses (an election is confirmed, a postulation is granted), the first three letters (all postulations) mingle language appropriate to both: 'postulo et eligo', 'rogamus ... quatinus ... pre-

⁶⁵ These three letters were edited by F. Balme in 'La province dominicaine de Terre-Sainte de janvier 1277 à octobre 1280', *Revue de l'Orient Latin* 1 (1893) 528-538, but his text is marred by a plethora of misreadings and unannounced emendations.

⁶⁶ It antedates the innovation which became law in 1276, requiring votes to be collected by the subprior and the two senior brethren (instead they were collected by three suitable friars 'adsumptis de collegio nostro'), but the final announcement of the *electio* follows the procedure introduced in 1264-1266 ('Ego fr. Pontius uice mea et omnium mecum eligentium postulo et eligo fratrem Hugonem de Salinis dictum Grenot in priorem ...'). Hugo de Salinis features in the catalogue of the books of Dijon, and was dead by 1307 (A. Dondaine, AFP 7 [1937] 125). The recently absolved prior, Hugh of Lausanne, can possibly be identified with the person of that name who was lector in Lyons in 1287 and papal penitentiary in 1292-1294 (MOPH XXII 58); he may also be the Hugh who was prior of Lausanne in 1286 (B. Andenmatten in *Helvetia Sacra* IV 5, Basel 1999, 441).

dictum fratrem ... confirmare dignemini', 'cum fratrem prouidum et discretum et ydoneum ad maiora postulauerimus in prelatum, paternitati uestre prout possumus supplicamus quatinus ipsum nostro conuentui concedere et confirmare dignemini in priorem', 'dictus fr. G. dicte electioni seu postulationi consensit et sic sollempnizata est electio et pacifice consummata; cum igitur fratrem postulando elegerimus religiosum, prouidum et discretum et aptum etiam ad maiora, ut pote magnis et plurimis a deo gratiis predotatum, paternitatem uestram prout possumus humiliter deprecamur quatinus ipsum nobis uelit concedere in priorem et quantocius confirmare'. The provincial election in the Holy Land resulted in the 'election' of Hugh of Mâcon who was not in the province, and who should, on the face of it, have been postulated; but the letter speaks only in terms of 'electing'.

Thirdly, the electors of Hugues de Salins did not write to the provincial himself but to some unspecified prior, 'cum intelleximus quod uos habeatis auctoritatem et potestatem a priori prouinciali Francie confirmandi electum nostrum'. This accords with Humbert's suggested practice.

Fourthly, the electors of the provincial in the Holy Land made use of Alexander IV's 'concession' and proposed several names at once,⁶⁷ but, since none of those chosen in their previous election had been accepted by the Master, the Holy Land had been without a provincial for a long time. This time they elected Hugh of Mâcon; should he be dead or unavailable, their second choice was the vicar of the province, Robert the Norman, prior of Acre. They beg the Master to confirm one or the other 'absque temporis prorogatione ... ne absque priore prouinciali propter dilationem confirmationis cum desolatione fratrum cogeretur memorata prouincia diutius remanere'.

From 1266 onwards Gui was able to provide information about the confirmation of several provincials of Provence: Bernardus Geraldi de Monte Albano was elected in that year at the provincial chapter at Limoges and confirmed by a letter from the Master (who was at Bordeaux) before the capitulars disbanded; Petrus de Valetica was confirmed in 1269 by the three senior electors 'ex con-

⁶⁷ The concession was also clearly appreciated in Spain, since the provincial chapter of 1275 had to explain that the election or postulation must be completed first, and only then can one or more alternative names be nominated 'de communi consensu maioris partis conuentus' (AD 4 [1983] 19).

cessione et commissione magistri ordinis speciali'; Bernardus Geraldus was re-elected in 1276 and confirmed by the three senior electors 'ex concessione magistri ordinis speciali'. He was absolved in 1281 and promptly re-elected at the next provincial chapter, but this time the election was cassated by the Master. A new election was held on 29 January, and Bernardus Geraldus was elected again; the result was sent to the Master at the following general chapter, and he cassated it again. This time the province admitted defeat and elected Berengarius Notarii of Arles at the provincial chapter of 1282, and he was presumably confirmed, though Gui says nothing about this. When he was absolved at the general chapter of 1285, the province once again elected Bernardus Geraldus and this time he was confirmed by the new Master, Munio of Zamora. He died in office on 25 March 1291 and Bernardus de Trilia was elected to succeed him 'circa quindenam pasche' and confirmed by the Master a few weeks later at the general chapter. Bernard was absolved in 1292 and died soon afterwards: his successor was Petrus de Mulceone, inquisitor of Toulouse. The Master, Stephen of Besançon, had arranged for someone to act as *confirmator* on the spot; but, to everyone's dismay, he refused to confirm the election and referred it to the Master (Douais, *Acta cap. prov.* 369-371), who evidently did confirm it; presumably the delegated *confirmator* was hesitant about removing Petrus from his current assignment as inquisitor.⁶⁸

It is clear both that John of Vercelli was prepared to make quite aggressive use of his right to confirm, and that general chapters no longer had anything to do with confirming provincials, even when the results of an election were brought to them: in 1282 it was the Master who cassated the Provence election, not the chapter ('missa electio ad sequens capitulum generale apud Viennam in Theutonia ad magistrum et ab eodem magistro cassata'), and in 1291 it was the Master who confirmed it, not the chapter ('confirmatus a magistro ordinis fratre Munione in sequenti capitulo generali Palencie finita diffinitione immediate in conspectu omnium ibidem, ubi erat ipse pro prouincia diffinitor'). The Master could delegate his authority as *confirmator*, but, as happened in 1292, this did not guarantee immediate results.

⁶⁸ Martène-Durand VI 424-427; Agen 3 ff. 55^v-57^r, Bordeaux 780 ff. 31^v-32^v. There are only insignificant textual variants. The date (1292) given for Bernardus de Trilia's election and confirmation in Martène-Durand VI 426 is not supported by the manuscripts and is obviously wrong.

Not surprisingly, Gui had less information about provincials of France, but in their case too it is only from the time of John of Vercelli that he first had anything to report on their confirmation. After Peter of Tarentaise was made archbishop of Lyons in 1272, John of Châtillon was elected at the provincial chapter 'et illa electio fuit cassata'; he was then elected again 'et illa uice a magistro Iohanne confirmatus'. No mention is made of the confirmation of the next two provincials, but Stephen of Besançon was elected at the provincial chapter in 1291 and confirmed by the three senior electors, there being no Master at the time. The next provincial, William of Auxerre, died in office in November (1293) 'during the octave of St Martin', and his successor, Oliver of Tréguier, was confirmed in 1294 by Stephen of Besançon, who had become Master in 1292, 'paulo antequam obiret' (Bordeaux 780 f. 35^v) or, as Gui had earlier written, 'paulo post capitulum generale' (Agen 3 f. 60^v)—either way, he was not confirmed at, let alone by, the general chapter.⁶⁹ The next provincial but one was absolved at the provincial chapter of 1306 (held in conjunction with the general chapter), and then William of Cayeux was 'ibidem immediate electus et confirmatus' (MOPH XVIII 80-82).

Gui does not normally mention confirmation in his catalogue of the priors of the old province of Provence, and most of what he does say is unhelpful for our present purposes, but there are a few points worth noting.

There is only one reference to confirmation in connection with an election which could fall before or during Humbert's time as Master: Raymundus de Fluxo, prior of Toulouse from c. 1242 to 1258, 'semel fecit se absolvi sed immediate fuit reelectus et confirmatus' (MOPH XXIV 50-51). However this could mean that he was re-elected during the provincial chapter of 1249 at Toulouse itself (whose absolutions of priors do not survive), in which case he could have been confirmed by the chapter.

Bertrandus de Claromonte, of Bergerac, was absolved as prior of his home convent at the provincial chapter of 1292, which should have been held on the feast of St Mary Magdalen (22 July) (Douais, *Acta cap. prov.* 357). Between 15 Aug. and the following Lent he was 'elected and confirmed' as prior of Le Puy, 'elected and confirmed' as prior of Narbonne, and, finally, appointed inquisitor of

⁶⁹ The 1294 general chapter was held in June at Montpellier, and Stephen was at it (cf. MOPH V 162-164); he then went to Italy and died in Lucca on 22 Nov. (Martène-Durand VI 409-410).

Toulouse (MOPH XXIV 173); this suggests, not only that things could move fairly quickly, but also that Gui saw no point in distinguishing between election and postulation.

When Petrus de Planis, lector of Limoges, was elected prior of Brive in 1273, he was confirmed 'ibidem' by Stephen of Salanhac (who was not even a prior at the time) (MOPH XXIV 165). The following year Petrus de Mulceone, of Brive, was elected prior of Limoges and confirmed by the prior of Brive (MOPH XXIV 63.17-18). When Gui himself was 'translated' from the priorship of Albi to that of Carcassonne in 1297, he was confirmed 'in monasterio Pruliani (MOPH XXIV 102-103), which presumably means that somebody there had been given authority to confirm the election, and it apparently made no difference that Gui was already prior somewhere else. Evidently confirmation was sometimes delegated to someone in the house nearest to the place where an election was to be held.

Nevertheless, cassation by the provincial was a real possibility. Guillermus de Podio became prior of Castres in 1285, for example, only after three previous elections had been cassated ('cassatis prius a priore provinciali ... tribus electionibus trium electorum successive', MOPH XXIV 153). When the prior of Montaubon died in Toulouse on about 29 Sept. 1295, his successor was confirmed shortly before Christmas, 'cassatis prius multis electionibus aliorum (MOPH XXIV 125).

The provincial chapter of 1295 absolved the prior of Bayonne and a successor, probably from within the community, was elected ('fr. Lupus natione Vasculus'), but, because of the war going on between the French and English, he was not confirmed (presumably because word could not be got to whoever was supposed to confirm the election), and in November the provincial assigned him to be lector at Béziers; Gui does not treat him as a prior. A fresh election was held and the new prior was confirmed shortly after Christmas, only to be absolved again at the following provincial chapter. There was then an interval of two years, 'factis multis electionibus et cassatis, seivente adhuc guerra'; finally, at the provincial chapter of 1298, 'post diffinitionem', the prior of Narbonne was transferred to Bayonne to be prior there (MOPH XXIV 73).

The troubles at Bayonne show that, in Gui's mind, election without confirmation did not suffice to make anyone a prior. However, some rather extreme cases show that confirmation did suffice, even if it took no effect because the prior in question refused or was unable to do the job. Arnaldus de Prato was first elected prior of Condom in 1301; he was confirmed, 'noluit autem tunc acquiescere

deprecanti, non compellenti, unde paulo post fuit absolutus nec pre-fuit ista vice' (MOPH XXIV 158). Gui counted him as a prior, nevertheless, and so he evidently was, since he needed to be absolved; confirmation had made him a prior even without his consent and without the provincial putting him under any obligation. Gui similarly included as priors fr. Yterius de Compuhaco who was elected prior of Périgord in 1302 and confirmed, 'sed quia noluit venire ad conventum fuit ad suam instantiam sequenti mense Febroarii absolutus' (MOPH XXIV 94), and Poncius de Caercino de Lautrico who was elected prior of Rodez in 1303 and confirmed, but did not go there because of his bodily weakness and was absolved a few weeks later (MOPH XXIV 212).⁷⁰

It is clear that, although chapters continued to absolve priors and provincials, they soon ceased to play any part in their confirmation, and that confirmation in office yielded to the canonically more normal confirmation as a prerequisite for assuming office. Nevertheless, we look in vain for any capitular alteration of the constitution inherited, via Raymund, from PC II 15ab; even in the late fifteenth century the constitutions still proclaimed that general chapters 'confirmed or removed' provincials though, nevertheless, the Master could confirm or remove them on his own.⁷¹ It was left to Bandello, in his 1505 edition of the constitutions, to rework the text so as to give priority to confirmation by the Master (f.xii')

Prior autem prouincialis supradicto modo ellectus poterit per magistrum ordinis confirmari vel eius ellectio cassari si ipsi magistro videbitur. Quod si ordo magistrum non habuerit ... Statuimus autem vt prior prouincialis in capitulo generali a magistro et diffinitoribus capituli generalis premissa diligenti examinatione confirmetur vel ammoueat.

Nor did the shift to a more normal understanding of *confirmatio* mean that capitular 'confirmation or removal' of superiors became less important; on the contrary, the order laboured mightily

⁷⁰ Two elected and confirmed priors of Pamiers who refused to take up office and were absolved, in 1295 and 1297, are not included as priors (MOPH XXIV 182)—Gui was more interested in the completeness of his record than in being consistent with regard to canonical niceties; nevertheless, these priors who never functioned as such were absolved, so they had clearly become priors.

⁷¹ I have checked three manuscripts from this period: Siena, Bibl. Com. F.VI.3 and G.XI.36, and Vienna 1507.

to make it more effective by ensuring that chapters were informed of the wishes of provinces and convents with regard to their superiors.

The practice of holding some kind of local consultation on whether priors and provincials should be absolved is alluded to by the Roman provincial chapter of '1244':⁷² 'Tempore instantis capituli provincialis, cum sit collatio de priore, nullus cogatur ad dicendum voluntatem suam utrum velit quod absolvatur prior provincialis vel non' (MOPH XX 2.19-21).

A certain degree of formality is implied by an admonition of the 1260 general chapter: 'Si forte petatur absolutio prioris provincialis vel conventualis, scribantur nomina petentium et non petentium' (MOPH III 105.18-19).

A step back from formality was proposed in 1262: 'De prioribus conventualibus vel lectoribus repetendis vel amovendis nulum fiat scrutinium, poterunt tamen fratres singuli innotescere super hiis visitatori verbo vel priori provinciali scripto quod eis circa hoc visum fuerit expedire' (MOPH III 115-116). The terminology is interesting: although there is no talk of getting the prior confirmed, 'repetendis' still implies that he does, in a sense, need to be re-appointed by the chapter. Lectors were routinely reassigned at provincial chapters; the traditional 'confirmation or removal' had apparently come to be seen in the same light: anyone who wanted to keep his prior had to ask for him to be given back again.

Nothing came of the 1262 inchoation, but similar language was used again in an admonition of the 1266 chapter which seems to favour a greater degree of formality: 'Monemus quod supprioris vel loca eorum tenentes singulis annis in singulis conventibus, in die tractatus eorum que ad provinciale capitulum sunt mittenda, disquirant voluntates singulorum fratrum coram omnibus de absolute vel repetitione prioris conventualis' (MOPH 134.22-25).

The terminology which was later to prevail appears for the first time in an admonition issued in 1268 (rather surprisingly, a provincials' chapter): 'Singulis annis quodlibet provinciale capitulum super *absolute vel retentione* prioris sui provincialis voluntatem suam insinuet capitulo generali'; however, this was annulled the following year: 'Ordinationem factam de scrutinio priorum provincialium revocamus (MOPH III 143.10-12, 149.14-15). Note the word *scrutinium*.

⁷² On the date of this chapter, see below, Appendix III.

Also in 1269, the Master, with the agreement of the diffinitors, authorized subpriors and their vicars to order the brethren who took part in the discussion of things to be sent to the provincial chapter to make sure that the prior was not told who had asked for his absolution, and in 1271 subpriors themselves and their vicars were ordered to observe the same restraint; they were also told that, should there be a 'scrutinium de absolutione vel repetitione prioris', the votes must be collected and written down by him and the prior's socius secretly (MOPH III 149.29-33, 160.5-16).

In 1273 what turned out to be the mother of all constitutional battles broke out, as successive general chapters attempted to introduce into the constitutions a formal procedure for the provincial chapter's scrutiny 'super retentione vel absolutione prioris provincialis', and the corresponding scrutiny in each house with regard to its conventual prior. The difficulty was that diffinitors wanted the result of the scrutiny to be kept secret and simply forwarded to the appropriate chapter, whereas provincials wanted the result to be published immediately; they therefore kept throwing out each others' inchoations. The struggle went on until the provincials eventually capitulated in 1283 (MOPH III 168-221).

Apart from their one bone of contention, though, it is plain that provincials and a whole succession of diffinitors agreed on the importance of the procedure for which they were trying to legislate; so important was it, in fact, that, throughout the whole long gestation of the new constitution, whatever law had been introduced was brought into immediate effect by an ordination, and only one chapter, that of 1274, abandoned the struggle to get the constitutions changed and contented itself with an ordination.

It is clear that, for all its adoption of a more normal practice of confirmation, for all its major superiors' gradual acceptance that this gave them a useful tool of government, the order still set great store by the system it had originally espoused, modelled on that of other centralized religious orders, in which the main protection against bad superiors was not complicated electoral procedures followed by confirmation, but the ever-ready possibility of getting rid of them quickly and with a minimum of fuss.

5. *Innocent IV's intervention*

With regard to the Master, the 1236 *forma electionis* makes it clear that whoever wins an absolute majority in the election becomes Master without further ado 'ex ui talis electionis et huius

constitutionis' (PC II 11a). Confirmation is not mentioned. But, of course, the diffinitors of the general chapter had always been able to remove the Master from office (PC II 8a); in this sense he was, like provincials and conventual priors, 'confirmed' at every chapter by not being dismissed. However, the language of confirmation, which the Dominicans were quick to adopt, even if they originally used it in an idiosyncratic way, applied properly in cases where a higher superior confirmed the election of a lower superior; and, in his own particular hierarchy, the Master was the highest superior of all. It was quite natural to say that a provincial was confirmed or removed by the Master and diffinitors at the general chapter (PC II 15a); but an equivalent formula for the Master would either have to make him confirm himself or imply that he was confirmed by an acephalous chapter. It is not surprising, then, that the order continued to remain silent on the subject, notwithstanding the evolution of its practice of and language about the confirmation of priors and provincials.

Nevertheless, it seems to have been the Dominicans who, all unwittingly, first raised questions about the canonicity of the system whereby the clerical heads of centralized religious orders assumed power, *cura animarum* and all, without being confirmed.

The crucial document is Innocent IV's bull, *Inter alia*, addressed to John of Wildeshausen on 17 Jan. 1244 (Reg. 387; BOP I 129-130). I give the text here from the original which was once in S. Eustorgio and is now in the Archivio di Stato, Milan, Bolle e Brevi:

Innocentius episcopus seruus seruorum dei, uenerabili fratri .. episcopo quondam Bosnensi magistro et dilectis fratribus ordinis predicatorum, salutem et apostolicam benedictionem.

Inter alia quibus ex iniuncto nobis officio apostolatus intendimus, religionis sacre specialiter desiderantes augmentum et ordinem uestrum prerogatiua fauoris et gratie non immerito prosequentes, cum a sue institutionis exordio laudabilibus continue profecerit incrementis, ipsius ordinis cultum affectione plena diligimus et cupimus uotius semper in domino successibus ampliari, eidem ordini sollicito curantes in hiis que salubria sibi et oportuna cognoscimus prouidere.

Cum itaque, sicut nobis exponere curauistis, tu frater .. episcope ac magister et predecessores tui iuxta eiusdem ordinis consuetudinem obseruatam hactenus, et a sede apostolica toleratam, statim postquam electi secundum predicti constitutiones ordinis extitistis fratrum ipsius curam gesseritis, magisterii officium plene ac libere in omnibus exercentes, iidemque fratres uobis deuote ac humiliter obedierint et intenderint reuerenter, et in eodem ordine sit statutum ut magister ipsius qui pro tempore fuerit a magisterii officio amoueri ualeat a

diffinitoribus capituli generalis, nos, uolentes omnem ambiguitatis scrupulum in hac parte de uestreis cordibus amputare ac ordinem ipsum, a sede approbatum eadem, honestate floridum, preclarum scientia et uirtute fecundum, priuilegio apostolice gratie attollere singulari, uestreis supplicationibus inclinati, ut successores tui magister qui erunt pro tempore statim, postquam electi secundum constitutiones fuerint supradictas, eo ipso ueri eiusdem ordinis effecti magistri, curam animarum fratrum ipsius ordinis plene habeant et libere gerant, ipsosque fratres auctoritate propria ligare ac soluere ualeant, nec non in eodem agere ordine que ipsi et prefati diffinitores iuxta memoratas constitutiones eisdem ordini et fratribus secundum deum uiderint expedire, aliasque magisterii officium licite in omnibus exercere, iidemque fratres tibi magister et successoribus ipsis deuote ac humiliter obediant et intendant, et prefati successores et tu magister a diffinitoribus capituli generalis ipsius ordinis secundum ordinis constitutiones eiusdem absolui et amoueri possitis, auctoritate presentium, habentes ratum et firmum quicquid super premissis per te magister dictosque predecessores fratres et diffinitores factum et obseruatum est hactenus, concessa tibi exequendi magisterii officium quoad premissa omnia et alia libera facultate, de fratrum nostrorum consilio indulgemus.

Nulli ergo omnino hominum liceat hanc paginam nostre concessionis infringere uel ei ausu temerario contraire. Si quis autem hoc attemptare presumpserit, indignationem omnipotentis dei et beatorum Petri et Pauli apostolorum eius se nouerit incursurum. Dat. Lateran. xvi. kal. februar. pontificatus nostri anno primo.

It is worth remarking that confirmation, as such, is not mentioned; what Innocent's bull does is endorse the legitimacy of the Master taking office immediately after his election, *cura animarum* and all, which implicitly excludes the need for any preliminary examination or confirmation of the election such as Lateran IV const. 26 called for. However, Innocent saw himself as bestowing a 'singular privilege' on the order, and its singularity presumably consisted in the fact that it dispensed with the procedures normally required before anyone was given *cura animarum*; since Innocent says that the Dominican practice had hitherto been 'tolerated' by the Holy See, he presumably considered it not just unusual but questionable.

Nevertheless, the pope was evidently aware of the traditional religious alternative, since he is equally explicit about the legitimacy of the Master being 'absolved and removed' from office by the diffinitors of the general chapter. Although he does not put it in these terms, he appears to have grasped that, whereas normally a candi-

date's suitability was examined before he was permitted to assume office, self-regulating religious orders examined his performance in office and 'confirmed' him by not removing him. It is this whole package which he validated.

Inter alia is presented as the pope's official response to an *ambiguitatis scrupulum* felt by the brethren, which had apparently been communicated to him by the Master, John of Wildeshausen; the impressive number of originals whose existence is still attested suggests that it really did address a question which had arisen within the order: though the bull was first issued and registered on 17 Jan., copies were still being made as late as 3 September.⁷³ To a canon lawyer like Innocent, the chief point was probably the propriety of the Master assuming *cura animarum* simply by virtue of his election; but there can be little doubt that what was vexing the minds of the Dominicans was not the election but the removal of the Master.

There is no evidence that the pope or anyone else apart from the electors was involved when Jordan became Master in 1222. After Jordan's death, the Bologna chapter of 1238 elected Raymund of Penyafort, and four provincials were sent to Barcelona to persuade him to accept;⁷⁴ before he even left Barcelona, Raymund used his authority as Master to confirm an agreement between the Dominicans of Lyons and the monastery of Ainay (MOPH VI ii 77-79; Ruis Serra, *Diplomatario* 53-55; cf. AFP 70 [2000] 37). When John of Wildeshausen was elected in 1241, after Raymund's resignation, Gerald de Frachet says that he tried to refuse on the grounds

⁷³ BOP I 130 lists two originals in the archives of the order and one each in the convents of Milan, Lucca and Trani. The Soest 'bullarium' lists what we may presume to be originals in Magdeburg, Erfurt, Freiberg, Strausberg and Leeuwarden (Soest, *Wissenschaftliche Stadtbibliothek* 29 p. 46); the Regensburg bullarium notes one in Würzburg and, apparently, one in Regensburg (AFP 6 [1936] 226, 230). The *Schedario Baumgarten* adds three more, from Naples, Palma and Marseilles (nos. 1355, 1356, 1384); there is also an original in the Archivio di Stato, Siena, presumably from the Dominican convent. Borselli records a copy in Bologna (Bologna, *Bibl. Univ.* 1999 f. 28"), and there is one dated 3 Sept. at S. Maria di Castello, Genoa (AFP 45 [1975] 62). The *Liber privilegiorum* of the Roman province, in addition to those in Siena and Lucca, notes an original in Perugia (AS Perugia, Corp. rel. soppr. S. Domenico 66 f.15"). Incidentally, the Soest 'bullarium' gives the place and date of issue as Civita Castellana, 18 June; Scheeben misread '14 kal.' as 'ix kal.' and so gives the date as 23 June in *Archiv der deutschen Dominikaner* 2 (1939) 162.

⁷⁴ Cf. the *vita*, ed. MOPH VI i 33 and J. Ruis Serra, *San Raimundo de Penyafort, Diplomatario*. Barcelona 1954, 282; also Bernard Gui, in Martène-Durand VI 406-407.

that he was a bishop but the pope obliged him to accept because, having surrendered his bishopric, he was under obedience to the order (*Cronica ordinis*, MOPH I 332); however, Humbert's *cronica* (*ibid.*) says that this actually happened some years earlier when John was elected provincial of Lombardy, and this is proved to be correct by Gregory IX's letter, to which we shall turn shortly. There is thus no reason to suppose that anyone outside the order had ever been called upon to intervene in the election of the Master, or that there was any uncertainty about the order's competence to elect its Master, or that any further step was thought necessary before the person elected assumed office.

The crisis which is well attested was prompted by Raymund's resignation in 1240. According to Humbert's *cronica ordinis* (cf. MOPH I 331),⁷⁵

Cum quasi per duos annos rexisset ordinem, sentiens sibi uires ad huiusmodi officium omnino deesse, tantum institit apud Bononiam in capitulo generali apud diffinitores quod eius cessionem receperunt. Super quo tanta turbatio orta est in ipso capitulo et per ordinem diffusa, quod dedit occasionem statuendi postea quod a diffinitoribus amodo non reciperetur magistri cessio nisi ex causis ex quibus posset absolui.

A change to what was said in const. II 8 on the grounds for removing the Master had already been inchoated in 1240 (MOPH III 15.3-8); when it was approved in 1241 an addition was made: 'Cessio magistri non admittatur a diffinitoribus nisi propter aliquid predictorum aut propter defectum aut impotentiam que ipsum ab executione officii magistratus perpetuo impediret, et hec precipimus firmiter observari' (MOPH III 20.7-16). The two inchoations were confirmed respectively in 1242 and 1243 (MOPH III 22.21-30, 24.33-25.2).

If we are to believe a story which Bernard Gui was told, the diffinitors took the opportunity of the first general chapter without provincials (that of 1242) to express their disapprobation of what had happened in 1240 by absolving all the provincials involved; there is nothing intrinsically implausible in this tale, though its veracity cannot be confirmed (see Appendix I), and at least it attests an enduring memory in the order that the provincials' acceptance of Raymund's resignation in 1240 was felt to be wrong. If it is true,

⁷⁵ I quote from my own, as yet unpublished, edition.

then of course John of Wildeshausen himself would have been affected, had he not already been raised to higher office; there was no pope in 1242, but John evidently wasted no time in broaching the subject with Innocent IV, who was elected on 25 June 1243.

We may take it, then, that the issue which John of Wildeshausen raised with the new pope concerned, not the procedures whereby a new Master came to power, but the legitimacy of a general chapter removing a Master from office when he had done nothing to merit deposition—and, by implication, the legitimacy of his own election as Raymund's successor.

As *Inter alia* shows, Innocent discussed the matter with his cardinals ('de fratrum nostrorum consilio'), and, however anomalous he may have considered the order's practice, he endorsed it and, in due course, under Alexander IV, the Franciscans and the Carmelites secured similar bulls recognizing the right of their superiors general to assume office as soon as they were elected and the authority of their general chapters to 'absolve and remove' the superior general.⁷⁶

The Carthusians seem to have started worrying about their procedures at much the same time, and Alexander IV responded on 16 Jan. 1257 (Reg. 1618), but, interestingly, what they wanted and obtained was papal acceptance of their practice of having newly elected priors confirmed by neighbouring priors, and they apparently said nothing about the removal of priors from office; this rather supports the belief that the Holy See accepted that election plus constant possibility of removal was a reasonable alternative to election plus confirmation.

There is one feature of *Inter alia* which does reflect the specific issue bothering the Dominicans. John of Wildeshausen had apparently explained, among other things, that the order had a rule 'ut

⁷⁶ The Franciscans obtained a version of *Inter alia* on 6 Oct. 1255 (ed. in L. Wadding, *Annales Minorum*, rev. ed. Quaracchi 1931, II 612-613). The Carmelite equivalent is *Qui ex apostolici cura*, issued on 24 Feb. 1256, edited in C. Cicconetti, *La Regola del Carmelo*, Rome 1973, 323-324; it might appear to echo Lateran IV const. 24 in its reference to the prior being elected 'ex unanimi omnium assensu vel eorum maioris et sanioris partis', but in fact this probably comes from the original Rule of St Albert which antedates Lateran IV (B. Secondin, *La Regola del Carmelo*, Rome 1982, 92), and it is interesting that, when he approved the revision of the Rule by Hugh of St Cher and another Dominican, Innocent IV evidently saw no reason to insist on any modification such as the requirement that the election be confirmed (cf. Cicconetti, op. cit. 201-202).

magister ipsius qui pro tempore fuerit a magisterii officio amoueri ualeat a diffinitoribus capituli generalis'; in endorsing this, Innocent introduced a slight change in the terminology: '... prefati successores et tu magister a diffinitoribus capituli generalis ipsius ordinis secundum ordinis constitutiones eiusdem *absolui et amoueri possitis*'.

The only terms so far used in the Dominican constitutions for the removal of superiors were *remouere* (in early texts derived from PC II 8a and 9bc) and *amouere* in the case of the Master and provincials, and also *deponere* in the case of the Master. The Cistercians used *remouere*, *amouere* or *deponere* for the dismissal of other abbots, but only *deponere* in the case of the abbot of Cîteaux.⁷⁷ *Amouere* occurs in connection with religious superiors in general in Lateran IV const. 12, and it is applied to abbots in X.3.36.8 (Friedberg² II 602), for instance, and Gregory IX's proposed reform of Cluny made provision for the *amotio* even of the abbot of Cluny (Reg. 745). *Amouere* and *amotio* are a normal part of Innocent IV's vocabulary (e.g. Reg. 2240, 2408, 2645), and could be applied to bishops as well as to religious superiors (Reg. 2974). The implication is always that a prelate is removed because he has shown himself unworthy in some way. It was on this basis that Dominic asked the diffinitors in 1220 to depose him: 'Ego sum dignus depositione, quia ego sum inutilis et remissus' (ACB 33).

Absoluere, to some extent, has different resonances. On 8 May 1244, for instance, Innocent informed the archbishop of Vienne that Philip of Savoy, at his own request, had been 'absolved' of responsibility for the church of Valence of which he was *procurator* (caretaker in the absence of a bishop), so the canons should proceed to hold an election (Reg. 659). Here *absoluere* clearly means relieving someone of a task perceived as an unwanted burden. The word, in this sense, is appropriate to Raymund's situation: unlike Dominic, he had not alleged any canonical grounds for his own deposition, he had pleaded bodily weakness as a reason for being allowed to resign.⁷⁸ This was something not envisaged in the constitutions, and the inchoation introduced in 1241 was evidently intended to set severe limits to the acceptance of any such plea in the future: if

⁷⁷ De Place, *Cîteaux, documents primitifs* 80, 86.

⁷⁸ Gerald de Frachet's *cronica ordinis* gives the same impression as that of Humbert which has already been quoted: 'Hic, cum biennium rexisset ordinem, propter nimiam debilitatem corporis ad suam magnam instantiam in capitulo generali Bononie est absolutus ab officio magistratus' (MOPH I 330).

there was no reason to depose the Master, his resignation could only be permitted if he was suffering from an infirmity which would permanently prevent him from carrying out his duties. By implication, the capitulars were expressing a doubt whether Raymund was in such a position; since he lived for another thirty-five years,⁷⁹ such doubts were, on the face of it, justified.

In the traditional language of religious, *absoluere* had a somewhat double-edged function. It is typically associated with priors, that is to say, the second-in-command of a monastery. It is found in Cluniac texts in what seems to be a thoroughly benign sense: a prior is blessed when he assumes office and again 'quando absolvendus est'; the second blessing is a prayer that he will be rewarded for his faithful service.⁸⁰ However, this interacted with a much less benign tradition with roots in the Rule of St Benedict 65: the Carolingian rule for canons, Rule of Aix 138, envisaged priors becoming so proud and negligent that, if they were incorrigible, they must be sacked, 'a ministerio propellantur' (PL 105:930); exactly the same text is found in the 12th-century customary of Saint-Ruf found in Vich, Museo dioc. 149.⁸¹ These two traditions are merged in the customary of Marbach, whose chapter on the *absolutio* of the prior begins by quoting the Rule of Aix (except that 'a ministerio propellantur' has become 'a ministerio absolvatur'), but then proceeds to say that 'quando absolvendus est' he is to receive the blessing prescribed in Cluniac sources (Marbach, ed. cit. 194-195 §204-205). The Victorine *Liber ordinis* also uses the language of *absolutio*, but with more sense of the prior's failings than of the community's gratitude; and *absolvere* was clearly seen as synonymous with *deponere* (ed. cit. 28-29 §7). Whether the connotations are benign (relieving someone of a burden) or verging on the hostile (relieving someone of his wallet), *absolutio* is applicable to a religious who is not the top man: the superior of the house gives him his responsibility and can also relieve him of it.

⁷⁹ He died on 6 Jan. 1275 (MOPH III 182.13, 204.29-30; Martène-Durand VI 407); the date is also noted in an interpolation in Gerald's *cronica* in AGOP XIV 23, and the year is recorded in Raymund's *vita* (MOPH VI i 36).

⁸⁰ Cf. *Consuetudines Udalrici* (PL 149:737-738), and the customary of Afflighem (*Corpus Consuetudinum Monasticarum* VI, Siegburg 1975, 157-158).

⁸¹ There is a similar provision in the 'rule' edited by J. Leclercq in *Studi Gregoriani* 6 (1959-1961) 201, drawn directly from Rule of St Benedict 65, which envisages not only the deposition but the expulsion of the prior if necessary ('deiciatur de ordine prioratus ... et si postea in congregatione quietus et obediens non fuerit, etiam de congregatione expellatur').

Absolutio became the normal term for the removal of Dominican superiors, and it was adopted by other mendicant orders. It is a pity that the acts of early Dominican chapters have survived too incompletely for us to be certain when it became current; the evidence that we have, though, forms a suggestive pattern.

When John of Wildeshausen was elected provincial of Lombardy, as Humbert tells us, 'cum ... ad refugiendum officium pontificalem uellet ordinem allegare, porrecta est econtrario littera papalis in qua mandabat quod, cum esset absolutus a cura pontificalis regiminis et per consequens restitutus sub obedientia ordinis, debebat ordini in recipiendo officia obedire; per quam litteram compulsus fuit ad recipiendum officium prioratus predicti' (cf. MOPH I 333). The letter, dated 9 March 1240, survives in a number of 'bullaria', and it is highly pertinent to our present enquiry.⁸²

Gregorius etc. uenerabili fratri Iohanni teutonico episcopo quondam Bosnensi ordinis fratrum predicatorum etc. Cum olim te ab onere pontificalis officii ad instantiam tuam duxerimus absoluendum et per consequens obedientie magistri ordinis tui et obseruantie eiusdem ordinis fueris restitutus, propter quod, etsi pontificalibus insigniis uteris, nichilominus mandatis magistri eiusdem ordinis obedire teneris, fraternitati tue per apostolica scripta mandamus quatinus, usu dictorum insigniorum et continua indulgentia si quam ab apostolica sede optines non obstantibus, eidem magistro plenam obedientiam exhibeas ad supportanda ipsius ordinis onera tamquam bonus miles Christi et sicut unus de aliis fratribus uiriliter te accingas. Datum Laterani vii idus martii pontificatus nostri anno xiii.

John had been *absolved* from the burden of his bishopric, and, as a consequence, he was once more under obedience to the Master of the Order; he must therefore obey the Master in accepting 'ipsius ordinis onera', in concreto the office of provincial of Lombardy. This implies a particular view of provincials, as people who have been given an obedience by their superior, the Master.

Is it simply due to the fortuitous survival of evidence that *absoluere* makes its first known Dominican appearance in an unsuccessful inchoation of the 1242 general chapter? The inchoa-

⁸² H. Finke drew attention to it in *Die Papsturkunden Westfalens bis zum Jahre 1378*, Münster 1888. XXXIII note d. I take the text from AGOP XIV A 4 p. 224, with a few minor corrections from Soest 29 p. 68. The only point of substance on which the two manuscripts differ is the date; Soest 29 has '8 idus' (8 March) rather than 'vii idus' (9 March); the Regensburg bullarium supports the latter (AFP 6 [1936] 240).

tion certainly treats priors and provincials in a way more appropriate to monastic obedientiaries than to prelates:⁸³ '<Inchoamus> quod priores conventuales postquam duobus annis continuis fuerint ipso iure sint absoluti, similiter priores provinciales de quarto in quartum annum ipso iure sint absoluti nisi electio magistri sit ipso anno celebranda vel illorum sit diffinitio, et tunc terminato capitulo sint absoluti' (MOPH III 23.27-31). The proposed routine removal of superiors is obviously quite different from deposition; but it equally has nothing to do with relieving people of intolerable burdens—some priors and provincials might have been enjoying their responsibilities.⁸⁴

Raymund certainly had reason to feel that the Mastership had been thrust upon him, but it is not clear whether he saw it as a matter of obedience to accept it. The election of religious superiors in this period left little room for an electus to refuse, but the Dominican constitutions were especially insistent that anyone elected Master became Master unconditionally and at once: the election had to be completed before the opening of the chapter so that, when it began, it would have a Master, 'old or new, present or absent', lest it be deemed acephalous (PC II 11c); a newly elected Master who was not at the chapter would not even know that he was Master, so he had obviously had no chance to consent or refuse. After Raymund's election in 1238, according to Humbert's *cronica ordinis*, provincials and others were sent to Barcelona 'ut eum inducerent ad officium recipiendum; quibus licet cum difficultate, timens de

⁸³ In 1255 the canons of Arrouaise decreed 'quod omnes officiales intra monasteria manentes singulis annis infra festum Beati Petri ad Vincula sua resignent officia' (L. Milis. ed., *Constitutiones ordinis Arroasiensis*. CCCM 20, Turnhout 1970, 230 §264b).

⁸⁴ *Absoluere* appears regularly in the acts of general chapters after 1242 (e.g. MOPH III 40.19, 42.15, 48.8, 54.24-27). The connotation of giving relief is evident in one act of the 1251 chapter, 'Volumus quod omnes priores absoluti per totum annum post presens capitulum a prioratus officio quiescere permittantur' but it cannot be taken for granted; the same chapter 'absolved' the prior of Dinan so that he could become lector of Lyons, and it attached penances to the 'absolution' of one provincial and one conventual prior which implies that their absolution was penal (MOPH III 59.13-22). As in traditional religious parlance, then, *absoluere* means removing someone from office, regardless of whether it is a mercy, an administrative reshuffle, or a punishment. In the Gillet constitutions (const. 930-932), the chapter 'De absolutione ab officio' was included in the section 'De culpis, delictis, poenis seu poenitentiis ac de processibus', but by then the principle was well established that all superiors had a fixed term of office, so absolution was inherently an abnormal procedure.

periculo ordinis si se subtraheret, acquieuit' (MOPH I 331). If Galvano may be believed, it had been a difficult election, with the electors split down the middle, and Raymund was their eventual compromise candidate.⁸⁵ In such circumstances, a refusal on his part would have precipitated a crisis; but even after the most tranquil election a refusal would cause a constitutional quandary. The newly elected Master *was* Master, whether he liked it or not; Raymund evidently did not like it, but he dreaded to think what would happen if he refused to cooperate.

Since the 1241 inchoation speaks entirely in terms of the Master's resignation (*cessio*), it is unlikely that Raymund had appealed to the traditional religious notion of *absolutio* in 1240. But it is possible that John of Wildeshausen was thinking along those lines when he spoke to the pope in 1243/1244. The provincialate of Lombardy had been forced on him as an *obedientia*, and the 1242 inchoation in effect treated all superiors under the Master as obedientiaries, though, if Bernard Gui's story is correct, the very same capitulars penanced the provincials who had allowed the Master to resign (who had 'absolved' him?).⁸⁶ Whatever Innocent himself meant by *absoluere*, and whether or not the word was introduced into the discussion by John, the pope's formal statement that the Master could be 'removed *and* absolved' by the diffinitors was bound to interact with the traditional use of the word in religious life which had already, though perhaps only recently, entered the vocabulary of the Dominicans. If the general chapter could absolve the Master, as well as priors and provincials, was the relationship between the chapter and all superiors, including the Master, analogous to that between an abbot and his obedientiaries?

Humbert sheds interesting light on at least his own view of the status of the Master in his *tractatus de officiis ordinis*. Although he distinguishes between superiors who have cure of souls *ordinarie*, such as the Master, provincials and priors, and those who have it *ex commissione*, such as subpriors and novice-masters, he presents everyone who has any kind of responsibility in the order, from the

⁸⁵ Cf. C. Longo, in *Magister Raimundus*, Rome 2002, 39-42. Galvano's account is quoted by Taegio (ed. Odetto. AFP 10 [1940] 354), and it is not necessarily incompatible with Salanhac's account of the electors' unanimity (MOPH VI ii 75-76); Salanhac may have been present, but he was evidently not one of the electors, and Galvano agrees that the final scrutiny resulted in a unanimous election.

⁸⁶ Was *absoluerat* the word used in 1242, or is it due to Gui (or his informant)?

Master to the gardener, as *officiales* (ed. Berthier II 179-180):

In ordine nostro sunt officiales quidam qui habent ordinarie curas pertinentes ad animas differentes secundum plus et minus, ut magister ordinis, prior prouincialis, prior conuentualis; alii sunt qui habent huiusmodi curam ex commissione, ut supprior, magister nouitiorum, magister conuersorum et corrector familie, et horum quatuor primus habet uniuersalem in conuentu, alii uero particularem circa determinatas personas; alii sunt circa cultum diuinum ...

In ordinary language, an *officialis* was someone wielding delegated authority in church or state; in religious life, the word covered people exercising particular responsibilities under the superior of a monastery. In the latter context, *officialis* was synonymous with *obediensarius*, as can be seen from two closely parallel texts from the Victorine *Liber ordinis* (ed. cit. 18) and the customary of Springiersbach (ed. cit. 153) about what is to be done after the election of a new abbot:

St Victor

In crastino ueniant omnes oboediensarii in capitulo et prostrati coram abbate ponant ad pedes eius clauas suas. Ipse uero praecipiet eis ut surgant et resumant eas.

Springiersbach

[Abbate] reducto ad capitulum et presidente, officiales monasterii clauas obediensarum ponunt ante pedes eius et iubente eo denuo resumunt.

Even the prior was an obediensarius or *officialis*. According to the *Liber ordinis*, someone chosen to be prior must plead his unworthiness but, if the abbot does not change his mind, 'non debet oboedientiam pertinaciter refutare' (ed. cit. 25). A decree of the Arrouaise canons puts the matter very bluntly (ed. cit. 217 §239b):

Abbas pro libito suo priorem et caeteros officiales suos substituat uel deponat. Omnes officiales in aduentu noui abbatis antequam oboedientia promittatur ei omnia officia sua reddant et ad pedes eius clauas suas deponant.

In the Dominican order the general chapter and, to a lesser extent, the provincial chapter enjoyed much the same kind of power: the general chapter decided whether the Master and the provincials continued in office or not, and the general or provincial chapter decided the fate of priors. Humbert was an experienced churchman, a man of the world, and a competent, if not especially stylish, latinist; if he chose to present all Dominican superiors, including the Master, as *officiales*, we must take it that he knew what he was

implying: their position vis-à-vis the chapter was akin to that of monastery officials vis-à-vis the abbot.

By 1263 the Dominicans had apparently accepted the idea that the Master could be absolved like anyone else. The acts of the general chapter of that year include Humbert's absolution, 'Admittimus cessionem magistri ordinis quam humiliter a nobis petiit, ipsum ab officio magistratus absolventes' (MOPH III 121.23-24), and there is no sign that it provoked anything like the outrage caused by Raymond's resignation in 1240.⁸⁷

6. *Confirmation of the Master: the 'bullarium' tradition*

Inter alia nowhere mentions the confirmation or non-confirmation of a newly elected Master, and this is equally true of Alexander IV's re-issue of it on 20 June 1258 (BOP I 36 5), nor was the text altered in this regard when it was incorporated in the successive collections of Dominican privileges known as 'Mare magnum'.⁸⁸ Nor is there any allusion to the confirmation of the superior general in the corresponding bulls which Alexander IV gave the Franciscans and the Carmelites. It is with some surprise, then, that we find early Dominican 'bullaria' all presenting *Inter alia* as if it were simply or primarily about the confirmation of the Master.

The 'bullaria' known to me are of two different kinds:⁸⁹ in one, single bulls are presented one after another, with individual titles;

⁸⁷ Galvano, who had a taste for malicious gossip, makes out that Humbert was sacked: 'Magister Umbertus a magisterio ordinis absolvitur quia prelatos voluit esse perpetuos, quia nimis delicatus etiam (*sic vel et codd.*) cibus et vestibus, et conventus non sufficiebant ad eius pompas et sumptuositates' (MOPH II 99); this is not supported by any other evidence and is rather contradicted by the acta of 1263, 'Volumus etiam et ordinamus quod post primum priorem in choro et in aliis locis primum locum teneat, et ab oneribus ordinis eum eximimus quantum ipse duxerit acceptandum' (MOPH III 121.27-29). According to Bernard Gui, after his absolution Humbert 'superuixit in honore et religione annis multis' (Martène-Durand VI 408).

⁸⁸ Successive popes confirmed the order's privileges with bulls of this kind; Alexander IV on 28 March 1261 (BOP I 405), Clement IV on 3 June 1265 (BOP I 452), Boniface VIII on 19 May 1296 (BOP II 48) and John XXII on 15 Feb. 1317 (BOP II 132), and so on. In what is probably the first printed collection of the order's privileges, the *Tabula privilegiorum* (and other things) published in Venice in 1504, f. 3, *Inter alia* is quoted from Gregory XI's 'Mare magnum' (BOP II 278), in the context of Sixtus IV's confirmation of all the order's privileges (BOP III 516-520).

⁸⁹ No systematic study has yet been undertaken of Dominican 'bullaria', and I am only going on the material which is available to me; it is more than likely that there is further evidence waiting to be discovered.

in the other, groups of bulls are arranged under a series of general headings.

An example of the first type, from the province of France, is found in two manuscripts: Angers, Bibl. Mun. 406 ff.38-75, and Dijon, Archives départementales de la Côte d'Or, H 221 ff.1-46. Both have the same collection of seventy-three bulls, in the same order and with the same titles; in both, the 'bullarium' is followed by a dossier on the Dominicans' dispute with the university of Paris. The only difference is that the Dijon manuscript has two extra bulls at the end of the 'bullarium', from Martin IV (BOP II 1 no. II and 2 no. III). The Angers manuscript has an index which Dijon lacks.

Of the two manuscripts, Dijon has the more corrupt text; nevertheless, even a cursory examination shows that it has some correct readings which are missing in Angers.⁹⁰ They must therefore derive independently from a common archetype, so there must have been at least one other copy of this 'bullarium'. I have no idea how widely it circulated, but it is unlikely to have been an official provincial document; if the province of France wanted to provide its convents with a 'bullarium', it could have produced something far more comprehensive, as surviving originals from Saint-Jacques show.

On the other hand, some of the material which is included should not, on the face of it, have been available in France at all: no. 43 (BOP I 473 XLVI), for example, is addressed to the episcopate of Portugal, no. 48 (BOP I 404 CCXCIV) to the bishop of Constance, no. 50 (BOP I 185 CCVI) to Dominicans in the service of prelates and princes in Germany, no. 74 (BOP I 405 CCXCVI) to the bishops of Germany, Bohemia, Moravia and Poland, and no. 53 (BOP I 404 CCXCV) contains permission for the brethren in Scandinavia to accept the hospitality of clerics who have been excommunicated for keeping concubines. One can see how such documents might become part of Dominican 'case law', except perhaps the last, which is very specific to one particular situation; but it is difficult to explain their presence in the Angers-Dijon 'bullarium' unless there was some system whereby the brethren were informed of the contents of papal documents affecting the order, even those not directly related to their own particular territory.

⁹⁰ For example, in Alexander's version of *Inter alia* (no. 2), Dijon correctly has 'tibi magister et successoribus ipsis', where Angers has *tuis* instead of *ipsis*. In Gregory's *Quoniam abundavit* (no. 31), Angers has *sedulo autem monentes* for *sedulo ammonentes*, and it gives an incomplete date ('xvii kal.' with no month indicated); Dijon is correct on both points.

The bulk of the collection covers the pontificates of Alexander IV, Urban IV and Clement IV (1254-1268), and, on the whole, the sequence of popes is respected, though the order of their bulls appears to be random; there are a few earlier bulls, inserted with no respect for chronology: one from Gregory IX (no. 31),⁹¹ and four from Innocent IV (BOP I 404 CCXCIV, 173-174 CLXXVI, 185 CCVI and 215 CCLXIII, nos. 46, 49-50 and 53). One of the few signs of systematic arrangement occurs at nos. 42-44, where three documents concerning the celebration of the Dominican saints have been brought together (BOP I 403 CCXVII, 474 XLVI, 285 XXXVI), with the result that one of Clement's bulls is out of sequence; generally, though, no attempt was made even to juxtapose bulls dealing with identical topics—for example, bulls forbidding non-Dominicans to wear the Dominican habit or anything too similar to it (BOP I 304 XCIV, 380 CCXLVIII, 304 XCIII) occur as nos. 19, 39 and 41, although nos. 19 and 41 were issued at the same time and differ only to the extent required by the fact that one is addressed to the Dominicans, the other to the bishops.

Only Alexander IV's version of *Inter alia* is included, as no. 2, and it is given the title 'Quod magister ordinis statim postquam electus fuerit eo ipso sit confirmatus et uerus magister ordinis effectus' (Angers ff.38^r, 43^v; Dijon f. 2^r), whose import is admirably clear. There is no allusion to the Dominican tradition of confirming superiors at general chapters by not removing them from office, nor is it asserted that the Master's election needs no confirmation; it is claimed that, as Raymund of Penyafort said about the pope, the Master is confirmed precisely by being elected.

Exactly the same interpretation of *Inter alia* is also found in the early fourteenth-century in what has been christened 'un vademecum dei provinciali romani',⁹² now AS Perugia, Corporaz. relig. soppr. S.Domenico Miscell. 66. This contains a 'bullarium' of the same type as Angers-Dijon (ff.35-93), preceded by an index (ff.25-32).⁹³

As it stands, the 'bullarium' contains 192 items, as does the index, but the 'bullarium' proper ends at no. 159 if not slightly ear-

⁹¹ A version of *Quoniam abundavit* issued on 16 March 1230 (Potthast 8500), whose text falls between those edited by V. Koudelka in AFP 34 (1964) 41-42.

⁹² E. Panella, 'Un vademecum dei provinciali romani (secoli XIV-XV)', MD NS 28 (1997) 361-411.

⁹³ The intervening pages were presumably intended to accommodate an extension of the index, but they were later used for other purposes.

lier.⁹⁴ It is arranged in chronological order of popes (not bulls), running from Honorius III to Boniface VIII (†1303). Each bull is given a heading to show what it is about, and there is generally an indication of where originals were to be found, though the only possessors mentioned are the procurator general (*procurator ordinis*) and a few houses of the Roman province.

There is also what appears to be another index at ff.13-19, but, on closer examination, this turns out to be an independent register of bulls running from Honorius III to Benedict XI (†1304). Each bull is identified by a heading similar to (and often identical with) that found in the 'bullarium', and a number; these numbers run continuously from 'Honorius [III] i' to 'Benedictus [XI] clxxvi', and they correspond neither to the 'bullarium' nor to the numbering of the register itself.⁹⁵ The reference must be to some other collection of bulls which was different from and larger than the 'bullarium' contained in our manuscript, and which covered one more pontificate, that of Benedict XI, and, apparently, some of its contents were not considered worthy of inclusion in the register.⁹⁶

As in the 'bullarium', the popes are in chronological order, but not their bulls, and there is information (almost always the same information as in the 'bullarium') about the location of originals. However, the register contains one distinct feature: later bulls on the same subject are listed together with the first one to appear, and also, where appropriate, successive versions of 'Mare magnum'; for

⁹⁴ Item 157 is Boniface VIII's 'Mare magnum' (BOP II 48-51 XIII), presented in the usual way, with a note that the procurator has an original. Items 158-159 are two more of Boniface's bulls (BOP II 47 XI-XII), but they lack the place and date of issue, nor are any originals located. From then on, the order of popes is abandoned: 160 is from Honorius IV (BOP II 10 IX), 161 from Gregory IX (the same version of *Quoniam abundavit* which has already appeared as item 5), 162-163 from Clement IV (BOP I 474 XLVIII, Reg. 1074—the latter being concerned with the misbehaviour of inquisitors in Provence), 164 from Alexander IV (ed. Koudelka, AFP 31 [1961] 67), 165 from Clement V (ed. *ibid.* 68-69), and so on. 166-170 concern the aftermath of the row between Boniface VIII and King Philip of France, and their only connection with the order is that they were written by a Dominican pope (Benedict XI, Reg. 1253-1255); 171, one of Boniface's decrees of excommunication (Friedberg² II 1309-1310), has nothing to do with the order at all. Relevance returns with item 172, a bull of Nicholas IV in favour of the Dominican nuns (BOP II 32 XXV).

⁹⁵ For example, the canonization of Peter Martyr is 'Innocentius xlix', but it is no. 38 in the register, and no. 44 in the 'bullarium'; Clement IV's confirmation of the Dominican office, 'Clemens cxlvii', is no. 102 in the register and no. 136 in the 'bullarium'.

⁹⁶ The register only contains 118 titles, but the highest-numbered bull to which it refers is 176.

example, under the heading 'Quod possumus in ecclesiis nostris tempore interdicto celebrare diuina' (item 4) we find:

Bullatum Senis, Honorius iiiii; bullatum Florentie et Urbeueteri, Gregorius xiiii; bullatum Senis, Luce, Florentie et Perusii, Innocentius xxxvii; bullatum procurator, Alexander lxix; bullatum procurator, Alexander cxxi; bullatum procurator, Honorius clxiii; bullatum procurator, Honorius clxiii (*sic*); Alexander cxii, Clemens clv, Bonifacius clxix.

This item is also interesting as showing that the collection on which the register is based had more early material than was available to the compiler of the 'bullarium'; the earliest bull which the latter could find on the subject was Gregory IX's *Precibus uestris*,⁹⁷ which features as no. 13, under the title 'Quod tempore interdicti licet nobis celebrare diuina' (presumably 'Gregorius xiiii' in the register). This is a further indication that the register represents a later development than the 'bullarium'.

The combined evidence of the 'bullarium', the index and the register, shows that the headings given to individual bulls were neither created ex nihilo in our manuscript nor so fixed as to be unalterable. There are divergent textual errors in the index and the 'bullarium' which show that the headings in both were copied from some earlier source. More important, both the 'bullarium' and the register contain inappropriate titles which give us a glimpse of their prehistory.

The third title in both collections is 'Quod possumus diuina officia in nostris ecclesiis celebrare', and, apart from 'Mare magnum', the register cites Honorius iii, Innocentius xl and Alexander cxiiii. The text quoted in the 'bullarium' is Honorius III's *Postulastis a nobis* (MOPH XXV no. 166, misdated to 1217), which is, in fact, simply authorization to say mass on an 'altare portatile'. 'Innocentius xl' and 'Alexander cxiiii' must be these popes' re-issues of *Postulastis*, which feature in the 'bullarium' as nos. 36 and 114 under more appropriate headings.⁹⁸ It is impossible to believe that anyone reading *Postulastis* would have given it the title found in the register and the 'bullarium;

⁹⁷ Cf. BOP I 25 XX, though the text quoted comes from a later issue. 'Honorius [III] iiiii', cited in the register, is no doubt *Cum nos* (BOP I 15 XXVIII).

⁹⁸ For the former, cf. BOP I 121 X; the latter is not in BOP. The location of originals in the register corresponds exactly to the information given in the 'bullarium' in connection with the three issues of *Postulastis*.

the only bull which would merit such a title is MOPH XXV no. 107, permitting the brethren in Paris to celebrate the divine office at S.Jacques, and there is no reason to suppose that a text of this was available in the Roman province, especially as the bull was not registered. The title must therefore have been known in the Roman province independently of the bull, but with an indication that there was a bull of Honorius III to go with it. Either someone must have attached *Postulastis* to the rubric because he could find nothing more suitable, or—and this is surely more likely—the Roman province had access to some kind of systematic guide to Dominican privileges, in which several bulls concerning the celebration of the liturgy were gathered together under this heading, including MOPH XXV no. 107 and *Postulastis*, but not furnishing actual texts.

No. 123 in the 'bullarium' also has the wrong title: the bull quoted is Clement IV's *Meritis uestre religionis*, issued on 20 Dec. 1267 (BOP I 490 LXXVI), allowing the brethren to celebrate the liturgy, in moderation, even during a time of the strictest interdict, but the title belongs to another *Meritis uestre religionis*, issued on 30 June 1267 (BOP I 486 LXVII), permitting reception of the last sacraments during a time of interdict, which features in the 'bullarium', under a different, but appropriate, title as no. 126. The register lumps both bulls together, as Clemens cxxxiiii and cxxxvii, under the heading 'Quod tempore strictissimi interdicti possumus confiteri et sacramenta eucharistie et extreme unctionis in articulo mortis recipere' (no. 91), which is precisely the heading of no. 123 in the 'bullarium'; the location of originals is also the same as that indicated for nos. 123 and 126 in the 'bullarium'. No one actually reading the two bulls would confuse them, but, in a systematic guide to the order's privileges they could have been brought together quite naturally, and, if only the incipit was quoted, it could easily be assumed that they were identical. Only when full texts were inserted, as in the 'bullarium', would it be necessary to find a fresh heading for the second one.

It appears, then, that, before the compilations in our manuscript were made, someone had been collecting information from more than one province about Dominican privileges, and that this information was sometimes available in the form of regests, some of which apparently covered more than one bull at a time, and that it was these regests which suggested at least some of the titles found in our 'bullarium' and register.

An order-wide project obviously makes it easier to understand how non-local bulls came to be included in the Angers-Dijon 'bulla-

rium', and it is suggestive that three of those which I mentioned also feature in the Roman 'bullarium' (nos. 74, 116 and 145), and, in each case, the scribe has optimistically written 'bullatum' without actually being able to locate an original.

There is another, more impressive, link between the Roman 'bullarium' ('Rom.') and Angers-Dijon ('AD'): in spite of the random arrangement of bulls within any particular pontificate, there are sequences of bulls from Alexander IV which are suspiciously similar:

<i>Conuenit ut sacer</i> 20.9.57	AD 3	Rom. 60
<i>Vobis extremam</i> 5.5.56	AD 4	Rom. 62
<i>Licet ad hoc</i> 10.4.61	AD 5	Rom. 63
<i>Ordinis uestri</i> 23.3.58	AD 6	Rom. 64
<i>Celestis amor</i> 20.1.61	AD 7	Rom. 66
<i>Vestra semper</i> 5.5.56	AD 8	Rom. 67
<i>Cum iam</i> 5.5.56	AD 9	Rom. 68
<i>Inspirationis diuine</i> 5.12.59	AD 10	Rom. 69
<i>Sacre religionis</i> 9.6.57	AD 11	Rom. 70
<i>Petitionibus uestris</i> 14.5.56	AD 12	Rom. 71
<i>Odore suaui</i> 5.5.56	AD 13	Rom. 72
<i>Cum paupertatem</i> 5.5.56	AD 14	Rom. 73
<i>In grauem</i> 29.6.58	AD 15	Rom. 75
<i>Deuotionis uestre</i> 13.5.58	AD 16	Rom. 76
<i>Cohiberi per nos</i> 27.9.60	AD 17	Rom. 77

Rom. 61 is not in AD, Rom. 65 is AD 23, Rom. 74 is AD 32.

<i>Quoniam abundauit</i> 27.2.59	AD 33	Rom. 90
<i>Patris eterni</i> 9.5.55	AD 34	Rom. 91
<i>Quo uos</i> 5.5.56	AD 35	Rom. 94
<i>Meminimus</i> 8.5.56	AD 36	Rom. 92
<i>Non solum in fauorem</i> 5.5.56	AD 37	Rom. 93
<i>Vestram et uestrorum</i> 5.3.58	AD 38	Rom. 95
<i>Meminimus</i> 15.10.59	AD 39	Rom. 96
<i>Cum dilectorum</i> 6.5.56	AD 40	Rom. 97
<i>Quia confusio</i> 5.5.56	AD 41	Rom. 98
<i>Pro reuerentia</i> 4.1.61	AD 42	Rom. 102

Rom. 99-101 are not in AD; AD 35-37 (Rom. 92-94) form a thematic block (they all concern the long-running dispute with the Franciscans over the two orders' poaching of each others' recruits).

It can hardly be fortuitous that these sequences, which have no chronological or thematic significance, recur with such minimal

variation in two otherwise quite different 'bullaria'. There are no such similarities in their collection of Clement IV's bulls.

It is also striking that, except for a few small differences which are probably due to textual corruption, both 'bullaria' have the same issues of all the many bulls of Alexander IV and Clement IV which they have in common, even those of which several issues are known. By contrast, of the four bulls of Innocent IV which they both contain, two are copied from different issues.

This suggests that, after the pontificate of Alexander IV, a rudimentary collection of his bulls took shape, and that, after the pontificate of Clement IV, it was made available to different provinces of the order together with an unorganized, and not necessarily complete, set of Clement's bulls and some more of Alexander's.

This makes it all the more interesting that AD and Rom. have so few titles in common that it must be deemed probable that their similarities in this regard, even their occasional convergence on an identical title, are due simply to the contents of the bulls themselves. So, even if some indication was provided of what the bulls were about, this did not take the form of official titles.

Nevertheless, *Inter alia* receives exactly the same interpretation in Rom. and in AD. As we have noted, its title in AD is 'Quod magister ordinis statim postquam electus fuerit eo ipso sit confirmatus et uerus magister ordinis effectus'. The Roman 'bullarium' gives Innocent's bull the heading, 'Quod magister ordinis ipso facto est confirmatus quod est electus' (f.42^v) or, as the index has it, 'Quod magister ordinis ipso facto quod est electus est confirmatus' (f.26^v); Alexander's bull is simply called 'Priuilegium de confirmatione magistri' (ff.27^r, 47^v). In the register, both are listed together under the rubric 'Quod magister ordinis ipso facto est confirmatus quod est electus, et quod potest a diffinitoribus capituli generalis absolui' (f.15^v). So, either the brethren in at least two provinces independently interpreted *Inter alia* in the same way, or a particular interpretation of it was being imposed on them.

We have seen enough to realize that AD, Rom. and the Roman register did not just appear spontaneously out of nowhere; underlying them was a flurry of activity, not confined to any one province, whose first product was a collection of bulls from the pontificates of Alexander IV (1254-1261), Urban IV (1261-1264) and Clement IV (1265-1268). The dates which this implies are not difficult to interpret.

It was probably in 1256 that the order's first procurator general was appointed, and it is suggestive that there is only one bull from 1255 in the sequences common to AD and Rom., and that both 'bullaria' contain later issues of three other bulls issued before May 1256 (*Ordinis uestri*, BOP I 269 V; *Deuotionis uestre*, BOP I 286 XXXIX; *Sacre religionis*, BOP I 302 LXXXVIII). It is reasonable to assume that the procurator generally kept copies of the bulls which he procured for the order, so, if the order wanted to marshal its privileges, his office was the obvious place to start. This would explain why the original nucleus of the Dominican 'bullaria' seems to begin essentially with the pontificate of Alexander IV.

After Clement's death there was a long interregnum before Gregory X became pope in 1271; and one of the first things the new pope did on his return from Outremer was to call a council: he started sending out letters on 31 March 1272 (Reg. 160). The mendicants can hardly have been unaware that their position was likely to come under attack, and an urgent ordination of the Dominican general chapter of 1272 can almost certainly be seen as part of the order's projected defence: 'Iniungimus omnibus prioribus conventualibus ut modis omnibus provideant et procurant habere omnes indulgencias et privilegia bullata ad ordinem pertinencia in communi vel saltem eorum transcripta sigillis authenticis sigillata vel per manum publicam roborata' (MOPH III 164.19-22). Does this context not explain why we can recognize the existence of a more-than-local 'bullarium' running up to the end of Clement IV's pontificate?

The contents of two systematic 'bullaria' have already been published in outline: on the one from Rodez ('Rod.'), now AGOP XIV A 4, see D. Planzer, 'De codice Ruthenensi miscellaneo', AFP 5 (1935) 5-123, esp. 44-123; on the one from Regensburg ('Reg.'), now Dresden, Sächsische Landesbibliothek A 177, see H.C. Scheeben, 'De bullario quodam Ordinis Praedicatorum saeculi XIII', AFP 6 (1936) 217-266. There is no need to present them afresh.

Both these 'bullaria' give the texts of an impressive number of bulls by popes from Honorius III to Alexander IV, arranged under twenty-five headings (Rod. 18-134, Reg. 1-143). The headings are the same in both manuscripts, and both contain essentially the same collection and arrangement of bulls, though each has some material which the other lacks. The Regensburg 'bullarium' also identifies a number of convents where originals of some of them (or originals of related bulls) can be found.

One salient feature of Rod. and Reg. is the number of bulls from Honorius III and Gregory IX which they have in common. Angers-Dijon have nothing from Honorius III, Rom. has three bulls, the collection underlying the Roman register has four, but Regensburg-Rodez have eight; Angers-Dijon have one bull from Gregory IX, Rom. has ten, the register implies a set of thirteen, but Regensburg-Rodez have twenty-five.

It seems clear that Bologna was one source of this abundance of relatively early bulls. This is shown by the presence in both Rod. and Reg. of *Cum olim te*, the letter with which Gregory IX blocked John of Wildeshausen's attempt to evade election as provincial of Lombardy (Rod. 75, Reg. 71); in the nature of the case, there would only have been one original of this, and, since the letter was solicited by the provincial chapter of Lombardy,⁹⁹ it may be presumed that it was kept in Bologna. However, Paris too must have made its contribution, since, under the heading 'De pertinentibus ad studium', there is a very full collection of papal documents concerning the Dominicans' relationship with the university of Paris (Rod. 100-115, Reg. 109-124), including one embedded in a letter of the chancellor of the university.

There can also be little doubt that it was the procurator of the order who had assembled this material. After the twenty-five sections of systematic 'bullarium', Rod. and Reg. continue in tandem a little while longer, and there is a most suggestive rubric in Rod. p.240: 'Exemplaria diuersarum litterarum que pro uariis negociis et utilibus fratribus (*sic*) possunt facile impetrari';¹⁰⁰ the procurator was the order's official agent at the papal court, and it was no one's business but his to offer the brethren samples of papal letters which 'can easily be obtained'—and if his 'catalogue' consisted of 'exemplaria', he was presumably circulating actual texts, not just résumés, of papal documents. After this rubric, Rod. and Reg. have five items in common, with identical individual titles, though Rod. also has three items not found in Reg.; then they have another five items in common, but with divergent titles.

⁹⁹ This is implied by Humbert of Romans, and, allowing for his mistaken dating, Gerald de Frachet, in their chronicles of the order (cf. MOPH I 332), and it is a priori likely to be correct.

¹⁰⁰ *Utilibus fratribus* must be emended to *utilitatibus fratrum*. Scheeben prints this rubric in square brackets, so it is presumably not in the manuscript of Reg. (which I have not seen for myself), but there is something similar at the head of its index (Scheeben, art. cit. 228).

After that they part company decisively, and it is only after this point that either of them has anything from any pope later than Alexander IV.

This might suggest that the procurator began looking for material soon after Alexander's death, except that, in that case, we should have expected to find evidence of it in the elements common to Angers-Dijon and Rom. It is, I think, more likely that it was somewhat later, perhaps in connection with the edict of 1272, that the procurator set about completing his collection of bulls from Honorius III, Gregory IX and Alexander IV with the help of the brethren in Bologna and Paris,¹⁰¹ and that it was then that the original nucleus of Rod.-Reg. took shape.

Only Innocent IV's version of *Inter alia* is included; it heads a section entitled 'De confirmatione magistri ordinis et electionibus ordinis' (Rod. 20, Reg. 3).¹⁰²

The combined testimony of the various 'bullaria' strongly suggests that their interpretation of *Inter alia* reflects the official view of the order; it also shows that it was current by the early 1270s and therefore antedates the row with Nicholas IV over his attempts to depose Munio in 1290-1291, which was, I have argued, the occasion for Ventura's testimony to be rewritten in such a way as to suppress the statement that Dominic had received his authority from the pope (AFP 66 [1996] 79-83).¹⁰³

The evidence of the 'bullaria' cannot tell us when *Inter alia* first came to be understood like this, but we may guess that the issue of confirmation of the Master was raised, not by *Inter alia*, but by Innocent IV's subsequent policy of requiring the superiors general of new orders to be confirmed by the Holy See, together with the order's own growing acceptance of standard procedures for the confirmation of priors and provincials. Alexander IV may have

¹⁰¹ It is suggestive that early bulls of Alexander IV which do not feature in Angers-Dijon or Rom. are found in Rod.-Reg.

¹⁰² Rod. p.208 has a note in the margin saying 'De confirmatione constitutionum', but this has nothing to do with any theory about how the Master is confirmed, as can be seen from the same manuscript's résumé of the first article of 'Mare magnum' (i.e. *Inter alia*): 'de confirmatione magistri ordinis et cura fratrum commissa eidem, et quod ipse ac diffinitores libere agere ualeant que ipsi iuxta constitutiones ordinis dicto ordini ac fratribus uiderint expedire' (Planzer, art. cit. 100).

¹⁰³ The text which Dietrich of Apolda's provincial brought back after the general chapter of Lucca in 1288 (*Acta Sanctorum*, Aug. I, Antwerp 1733, 563 §4) still had the undoctored version of Ventura's testimony.

been asked to re-issue *Inter alia* in 1258 because Humbert¹⁰⁴ wanted to ensure that Dominican practice was still beyond canonical reproach on this point even though confirmation was now required in some similar cases—there is evidence that he was rather scrupulous about canonical regularity;¹⁰⁵ but, if it was specifically he who requested the re-issue, it is equally possible that he was already looking ahead to his own resignation and wanted to be armed with the bull in case the diffinitors objected. The order may have come to focus on the confirmation of the Master as a defence against possible accusations of irregularity in its government at Lyons II.

In any case, we have to ask how, not just why, confirmation of the Master came to be seen as the salient point in a bull which never even mentions it. Once again, I suspect that the resignation of the Master provides the key. As Raymund of Penyafort remarked, 'Regulariter debet fieri renunciatio in manu illius de cuius manu habetur institutio vel confirmatio' (*Summa*, ed. cit. 330); Innocent IV was of the same mind, and he adds that 'Non potest prelati renunciare in manibus subditorum'.¹⁰⁶ Thus, for example, the abbot of a monastery coming directly under the Holy See could not validly resign—or a successor be validly elected—without the pope's permission (X.1.9.15, Friedberg² II 115). If the general chapter could accept the Master's resignation, then it must be the general chapter which had given him the job in the first place; if the language of 'absolution' could be extended to him (on the authority of *Inter alia*), then, as Humbert perceived, he was, vis-à-vis the chapter, no more than an *officialis*, a subject who could be given tasks and relieved of them. By implication, the chapter was not just the body which elected him, it was also the superior with competence to confirm his election, just as it had always had authority to 'confirm' him in office by not deposing him.

I am not aware of any direct evidence that this is the logic underlying the Dominican interpretation of *Inter alia*, but Carmelite

¹⁰⁴ *Inter alia* was re-issued on 20 June 1258 (BOP I 365), and Humbert was at Prouille on 11 June (cf. AFP 65 [1995] 169), so he cannot have solicited it personally; but he could have got the procurator general to ask for it on his behalf.

¹⁰⁵ One of the first bulls he secured from Alexander IV was *Ne pro dilatione* (26 Jan. 1255), specifically authorizing him and his successors to choose their own confessors, although the Dominican Master was, on the face of it, already allowed to do so under Gregory's decretal on which Alexander's bull was modelled (X.5.38.16, Friedberg² II 889). I have already remarked that *Cum hii qui in lege* (16 March 1257) responds to what was, on the face of it, an exaggerated worry about the canonical validity of Dominican elections of provincials and the Master.

¹⁰⁶ Cf. his *Commentaria in V libros decretalium*, Lyons 1554, f.36^v.

use of *confirmare* in official texts from the fourteenth century resonates suggestively with Dominican usage and may perhaps be permitted to shed light on it. *Confirmare* occurs in their 1324 constitutions, with reference to the prior general, in two different senses: he may be 'confirmed' at each general chapter by not being removed from office (cf. primitive Dominican usage with reference to priors and provincials), but he is also pronounced 'confirmed' immediately after his election 'in virtute privilegii apostolici ordini indulti' (which presupposes an interpretation of *Qui ex apostolici cura* analogous to the Dominican interpretation of *Inter alia*).¹⁰⁷

Whether or not the Carmelites developed this double-edged notion of confirmation under Dominican influence, their use of *confirmare* at least corroborates the possibility that the Dominicans in the final decades of the thirteenth century saw *Inter alia* as endorsing the status of the general chapter as the Master's *superior*, with authority, therefore, to confirm him when he was elected, so that he could take office immediately, to confirm him in office by not removing him (or, of course, to remove him from office), and, if necessary, to accept his resignation.

The Dominican 'bullarium' interpretation of *Inter alia* recurs in a 'tabula privilegiorum' compiled in the late 1320s by Francesco Pipino of Bologna, which appears to have circulated in several provinces. This is not a 'bullarium' (it does not contain the actual

¹⁰⁷ B.Zimmerman, *Monumenta historica Carmelitana* I, Lérins 1907, 69, 88. The acts of the general chapters between the election and the resignation of Jean d'Aillier (prior general 1321-1333, cf. A.Staring, *Medieval Carmelite heritage*, Rome 1989, 297-298) begin by reporting his 'confirmation' (G.Wessels, ed., *Acta capitulorum generalium Ord. Fr. B.V.M. de Monte Carmelo* I, Rome 1914, 24, 26). Both senses of *confirmare* recur in the 1357 constitutions (P.F.Robinson, *The Carmelite Constitutions of 1357*, Diss. ad Lauream apud Pont. Univ. S.Thomae in Urbe, Rome 1992, 249, 291-292). The section on the general chapter in the 1294 constitutions (*Analecta Ordinis Carmelitarum* 18 [1953] 173-175) deals with the election of the prior general and with the diffinitors' authority to 'absolve' him, but confirmation is not mentioned, nor is there any allusion to *Qui ex apostolici cura*. I am not aware of anything similar in Franciscan texts: their 1260 constitutions borrow language from the Dominicans and state that whoever secures an absolute majority in the election of the Minister General 'ex vi talis electionis et praesentis constitutionis verus electus habeatur'; in 1292 this was changed to 'verus generalis minister habeatur auctoritate privilegiorum ordini nostro a sede apostolica indultorum' (ed. M.Bihl, AFH 34 [1941] 292, 296), and this was maintained in the fourteenth century, but there is no mention of confirmation. Nor is there any allusion to confirmation of the Minister General in the *Expositio super regulam* attributed to Bonaventure or Pecham (*S.Bonaventurae Opera Omnia* VIII, Quaracchi 1898, 426-427).

texts of any bulls), it is an alphabetical guide to the order's privileges under a number of headings, but it seems to be a further development within the Rodez-Regensburg tradition. The second item included under the title 'Confirmatio vel confirmatus' is 'Quod magister ordinis fratrum predicatorum statim ut secundum constitutiones ipsius ordinis electus fuerit, est ipso facto verus magister'; Boniface's *Mare magnum* is cited, with a note that 'hoc ipsum in antiquis privilegiis plurimorum romanorum pontificum continetur, sed quia Bonifacius papa in suo mari magno omnia illa colligit et superaddit, ideo solum nomen ipsius hic ponitur'.¹⁰⁸

There are two later examples of the same interpretation of *Inter alia*: in the systematic collection of bulls which he compiled at the beginning of the fifteenth century, James of Soest placed *Inter alia* under the heading 'Quod magister ordinis ex ipsa electione confirmatus est et habet curam animarum' (Soest, Wissenschaftliche Stadtbibliothek 29 p.46);¹⁰⁹ Alberto of Castello similarly cited it (as absorbed into Gregory XI's 'Mare Magnum') in his *Tabula priuilegiorum*, published in Venice in 1504, to show that 'Confirmatus est magister ordinis statim postquam fuerit canonicè electus' (Confirmatio vel confirmatus 3).¹¹⁰ However, both James and Alberto were almost certainly copying or adapting what they found in an older source of the Rodez-Regensburg type—their dependence on some such collection is shown by the inclusion of *Cum olim te* (Soest 29 p.68, *Tabula* Episcopus 2); Alberto's *tabula*, in fact, seems to be based on Pipino.¹¹¹

7. From 'confirmation' to 'non-confirmation'

Circumstances made the confirmation of the Master a significant issue in the late thirteenth century, but subsequent changes in the general practice of the church made it unimportant again.

¹⁰⁸ On this compilation, which I have not been able to examine for myself; see D. Planzer, 'Die Tabula Privilegiorum Ordinis Fratrum Praedicatorum des Franciscus Pipinus OP', AFP 10 (1940) 222-257; 6 manuscripts are listed in SOPMÆ I 395 §1117. For the text quoted, see Planzer, art. cit. 248.

¹⁰⁹ A catalogue of the bulls contained or alluded to in this 'bullarium' was published by H.C. Scheeben in *Archiv der deutschen Dominikaner* 2 (1939) 156-174.

¹¹⁰ The *Tabula* is the first piece in a collection of Dominican texts, and, although his name does not appear in the 1504 edition, it seems that Alberto was responsible for the 'compilation' (cf. R. Creytens, AFP 30 [1960] 239-241).

¹¹¹ Planzer, art. cit. 242, actually presents the 1504 publication as an edition of Pipino's *tabula* 'in etwas veränderter Gestalt', and this is followed in SOPMÆ I 395.

Antoninus does not even mention *Inter alia* in his chapter on mendicant privileges (*Historiae* III 23.5, ed. Lyons 1543 ff.clxv-clxvi').

Bandello incorporated some of it in the *declaratio* on const. II 4 in his 1505 edition of the constitutions (f.lxxix'), but with no allusion to confirmation:

Declaramus quod secundum priuilegia apostolica magister ordinis statim postquam fuerit electus eo ipso curam animarum omnium fratrum ipsius ordinis plenarie habet et libere gerit, ipsosque fratres auctoritate propria ligare et absoluere nec non in eodem ordine ea agere potest que ipse et prefati ordinis diffinitores iuxta constitutiones eiusdem ordinis secundum deum uiderint expedire, tenenturque omnes fratres sibi deuote et humiliter secundum regulam et constitutiones obedire ...

This is all that derives from *Inter alia*; the remaining magisterial powers which Bandello lists are based on other papal documents. His *declaratio* passed to subsequent editions of the constitutions.

Prierias says nothing about the confirmation or non-confirmation of the Dominican Master in his great dictionary of canon law known as the *Summa Silvestrina*, first published in 1514-1515.¹¹²

In the highly official collection of Dominican privileges compiled by Master General S.Ususmaris, *Inter alia* is summed up with no reference to confirmation: 'Magister ord. electus secundum constitutiones statim habet super ordinem et fratres liberam auctoritatem, et potest a diffinitoribus capituli generalis absolui ab officio' (*Privilegia per complures summos pontifices ordini fratrum Praedicatorum concessa*, Rome 1566, ff.14'-15"). A very similar résumé was given a century later in A.González, *Summarium privilegiorum*, Rome 1670, 7.

In his *Constitutiones, Declarationes et Ordinationes*, Rome 1655, V.M.Fontana did not even include a section on *Confirmatio*, nor does he say anything on the subject in connection with the election of the Master.

Nevertheless, the question was becoming relevant again in the sixteenth century, thanks to the growing influence of the Jesuits and

¹¹² On the successive editions, see M.Tavuzzi, *Prierias*, Durham 1997, 134. Fr Tavuzzi kindly looked at all the entries in the *Summa* for me which might have provided an occasion for Prierias to allude to the subject, and he found nothing; I am grateful to him for this information.

their model of religious life. Their general was confirmed by the Holy See, and this created a new norm and, in the light of it, a new interpretation of the 'privilege' enjoyed by some orders. As the great Jesuit theologian, F.Suarez, explained (*De religione* tract. VIII lib. II cap. V), when a superior general is elected,

Solum potest confirmatio post electionem requiri, ut plenum ius praelationis obtineatur, quae confirmatio iure communi necessaria est. ... In praesenti confirmatio per se spectat ad solum summum pontificem; tamen, iuxta privilegia et indulta multarum religionum non solet esse necessaria specialis confirmatio, sed, cum ex vi privilegiorum fiat autoritate apostolica, eo ipso quod quis publice denunciatur canonicè electus censetur etiam confirmatus eadem apostolica autoritate, et ita videtur esse in usu multarum religionum.

On this view, confirmation by the Holy See is not merely normative but necessary; however, many religious orders have a privilege granting such confirmation in advance and in general, so that, in any particular case, whoever is elected is deemed to be confirmed on the authority of the Holy See as soon as he is declared canonically elected.

The influence of this approach on Dominican canonists is apparent in the language used by Pietro Martire Festa (Urceanus) in his chapter on the election of the Master: once the election has come to a successful conclusion, 'ex vi talis electionis *absque alia confirmatione* electus sit Magister ordinis'.¹¹³ Like Festa, and on his authority, Passerini declares that, in the election of the Dominican Master, 'si unus a maiori parte ultra medietatem electus sit, ille est *sine alia confirmatione* Generalis'; but he also expatiates on the privilege which legitimizes this and says that the generals of orders which enjoy it 'statim sequuta electione sunt confirmati et habent plenariam potestatem officii', whereas in the case of an order without this privilege 'debet peti confirmatio Generalis a Domino Papa'.¹¹⁴

¹¹³ *Summarium constitutionum*, Paris 1619, 300. On Festa († 1612), cf. G.M.Piò, *Delle vite degli huomini illustri di S.Domenico II*, Pavia 1613, 389—Piò had been his student ('fù già mio Precettore nello studio di Bologna'); A.D'Amato, *I Domenicani a Bologna*, Bologna 1988, 524-526, 731.

¹¹⁴ P.M.Passerini, *De electione canonica*, Rome 1661, 753-754. He cites the passage I have quoted from 'Urceanus', and also Camillus Jasinski, *Directorium electionum*, Kraków 1641 and Brescia 1654, which I have not been able to see. On Passerini, cf. QE II 674.

By implication, Dominican canonists had accepted the Jesuit premiss and accordingly emphasized that it was on the authority of a papal privilege that the Master took office by virtue of his election and needed no *other* confirmation (i.e. no other confirmation by the pope).

By Jesuit standards, Dominican practice was eccentric, but it was in good company and does not seem to have caused any concern. By the time the issue surfaced again in the nineteenth century, however, the climate had changed considerably.

The older orders were in poor shape and they were no longer entirely trusted to run their own affairs. Pius IX was among those who thought that much greater papal involvement was needed; hence 'la nomina pontificia di parecchi superiori verso il 1850 (per i Domenicani, Frati Minori, Agostiniani, Redentoristi e per la congregazione Benedittina di Montecassino), data che la procedura normale dell'elezione non favoriva, secondo il parere del Papa, la scelta di un generale energico per mandare avanti la riforma',¹¹⁵

Even when the Dominicans were allowed to hold an election in 1862, the pope told the cardinal protector to preside at it, and he denied the order's request to be permitted to elect a Master General for life. What is more, he issued strict instructions that another chapter must be held six years later, to which the Master General must make a full report on his own behaviour and on the state of the order; the chapter must then forward this report to the Sacred Congregation of Bishops and Regulars 'cum opportunis postulatis' so that the pope can decide what is best for the order 'etiam quoad Magistri Generalis dimissionem' (Acts of the 1862 chapter, pp.15-18).

In preparation for Vatican I a commission was appointed to draft a constitution on religious. Among other things, it proposed a law requiring the election of all superiors general to be confirmed by the Holy See: 'Cum regulares ab apostolica sede peculiari modo dependeant et eidem speciali vinculo adstricti sint, congruum et expediens visum est constituere in capitulo VI schematis ut electio moderatorum generalium ab apostolica sede confirmari debeat' (Mansi LIII 822).

¹¹⁵ K.Schatz, 'Vaticano I, Concilio' in *Dizionario degli Istituti di Perfezione* IX 1738-1743, at 1739; cf. also C.Lefèbvre in R.Epp, C.Lefèbvre, R.Metz, *Le droit et les institutions de l'église catholique latine de la fin du XVIII^e siècle à 1978*, Paris 1981, 443-444.

It is against this background that the last part of our story begins.

The general chapter of 1841 called for an updated edition of Fontana's *Constitutiones, Declarationes et Ordinationes* (p.4, ord. 3); after a long delay, Jandel entrusted the task of preparing it to his socius from the province of Sicily, Gaetano Lo-Cicero (1805-1888),¹¹⁶ who worked on it for about five years, as he says in his preface; the result was published in Rome in 1862. He added a final item to the section 'De electione Magistri Ordinis' (161 §34): 'Publicetur scrutinium: et si unus a majori parte ultra medietatem totius Capituli fuerit electus, publicetur Magistri Ordinis electio *sine alia confirmatione*'; the language is recognizably Passerini's, and Passerini is cited as a source.

However, Lo-Cicero also added a whole section 'De confirmatione electionis', whose final item is 'Magister Ordinis, eo ipso quod est electus, ex vi electionis et Constitutionum, *sine ulla confirmatione*, gerit curam animarum omnium Fratrum' (97 §22); no source is cited except the constitutions. I have no idea whether Lo-Cicero was conscious of what he was doing when he substituted *ulla* for *alia*,¹¹⁷ but it was his new formulation which was adopted by Jandel in the relevant *declaratio* in his edition of the constitutions: 'Magister Ordinis, semel electus, confirmatione ulla non indiget' (Paris 1872, 391-392). This is the source of the similar assertion found in the order's twentieth-century constitutions.

I leave it to nineteenth-century historians to judge in what measure the order's new claim about the non-confirmation of the Master was a gesture of defiance, an act of supposed fidelity to tradition, or simply an accident.

It was always open to anyone who examined *Inter alia* in its own right to perceive that it did not simply allow the Master to assume office immediately after his election, it also endorsed the general chapter's right to remove him from office.¹¹⁸ As we have

¹¹⁶ There is a very brief biographical note on him in *Memorie Domenicane* 75 (1958) 237-238.

¹¹⁷ It may be significant that, when he was working on his re-edition of Fontana, the order was governed by a Master General (Jandel) appointed by the pope; his preface is dated a few months before the chapter at which Jandel was *electus*.

¹¹⁸ In addition to texts already quoted from Ususmaris and others, we may note that Festa specifically connected the chapter's right to absolve the Master with *Inter alia* (op. cit. 316). In the nineteenth century, Lacordaire even concentrated on this aspect of Innocent's bull: having described Dominic's failure to get himself deposed

seen, these were originally two sides of the same coin: it was because he could be removed so easily that there was no need for his election to be confirmed; but the connection was not maintained in the influential tradition of constitutional *declarationes* which, in the wake of Bandello, invoked *privilegia apostolica* with regard to the Master's immediate assumption of authority and *cura animarum* (const. II 4 decl. f), but not his possible removal from office (II 8 decl. e). There is no allusion to *Inter alia* in Lo-Cicero's section 'De absoluteione Magistri Ordinis' (*Constitutiones* 2) or in the relevant *declarationes* in Jandel's edition of the constitutions (392, 465-466).

The general chapter's right to remove the Master remained in the constitutions, but the decreasing frequency of general chapters progressively deprived it of much of its original significance,¹¹⁹ and in the seventeenth century, when the Master's authority was considered so great that it could not be limited even by a Most General Chapter,¹²⁰ it is hard to imagine any chapter venturing even to dream of deposing him. Furthermore, long before the practice of holding regular triennial chapters was re-established in 1895 (Avila General Chapter pp.110-111), the order had been obliged to accept that its Master was elected for a fixed term of office,¹²¹ which further marginalized the relevance of his possible removal by the general chapter.

at the chapter of 1220, he goes on, 'Dominique obtint que du moins son pouvoir serait limité par des magistrats appelés *définiteurs*, lesquels, au temps du chapitre, auraient le droit d'examiner et de régler les affaires de l'ordre, et même de déposer le maître général, s'il venait à prévariquer; ce remarquable statut fut approuvé dans la suite par Innocent IV' (*Vie de Saint Dominique XVI*, Paris 1841, 310; ed. A.Duval, Paris 1989, 270).

¹¹⁹ Annual chapters were abandoned in favour of biennial in 1370 (MOPH IV 412, 425), and triennial in 1553 (MOPH IX 342, 361). No chapter was held between 1629 and 1642, and the acts of the 1642 chapter were declared null in 1644 (MOPH XII 111-112). After 1650 there were only five more general chapters in the seventeenth century, and only six were held in the whole of the eighteenth century (cf. I.Taurisano, *Hierarchia Ordinis Praedicatorum*, Rome 1916, 24).

¹²⁰ The general chapter of 1670 declared the acts of the Master of the Order, except censures and precepts, to have permanent validity 'cum ad limitandam auctoritatem magistri ordinis nec capitulum generale nec generalissimum sufficiat' (MOPH XIII 45).

¹²¹ It was set at six years in 1804, and twelve years in 1862 (cf. Jandel, *Constitutiones* p.392); it was reduced to nine years by a change to LCO 397 inchoated in 1971 (Tallaght general chapter 53 §92), approved and brought into immediate effect in 1974 (Madonna dell'Arco general chapter 64 §57) and confirmed in 1977 (Quezon City general chapter 90-91 §166).

Gillet's constitutions still stated that the diffinitors of the general chapter were responsible for disciplining the Master and, in certain circumstances, 'amovendi eum ab officio Magisterii liberam habeant facultatem' (const. 523 §II), but it is amusing to note that, though the modern constitutions, which came into force in 1968, refer to the possibility of the Master being 'ab officio amotus' (LCO 403), it apparently did not occur to any of the people involved in their composition or endorsement to indicate how or by whom this could be effected. Only in 1974 did the general chapter publish a *declaratio* 'quod in plena potestate quam capitulum generale habet in Ordine includitur potestas amovendi magistrum ab officio' (Madonna dell'Arco 1974, p. 131).

The Gillet constitutions also still authorized the general chapter, in strictly defined circumstances, to accept the Master's resignation (const. 523 §II), but since 1968 the order has made no constitutional provision for this at all. So we seem to have come full circle rather in the manner of a serpent biting its own tail: the very issue which evoked *Inter alia*, the bull on which the vaunted non-confirmation of the Master is supposed to rest, has apparently 'softly and suddenly vanished away'.

APPENDIX I

Provincials in 1240-1242

In connection with the sixth provincial of Provence, Poncius de Sparra, Bernard Gui says, 'De ipso audiui dici quod bis fuit provincialis, fuit enim absolutus prima uice in capitulo generali ... anno domini MCCXLII quia cum aliis absoluerat magistrum ordinis fratrem Raymundum de Pennaforti, sed immediate fuit reelectus in capitulo provinciali Montispessulani anno domini MCCXLII'.¹ The story is at least coherent: the 1240 chapter, which allowed Raymund to resign, was a provincials' chapter (AFP 70 [2000] 101); since there was an election in 1241, which meant that provincials were there as well as elected diffinitors, the earliest opportunity for diffinitors on their own to take punitive action against provincials was the general chapter of 1242. The Limoges *Memorialia* confirm that Poncius was provincial in 1241, when the provincial chapter was held at Limoges;² and the provincial chapter of 1242 was held at Montpellier (Douais, *Acta cap. prov.* 20). Unfortunately, though, there does not seem to be any way of confirming the accuracy of what Gui was told about Poncius.

In Germany and Poland new provincials were elected in 1240, so it would have been their predecessors who attended the general chapter of that year;³ Dacia acquired a new provincial in 1241.⁴ The question of their absolution in 1242 did not arise.

A certain Stephen was confirmed as provincial of Greece at the general chapter of 1240 (MOPH III 18.11-12), but it is not clear whether he was at the chapter himself, let alone whether he took part in the acceptance of Raymund's resignation; nor is it known how long he was provincial.⁵

¹ Agen 3 f.54^v, at the foot of the page; there is a fairly similar marginale, though without 'de ipso audiui quod', in Bologna 1535 f.26^v. In later versions of his compilation, Gui simply stated in the text, 'Fuit autem absolutus in capitulo generali Bononie anno domini MCCXLII sicut et omnes alii qui in absolutionem magistri ordinis fratris Raymundi de Pennaforti consenserant, sed immediate fuit reelectus ...' (Bordeaux 780 f.30^v, Toulouse 490 f.66^v, Barcelona 218 f.103^v; cf. Martène-Durand VI 422).

² C.Douais, *Frères Prêcheurs de Limoges*, Toulouse 1892, 30, 39.

³ QF 1 (1907) 13, *Archiv der deutschen Dominikaner* 4 (1951) 82-83; AFP 21 (1951) 18-19.

⁴ J.Gallén, *La province de Dacie*, Helsinki 1946, 15.

⁵ Cf. T.M.Violante, *La provincia domenicana di Grecia*, Rome 1999, 86.

Unless I have missed something (which is quite possible), there is no evidence about the provincials of Hungary⁶ and the Holy Land⁷ for the relevant years.

In France, Hugh of St Cher was provincial by 1236 (cf. AFP 70 [2000] 37), and he was one of the provincials sent to secure Raymund's acceptance of his election in 1238 (Martène-Durand VI 406); he is attested as provincial again in Nov. 1240 (Chapotin, *Dominicains de la province de France* 180-181), so he was certainly one of the provincials at the chapter which permitted Raymund to resign. According to Vincent of Beauvais (*Spec. Hist.* XXX 152) and Bernard Gui (MOPH XVIII 79), he was provincial when he was named a cardinal, and this is confirmed by a letter which Innocent IV addressed to him as 'prior of the friars preachers in France' on 15 April 1244 (Reg. 612, BOP I 140). He was appointed cardinal later in 1244, probably on 28 May.⁸ If he was absolved in 1242, he must have been promptly re-elected.

John of Wildeshausen was provincial of Lombardy when he was elected Master in 1241 (MOPH I 332, II 92). Stephen of Spain was removed from office in 1238 (Martène-Durand VI 407), and D'Amato makes John his immediate successor,⁹ but this cannot be correct: John tried to evade election by pleading his status as a bishop (MOPH I 332), and it was only on 9 March 1240 that Gregory IX told him that, since he had renounced his see, he was under obedience to the order again; he must have been elected in 1239, then. This leaves a gap of one year unaccounted for.

⁶ N.Pfeiffer could evidently find nothing on the provincials of Hungary between John of Wildeshausen (who became bishop of Bosnia in 1233/1234) and 1242 (*Die ungarische Dominikanerordensprovinz*, Zürich 1913, 133). Hungarian provincials were absolved in 1247 and 1250 (MOPH III 40.19, 54.24), but I do not know who they were. The 'frater Gerardus' whom M.M.Wojnar identifies as provincial in the 1250s (Pont. Comm. ad red. cod. iuris canon. orientalis, Fontes III vol. IV 1, Rome 1962, 134), on the authority of S.Ferrarius, *De rebus Hungariae provinciae*, Vienna 1637, 105-108, seems to be known solely from the letter which Queen Mary sent to the general chapter of 1260 (MOPH I 311-312; Thomas of Cantimpré, *De apibus* II lvii 58-59), in which she mentions John of Wildeshausen appearing to her in the night 'cum quodam fratre bone memorie Gerardo priore eiusdem ordinis', which only proves that Gerard was dead by then.

⁷ Philip was removed from office in 1238 (Martène-Durand VI 406-407). B.Altaner was right to deny that Yves le Breton succeeded him immediately (*Die Dominikanermissionen des 13. Jahrhunderts*, Habelschwerdt 1924, 33-34)—he suggested that Yves became provincial in 1251, but I have argued that 1254 is more probable (MOPH XXVI 41 n.41); he was unable to name any provincial between Philip and Yves.

⁸ A.Paravicini Bagliani, *Cardinali di curia e 'famiglie' cardinalizie*, Padua 1972, 163-165.

⁹ A.D'Amato, *I provinciali della provincia di Lombardia (1221-1303)*, Bologna 1996, 21.

Our main source for the early provincials of Lombardy is Galvano, who appears to have had some good information about them, but an inadequate knowledge of their chronology. According to him, John succeeded Stephen in 1238, and was himself succeeded by Otto of Friesach in 1241; Otto ruled the province for three or four years and then died or was absolved (Galvano tells a different story in different places), to be succeeded by James Boncambio in 1244, who was provincial for a year, was then either absolved or made vice-chancellor of the papal curia in 1245, and subsequently became bishop of Bologna (MOPH II 92-93; AFP 10 [1940] 354-355, 371). But Boncambio was certainly not provincial in 1244-1245: on 31 May 1244, and again on 24 June, Innocent IV informed the canons of Bologna that he had appointed his vice-chancellor, Boncambio, bishop of Bologna (Innocent IV, Reg. 720, 741).

It appears that there was no provincial of Lombardy at the time of the 1244 general chapter, since the 'vicarius Lombardie' was penanced at it, together with the prior of Bologna (MOPH III 30 app. crit.), but this cannot be because Boncambio had been made a bishop, since Innocent's letters make it quite clear that Boncambio was still vice-chancellor when he was appointed to Bologna.¹⁰ If it is true that Boncambio joined the order, already a mature man, as a result of the preaching of John of Vicenza in 1233 (cf. AFP 70 [2000] 65), when Stephen was provincial (cf. *ibid.* 45), he could have been provincial himself in 1238-1239; this accords with one of Galvano's stories, in that, on this assumption, he would have ruled the province for about a year and then become the pope's vice-chancellor. The last date on which the previous vice-chancellor is attested is 30 June 1238, and Boncambio himself is attested from 15 April 1239 to 15 June 1241, and again from 26 Sept. 1243 to 2 June 1244 (and as ex-vice-chancellor on 24 June).¹¹

We may take it, then, that Boncambio was provincial from 1238-1239, and that John of Wildeshausen was elected to succeed him in 1239. In any case, John was one of the provincials who accepted Raymund's resignation in 1240, but he had risen to higher office by 1242.

In Spain, according to the standard account, Giles of Portugal was provincial from 1233/4 until 1245 (SOPMÆ I 15), but these dates are far from certain. Luis de Sousa is, in fact, quite honest about them. He believed that Giles was Sueiro's successor, and his primary datum was that Sueiro was provincial for twelve years;¹² since he believed that Sueiro

¹⁰ This also rules out D'Amato's suggestion that he became provincial in 1244, but only lasted a short time since he was soon appointed bishop (*Provinciali* 23).

¹¹ H. Bresslau, *Handbuch der Urkundenlehre*, 3rd ed. Berlin 1958, I 250-251.

¹² L. de Sousa, *História de S. Domingos* I i 28 (Porto 1977, I 138). There are other instances where the duration of a provincialate seems to have been remembered rather than its precise dates. In addition to what he says about Boncambio,

became provincial in 1221, he inferred that Giles must have succeeded him in 1233.¹³ As for the end of Giles's provincialate, he explicitly only provides a terminus ante quem: a document which he quotes (I ii 21, ed. cit. I 205) shows that Giles was no longer provincial in Feb. 1246.¹⁴ The assertion in Manuel Joseph de Medrano OP, *Historia de la Provincia de España*, Madrid 1727, II 331, that Giles was absolved in 1245 seems to rely solely on the unwarranted transformation of a terminus ante quem into a date.

That Giles was in fact not provincial until 1245 is strongly suggested by a passage in the acts of the provincial chapter of 1243 (ed. R.Hernández, AD 5 [1984] 21): 'Admonemus fratres quod sine licentia Prioris Provincialis nullus fratrum vel Priorum eat ad curiam regis alicuius vel reginae vel infantis vel infantissae, nec petant aliquid ab eis sine eius licentia, nec procurerit per se vel per alium ut vocetur ad curias ipsorum vel ad eos. Et ego frater G. de consilio Diffinitorum retineo mihi potestatem dandi hanc licentiam et prohibeo quod nullus sine licentia mea praesumat ire vel dare licentiam eundi ad huiusmodi curias ...'. In Latin, G. is not the initial for Giles (Aegidius). Believing it to be assured that Giles was still provincial, the editor suggests that G. may be Vicar Provincial (Giles being absent at the general chapter), or that G. stands for a vernacular form of Giles's name; it is rather more probable that Giles was no longer provincial, and that the unidentified G. was his successor, and that it was he who was absolved at the general chapter of 1249 (MOPH III 48.8).

Galvano steadfastly maintained that Stephen of Spain was provincial of Lombardy for nine years (AFP 10 [1940] 351, 353; MOPH II 87), in spite of the claim quoted from his lost *cronica* that Stephen succeeded Ventura in 1224 and remained in office until 1236, when he was made a bishop and Dominic of Segovia took over as provincial (AFP 10 [1940] 351, 353), and the different contention in his surviving *cronica* that Stephen succeeded Ventura in 1224 and was absolved in 1238 (no mention being made either of his bishopric or of Dominic of Segovia) (MOPH II 87, 92). Galvano's dates are inconsistent with the duration he himself ascribes to Stephen's provincialate, and it is the latter which appears to be correct: Jordan, *Ep.* 49, which has to be dated to 1229 because of its contents, implies that Stephen has just become provincial, and this tallies with the evidence that Ventura, who almost certainly preceded him (and whose provincialate is confirmed by the chronicle of S.Agnese), was prior of Bologna again by 8 Aug. 1229 (AFP 41 [1971] 17); Stephen was removed from office in 1238 (Martène-Durand VI 407). Gui could not determine for certain whether Poncius de Sparra became provincial of Provence in 1236 or 1237, as we have seen, because his primary information was that Romeus was provincial for four years and Poncius for twelve.

¹³ 'O anno preciso, em que foi eleito S. Frei Gil, não consta por nenhum dos que d'elle escrevem. Mas pola conta que levamos dos doze annos, que dom Frei Sueiro viveo Provincial vem a cair no de 1233' (I ii 18, ed. cit. I 193).

¹⁴ 'Não ha clareza nos escritores antigos dos annos que o Santo governou a Provincia ..., nem que rezão houve pera deixar o cargo; só nos consta por huma conveniencia, que adiante tocaremos, que na entrada do anno de 1246 já estava livre delle' (I ii 20-21, ed. cit. 202).

It is, therefore, at least possible that Giles was absolved in 1242 for his part in the affair of 1240.

We do not know who was provincial of England in 1240.

A provincial called Alard is attested in a little clutch of letters in which Grosseteste expresses his desire to have John of St Giles at his side for at least a year. The first is addressed to Alard and says that John 'circiter instans festum Sancti Michaelis venturus est in Angliam', and the second, apparently written at the same time, is addressed to Alard and the diffinitors of the provincial chapter; the third is addressed to John himself, begging him to come and use his 'ars aedificatoria' in his native land and, in particular, in Grosseteste's own diocese.¹⁵ John's movements are not known in detail, but he must have finished being lecturer of theology in Toulouse in 1235, since his successor arrived there in November,¹⁶ and John himself was in Germany in the summer, apparently in connection with the wedding of Henry III's sister, Isabella, to Frederick II on 20 July, from where he evidently returned to England.¹⁷ This suggests that Grosseteste's letters to Alard should be dated to the summer of 1235, and that Alard was in office as provincial at the time of that year's provincial chapter.

The next provincial we hear of is Matthew. During the dispute preceding the inception of the Franciscan, Thomas of York, in Oxford in March 1253, one of the people consulted was, in the words of Adam Marsh, 'omni gratia dignissimus pater honorabilis frater Matthaëus, prior fratrum prae-dicatorum in Anglia';¹⁸ we may take it as probable, then, that he was the provincial absolved by the general chapter of 1254 (MOPH III 71.32). As provincial, Matthew was sent overseas on a royal embassy with Adam Marsh, for which expenses amounting to 40 marks were authorized on 18 July 1247.¹⁹ Before this, we have only a letter from Grosseteste to Matthew, provincial, and the diffinitors of the provincial chapter, begging for the prompt despatch of two friars to assist him in accordance with the privilege he had been granted by the pope (*Ep.* 100, ed. cit. 304-305); unfortunately it is not possible to attach a precise date to this letter.

¹⁵ *Epp.* 14-16, ed. H.R.Luard, Rolls Series, London 1861, 59-63.

¹⁶ J.Duvernoy, ed., *Guillaume Pelhisson, Chronique*, Paris 1994, 82-84.

¹⁷ According to Matthew Paris, Frederick lay with his wife the morning after the wedding and was at once convinced that she had conceived a son; he informed Henry III of this 'per episcopum Exoniensem et magistrum J. de Sancto Egidio fratrem Praedicatorum'. The bishop and his party set off for England four days after the wedding, but nothing more is said about John nor is his rôle in the affair explained (MGH SS XXVIII 131; *Chronica majora* III, ed. H.R.Luard, Rolls Series, London 1876, 324).

¹⁸ Adam Marsh, *Ep.* 192 (ed. J.S.Brewer, *Monumenta Franciscana*, Rolls Series, London 1858, 348). On Thomas's inception, see A.G.Little, *The Grey Friars in Oxford*, Oxford 1892, 38-39.

¹⁹ *Calendar of Liberated Rolls*, Henry III vol. 3 (1245-1251), London 1937, 132.

The collection of Grosseteste's letters is arranged in vaguely chronological order, but in this part of it the sequence is far from exact. *Ep.* 99, which immediately precedes the letter to the Dominican provincial and which follows a whole series of letters concerning Grosseteste's long-running dispute with his chapter, can only be dated to 1242,²⁰ which is no doubt why the editor dates *Ep.* 100 'c.1242'. *Ep.* 101 is a letter to the king responding to a complaint that Grosseteste had not been to see him, to which Grosseteste replies that it is a sign of friendship to visit people when things are going badly for them and to stay away when things are going well. This cannot be dated after *Ep.* 100 in 1242 since the king had already left England in May (cf. *Annales Monastici* I 122, II 89, 329, IV 89), which is far too early for a provincial chapter. It would obviously be silly for the king to expect Grosseteste to visit him when he was not there to be visited, and when he and his party returned from Gascony in 1243, 'frustrato negotio inanes', 'consumpta inutiliter, ut assolet, innumerabili pecunia' (*Annales Monastici* IV 90), it was hardly appropriate to comment on how well he was doing; so 1243 would seem to be ruled out too. *Ep.* 102 is dated to 1243 on the basis of external evidence. *Ep.* 103 is an appeal to the queen to intervene with her husband to free 'non solum populum sed et clerum et sacerdotium regni Angliae de insolitis et novis angustiis'; this might refer to the king's aggressive fund-raising for his French expedition,²¹ in which case we are back at the end of 1241 or the first half of 1242. *Epp.* 104-105 must be even earlier, since they are addressed to the papal legate, Otto, who left England at the end of 1240 (*Annales Monastici* II 328), an event which *Ep.* 105 refers to as imminent. *Ep.* 106, however, is addressed to the nuncio, Martin, who arrived in England at about Easter 1244 and left little more than a year later (*Annales Monastici* III 166-167).

Assuming that *Ep.* 100's place in the collection is chronologically appropriate at all, it might be as early as 1240 (in which case Matthew would have been one of the provincials who accepted Raymund's resignation, provided he attended the general chapter) or it might be as late as

²⁰ It is addressed to Walter of Cantilupe, bishop of Worcester, who wanted Grosseteste's opinion as to whether he should go overseas with the king 'ad tractandum solummodo de pace inter ipsum et suos adversarios'; since he would be travelling at the king's expense, we must infer that the king had asked him to go with him. Walter set off with the papal legate at the end of 1240 for the council called by Gregory IX, but he got no further than France and returned to England with Richard of Cornwall in Jan. 1242 and, in all probability, accompanied him to Canterbury where there was a meeting of the king with a number of bishops (*Annales Monastici* I 121, II 329, III 157). The expedition on which Henry III wanted Walter to accompany him was evidently his ill-fated attempt to regain his lands in France in 1242 (on which cf. M. Powicke, *The thirteenth century*, Oxford 1953, 100-103).

²¹ The annals of Tewkesbury show how this was resented: under the year 1241 they record that 'Dominus rex extorsit a nobis xx. marcas ad itinerandum in partibus transmarinis' (*Annales Monastici* I 121-122).

1243 or even 1244. We are thus completely in the dark as to whether an English provincial was absolved in 1242.

Nor do we know who was provincial of Rome at the 1240 general chapter. It is conventionally said that Humbert was provincial there from 1240 to 1244 (SOPMÆ II 283), but there is no solid evidence for the beginning or end of his provincialate. He succeeded either Hugh of St Cher or Peter of Rheims as provincial of France in 1244/1246, but no source states that he had only just finished being provincial of Rome then (AFP 70 [2000] 77-78). Masetti gives it as his opinion that he probably became provincial of Rome in 1240, claiming to follow Échard in this,²² though Échard actually opted for 1242 in the article on Humbert, and c.1240 in the article on John Colonna (QE I 142, 418).

Our most systematic information comes from two sources edited and exploited by H.C.Scheeben in 'Accessiones ad historiam Romanae provinciae saeculo XIII', AFP 4 (1934) 99-143. The first, which he rather misleadingly called 'Chronica Romana', is a continuation of Humbert's *cronica ordinis* found in a manuscript from some house of the Roman province, now Rome, Bibl. Vallicelliana F 28, ff.179-185; it is structured around general chapters, and its specifically Roman contribution is to tell us who was sent from that province to each chapter. The other source is a list of provincials, whose common nucleus goes up to Tramus, who was provincial 1326-1328 (Panella, MD NS 28 [1997] 384); it is found in the chronicles of Perugia and Orvieto, and in the provincial's 'vademezum'.²³

The list is certainly not a sufficient guide to the sequence of the earliest provincials. It places Humbert fourth, after James of Piacenza, Clarus and Nicholas of Giovinazzo; but, as we shall see, there is evidence that he was provincial in 1244, and that the provincial in 1236 was called John.

Nor, if the list is taken to be in correct chronological order, is it always compatible with the information contained in the Vallicelliana continuation, and the latter is undoubtedly more convincing. John Colonna was still provincial on 13 August 1255;²⁴ when he became archbishop of Messina shortly afterwards (cf. MOPH XXII 92), his successor was Thomas Agni of Lentini,²⁵ who himself became bishop of Bethlehem, in which capacity he is first attested early in 1259 (cf. MOPH XXII 91). The next

²² P.T.Masetti, *Monumenta et antiquitates*, Rome 1864, I 218.

²³ A.Maiarelli, ed., *La cronaca di S.Domenico di Perugia*, Spoleto 1995, 20-21; A.M.Viel-P.M.Girardin, *Chronique du couvent des Prêcheurs d'Orviêto*, Rome 1907, 61-62; AS Perugia, Corporaz. relig. soppr. S.Domenico Miscell. 66 f.11.

²⁴ T.Kaeppli, 'Iacopo da Benevento OP', *Archivio Italiano per la Storia della Pietà* 1 (1951) 466.

²⁵ This is attested by the almost contemporary *cronica ordinis* of Gerald de Frachet (cf. MOPH I 338, but Reichert's reading, 'Iohannem de Lentino' seems to be a sheer fantasy; all the manuscripts known to me have 'Thomam de Lentino').

provincial in the list is Aldobrandino de' Cavalcanti, but he was not actually elected until 1262.²⁶

According to the Vallicelliana continuation, however, 'Anno domini MCCLVIII celebratum fuit capitulum generale prouincialium apud Valencenas ... In hoc capitulo magister Umbertus dedit fratrum Robertum, tunc priorem Rothomagensem, Romane prouincie in priorem prouincialem, fratres enim electores prioris prouincialis dicte prouincie compromiserunt in ipsum' (f.179^v; Scheeben, art. cit. 104). The Valenciennes chapter is famous for the high-powered commission on studies which Humbert appointed to advise it, and for its resulting legislation;²⁷ Robert seems to have made some enactments on the subject for his new province, though he did not live long enough to supervise their fulfilment: the provincial chapter of 1260 called for better observance of 'monitiones et ordinationes bone memorie fr. Roberti prioris prouincialis de studio et de biginarum confessionibus audiendis' (MOPH XX 24-25). The province clearly had a functioning provincial by the time of its chapter in 1261 (MOPH XX 25.32), and, according to the Vallicelliana continuation, the provincial who attended the general chapter of 1262 was Troianus. This bridges the gap between Thomas Agni and Aldobrandino in a perfectly coherent fashion; but, if it is correct, then the fourteenth-century list of provincials is wrong to place Troianus and Robert, in that order, immediately after Humbert.

This means that we cannot treat Humbert's placing in the list as dependable; and, since the Vallicelliana continuator began where Humbert's *cronica* leaves off, he has nothing to tell us about provincials before 1254.

We know that Humbert was prior of Lyons in March 1236 from the agreement with the monastery of Ainay whose confirmation was one of Raymund of Penyafort's first tasks when he became Master (cf. AFP 70 [2000] 37). The deed was no doubt taken to Barcelona in 1238 by Hugh of St Cher, who was one of the provincials sent there to inform Raymund of his election (Martène-Durand VI 406). It would have made sense for Humbert to accompany him, if he was at the 1238 chapter, since it was he who had brokered the agreement; he is not mentioned as one of the provincials who went to Barcelona, so we may cautiously infer that he was not yet provincial of Rome.

The same conclusion can be reached from the other side too. There is evidence that the Roman provincial on 20 July 1236—well after the general chapter—was called John.²⁸ If the Most General Chapter left him in

²⁶ S.Orlandi, *Necrologio di S.Maria Novella*, Florence 1955, I 232-233; MD NS 21 (1990) 102. The Vallicelliana continuation first mentions him being present as provincial at the general chapter of 1264 (Scheeben, art. cit. 106).

²⁷ Cf. Tugwell, *Albert and Thomas*, New York 1988, 15.

²⁸ Cf. I.Taurisano, *I Domenicani in Lucca*, Lucca 1914, 219; Scheeben, AFP 4 [1934] 127.

office, it is not very likely that Jordan absolved him on his own authority before leaving for the Holy Land, and thereafter there was no general chapter or Master until 1238. So, unless he died, he must still have been provincial at the general chapter of 1238.

The only John included in the list of provincials before John of Viterbo (who was provincial in the 1280s)²⁹ is John Colonna. A papal letter was addressed to him by name as provincial on 2 April 1253,³⁰ so he was certainly in office then, but the evidence for the preceding years is misleadingly presented by Scheeben in AFP 4 (1934) 128-129. The acts of the provincial chapter of 1251 oblige the priors of Rome and Siena to go to the next general chapter to try to prevent the provincial being absolved (MOPH XX 12.12-14), but the provincial is not named. The claim that the 'chronica Romana' attests that he was provincial in 1249 is simply untrue: it contains no entry for 1249, nor is there any interpolation into Humbert's *cronica* relating to that year. It does, however, record that the provincial at the general chapter of 1254 was John Colonna (f.179r). The evidence that he was provincial in 1248 comes from a 16th/17th-century 'scheda' published by Masetti, *Monumenta et antiquitates* II 267-269; this appears to be a good source (cf. Appendix II), so, since its testimony accords perfectly well with other evidence, we may take it that John Colonna succeeded the Roman provincial who was absolved by the general chapter of 1247 (MOPH III 40.19).

The evidence that this was not his first provincialate comes from Constantine, whose *legenda* of St Dominic refers to a letter written 'fratri Iohanni de Columpna priori fratrum tunc temporis in Romana prouincia' (Const. 58). There is good circumstantial evidence that the *legenda* was written in 1246-1247,³¹ so the reference must be to an earlier provincialate. We may take it, then, that the John who was provincial in 1236 was John Colonna, in which case there was no vacancy caused by death between then and 1238.

We do not know when John ceased to be provincial; but, if he had not already been removed from office, there were reasons for desiring his removal in 1240-1241, which, furthermore, might also have made it seem appropriate to ask for a provincial safely removed from the complexities of local politics. The Colonnas were an important Roman family, and in 1238 John's brother, Oddone, was elected as the 'pro-papal' senator of Rome; when Frederick II's son and imperial legate, Enzo, invaded the Marches in

²⁹ AFP 4 (1934) 111, 133-134. Scheeben's 'Johannes de Lentino' (ibid. 129-130) is, as I have already remarked, a sheer fiction.

³⁰ BOP I 230; G. Batelli, ed., *Schedario Baumgarten* I, Vatican City 1965, no. 2137.

³¹ Cf. Scheeben in MOPH XVI 281-284; the case is even stronger than he suggests, but that must wait for another occasion.

Sept. 1239, Cardinal John Colonna, the uncle of the Dominican John,³² was sent by Gregory IX to oppose him. But in 1240 the family changed sides; even the cardinal openly broke with the pope at the beginning of 1241 and allied himself with the emperor. In May 1241 Gregory IX managed to get both Roman senators removed (including Oddone, once again) and replaced by Matteo Orsini on his own (who promptly went and besieged Cardinal John at Lagusta).³³ Whatever the Dominican provincial's own politics, his family connections meant that by 1241, perhaps even by the time of the provincial chapter of 1240, his continuation in office would probably have been an embarrassment. This would suggest that he was relieved of his position, and Humbert elected³⁴ or provided³⁵ to replace him, in 1241 or 1242.

One of only two dates explicitly connected with Humbert's Roman provincialate is furnished by Thomas of Cantimpré (*De Apibus* II 57.60): 'Hic in Tusciae partibus Prior Provincialis fratrum Praedicatorum factus, adeo Romanae curiae gratus et charus fuit, ut eum plures Cardinales in Papam eligerent eo tempore quo Dominus Innocentius quartus in Apostolicum est assumptus.' Innocent was elected on 25 June 1243, but it has been argued that it was actually in 1241, during the troubled election which produced the short-lived Celestine IV, that Humbert received some of the cardinals' votes. According to the *Annales Stadenses*, cardinals Romano Bonaventura and Goffredo Castiglioni were both elected before Celestine, but neither was willing to accept, 'et iterum cardinales elegerunt unum, sed non de suo collegio; sed Romanis quaerentibus quis esset, nomen illius exprimere noluerunt' (MGH SS XVI 367).³⁶ It has been suggested that this unnamed outsider was Humbert, in which case he had presumably been provincial for some time before the death of Gregory IX in August 1241.

³² The story in the *Vitas fratrum* which, as printed in MOPH I 177, is about 'frater quidam ... nepos cuiusdam cardinalis', is explicitly about John Colonna in the manuscripts which represent Humbert's 'first edition' (the story is not in Gerald de Frachet's text and was added in 1259). On the different versions of the *Vitas fratrum*, see my 'résumé des conclusions provisoires' in CdF 36 (2001) 415-418.

³³ Cf. Richard of S.Germano, RIS² VII ii 203, 207, 210; DBI XXVII 326-327, 394-395.

³⁴ Having, presumably, acquired an international reputation through his presence at general chapters; as long as he was prior of Lyons (and we do not know how long that was), he should at least have attended all those held in Paris.

³⁵ Perhaps on the recommendation of Hugh of St Cher.

³⁶ There is an allusion to Senator Matteo Orsini's refusal to accept the electors' choice in the account composed in Nov. 1241 by the cardinals who had fled to Anagni: 'Nec est aliquatenus obmittendum, quod senator nos concuciebat terroribus et tonitruis et choruscationibus fulgurabat, nisi obmisso illo in <quem> fratres vota direxerant, protinus mitratum papam de carcere monstraremus, alioquin effossum pape cadaver in medio nostrum poneret' (K.Hampe, *Ein ungedruckter Bericht über das Konklave von 1241 im römischen Septizonium*, Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse IV [1913] 30; for the date, see *ibid.* 26).

D. Planzer perhaps exaggerates the difficulty in identifying the papal candidate whom the cardinals elected 'non de suo collegio' with Humbert (AFP 3 [1933] 264-267), but the identification is at best purely speculative. And if it was in 1243 that Humbert received some votes, he could have had sufficient opportunity to impress the cardinals if he became provincial in 1241 or even 1242.

So Humbert could have become provincial as early as 1238,³⁷ but, in the absence of more compelling evidence, we may venture to guess that John Colonna took the occasion of the 1241 chapter³⁸ to explain the situation and ask to be relieved of office, with a request that the chapter or Master either provide a successor from outside the province or at least propose someone whom the provincial chapter could elect.

If this is correct (which is far from certain), then Humbert played no part in Raymund's resignation in 1240.³⁹

The second precise date for which there is evidence comes in Masetti's 'scheda', according to which Humbert presided over a provincial chapter held during Lent in 1244 (Masetti, *Monumenta et antiquitates* II 267). The surprising timing of the chapter turns out, even more surprisingly, to be entirely plausible (see Appendix III); there is therefore a fair chance that the 'scheda' is also correct to identify the presiding provincial as Humbert. The chapter in Lent (the one which should have been held in 1243) is the chapter whose acts survive as those of the 1244 chapter, and they attest that the province had a functioning provincial at the time (MOPH XX 3.10).

A Roman provincial was absolved by the general chapter in 1247 (MOPH III 40.19), and this cannot be Humbert, since he must be the provincial of France alluded to in the acta of 1246 (MOPH III 36.4).⁴⁰ The Vallicelliana continuation cannot help us, but, if we move Troiano and Robert the Norman to their proper places, this leaves only Peter of Chieti (Petrus Teatinus) between Humbert and John Colonna in the fourteenth-century list of provincials, and there is no reason why he should not be the one who was absolved in 1247 (cf. Scheeben, AFP 4 [1934] 127-128).⁴¹

³⁷ Heintke, who was unaware of the Vallicelliana continuation and believed, on the authority of the fourteenth-century list of provincials, that Troianus and Robert, as well as Peter of Chieti, had to be fitted in between Humbert and John Colonna, suggested that Humbert's provincialate could be dated to 1238-1240/1241 (F. Heintke, *Humbert von Romans*, Berlin 1933, 33-48, 151, 153-154, 160).

³⁸ If he was still provincial he should have been there, since the chapter coincided with the election of a new Master.

³⁹ His account of the 1240 chapter (cf. MOPH I 331) contains nothing he could only have known about if he had been present himself; but his customary discretion would probably have kept him from revealing too much even if he was there.

⁴⁰ Neither of his possible predecessors in France, Hugh of St Cher (by now a cardinal) and Peter of Rheims (by now a bishop), could still be in question.

⁴¹ The provincial chapter of 1247 elected him diffinitor for the next general chapter (MOPH XX 7.24), but that is not incompatible with him having just been

In his letter to John of Wildeshausen accompanying the new legenda of St Dominic, Constantine explains that he was at first not sure what he was meant to do with the miracle-stories which he had received from the Master, 'nuper autem in nostro prouinciali capitulo per priorem nostrum prouincialem iteratum pariter et expressum a uobis accipi mandatum' (Const. 2). There can be little doubt that the miracle-stories are those which had been sent in to the 1246 general chapter in Paris in response to the previous chapter's demand (MOPH III 33.16-18); it was a provincials' chapter (cf. AFP 70 [2000] 101), so we may infer that the Roman provincial brought back more explicit instructions for Constantine from there. The acts of the 1246 provincial chapter confirm that there was a functioning provincial at the time (MOPH XX 6.23).

We know, then, that the change of provincials occurred after the spring of 1244, and early enough for the general chapter of 1246 to be attended both by Humbert, as provincial of France, and by his successor in the Roman province.

Converging arguments suggest that it was in 1246 rather than in 1244 or 1245 that Humbert was moved from the provincialate of Rome to that of France.

The manuscript of the Roman provincial chapters begins with an apparently orderly sequence: 1243, 1244, 1245 ... However, there is reason to redate the first of these to 1242 (AFP 70 [2000] 101) and to identify that of '1244' with the delayed 1243 chapter held during Lent 1244. Unless the acts of a whole chapter have gone missing, this implies that no further chapter was held in 1244. If the provincial was absolved in 1244, there should have been an election later in the year, in which case there was no reason why the province should not hold a proper provincial chapter; without the need for an election, it is understandable that the province, presumably with the consent of the Master, decided not to bother.

The other argument is rather more complicated and turns on the claim that, after his release from captivity, Thomas Aquinas accompanied the Master to Paris.⁴²

I have tried elsewhere to reconstruct the events of these years on the basis of the contradictory information provided by the sources (*Albert and Thomas* 204-208), and there is no need to tell the whole story again; but we must cling firmly to the only date which is tolerably certain: according to William of Tocco, whose sources include members of Thomas's family, his kidnap was prompted by a message which his mother sent to his brothers 'qui erant cum imperatore Frederico in castro Aquependentis Tuscie regio-

absolved as provincial, especially if he had not lasted long enough to attend a general chapter in that capacity.

⁴² William of Tocco, *Ystoria sancti Thome de Aquino XIII*; ed. C. le Brun-Gouanic, Toronto 1996, 116.

nis';⁴³ after Thomas had been snatched from them, the brethren lodged a complaint with Innocent IV 'qui tunc erat in Tuscia', and the pope was distressed that such a crime could have been committed 'quasi in eius presentia'.⁴⁴ We know that Frederick was camped at Acquapendente in March-April 1244,⁴⁵ and, as can be seen from his registers, Innocent was at Civita Castellana for most of June before sneaking off to Genoa at the end of the month; the kidnap must have taken place, then, between Frederick's arrival at Acquapendente in March and Innocent's departure from Civita Castellana on 27 June. If the pope was already in Tuscany, as the narrative implies, and if Thomas was really abducted almost under the pope's very nose, it must have taken place in the vicinity of Civita Castellana in June.

The two oldest versions of the story date from about 1260; one comes in the *Vitas fratrum* (cf. MOPH I 201),⁴⁶ the other in Thomas of Cantimpré, *De apibus* I 20.10.⁴⁷

According to the former, Thomas was being taken by the Master from Naples to Paris when he was kidnapped; he was kept in captivity 'quasi per annum' and then released when it became apparent that he could not be turned from his determination to be a Dominican. Then 'missus est Parisius et factus est magister in theologia' (a statement which totally ignores the years he spent as Albert's student in Cologne).

There is no reason why John of Wildeshausen should not have proposed taking Thomas to Paris with him in 1244. He was certainly in Rome in the spring,⁴⁸ and he could perfectly well have visited Naples too; later

⁴³ Ptolemy of Lucca says that Thomas was actually captured at Acquapendente (*Hist. eccl.* 22.20; cf. A.Ferrua, *Thomas Aquinatis vitae fontes praecipuae* [sic], Alba 1968, 355), but Tocco's more detailed account is probably more reliable.

⁴⁴ *Ystoria* X, ed. cit. 107, 109. On the testimony of Thomas's family, cf. Tocco's deposition in the Naples canonization process LXII, ed. M.H.Laurent, *Fontes Vitae S.Thomae*, Saint-Maximin 1911-1937, 350-351.

⁴⁵ J.L.A.Huillard-Bréholles, *Historia diplomatica Friderici Secundi* VI, Paris 1860, 166-189, 910-911.

⁴⁶ The pattern of manuscripts which do or do not contain this story shows that it has nothing to do with Gerald de Frachet; it was one of several pieces which accrued to the compilation while Humbert was editing it in Paris, probably in the early months of 1260 (not long after Thomas's departure from S.Jacques). Thomas is not named, though his identity cannot be doubted; such anonymity is typical of Humbert's editing—even before the more drastic suppression of names in his 'second edition' he turned Gerald's 'frater Thomas de Aquino' in another story into 'frater quidam qui fuit magister in theologia Parisius' (MOPH I 215 §VI).

⁴⁷ The story is rather artificially attached to a denunciation of clerical decadence, so it was probably added as an afterthought; but *De apibus* was dedicated to Humbert while he was still Master, so it must have been finished before his resignation in 1263 became known.

⁴⁸ Between 3 Feb., when Innocent confirmed the status of S.Sisto as a monastery under the care of the Master and the Roman provincial, and 14 May, when he sent a formal complaint to the Master and diffinitors of the general chapter, John

in the year he headed North and could have gone via Paris.⁴⁹ However, the general chapter required his presence in Bologna by Whitmonday (23 May), and he was still there on 12 June (see the document edited by G.Meersseman in AFP 20 [1950] 65-66), so it is extremely unlikely that he was travelling with Thomas anywhere near Civita Castellana in June; if he did take Thomas with him, it must have been when he set off for the chapter, in May at the latest.

Thomas of Cantimpré (whom we shall call 'Cantipratanus' in the manner of our forebears, to avoid confusion) distinguishes the separate stages of Thomas's early life in the order far more clearly than the story in the *Vitas fratrum*; inter alia, he knew that Thomas went to Paris after his release, then to Cologne, and then back to Paris. He does not say that he was going to Paris when he was kidnapped, though, or that he was travelling with the Master. According to him, the Master's involvement began later on. Thomas was held captive for 'two or three years', but the Master went to Rome to complain to the emperor, with the result that Frederick was all set to have Thomas's brothers executed, and would have done so 'si dictus magister in querimonia perstitisset'. The Master calmed the emperor down, but Thomas's brothers were so terrified that they released him, and he was sent to Paris by the Master of the Order.

Cantipratanus definitely has some of his facts wrong, beginning with Thomas's entry into the order in Bologna. The Master certainly did not go to Rome to complain to the emperor—the emperor was not in Rome; nor is he likely to have visited Frederick after he had been formally deposed at the first council of Lyons on 17 July 1245. There is therefore an ineradicable incoherence in Cantipratanus's story. Tocco is more credible when he says that the brethren complained to the pope and the pope complained to the emperor, who had Thomas's brothers arrested and would have dealt severely with them if the brethren had persisted in their complaint, which they refrained from doing 'particularly since they had heard that the young man was sticking loyally to the habit even in prison' (*Ystoria* X, ed. cit. 109).

However, Tocco supports Cantipratanus in bringing the Master into the story after rather than before the kidnap. It was 'the brethren' who

had evidently removed the prior of S.Sisto and deprived the nuns of a resident confessor and laybrother (BOP I 131, 143; C.Carbonetti Vendittelli, *Le più antiche carte del convento di San Sisto in Roma*, Rome 1987, 192-200).

⁴⁹ On 28 Dec. 1244 he was at Bruges, where he issued letters of fraternity for the canons of St Mary's, Antwerp (ed. S.P.Wolfs, *Litterae de beneficiis OP*, Groningen 1963, 1-2; the date is 'anno Domini MCCXL quarto, V kal. Ianuarii', and I do not know why Wolfs took it to mean 28 Dec. 1243). According to Kaeppli, he preached in Paris on 6 Jan. 1245 (SOPMÆ III 47), but the sermons in the relevant manuscript, Arras 691 (759), are too disorganized to be allocated to particular years like this (cf. N.Bériou, *L'avènement des maîtres de la parole, la prédication à Paris au XIII^e siècle*, Paris 1998, 657-658; id. in G.Dahan, ed., *Le brûlement du Talmud à Paris 1242-1244*, Paris 1999, 214-216); I am most grateful to Mme Bériou for her advice on this point.

decided to send Thomas to Paris (in 1244), and he was accompanied by 'four brethren' when his brothers attacked. He was kept in captivity for 'about two years', then the family abandoned their attempts to get him out of the order and he was released. He returned to Naples, from where the brethren sent him, according to Tocco's original text, 'Romam ad magistrum ordinis', and the Master then took him 'Parisius et deinde Coloniam' (*Ystoria* VIII-IX, XII-XIII ed. cit. pp. 106-108, 115-116).⁵⁰

It is perfectly possible, even likely, that the Master was involved in both decisions to send Thomas to Paris, in 1244 and after his release; but, for all his faults as an historian,⁵¹ Tocco collected information from a far wider range of sources than anyone else, and these included the best sources available at the time, so credence should probably be given to his version of the story, especially as Cantipratanus provides early corroboration that it was after Thomas's release that he was sent to Paris *by the Master*.⁵²

So we come to the crucial question: when? In *Albert and Thomas* I argued for 1246. Since then, Torrell has revived the earlier theory that John of Wildeshausen took Thomas to Paris with him in the autumn of 1245 (op. cit. 27, 36),⁵³ but this runs into several difficulties.

⁵⁰ The family had apparently forgotten about Thomas's first stay in Paris and remembered him as being sent to Cologne immediately after his release (Naples process LXII, ed. cit. 351); this is presumably why Tocco implies that Paris was just a stop on the way to Cologne. Ptolemy had heard the same story, and has Thomas go straight to Cologne 'ad fratrem Albertum' (*Hist. eccl.* 22.21; Ferrua, op. cit. 356). It looks as if what was remembered in Naples was that Thomas had been sent to 'a studium generale' (cf. the testimony of Bartholomew of Capua in the Naples process LXXVI, ed. cit. 372), and his association with Albert and Albert's association with Cologne pushed Paris out of the picture. But Albert was not sent back to Cologne until 1248, and, in any case, Thomas's first stay in Paris seems now to have been proved beyond reasonable doubt (cf. J.P.Torrell, *Initiation à saint Thomas d'Aquin*, Fribourg and Paris 1993, 28-33).

⁵¹ He was too receptive to the spin which Thomas's relatives put on the family's attempts to get him out of the order—for instance, it is hard to accept that Thomas was kidnapped just because his mother was upset that she had not been able to see him (*Ystoria* IX, ed. cit. 107); and his ignorance of the context for some events in Thomas's life could lead him into strange error (on one truly heroic muddle, cf. *Albert and Thomas* 308-309 note 160).

⁵² We should not be over-impressed by the tale in the *Vitas fratrum* just because it almost certainly originated in Paris. Thomas was already a very famous man by 1260—even in the 1258 version of the *Vitas fratrum* Gerald describes him as someone 'cuius uita et scientia nota est et perutilis ecclesie dei' (cf. MOPH I 215); since he had until very recently been a member of their community, it is more than likely that the brethren of S.Jacques gossiped about his adventurous past, but there is no reason to imagine that they were any better informed about it than anyone else. The Master's involvement was most likely to be remembered, in any case, if Thomas had actually arrived in his company.

⁵³ Cf. J.A.Weisheipl, *Friar Thomas d'Aquino*, rev. ed. Washington DC 1983, 36, 351.

In the first place, Tocco is the only primary source for this journey, so any interpretation of it ought to begin with what Tocco actually reports. In the first edition of his *Ystoria*, it is true, he says that the brethren sent Thomas to Rome 'ad magistrum ordinis', but he soon changed this to 'ad capitulum generale'. He was wrong to believe that Thomas was sent to a general chapter in Rome—no such chapter was held there until 1292; but he must have thought that he had compelling reasons for connecting a general chapter with Thomas's destination. And no one set off to go to a general chapter from Naples (or Rome) in the autumn.

If the Master was going to a general chapter, he would have to arrive in time for its initial business to begin on Whitmonday; that is to say, he would have to be in Cologne by 5 June 1245, or in Paris by 28 May 1246. It is difficult to see what would have been gained by taking Thomas to Cologne and, if Thomas was already at liberty to travel there with the Master, his captivity was considerably shorter than the 'two years' (or 'two or three years') indicated by Cantipratanus and Tocco, and even the 'year or so' of the *Vitas fratrum* would probably be an exaggeration. A similar journey in 1246 would have the right destination, Paris, and it would allow for Thomas to have been kept prisoner for well over a year.⁵⁴

Secondly, it is very doubtful whether John himself could have been in Rome in the latter part of 1245. After the general chapter in Cologne, John apparently attended the first council of Lyons in person, which would have kept him in the vicinity until the closing session on 17 July.⁵⁵ On 17 and 19 Sept. important new bulls were issued for the order as a whole, including one which was sent to all the bishops in christendom ordering them not to molest the Dominicans (BOP I 153-156); it is difficult to believe that John played no part in soliciting them (there was as yet no procurator general to handle such business). On 21 Dec. Innocent announced to the prelates of the church that, 'previa deliberatione solemnī', he had made the Dominicans responsible for publicizing the sentence passed on Frederick at the council (BOP I 158);⁵⁶ one must presume that some consultation with the Master of the Order had been involved in the 'previa deliberatio solemnī'.

⁵⁴ It is difficult to disagree with Le Brun-Gouanvic (*Ystoria*, ed. cit. 116) that, if Tocco's story is true, it must mean that Thomas was sent to Rome to be taken to the chapter of 1246.

⁵⁵ H. Wolter-H. Holstein, *Lyon I et Lyon II*, in G. Dumeige, ed., *Histoire des conciles œcuméniques* 7, Paris 1966, 59, 74. The Franciscan Minister General did not attend the council in person (Salimbene, *Cronica*, ed. G. Scalia, CCCM CXXV, Turnhout 1998-1999, 268), but 'frater Iohannes magister ordinis fratrum Predicatorum' is among the signatories of the documents produced on 13 July (Huillard-Bréholles, *Historia diplomatica Friderici secundi* VI/1 317).

⁵⁶ On Innocent's reliance on the mendicants in this connection, and his consequent support of them at this time, cf. D. Berg, 'Papst Innocenz IV. und die Bettelorden in ihren Beziehungen zu Kaiser Friedrich II.', in F. J. Felten-N. Jaspert, ed., *Vita religiosa im Mittelalter, Festschrift für Kaspar Elm*, Berlin 1999, 461-481.

It is also suggestive that on 8 Jan. 1246 the pope asked John to find a member of his order to act as *magister* at Cîteaux (Chapotin, *Dominicains de la province de France* 423);⁵⁷ on the face of it, the task might appropriately have been entrusted to the provincial of France unless Innocent knew that John was in France or unless he knew that there was no provincial of France, which would probably have been the case if, in accordance with Gerald de Frachet's revised opinion, Peter of Rheims was provincial when he was chosen to be bishop of Agen towards the end of 1245 (cf. AFP 70 [2000] 77).

This brings us to the third point: what was John doing in Rome anyway? It is unlikely that he went there simply to fetch young Thomas, but there was one development which could have persuaded him to undertake the long journey early in 1246: if the French province had just elected the provincial of Rome to be its new provincial, the Master might have thought it important to go in person to urge Humbert to undertake this new assignment,⁵⁸ and arrange for the election (or appointment)⁵⁹ of his successor in Rome. In this case, Thomas could have travelled with him from Rome to Paris in the spring of 1246, accompanied, presumably, by the new provincials of Rome and France.⁶⁰

In sum, we have quite good reasons for dating the end of Humbert's Roman provincialate to 1246, and evidence that he was provincial early in 1244. The arguments in favour of supposing that he was not provincial in time for the general chapter of 1240 are much weaker, but, for what they are worth, they suggest that John Colonna ceased to be provincial in 1241 or, possibly, 1242; if he was not removed from office in 1241, then, of course, a general removal of all the provincials who had accepted Raymond's resignation would, without further ado, have relieved the Roman province of a provincial whose family connections had made him an embarrassment.

In 1242, then, at least four provinces had provincials who had assumed office after the 1240 general chapter (Lombardy, Germany, Poland and Dacia), and the same might be true of Greece. Hugh of St Cher sur-

⁵⁷ Cf. S. Lusignan, in id.-M. Paulmier-Foucart, edd., *Lector et compilator, Vincent de Beauvais*, Grâne 1997, 290-292.

⁵⁸ Similar considerations would apply if Humbert was elected to succeed Hugh of St Cher in 1244, but they would have brought John back to Italy later in 1244, not early in 1245, and in any case the hypothesis that John and Thomas travelled together in the first half of 1245 is unattractive, for the reasons I have already given.

⁵⁹ There was a provincials' chapter in 1246, so it was clearly desirable that there should be a new provincial in time for it.

⁶⁰ If Abbot Matthew, who seems not to have been a particularly fast walker, could leave Paris after 1 April and still be in Bologna by Whitsun (17 May) in 1220 (cf. AFP 66 [1996] 48-49), the journeys I am proposing for John of Wildeshausen cannot be considered impossible.

vived as provincial of France, but, like Poncius of Provence, he may have been absolved and immediately re-elected. Spain seems to have had a provincial other than Giles of Portugal by 1243, but we do not know when Giles was absolved. There are inconclusive reasons for believing that there was a change of provincial in the Roman province in 1241 or 1242, and we are completely in the dark about the provincials of England, Hungary and the Holy Land. This means that we can neither confirm nor refute the story which Bernard Gui was told.

APPENDIX II

Masetti's 'scheda'

In *Monumenta et antiquitates* II 267-269 Masetti edited a 'scheda' entitled 'Origo nonnullorum conventuum Romanae provinciae Ordinis Praedicatorum', which he dates to the late 16th or early 17th century. He points out that its value is uncertain, since the compiler did not specify where his information came from; nevertheless, it looks as if someone has gone through a more complete text than we now have of the 13th-century acts of Roman provincial chapters, picking out those at which new convents were launched, and noting, not just these foundations, but also anything else which he found interesting, such as information about St Thomas. However, some items clearly derive from commentary on the acts rather than the acts themselves, so the 'scheda' is either a 16th/17th-century compilation based on several sources or it is a copy of a rather older fragmentary chronicle. We can only gauge its value as an historical source by examining its contents. It begins with the chapter of 1244, but, since what it says about 1244 is precisely what we need to verify for our present purposes, we shall commence our examination with the next entry, and return to 1244 at the end.

In 1248, it tells us, 'in capitulo Romae celebrato fuit positus conventus Ananiae sub Fr. Ioanne de Columna priore provinciali in festo exaltationis S. Crucis. Primus prior fuit Fr. Pancratius, et primus lector Fr. Bartholomeus de Lentino'. The establishment of a convent in Anagni in 1248 is not confirmed by surviving chapter acts, but the Roman province received permission to make two foundations in that year (MOPH III 42), and it is compatible with other evidence that Anagni should have been one of them (Masetti I 186; AFP 70 [2000] 84). Pancratius was prior of Anagni in 1251 (MOPH XX 12). I know nothing about Bartholomeus de Lentino. There is, as we have seen, no objection to the supposition that John Colonna was the successor of the provincial absolved in 1247, or to the date given for the provincial chapter—although the surviving Roman acts do not usually specify when chapters were actually held, the Exaltation of the Cross was the date fixed for 1274, 1277 and 1301 (MOPH XX 43, 48, 138); the place of the chapter is correct (MOPH XX 7).

The next entry concerns 1258: 'In capitulo Viterbii celebrato in festo S.M. Magdalenae fuit positus conventus Spoletanus; primus prior fuit Fr. Lucas Pistoriensis, et lector Fr. Philippus Pistoriensis. Et similiter apud Fogiam; primus prior Fr. Philippus Consti'. The place and date of the chapter are correct (MOPH XX 21-22), and the establishment of a convent at

Spoletto, with Lucas of Pistoia as its prior, is confirmed by the acta (MOPH XX 23). Philip of Pistoia was appointed the first lector of Pistoia in 1259 (MOPH XX 24), but there is no reason why he should not previously have filled the same rôle in Spoletto.

What our 'scheda' says about Foggia is unconfirmed by other evidence, but it could help to resolve a puzzle: the Dominicans were apparently quite well established in Foggia by 1268-1269, and a prior of Foggia is mentioned in 1270/1271; yet in 1283 they had only a *domus* headed by a *vicarius*.¹ According to our 'scheda', the convent of Foggia was transferred to Monopoli in 1273. The date of foundation of Monopoli does not seem to be otherwise known, but a prior of Monopoli was absolved in 1283 (MOPH XX 64). It is quite conceivable that a convent was established in Foggia in 1258, and that it was reduced to a *domus* in 1273 so that a formal community could be sent to Monopoli.² I know nothing about Philipus Consti.

What the 'scheda' says about the establishment of a convent in Pistoia in 1259, with Paschalis as prior, and Philip of Pistoia as lector, is confirmed by the acta (MOPH XX 24); the place of the chapter, Rome, is correct (MOPH XX 23), and the date, Michaelmas, is perfectly plausible (the same date was chosen for 1256 and 1260: MOPH XX 19, 24). Only our 'scheda' calls Paschalis 'Florentinus', but there is no reason why Orlandi should not be correct in identifying him with the 'Paschalis de plebatu S.Viti de Ancisa' who died in 1284, of whom the chronicle of S.M.Novella says that 'fuit prior in pluribus conventibus' (*Necrologio di S.Maria Novella* I 13, 238-239).

No date is given for the chapter of 1260, but the place, Naples, is correct (MOPH XX 24). Troianus is said to have been elected provincial, which is consistent with the fact that Robert the Norman was dead by the time the provincial chapter met in that year (MOPH XX 24), and that, according to the Vallicelliana continuation, Troianus was provincial in 1262 (AFP 4 [1934] 105).

We are also told that a convent was established in Gaeta; there is no trace of this in the acts of the general or provincial chapter, and the foundation in Gaeta is commonly dated to 1229 (ASOP I [1893-1894] 707), I do not know on what grounds—the earliest mention I can find in the acts of the provincial chapters is in 1283, when the prior of Gaeta was absolved

¹ R. Filangieri, ed. *I registri della cancelleria Angioina* II, Naples 1951, 287; IV, Naples 1952, 216; VI, Naples 1954, 367. MOPH XX 64-65. Cf. G.Cappelluti, *L'ordine domenicano in Puglia*, Teramo 1965, 101-103; G.Cioffari, *Storia dei Domenicani in Puglia*, Bari 1986, 41.

² It is not surprising that none of this has left any trace in the surviving acts of the provincial chapters, since the only manuscript we have (AGOP XIV A 1) reflects the interests of the Roman province as it was after the *provincia Regni* had been detached from it; it therefore pays scant attention to the southern part of the original Roman province.

(MOPH XX 64). However, on 13 Feb. 1261 Alexander IV confirmed the gift of the church of Sant'Angelo, Gaeta, to the Dominicans, and his bull incorporates the bishop's letter, dated 13 Aug. 1255, in which the gift was originally made; the deed was apparently drawn up 'Gaiete in domo fratrum predicatorum', but there is no mention of any local prior. This evidence is therefore perfectly compatible with a formal convent first being sent there in 1260.³ The prior is identified as 'Fr. Ugo Trombetti', who, according to the 'scheda', had been appointed the first prior of Arezzo in 1244; I know nothing about him.

Several people are said to have been made preachers general at the same chapter, but the only one named is 'frater Thomas de Aquino qui ex Parisio redierat magister in theologia'; this could well be correct (cf. *Albert and Thomas* 219-223).

Also in 1260 'fuerunt absoluti priores ab Anania usque ad Pisas inclusive, et hoc ratione discordiae quae orta fuit inter diffinitores pro absolutione trium priorum in Tuscia'. The surviving text of the acta does not mention the absolution of most of the priors in Lazio and Tuscany, but absolutions of priors are very incompletely preserved, so this is not surprising. Disagreements among the diffinitors should never have been recorded in the official acta, but it is difficult to see why anyone should invent a tale like this centuries after the event; the 'scheda' has presumably preserved a memory of what was being said at the time, or at least of what people who recalled the wholesale removal of priors said about it afterwards.

In 1268 ('1258' in Masetti must be a mistake) the provincial chapter of Viterbo is correctly dated to Pentecost, since it coincided with the general chapter. The establishment of a convent in Rieti with a prior called Ugo is confirmed by the acta (MOPH XX 34), though not his cognomen 'Martellinus'; Hugo Martellinus is, however, mentioned in the acts of 1259 (MOPH XX 24), and 'Ugo dictus de Martellinis' is described in the chronicle of S.M.Novella as having been 'prior multotiens in multis conventibus'. Orlandi accepts that the first prior of Rieti was the same man (*Necrologio* I 9, 228).

The place and date of the 1273 chapter (Rome, Michaelmas) are correct (MOPH XX 40-41), and it is possible that Thomas Aquinas was a diffinitor at it, though no other evidence has been found to prove it. The establishment of a convent at Città di Castello with Guarnerius Florentinus as prior is confirmed by the acta (MOPH XX 43).

The 'scheda' also says 'fuit positus conventus Sulmonae', which appears to contradict the general chapter's authorization of a foundation in

³ See Kaeppli, *Archivio Italiano per la Storia della Pietà* 1 (1951) 466. There is a typed copy of the papal letter in Kaeppli's files, but 'actum Gaiete in domo fratrum predicatorum' is added in red ink, presumably as a correction to the transcript. I have not checked the original.

Sulmona in 1279 (MOPH III 205); the convent first appears in surviving provincial acta in 1283 (MOPH XX 65). However, on 10 March 1267 Clement IV congratulated Charles of Anjou on giving the order a *locus* 'qui capella et pallatium regis appellatur', and, in spite of Franciscan complaints that it was too close to their own house, the pope approved the gift;⁴ it is quite conceivable that a convent was first installed in 1273, but ran into difficulties and needed refounding, with the explicit backing of the general chapter, in 1279.

We have already noted the transfer of the convent of Foggia to Monopoli in 1273, which is compatible with the fact that there was only a *domus* in Foggia in 1283; however, there was a convent in Foggia by 1288, when its prior was absolved by the Lucca general chapter (MOPH III 246), and its lector was put in charge by the provincial chapter held at the same time (MOPH XX 84). If we are to believe the 'scheda', then, a new foundation could be made by transferring to it enough members of another community to form a convent, even if, as a result, the founding community was temporarily reduced to a *domus*. This means that we should not dismiss out of hand what the 'scheda' says about another transfer made in 1273, '(conventus) Plazae in Cataniam'.

We are extremely ill informed about the early history of the Dominicans in Sicily.⁵ Bernard Gui lists the convents of the *provincia Regni* according to their geographical position, and it would be rash to assume that he intended to indicate their relative seniority—when he was in a position to provide an *ordo conventuum*, he did so explicitly. The 1307 edition of his compilation of *Dominicana* lists six convents in Sicily: Messina, Piazza Armerina, Augusta, Palermo, Catania and Trapani; he was later able to add two more, Syracuse and Agrigento.⁶ The papal documents which the convent of Messina possessed suggest that it goes back almost to the beginning of the order (V.J.Koudelka, AFP 44 [1974] 64, 74-75), and there is direct evidence that the Dominican prior there was a person of some importance by 26 May 1231 (F.Russo, *Regesto Vaticano per la Calabria* I, Rome 1974, 129 no. 740), and the convent of Messina is mentioned in the first surviving acts of the Roman provincial chapter (MOPH XX 1). In response to the 1245 general chapter's appeal for miracle-stories about Dominic (MOPH

⁴ Clement IV, Reg. 1183; Eubel, *Bullarii Franciscani Epitome* 129 no. 1286. It is presumably because of this that the convent is said to have been founded in 1266 (S.L.Forte, AFP 39 [1969] 517).

⁵ Cf. C.Longo, 'La fondazione del convento domenicano di Augusta', *La Fiaccola* 1992, 8-21, esp. 8-9.

⁶ The list of convents was not in the first edition of Gui's compilation (cf. MOPH XXII 5.5-7 with app. crit.; SOPMÆ I 221); Agen 3, which in principle represents this edition, was periodically updated and does not have the earliest form of the list. This means that the oldest text is that found in the 1307 edition, represented by Bologna, Bibl. Univ. 1535. On the evolution of Gui's compilation, see MOPH XXII pp.VI-XVIII, MOPH XXVII 27-29.

III 33), two were sent in by the brethren of Augusta, which were duly incorporated into Constantine's *legenda* (Const. 120-121). Humbert was able to add a miracle from Piazza Armerina in his own *legenda* (Humb. 61), and it was one of three which Gerald de Frachet included in his 1258 edition of the *Vitas fratrum*; since it had already been used in his *legenda*, Humbert excised it from the *Vitas fratrum*, but the other two stories survived (MOPH I 93-95). Gerald's use of the word *conventus* does not, perhaps, prove that there was a formal convent in Piazza, but it is just as likely that there was.

We have absolutely no information about the Dominican foundations in Palermo and Catania. In the report sent in by the provincial of Sicily in 1613, they are dated respectively to 1300 and 1313 (Forte, AFP 45 [1975] 250-251), but both dates are certainly too late. A prior of Palermo was absolved by the provincial chapter in 1283 (MOPH XX 64), and Gui knew about the convent in Catania by 1307. Modern Dominican historians have accepted the evidence of the 'scheda' without demur,⁷ and I see no reason why they should not be correct to do so. Piazza, however, soon regained its status as a convent: in 1283 its prior, Nicholas of Piazza, who had been made a preacher general in 1281, was appointed vicar in Sicily (MOPH XX 58, 65).

Under 1275 we are told that 'fuit divisa provincia in vicarias propter constitutionem novam factam in capitulo generali immediate Bononiae celebrato, sed parum duravit'. The constitution in question was indeed confirmed in 1275 (MOPH III 177), but 'sed parum duravit' must derive from a more or less contemporary chronicle, not from the acts of the provincial chapter. Since the order quickly abandoned the constitutional innovation of *vicariae*, it is no doubt true that 'parum duravit' in the Roman province.⁸ The place of the 1275 chapter is correctly given as Orvieto (MOPH XX 45).

In 1276, as stated, the provincial chapter coincided with the general chapter at Pisa, but the surviving acts do not confirm the establishment of convents at Salerno, L'Aquila and Capua. A foundation in L'Aquila was authorized by the general chapter of 1255 (MOPH III 77), and the order seems to have been present there soon afterwards; however, the earliest mention of an actual convent occurs in the acts of the provincial chapter of 1283, and the chapter was held there in 1284 (MOPH XX 65, 66).⁹

⁷ Cf. M.A. Coniglione, *La provincia domenicana di Sicilia*, Catania 1937, 362; A. Barilaro, *Beato Bernardo Scammacca*, Palermo 1980/1981, 13.

⁸ The division of provinces into vicariates was removed from the constitutions almost immediately: there was a fresh inchoation in 1276 with a different revision of const. II 3 in which vicariates were not mentioned, though provincials were permitted to appoint vicars to visitate parts of their territories on their behalf 'prout sibi videbitur expedire'; the new text was confirmed in 1278 (MOPH III 185.23-27, 194.22-27)

⁹ Cf. B. Carderi, *I Domenicani a L'Aquila*, Teramo 1971, 7-9.

The Dominicans were given a place in Salerno in 1272 (cf. S.L.Forte, AFP 39 [1969] 472), and it is quite possible that a formal community took possession in 1276; the provincial chapter was held there in 1279.

The Dominicans were apparently in Capua as early as 1253 (Forte, *ibid.* 443), but they had been expelled by Manfred; on 10 March 1267 Clement IV congratulated King Charles for restoring their house to them, notwithstanding Franciscan objections (Reg. 1183; Eubel, *BF Epitome* 129 no. 1286); there was certainly a formal convent by 1283 (MOPH XX 64-65), which could perfectly well have been established in 1276.

The chapter was held in Orvieto in 1282 (MOPH XX 59), as stated in the 'scheda', and the establishment of a convent in Prato (which had been authorized by the general chapter of 1281, MOPH III 214) and the names of its prior and lector are all confirmed by the acta (MOPH XX 62).¹⁰

In 1285, we are told, 'in capitulo provinciali Ananiae celebrato in festo apostolorum Petri et Pauli fuit positus conventus in Feradona per magistrum ordinis, quem locum per plures annos tenuerunt fratres'. This poses several problems, not the least of which is the meaning of 'Feradona', a name of which neither I nor my colleagues have been able to make sense.

The general chapter of 1285 was held in Bologna in mid May (Pentecost fell on 13 May), and Munio of Zamora was elected Master at it; since he was provincial of Spain at the time (Martène-Durand VI 409), he should have been present. The Roman provincial chapter was scheduled to meet at Anagni on the Nativity of St John the Baptist (24 June) (MOPH XX 69.11-12), not the feast of SS. Peter and Paul (29 June), but it might have been delayed a few days to permit the new Master to be present, perhaps also to enable the provincial to get there. On 19 July, Honorius IV presented the bishop of Tivoli with a fairly elaborate scheme which would allow the church of St Blaise to be given to the Dominicans; as he explained, the Master, Munio, and the Roman provincial, John,¹¹ had

¹⁰ For other relevant documents, cf. B.Orsi, *Il S.Domenico di Prato*, Prato 1977, 11-14.

¹¹ This must be John of Viterbo, whom the Vallicelliana continuation identifies as the Roman provincial at the 1285 general chapter (AFP 4 [1934] 111). He is surely the same as the John of Viterbo who had been used as a papal diplomat at least since 1273 (Gregory X, Reg. 309, 742-743), and who is attested as procurator of the order as well as papal nuncio in 1277-1278 and 1280 (Nicholas III, Reg. 222, 224, 241, 758, 841; for his diplomatic missions, cf. also 253-257, 259, 265-272). He is also presumably the same as the John of Viterbo who was prior of Florence in 1263 when the provincial chapter chose him to be an elector of the Master at the following general chapter (MOPH XX 28.25); this must make it likely that he is the prior of Florence referred to by the general chapter of 1264, who had incurred debts *in curia* when he was serving as the order's procurator there (MOPH III 125.34-35). If so, he had been associated with the curia for as long as Honorius IV (James Savelli) had been a cardinal (Savelli was made a cardinal in Dec. 1261: HC I 8); the two men must have been well acquainted by the time they met as pope and provincial in 1285.

pointed out to him that the order lacked a house in Tivoli (BOP II 6). The timing suggests that Munio and John are more likely to have visited Honorius in Rome before the provincial chapter than in Tivoli after it,¹² so the two men had presumably travelled from Bologna together.¹³ In any case, the 'scheda' could well be right to imply that Munio was at the provincial chapter in Anagni.

The Roman province had been authorized to make two foundations by the general chapter (MOPH III 229.24). The surviving acts of the provincial chapter show that one was initiated immediately at Foligno ('ponimus locum in Fulgineo', MOPH XX 71.22). The name 'Feradona' has proved baffling, but it is possible that the short-lived house which the Master apparently launched with a fully-fledged convent was at Atessa: a prior of Atessa was absolved in 1287 (MOPH XX 77.28), and the place was abandoned in 1293 (MOPH XX 116.1), so it would be true to say of it that 'locum per plures annos tenuerunt fratres'. It was apparently not restarted until well after the period covered by the 'scheda'.¹⁴

After 1285, the 'scheda' jumps to the provincial chapter of 1298, held in Pisa (MOPH XX 128), as stated. The establishment of a convent in Cor-

¹² After his election in Perugia, Honorius was in Rome by 18 May for his consecration, and he stayed there until the beginning of July; he then went to Tivoli, which he reached by 10 July, and he remained there until October (cf. Potthast, *Regesta* II 1795-1802).

¹³ It is possible that Munio wanted to be presented to the pope by an habitué of the curia such as John of Viterbo, as he had reason to be unsure of his own reception. One of the unresolved issues on someone's desk was the status of the nuns of Zamora: there had been a fierce controversy which had split the community between those who wanted to come under the bishop and those who wanted to come under the order, and it had been made vastly more exciting by sensational tales of orgies in the monastery (see P.Linehan, *The Ladies of Zamora*, Manchester 1997). Munio had not been accused of taking part in any bacchanalian revelries (in his earlier account, Linehan described his position rather unfairly); he may have taken an excessively partisan stance against the nuns who wanted to remain under the bishop (*The Spanish Church and the papacy in the thirteenth century*, Cambridge 1971, 224-225; *Ladies of Zamora* 57), but he did so in an official capacity, perhaps as vicar provincial in Galicia, a charge he was given in 1275 (AD 4 [1983] 14). The matter had been referred to the Holy See long ago, and, most recently, in 1281 the pro-bishop prioress had written to Cardinal Ordoño Alvarez begging him to intervene with the pope to get the episcopal régime restored, and she provided him with a graphic account of the goings-on which had resulted from the friars' involvement with the nuns, as well as mentioning Munio by name (the letter is translated in full in *The Ladies of Zamora* 57-58); there the matter had apparently rested, but Cardinal Alvarez was still playing an active rôle in the curia in the last months of 1285 (Honorius IV, Reg. 96-97, 100). If Munio was afraid that he might have a reputation there as the superior under whose auspices the Dominicans had invaded and corrupted a monastery of nuns, one can see why he might have chosen to present himself for the first time with a respected chaperon.

¹⁴ Cf. B.Carderi, *Cartulario Aprutino Domenicano* I, L'Aquila 1988, 11.

tona in 1298 and the name of its first prior are confirmed by the acta (MOPH XX 129).

We are then taken back to the chapter of 1287, held in Rome (MOPH XX 75), to be told that 'unus ex deffinitoribus fuit Fr. Banduccius Pistoriensis tunc procurator ordinis'. 'Fr. Banducius Pystoriensis, procurator ordinis' was certainly elected to be diffinitor of the following general chapter (MOPH XX 80); there is no reason why he should not have been a diffinitor at the provincial chapter.

We are then told that Nicholas of Prato was elected provincial in 1297 at the chapter held at Perugia on the Nativity of Our Lady. The place and date of the chapter are correct (MOPH XX 125), and Nicholas's election is entirely plausible (cf. Scheeben, AFP 4 [1934] 136).

The last entry in the 'scheda' concerns 1299: 'Anno 1299 fuit celebratum capitulum provinciale Pistorii in nativitate B.V., cum tamen in praecedenti capitulo in festo apostolorum assignatus fuisset; quod contigit quia Fr. Nicolaus de Prato prior provincialis existens factus est ante tempus episcopus Spoletanus.' The chapter was indeed held at Pistoia, and it was originally supposed to take place on 29 June, the feast of Peter and Paul (MOPH XX 129); Nicholas of Prato's appointment as bishop of Spoleto by papal provision was formally announced on 1 July 1299 (Boniface VIII, Reg. 3155), so the province could have had enough advance warning to be able to postpone its chapter until 8 Sept. in order to combine it with the election of a new provincial.

'In hoc capitulo', the 'scheda' goes on, 'fuit electus in priorem provinciale Fr. Ugo Lucanus, et per Ven. Patrem Fr. Nicolaum de Tarvisio tituli S.Sabinae Presbit. Cardinalem, qui fuerat magister ordinis, ex commissione sibi facta super totum ordinem per Bonifacium summum pontificem fuit confirmatus'. Nicholas Boccasino was Master of the Order when he was made Cardinal Priest of S.Sabina on 4 Dec. 1298, so there was no general chapter in 1299; there was thus no Master to confirm the election of provincials in 1299. In these circumstances the proper procedure was still for the election to be confirmed by the three senior electors,¹⁵ and this was followed at the provincial chapter of Provence in 1299, at which Bernard de Jusix was elected provincial.¹⁶ Nevertheless, the acts of the Roman provincial chapter show both that Ugo Lucanus was elected at the chapter (MOPH XX 136.1) and that he was not confirmed immediately (he is referred to as 'prior provincialis futurus' in MOPH XX 131.12, and prayers were ordered 'pro electo in provincialem Romane provincie', *ibid.* 134.23-24).

¹⁵ An inchoation made in 1297 would have transferred the power to confirm from the senior electors to the vicar of the Master (MOPH III 283.19-23), but this was not approved in 1298, and even if it had been successful it would not have come into force until 1300, since there was no general chapter in 1299.

¹⁶ Martène-Durand VI 428; Bernard Gui was prior of Carcassonne at the time (MOPH XXIV 102-103), so his information can be trusted.

Alberto da Chiavari, elected Master in 1300, died soon afterwards, and on 23 Sept. 1300 the pope formally entrusted the care of the order to Boccasino, now Cardinal Bishop of Ostia (Boniface VIII, Reg. 3692). By this time the Roman province certainly had a functioning provincial, as can be seen from the acta of its 1300 chapter, held at Orvieto on 22 July, the feast of St Mary Magdalen (MOPH XX 135.20-21, 136.17, 138.7). This might suggest that the 'scheda' is mistaken in saying that Boccasino confirmed Ugo's election 'ex commissione sibi facta super totum ordinem'. Nevertheless, it is possible that Boniface had already informally asked Boccasino to look after the Dominicans. The 1299 Roman provincial chapter ordered prayers 'pro venerabili patre domino N. *cardinali nostro*' (MOPH XX 134.14), and the capitulars may have felt obliged to refer the election of the new provincial to 'their cardinal'; something must have prevented them from getting the election confirmed in the usual way laid down in the constitutions, and there is no reason why it should not have been, as the 'scheda' says, an awareness that, for all his elevation to the cardinalate, the ex-Master was, in the pope's eyes, still in charge.¹⁷

Someone writing c.1300 is far more likely than any 16th-century antiquarian to have had both the information and the interests which the 'scheda' reflects, so we may take it that what Masetti discovered was either a copy of or extracts from an older manuscript. Assuming that the 'scheda' itself was not a fragment of something larger, the original text presumably ended with the chapter of 1299—if it had continued into the 14th century, why was no more copied? In any case, the original must have been written before the canonization of Thomas Aquinas in 1323, since he is simply called 'frater'. If the entry for 1244 always contained the reference to 'beatus Ambrosius Sansedonius' (and there is no way of knowing whether it did), the text cannot have been started until after Ambrogio's death and instant 'canonization' in 1287.¹⁸

¹⁷ Galvano claims that Alberto da Chiavari was elected 'ad procuracionem et per literas domini Nicholai cardinalis', and that 'in isto capitulo fuit maxima turbatio, videntes fratres quod per personas extra ordinem constitutas ordo regeretur' (MOPH II 105). This is not confirmed by Bernard Gui, who was actually at the 1300 chapter since it was held at Marseilles, in his own province, and he was still prior of Carcassonne; all that Gui says is that Alberto was elected in the second scrutiny (Martène-Durand VI 411; where the printed text has 'sero scrutinio', with the suggested emendation 'sexto', the manuscripts have 'secundo scrutinio'). All that is known for certain is that, on 11 April 1300, the pope wrote a letter to the forthcoming general chapter indicating what sort of man they should elect as Master (BOP II 60), with no hint that he intended to apply further pressure through the ex-Master.

¹⁸ On 19 July 1287 the Siena city council voted money for the construction of a chapel 'ob reverentiam beatissimi sancti Ambrosii Senensis' (P.Torriti, 'L'Iconografia del Beato Ambrogio da Siena', *Bullettino Senese di Storia Patria* 100 [1995 for 1993] 212-383, esp. 240).

Most of what the 'scheda' offers us consists of notes on provincial chapters which launched new convents; at the end, however, the compiler's concern seems to shift away from convents to a few individuals. It is not surprising that a cardinal like Nicholas of Prato (who died in 1321)¹⁹ should arouse interest, though it is noteworthy that only his elevation to the see of Spoleto is mentioned; he was made a cardinal on 18 Dec. 1303 (HC I 13). Hugo Lucanus (Ugo dei Borgognoni) (who died in 1322) is a less obvious candidate for enduring renown,²⁰ and only a contemporary is likely to have considered it worth noting the relatively trivial fact that Banduccio of Pistoia was a diffinitor at the provincial chapter of 1287.²¹ Since it is not at all clear why anyone in the 16th century should select these particular items, we may cautiously infer that the 'scheda' contains a copy of a much older compilation.

What is said about the short duration of the 'vicariae' instituted in 1275, and the brethren having a house in 'Feradona' 'per plures annos', was plainly not written immediately after the chapters in question; much less would anyone have noted in 1244 that Ambrogio Sansedoni entered the order, since the fact would only be of interest after he had become famous. It is probable, then, that the 'scheda' has preserved for us a selective chronicle composed by some member of the Roman province in about 1300; and there is no reason why he should not have been as successful as Bernard Gui was, at about the same time, in assembling good information (which is not necessarily the same as correct information) from a combination of written and oral sources.

We have probed the contents of this 'chronicle', item by item, and they have stood up well to our scrutiny. We should therefore approach what it says about 1244 without undue scepticism, even though, at first sight, it is almost entirely wrong:

Anno domini 1244 celebratum fuit capitulum provinciale Romae in quadregesima sub Fr. Umberto tunc priore provinciali Romanae provinciae, in quo capitulo positus fuit conventus Aretii, ubi factus est prior Fr. Ugo Trombetti. Eodem anno intravit ordinem B. Ambrosius Sansedonius.

¹⁹ The general chapter of 1321 ordered suffrages for him (MOPH IV 136).

²⁰ On Ugo, see A.F. Verde-D. Corsi, *La «cronaca» del convento domenicano di S. Romano di Lucca*, MD NS 21 (1990) 106-109.

²¹ In his own day, he was clearly quite an important person even after he ceased being procurator general of the order. On 5 Dec. 1303, together with the provincial, Ugo dei Borgognoni, and the prior of Lucca, Tolomeo, and two notaries, he was deputed by the clergy of Lucca to go to the pope to ask for the city to be released from excommunication (MD NS 21 [1990] 109). Although he is attested as a member of the Lucca community on 27 Feb. 1279, he does not feature in any of the 'liste capitolari' thereafter, including those of 1301, 1302 and 1307 (ibid. 371-374); so, unlike the provincial, he was probably not in any sense a local friar. I have not been able to discover when he died.

Raymund's constitutions no longer specified Michaelmas as the time for provincial chapters, saying simply that they should be held 'post capitulum generale ubi et quando prior prouincialis cum consilio diffinitorum elegerit' (const. II 7); but they were surely not normally held as late as the following Lent. The convent of Arezzo is generally said to have been founded in 1242, but even that is too late for its position in the *ordo conventuum*. And any book you care to consult will tell you that Ambrogio Sansedoni received the Dominican habit on 16 April 1237.

However, the commonly agreed date for Ambrogio Sansedoni's entry into the order is derived from a *vita* which has received far more credit than it deserves; the alternative offered by our 'scheda', 1244, is more consonant with such evidence as we possess and might well be correct (see Appendix IV).

More unexpectedly, it may well be true that a provincial chapter was held in Rome during Lent 1244 (see Appendix III).

The convent of Arezzo poses more complex questions. As Masetti points out, a Dominican prior of Arezzo was commissioned by the pope on 5 March 1247 to investigate the finances of a local monastery (BOP I 172, Masetti I 183), so the convent was certainly in existence by then. According to Fontana, who, as usual, gives only a vague reference to 'monumenta huius conuentus', 'initium habuit sub magistro ordinis Ioanne Theutonico anno 1242';²² this is perfectly compatible with a formal convent being established in 1244 by the delayed 1243 provincial chapter. However, the *ordo conventuum* in the 'provincial's vade-mecum' places Arezzo between Orvieto and Perugia, which suggests a foundation-date in 1232/1233 (AFP 70 [2000] 84-85); it is ahead of Todi even in the *chorus sinister*, and a prior of Todi features in the earliest surviving Roman chapter-acts (MOPH XX 1.30).²³ So either our 'scheda' and Fontana's source or the *ordo conventuum* must be wrong.

Panella dates the *ordo conventuum* to the 1330s,²⁴ and by this time, as we shall see in a later article, even the rather simpler *ordo provinciarum* had got into quite a muddle. Confusion was generated by several ambi-

²² V.M. Fontana, *De Romana provincia*, Rome 1670, 115-116. The general chapter of 1241 authorized the Roman province to make two new foundations (MOPH III 21 app. crit.).

²³ The instructions given by Gregory IX on 13 Aug. 1237 for lifting the excommunication of Todi include permission for the Dominicans and Franciscans to return there, with other clerics and religious (Reg. 3839); but this does not prove that there was already a formal convent in Todi. Fontana, *De Romana provincia* 111, says that the Dominicans 'first set foot' in Todi in 1236.

²⁴ Fr Emilio Panella OP has kindly reminded me that he had already published the *ordo conventuum* before I did; he examined the manuscript, whereas I only studied a photograph, so his later dating of it must be accepted (MD NS 28 [1997] 366-367). Bernard Gui, unfortunately, merely provides a list, not an *ordo*, for the Roman province.

guities. When a new entity was inserted into, rather than at the end of, the list, so that it would come immediately after its parent body, did this mean that it came next in absolute seniority (and was therefore on the opposite side of choir) or that it came next on the same side of choir (as seems to have happened at first to the *provincia Regni*)? Did the re-arrangement necessitated by such an insertion involve other provinces (or houses) swapping sides, or simply moving down (or up) on their own side of choir? Moving without swapping sides could result in loss of seniority, which might lead to protests and further reshuffling, which itself was not necessarily carried through systematically.

All these factors could have affected the Roman *ordo conventuum*,²⁵ which also had to be adjusted to accommodate the disappearance and re-appearance of convents and, later, the separation of the *provincia Regni* from the Roman province; if there is any truth in a report mentioned with some scepticism by Masetti (I 193), Trani remained attached to the Roman province for some time after the separation, causing yet another complication.²⁶ What is more, the seating at provincial chapters was probably more conservative than at general chapters, since priors attended them every year and would therefore tend to gravitate automatically towards the places they had occupied before.

As can be seen from the following diagram, only two moves are required to explain how Arezzo could have got ahead of Todi on the same side of choir; even if it originally followed it: (a) the loss of a senior convent (Trani, as it might be),²⁷ compensated for by the other convents on the

²⁵ The prior of the Minerva was given a seniority his convent did not deserve chronologically, but, if we are to trust the *ordo* in the 'provincial's vade-mecum', this resulted in him sitting next to the prior of Santa Sabina on the same side of choir.

²⁶ It is curious that Gui included Trani both in the Roman province and in the *provincia Regni* (cf. QE I viii; Gui himself never seems to have remedied this ambiguity—the correction in Barcelona, Bibl. Univ. 218, does not derive from him). As we have already remarked, these lists were not in Gui's first edition, so there is no reason to suppose that their original compilation antedates the division of the Roman province. Gui undoubtedly assembled information by quizzing delegates whom he met at general chapters, such as that of Toulouse in 1304; he learned of particular convents in the context of particular provinces, so it is not clear how he could have got Trani's affiliation confused unless he was given confusing information, and this would be explained if the status of Trani remained unclear or disputed for some time after the creation of the *provincia Regni*.

²⁷ It is not known when there was first a convent at Trani. G.Cioffari (id.—M.Miele, *Storia dei Domenicani nell'Italia meridionale*, Naples-Bari 1993, I 33-34) cites two papal letters from 1233 and 1236 as the earliest documentary evidence, but this is unsatisfactory. Nothing can be inferred from the fact that the former is addressed 'priori provinciali Apulie' (BOP I 45 LXVIII); Gregory IX held out against the terminology of Dominican 'provinces' as long as he could, and designated provincials by whatever part of their territory was appropriate to the matter in hand (we shall return to this point in another article). Nor does BOP I 89-90 prove that there

same side of choir moving up a place; and (b) the insertion of a convent near the top of the list (as was done with the Minerva), compensated for this time by re-arranging the convents below it in accordance with the seniority suggested by (a):²⁸

Right	A	B	Left	A	B	A	B
	C	D		E	D	E	I
	E	F		G	F	D	G
	G	H		H		F	H

Nor does it matter whether the loss or the insertion of a convent comes first:

Right	A	B	Left	A	B	A	B
	C	D		C	I	E	I
	E	F		E	D	D	G
	G	H		G	F	F	H
				H			

I am not foolhardy enough to try to reconstruct the evolution of the Roman *ordo conventuum*; my aim has been to show that Arezzo could quite easily have become misplaced by the early decades of the fourteenth century (and the same process of 'worming' could explain why Pistoia and Spoleto appear to be in the wrong order).²⁹ It is therefore quite possible that Fontana and Masetti's 'scheda' are right, and that Arezzo was initiated in 1242 and a convent sent there by the delayed 1243 provincial chapter.

was a formal convent in existence by May 1236, though the convent's possession of an original does suggest that there was at least a house there by then. On the other hand, there seems to be, or to have been, archival material, which Cioffari does not mention, showing that the church was being built in the late 1220s (T.Malvenda, *Annales*, Naples 1627, 437; cf. AFP 39 [1969] 184), and G.Cappelluti cites a papal document from 1236 referring to the subprior of Trani (*L'ordine domenicano in Puglia*, Teramo 1965, 74). If it is true that the convent was founded by Nicholas of Giovinazzo (Cappelluti, op. cit. 71), its formal establishment could be dated to the early 1230s, when Nicholas was provincial (he is attested as such on 28 Jan. 1231: *Epitome Bullarii* no. 245).

²⁸ A further confusion is caused, at least to a modern reader, by the fact that the right-hand choir always comes first and is therefore on the left.

²⁹ Cf. AFP 70 (2000) 84. I must retract my assertion (ibid. 85) that Arezzo was 'probably' founded in 1232/3; this does not seriously affect my contention that the provinces of Rome and Lombardy were on a collision course in the early 1230s.

APPENDIX III

Was there a provincial chapter in Rome in Lent 1244?

Masetti's 'scheda' claims that Humbert presided over a Roman provincial chapter in Rome in Lent 1244, which is, on the face of it, improbable. If there was a chapter then, it would have to be the one following the general chapter of 1243, not the normal provincial chapter of 1244. Michaelmas was the date originally prescribed for provincial chapters (PC II 16e), but this was altered in Raymund's constitutions to allow them to be held 'post capitulum generale ubi et quando prior prouincialis cum consilio diffinitorum elegerit' (const. II 7); this does not expressly preclude the possibility of a Lenten chapter, but the evidence we have, including the evidence of the Roman province, suggests that provinces used their new freedom to celebrate their chapters earlier rather than later.¹ Nevertheless, the hypothesis of a chapter in Lent suggests an attractive solution to a puzzle posed by the acta of 1244.

The sole known manuscript containing relatively early acta from the Roman province includes a chapter held at Rome and dated to 1244, which made rather curious provision for the following chapter: 'Capitulum provinciale sequens in Pentecoste fiet Viterbii si fuerit pax, alioquin fiet Urbeveteri in Nativitate b. Virginis' (MOPH XX 4.15-16).

According to the constitutions in force since 1241, those of Raymund of Penyafort (MOPH III 18.26-28), provincial chapters were to be held *post capitulum generale*, with only one exception: the capitulars of the host province attended the general chapter and were not obliged to hold any other provincial chapter in the same year; and the general chapter was held at Pentecost (const. II 8-9). The announcement in the 1244 Roman acta must then mean that there was at the time a conditional plan to hold a general chapter at Viterbo. However, the acts of the general chapter of

¹ The known dates for provincial chapters in Provence range from 24 June to 14 Sept., except for one held on 9 Oct. (Douais, *Acta cap. prov.* VII-VIII). There is almost no information from Spain in the early period, but the provincial chapter of 1251 was fixed for Michaelmas (AD 5 [1984] 36). In so far as we know them, the dates chosen in the Roman province up to 1275 were: the feast of SS. Peter and Paul (29 June) (MOPH XX 44), the octave of SS. Peter and Paul (6 July) (MOPH XX 26), the feast of St Mary Magdalen (22 July) (MOPH XX 21), the feast of St Dominic (5 Aug.) (MOPH XX 12, 32, 37), the Nativity of Our Lady (8 Sept.) (MOPH XX 4, 31, 35), the Exaltation of the Cross (14 Sept.) (MOPH XX 25, 43), and Michaelmas (29 Sept.) (MOPH XX 1, 5, 19, 24, 28, 36, 40).

1244 state that 'proximo sequens capitulum generale in provincia Theutonie in civitate Colonia decrevimus celebrandum' (MOPH III 30.2-3); and the 1245 chapter was in fact held in Cologne (MOPH III 30; QF 1 [1907] 31).²

From 1244 onwards the acts of each general chapter unfailingly indicate where the next one was to be, and no hitch occurred until 1268: Pisa had been appointed as the place for the general chapter and the Roman province had duly scheduled its chapter to coincide with it, but in the outcome both chapters were held at Viterbo (MOPH III 140, XX 34), the venue having been changed on the pope's orders.³ There are no gaps in the record, so, on the face of it, any plan to hold a general chapter at Viterbo in 1245 or any subsequent year must have involved a proposal to rescind a decision made by a general chapter and published in its acta.

Until 1243 the constitutions required general chapters to be held alternately in Paris and Bologna (const. II 8), but a change was confirmed in 1243 permitting the Master and diffinitors to choose somewhere else instead (MOPH III 25.12-14). The acta of 1243 say nothing about the venue for the next chapter, leaving us to infer that it was supposed to take place in Bologna as usual, and this is what actually happened (MOPH III 27). We may, if we like, conjecture that the acta originally contained a statement which has not survived about the venue for the following year, but the diffinitors of 1243 would certainly not have chosen Viterbo even conditionally, since it had been under interdict since January 1238, and in the

² The acts of the general chapter are known from two seemingly independent sources: Bernard Gui's compilation of *Dominicana*, and the manuscript from S. Maria Novella, now AGOP XIV A 1, which also contains the Roman provincial chapters. As can be seen from the apparatus criticus to MOPH III 30.1-12, AGOP XIV A 1 contains more of the last part of the 1244 acta than Gui's text, but it lacks the assignation of the following chapter to Cologne, which is therefore preserved only in Gui's compilation (and is already in the early edition found in Bologna, *Bibl. Univ.* 1535 f.44^v). There is no reason to suspect that Gui inserted it because he knew that the next chapter was actually held in Cologne; if it were an interpolation, it would surely be modelled on a surviving chapter-assignation, whereas in fact a completely untypical formula is used. On the other hand, if the acta had originally included a provisional assignation of the chapter to Viterbo, this is something which would have been likely to catch the eye of a member of the Roman province, so its omission in AGOP XIV A 1 would be hard to understand. Gui's text is therefore not suspect.

³ The circumstances are explained in the *Vallicelliana* continuation: 'Generale capitulum ... assignatum quidem erat Pisis, sed propter Conradinum, qui erat excommunicatus et a Pisanis receptus, translatum fuit de mandato domini pape Clementis apud Viterbium' (AFP 4 [1934] 107). When Frederick II's grandson, Conradin, invaded Italy in the autumn of 1267 in the hope of recovering the kingdom of Sicily from Charles of Anjou, Pisa supported him, taking no notice of Clement IV's vehemently expressed disapproval, and it was accordingly one of the cities which he solemnly excommunicated on 5 April 1268; nothing daunted, it welcomed Conradin in person two days later (cf. Clement IV, Reg. 692; Ghibelline annals of Piacenza, MGH SS XVIII 526).

hands of the emperor since February 1240.⁴ So, before 1243 it would have been unconstitutional to propose holding a general chapter at Viterbo, and any idea of doing so in 1244 would, once again, have involved contravening a decision made by the diffinitors in 1243.

The announcement in the 1244 Roman acta, then, attests a conditional intention to transfer the next general chapter to Viterbo from the place appointed by the constitutions or the diffinitors. However, until 1270 the Master had no authority to make such a change;⁵ as happened in 1268, it would require the intervention of the pope.

There can be little doubt who was behind the idea of a Dominican general chapter in Viterbo. Viterbo was Cardinal Raniero Capocci's city, and on 9 Sept. 1243, at his instigation, it was forcibly regained for 'the church', and the emperor's garrison there was taken hostage. Innocent IV had not approved of this resort to arms, but on 7 Oct. he agreed to provide financial assistance for the maintenance of what was meant to be a purely defensive force (MGH *Ep. sel.* II 24). In October and November the emperor tried to recapture the city, but without success; he had to settle for a safe-passage for his beleaguered garrison (a safe-passage which was not well honoured in practice). So, thanks to Capocci, by the end of 1243 Viterbo was once again securely 'papal' and freed from ecclesiastical sanctions.⁶ On 2 Feb. 1244 he formally made over to the Dominicans the church of S.Maria in Gradi, which he had built at his own expense in Viterbo, together with some books and other items. Presumably at his request, on 4 May 1244 Innocent IV renewed the indulgence previously granted by Gregory IX to anyone visiting the church on the feast of the Annunciation, and on 10 May he confirmed all the cardinal's gifts to the Dominicans (BOP I 141-143).

The major *dramatis personae*—the pope, the cardinal and the Master—had ample opportunity to interact in the early months of 1244, if not even earlier. Capocci seems to have been in fairly regular attendance at the papal

⁴ MGH *Epistolae saeculi XIII e regestis pontificum Romanorum selectae* I 618-619 no. 719; Richard of S.Germano, *RIS*² VII ii 205; Ghibelline annals of Piacenza, MGH SS XVIII 483.

⁵ The relevant measure was inchoated in 1268, no doubt because of the relocation of that year's general chapter, and confirmed in 1270, and it only permitted the Master, 'necessitate urgente', to move the chapter to a different convent in the same province (MOPH III 142.17-21, 150-151); in 1306 this was extended to allow him to move it to a different province 'si in eadem provincia commode celebrari non valeat' (MOPH IV 15.16-22).

⁶ Cf. Richard of S.Germano, *RIS*² VII ii 217; Matthew Paris, MGH SS XXVIII 229-230; Nicholas of Calvi, *Vita Innocentii IV* 8, in A.Melloni, *Innocenzo IV*, Genoa 1990, 263-264; Huillard-Bréholles, *Historia diplomatica Friderici secundi* VI/1 140-145; J.F.Böhmer-J.Ficker-E.Winkelmann, *Regesta Imperii* V iii 7425, iv 13474-13476, 13481; N.Kamp, *DBI* XVIII 612; D.Abulafia, *Frederick II*, London 1988, 357-358.

curia in this period,⁷ and John of Wildeshausen was personally involved in the discussions which resulted in *Inter alia* (17 Jan.), and *Odore suavi* (5 Feb.) gives the impression of having been requested by John himself (BOP I 132), and, as we have seen, he annoyed the pope by removing S.Sisto's male personnel some time between 3 Feb. and 14 May.

If the '1244' Roman acta are attributed to the Lenten chapter mentioned in Masetti's 'scheda', we can reconstruct a perfectly intelligible and convincing scenario, at least in outline.

A Dominican general chapter in Viterbo would provide a fitting climax to Capocci's successful ousting of the emperor and to his substantial benefactions to the order. It would mean altering the venue of the chapter, but a change from Bologna to Viterbo would not be too difficult to organize,⁸ especially with the help of papal couriers. John was in Rome, so he could easily inform the Roman provincial that he should prepare to host the general chapter, and send word to the province of Lombardy that it should make contingency plans to re-arrange its provincial chapter; Lombardy was a relatively compact province, which could comply at fairly short notice.⁹ The 1243 general chapter had made a *laissez-faire* decision to allow the old system to continue for another year; in the special circumstances of early 1244 it would not be a significant infringement of capitular authority to move the general chapter away from Bologna.

Only the pope could actually move the general chapter, and the condition attached to the Viterbo chapter in the Roman acta, 'si fuerit pax',

⁷ Paravicini Bagliani, *Cardinali di curia ...* 419.

⁸ An anecdote which, judging from the manuscripts in which it is found, was brought to the 1260 chapter for inclusion in the *Vitas fratrum*, recalls how Peter Martyr escorted the diffinitors of Spain, Provence, France and England to a general chapter in Bologna 'tempore guerre' (it was edited by A.Dondaine from BAV Reg. 584 in AFP 23 [1953] 74, but it is also found in Düsseldorf, Univ.- und Landesbibliothek B 93, and Berlin, Staatsbibliothek, Preußischer Kulturbesitz theol. lat. quart. 170). It rather looks as if the order had developed a routine for seeing delegates safely to Bologna (and, no doubt Paris), with predictable staging-posts at which representatives from different provinces would meet along the way; we may presume that the diffinitors of England and France met in France, that they joined their colleagues from Spain and Provence somewhere in Provence, and that Vercelli was the place appointed for them to meet their Lombard escort. In such circumstances it might not be necessary to inform the more remote provinces of a change in venue, provided the new venue was not too far from the old one; the province of France or Provence, for instance, could intercept a diffinitor travelling from England to Bologna. By contrast, a shift from Cologne, where the 1245 chapter was scheduled to take place, to Viterbo (or vice versa) would involve a significant change in most diffinitors' itineraries, and, for anyone coming from the Holy Land, and perhaps Greece, it would probably entail a different port of arrival; much more advance planning would be required.

⁹ Unlike Teutonia, be it noticed, whose territory extended from the Alps to the Baltic.

suggests that he had so far only made a conditional promise to do so, and not yet taken the necessary formal steps to effect the transfer. There can be no doubt what 'si fuerit pax' refers to: peace between pope and emperor.¹⁰ Contacts between the two men had been initiated immediately after Innocent's consecration,¹¹ and, in spite of some hiccups on the way, on 3 Jan. 1244 Innocent felt able to write to the podestà and council of Bologna saying that the emperor had sued for peace, and ordering them 'quod duos prudentes uiros in proxima quadragesima transmitters procureritis qui nobiscum deliberare ualeant de predictis et que deliberata fuerint communis uestri nomine confirmare'.¹² Apparently in early March, Frederick wrote to the bishop of Worms expressing the hope that peace would soon result 'ex presenti tractatu ... inter nos et ecclesiam per comitem Tholosanum', and on 12 March he gave Petrus de Vinea and Taddeus de Suessa full authority to treat with the pope; on 28 March he empowered them to make his submission, and terms for a settlement were agreed on Maundy Thursday (31 March).¹³ However, at least in the pope's eyes, this was not yet peace, and he did not yet free Frederick from excommunication. He wanted to see deeds, not words, and, as he complained in a letter of 30 April, far from implementing the accord of 31 March, the emperor almost immediately started pulling back from it (MGH *Ep. sel.* II 46). The next stage, then, was to be a meeting between Innocent and Frederick, and this was expected to happen in June.

We do not know why the change of venue for the general chapter was made conditional—maybe John had expressed a fear that, unless there was peace between pope and emperor, Viterbo was liable to be besieged again;¹⁴

¹⁰ The condition would be unworkable if it were taken in a general sense to mean 'if there is no war going on'; when was there not a war either brewing or happening somewhere in northern or central Italy? S.Maria in Gradi was vulnerable—that was why Cardinal Capocci provided a bolt-hole for the brethren inside the city in case of 'hostiles incursum quos Viterbiensis civitas frequenter patitur' (BOP I 141-142); but if the emperor or anyone else was going to attack Viterbo, he would want to do so suddenly and would certainly not take the convenience of the Dominicans into consideration. At what point could anyone say that Viterbo was safe from attack and that the Dominican chapters would therefore be held there?

¹¹ Calvi 7, ed. cit. 262; Huillard-Bréholles, *Hist. dipl.* VI i 104-105; cf. Innocent IV, Reg. 127.

¹² L.V.Savioli, *Annali Bolognesi* III ii, Bassano 1795, 202 no.632.

¹³ Huillard-Bréholles, *Hist. dipl.* VI i 168-172; Matthew Paris, MGH SS XXVIII 239; Ghibelline annals, MGH SS XVIII 487; Böhmer-Ficker-Winkelmann, *Reg. Imp.* V iii 7452a; Abulafia, *Frederick II* 359-360.

¹⁴ I should not wish to exclude the possibility that Capocci was hoping to get the pope himself to Viterbo for the Dominican chapter—if he had had his way, the papal confirmation of his gifts to the Dominicans might have been made in Viterbo towards the end of May rather than in Rome at the beginning of the month; in that case, Innocent might have been worrying about his own safety, not just that of the Dominican capitulars.

maybe the pope wanted to give the bellicose Capocci an incentive to support peace.¹⁵ Whatever the reason, as far as the pope was concerned the condition had not been met in time for it to be possible to move a chapter whose preliminaries were due to begin on the Monday after Pentecost, i.e. 23 May.

The whole story makes admirable sense if it was the 1244 general chapter which was to be moved to Viterbo and if the '1244' Roman acta belong to a provincial chapter held early in the year—and why should it not have been held in Lent (i.e. after Ash Wednesday, 16 Feb.)?

We get a much more awkward scenario if we take the '1244' Roman acta to be those of an ordinary provincial chapter held, most probably, in late September, and certainly not earlier than late June.

A general chapter in Viterbo in 1245 could still be a celebration of Capocci's generosity, but there would be less urgency about it; if he could wait until 1245, why could he not wait until 1246? In the ordinary way, if he was not impatient to act as host to the Dominicans immediately, he would have invited the 1244 chapter to choose Viterbo as the venue for the following year; if the diffinitors declined the invitation (as those of 1244 plainly did, if it was put to them), or if it only occurred to Capocci to suggest it too late for it to be proposed in 1244, the next step would be to repeat the invitation in 1245.

If it was not until after the 1244 chapter that Capocci had the idea of inviting the Dominicans to meet in Viterbo, why should he insist that they do so in 1245, even though a different venue had already been chosen and announced? It was one thing to propose relocating the general chapter in the early months of 1244, when so much had changed since the previous May; it was quite another thing to ask for a formal and positive decision of the diffinitors to be overturned in the summer of 1244, only a month or two after it had been taken. If, as it is easier to believe, Capocci had already made his suggestion in time for it to be tabled at Bologna in May 1244, he would be making an even steeper demand, that the following general chapter be held at a place which the diffinitors had actually rejected.

We know that the pope, the cardinal and the Master were together in Rome at the beginning of 1244, but there is no reason to believe that all three met again after the general chapter, and there would in fact have been little opportunity for them to do so. Innocent left Rome on 7 June and went to Civita Castellana; on 27 June he sneaked off to Sutri, on 29 June he boarded a Genoese ship at Civitavecchia, and on 7 July he reached Genoa. Capocci was probably with him in Civita Castellana, but he certainly did not accompany him to Genoa; in fact, on 8 July the pope wrote to inform him of his safe arrival there.¹⁶ John was still in Bologna on 12 June, when he

¹⁵ Capocci seems to have maintained an unremittingly hostile attitude to Frederick and to have been opposed to any reconciliation; cf. DBI XVIII 612-613.

¹⁶ There is a convenient résumé of the pope's moves in Potthast, *Regesta* II 969-974.

promulgated the statutes of a local confraternity of St Dominic (ed. G.Meersseman, AFP 20 [1950] 65-66); someone was looking after Dominican interests in the curia in mid June, but it can scarcely have been he,¹⁷ and I am not aware of any evidence to suggest that he returned to the curia. If it was the 1245 chapter which Capocci was determined to have celebrated in Viterbo, he must have convinced the pope to order the necessary transfer before 29 June and, in all probability, without consulting John of Wildeshausen and without giving the pope a chance to confer with him either.

And what exactly did the pope tell John, on this hypothesis? John himself could only have attached the condition 'si fuerit pax' if the pope had given him the option of moving the next chapter if he saw fit to do so; but, if the choice was his, would he risk upsetting the order by defying the decision of the diffinitors in favour of a speculative possibility? Would he, for that matter, risk angering the cardinal by attaching a condition which he would not like to the chapter on which he had set his heart? It would surely have occurred to him that, in such circumstances, it would be better to tell the cardinal that he would do his best to accommodate his wishes, and then wait and see what happened; if a peace was arranged in time, he could order the relocation of the chapter then, on the authority of the pope, with less inconvenience and annoyance to everyone. But if John had the freedom to make a decision in December, say, or January, what would be the point of telling the Roman province in June or July that it *might* be hosting the next general chapter? Why not leave it until he could, if appropriate, tell it that it *would* be hosting it?

Alternatively, did the pope tell John to relocate the chapter 'si fuerit pax'? It would have been disingenuous at best. Officially Innocent left Rome on 7 June in order to hold peace talks with the emperor, who was expecting to meet him at Rieti (Huillard-Bréholles, *Hist. dipl.* VI i 221); secretly, though, he was planning to evade the emperor and flee to Lyons. Since it was only at Sutri, on 28 June, that he put pen to paper making Capocci responsible for the Patrimony of Peter in central Italy as he himself was going 'to remote parts' (MGH *Ep. sel.* II 561), he was presumably trying to maintain the fiction of his meeting with Frederick until the last possible moment; nevertheless, he had laid his plans some time before this. He sent a Franciscan kinsman of his, Frater Boiolus,¹⁸ to Genoa to ask for

¹⁷ A fresh round in the 'war of bulls' between the Dominicans and Franciscans occurred in June: each order secured a new bull, *Non solum*, on 17 June to prevent its rival purloining its recruits; on 24 June Innocent issued another bull, *Meminimus*, to shut off a loophole that might have been exploited, and he seems to have made sure this time that each order received the version which applied to its own behaviour rather than that of its rival, so we may suspect that it was issued on his own initiative (cf. MOPH XXVI 25-26). I doubt if John could have been in Bologna on 12 June and still reached Civita Castellana in time to obtain *Non solum* on 17 June.

¹⁸ Boiolus's presence at the pope's side in Lyons early in 1245 is mentioned by Adam Marsh (*Ep.* 213, ed. cit. 378): 'Frater N. de Marnio et frater Boiolus, propin-

ships to be sent to Civitavecchia as soon as possible, and, according to Nicholas of Calvi, the ships arrived in seventeen days; since they got to Civitavecchia on 27 June, Boiolus must have been despatched on 10 June. It is likely, though, that Innocent knew what he was intending to do even before he left Rome.

On 28 May he created twelve new cardinals, two of whom, Hugh of St Cher and Eudes of Châteauroux, were in France, and they met the pope and received their rings at Susa in November (Calvi 15, ed. cit. 268); Susa was the rendez-vous Innocent arranged with his cardinals before leaving Civita Castellana—some of them were to follow him to Civitavecchia and travel with him to Genoa, others were to go overland and meet him at Susa. The pope fell ill at Genoa and was delayed for three months; he was presumably expecting to reach Susa in August, and we may surmise that, when he informed Hugh and Eudes of their elevation, he told them to meet him there then.¹⁹

Even if Innocent still hoped for a reconciliation with the emperor, his flight put paid to any immediate prospect of peace. If he was prepared to move the Dominican chapter, but only 'si fuerit pax', he would surely have waited at least until he was able to restart negotiations with Frederick from his vantage-point in Lyons. If he was cajoled by Capocci into taking immediate, albeit conditional, action in June, the chances for peace would have looked rather remote by the time the Roman provincial chapter is likely to have met; in the circumstances, it would have been more appropriate to fix the venue for the next one at Orvieto 'nisi fuerit pax'.

We have not yet examined all aspects of the question; but thus far the Lenten chapter alleged by Masetti's 'scheda' enables us to fit the pieces of the jigsaw together far more smoothly and convincingly than the apparently more obvious hypothesis of a normal provincial chapter coming after the general chapter of 1244. But we still have a few more hurdles to jump.

If the Roman acta of '1244' do belong to a chapter which took place in Lent, they must be the acts of the delayed provincial chapter of 1243, which should have been held at Michaelmas in Naples (MOPH XX 1.21);²⁰

quus domini papae, stant cum ipso satis ei familiares'. When the pope returned to Italy in 1251, it was Boiolus again whom he sent ahead of him into Ferrara to ask the Franciscans 'quod occurrerent sibi et quod semper starent iuxta eum', as Salimbene, who was present at the time, recalls (*Cronica*, ed. cit. 674). Nicholas of Calvi, be it noted, whom Salimbene calls 'amicus et socius meus' (ibid.), had been Innocent's confessor even before he became pope, and he travelled with him to Lyons; he later became bishop of Assisi (cf. Paravicini Bagliani, *Cardinali di curia* 69; W.R.Thomson, *Friars in the cathedral*, Toronto 1975, 101-105).

¹⁹ Calvi 12-13, ed. cit. 265-268; *Annales Ianuenses*, MGH SS XVIII 212-214; Ghibellinè annals, MGH SS XVIII 488; Matthew Paris, MGH SS XXVIII 242-243.

²⁰ I had already suggested, for different reasons, that the acta dated '1243' must belong to the provincial chapter of 1242 (AFP 70 [2000] 100-101); if the '1244' acta are really those of the 1243 chapter, it is easy to see how the mistake arose.

we must account for its postponement and relocation. If it was the 1244 general chapter which was provisionally relocated to Viterbo, then it was the normal 1244 provincial chapter which the Roman 'acta' conditionally assigned there to coincide with it; in this case, we must explain why there are apparently no acta for this second chapter of 1244.

It is not difficult to suggest a reason for the postponement and relocation of the 1243 provincial chapter. Though it is unclear to what extent the Roman provincial generally acted as intermediary between the order and the Holy See,²¹ the fact that some cardinals considered Humbert *papabilis* suggests that he personally must have had fairly regular dealings with the curia; it would be natural that he should seek to maintain them now that the church at last had a pope again.²² If the provincial was occupied at the curia, it would be reasonable to abandon the idea of holding the provincial chapter in September; if he was still attending to the order's business when the curia moved to Rome in mid October, it is understandable that he might have resummoned the chapter to meet in Rome later in the year or even early in 1244.

There is also a fairly obvious answer to the question why we have no acta for the ordinary Roman chapter of 1244: the chapter was never held.²³

²¹ No early evidence is cited, nor have I found any early evidence, to support the claim that is sometimes made, that the Roman provincial habitually acted as the order's procurator at the papal curia (cf. I. Taurisano, *Hierarchia Ordinis Praedicatorum*, Rome 1916, 81). The constitutions simply refer to 'fratres qui sunt ibi' (PC II X 15, const. II 13), but one can imagine that it could be difficult for someone who was an official of the curia, like the Dominican vice-chancellor, James Boncambio, to double up as representative of his own order, and that, especially when the curia was resident in a place which did not have a Dominican convent, such as Anagni, the Roman provincial was often de facto responsible for conducting the order's business with the pope when the Master himself was not there.

²² Innocent's election on 25 June was followed by a flurry of papal letters concerning the order, beginning with one issued on 9 July, confirming the gift of a church in Cosenza (in the Roman province) and addressed to 'the Master and brethren' (BOP I 117-118); if John and Humbert had already reached Anagni they had made remarkably good time from Paris, where the general chapter of provincials (cf. AFP 70 [2000] 101) had opened at the beginning of June (Whitsun fell on 31 May).

²³ It is, of course, conceivable that a whole chapter's worth of acta has been lost, in which case the dating of the chapters after '1244' is called into question. According to the '1244' acta, the next chapter was to be held in Orvieto, if the general chapter at Viterbo fell through, and the acta for '1245' are those of a chapter held in Orvieto, which would be correct if the arrangements made in 1244 were held over for a year; in so far as succeeding acta indicate the location of the following chapter, which they do only patchily, the sequence continues without a flaw. I see no way of confirming the date of the '1245' acta, but those of '1246' show that there was a functioning provincial at the time (MOPH XX 6.23), and Constantine's preface (Const. 2) attests the presence of a provincial in 1246; since the provincial was absolved in 1247 (MOPH III 40.19), there should not have been a functioning provin-

Although it had already had a chapter in Lent, the Roman province could be expected to gather again at Pentecost for a major celebration in Viterbo; but it might have seemed an unprofitable nuisance to reassemble capitulars for a routine chapter at Orvieto in September. In such circumstances, the Master, who disapproved of *discursus inutilis*,²⁴ could probably have been persuaded to dispense the province from its normal chapter, if the only serious item on the agenda was the election of a diffinitor and his socius for the next general chapter (the two men elected for that of 1244 could have been allowed to swap rôles and serve again in 1245, for instance).

On this theory, the earliest surviving acts of Roman provincial chapters were those of 1242, 1243 (actually held early in 1244) and 1245, and, because of the peculiar circumstances of 1243-1244, this was not a defective series; it is not in the least surprising that it should have come to be understood as beginning in 1243 rather than 1242, to give it a more normal appearance.

cial at the ensuing chapter if the need for confirmation was taken seriously and if no provision was made for immediate confirmation. The acta of '1247' indicate that the diffinitor for the following general chapter was 'fr. Petrus Theatinus', and he can surely be identified with the diffinitor whom Salimbene met at Hyères in 1248, who was allegedly persuaded of the merits of Joachimism after a long argument with Hugh of Digne. Salimbene calls him 'fr. Petrus de Apulia ... Neapolitanus lector et litteratus homo et magnus prolocutor', and Chieti is not in Apulia; but Salimbene wrote his *Cronica* some thirty years later and may not have remembered exactly where Peter came from (Salimbene, ed. cit. 361-383; for the date of composition, see *ibid.* XII). If a whole chapter is missing, then, it must fall between '1244' and 1247, and the most likely one is surely the second chapter of 1244, and the most likely reason for the absence of its acta is that there never were any.

²⁴ As he said in his encyclical from the 1244 chapter, admittedly in a rather different context, 'Cella placeat qua venitur ad celum; procul sit a vobis discursus inutilis nec discat aliquis movere indebite pedes suos' (MOPH V 9). I have no idea why Reichert dated this encyclical 'Parisiis 1246'; it comes immediately after the acts of the 1244 chapter in the only manuscript I have been able to check, Bologna, Bibl. Univ. 1535 f.44', and it is dated 1244 in E. Martène-U. Durand, *Thesaurus novus anecdotorum* IV, Paris 1717, 1687, and Reichert himself signals an encyclical attached to the 1244 chapter (MOPH III 30), but none for 1246.

APPENDIX IV

*The Vitae of Bl. Ambrogio Sansedoni*¹

Two lives of Bl. Ambrogio Sansedoni have come down to us. There is a *vita longa* by 'Recupero da Petramala, Aldobrandino de' Paparoni, Odoardo de' Bisdomini, Gisberto Alessandrino', which was transcribed by Taegio in his *De insigniis* (AGOP XIV 54 ff.207^r-219^v); it is printed, from Taegio's original manuscript (now lost), in *Acta Sanctorum* March III, Paris 1865, 181-200,² and an Italian translation (which I have not seen) was published in 1509, based on an 'anticho exemplare e per la cui anticha scriptura si può indicare essere il vero originali (*sic*) deli sopradecti compilatori' (Torriti, 'L'iconografia ...' 214). There is also a *vita brevis* by Recuperus, with a prefatory letter by Ildebrandinus de Paparonis, of which two manuscripts are known: Siena, Bibl. Com. T.IV.6 (from which the text is printed in *Acta Sanctorum* March III, Paris 1865, 209-239), and Bologna, conv. OP, Cividale A (from which part of the text is printed in ASOP 21 [1933] 158-172, 224-235).³

Both *Vitae* say that Ambrogio died in '1286', but there is no doubt that, by our reckoning, this means 1287. A cult sprang up immediately and official records were kept of miracles worked by 'Saint Ambrose', several of which refer to his burial on what we would call 21 March 1287 (since the indiction is given as well, the year is unambiguous);⁴ as the *vita brevis* indicates, this coincided with the Friday before Passion Sunday (which is true of 1287). The *vita brevis* also indicates that he was buried the day after he died;

¹ I am merely following convention in calling Ambrogio 'Sansedoni', and do not intend to express an opinion either way on whether he really belonged to the Sansedoni family. P.Torriti, 'L'iconografia del beato Ambrogio da Siena', *Bullettino Senese di Storia Patria* 100 (1995 for 1993) 219-226, presents the arguments for and against.

² In this appendix, I take the text essentially from the *Acta Sanctorum*, but I have occasionally corrected it from AGOP XIV 54; since only small points of language are involved, I have not deemed it necessary to signal such corrections in detail.

³ I checked the Bologna text many years ago, before the manuscript began the curious journey which eventually led it to the Vatican library and then back to Bologna again.

⁴ G.Sansedoni, *Vita del beato Ambrosio Sansedoni*, Rome 1611, 204, 206, 207, 223, where the deeds are edited from the originals in the Dominican convent in Siena.

he therefore died, as the *vita longa* says, on 20 March 1287. 'Saint Ambrose' was speedily adopted by the city: on 19 July 1287, the city council voted to help pay for the construction of a chapel in his honour in the Dominican church, and in March 1288 a payment was made for the illumination of a 'legenda beati Ambrosii Senensis' (Torriti, art. cit. 213, 239-241).

The *vita longa* has been a huge success with historians; it is full of incident, arranged in chronological order, and it provides the sort of information which editors of dictionaries appreciate (exact dates for Ambrogio's birth, entry into the order, and death). For Torriti it is 'la biografia di base' (art. cit. 213), and Taurisano commented that Ambrogio 'ebbe la ventura di trovare quattro discepoli, i quali dopo la sua morte ne raccolsero le gesta ed i miracoli, scrivendo una *legenda* così piena di ricordi e di notizie quale pochi santi ebbero nel Medio Evo'.⁵ The *vita brevis*, being arranged as a *tractatus de virtutibus* and containing less biographical information, has generally been accorded less attention. Nevertheless, the *vita longa* poses considerable difficulties, not the least of which is the fact that, though the two authors listed first in the vernacular version, Recuperus and Ildebrandinus, are the same as the two people responsible for the *vita brevis*, the two *vitae* tell significantly different tales.

Rather than glossing over the difficulties, as is generally done, we need to take a cold, and perhaps cruel, look at the *vita longa*, and then see how its credibility compares with that of the *vita brevis*.

a. *The vita longa*

The *vita longa* provides Ambrogio's childhood with everything that a saint's life needs, not just a date of birth (16 April 1220).

There are the necessary miracles. Ambrogio was born deformed 'ut eius futura sanctitas miraculosa mutatione apertius monstraretur'. His nurse used to take him to the Dominican church (St Mary Magdalen's at the time), where there was a tabernacle full of precious relics; whenever she moved away from it, the baby cried. One day, by this same tabernacle, the infant called out 'Jesus' three times, quite clearly, and was then perfectly cured of all deformity. This attracted so much attention that people started coming to Siena specially to see the boy. Even before he could read, he loved handling books; when he was playing with the other children, he used to build 'altars' with crosses on them, and stand in front of them as if praying.

There is the statutory prophecy: because he was so deformed, his nurse used to cover his face when other people were looking. One day, though, a mysterious pilgrim (*peregrinus*) told her not to do so, because the baby 'civitatis huius lumen erit et decus'.

⁵ I. Taurisano, in *S. Tommaso d'Aquino OP, Miscellanea storico-artistica*, Rome 1924, 129.

There is the precocious display of charity: as soon as he was capable of leaving the house, he used to collect the poor and bring them home to receive alms.

Young Ambrogio soon decided that he wanted to remain a virgin, and in this connection he had his first encounter with the devil. Avoiding a family wedding, he set off to visit some nearby Cistercians, at St Michael's. On the way, he met a disguised demon who tried to persuade him that it would be more humble for him to fit in with society, attend weddings and, in due course, get married himself. Ambrogio told the Cistercians all about this, and 'haec omnia per praefatos monachos scripto demandata vidimus et legimus'.

Later on, when he was on his way to visit the Augustinian Hermits, he rebuffed another demon. He told the Augustinians about it, and they 'haec omnia scripto mandare curarunt, quae omnia vidimus legimusque'.

It was, of course, perfectly natural that the boy's feats should be recorded so earnestly, since he already enjoyed considerable fame.

On his seventeenth birthday (16 April 1237) he received the Dominican habit, to the brethren's great delight; contrary to the order's practice, they were going to receive him during mass, at the high altar, but, in deference to his humility, they refrained. Then, 'post multos dies' (which should surely be 'post non multos dies'),⁶ he asked to be sent to Paris to study with St Albert (at least three years before Albert himself went to Paris as a student).⁷ He was duly sent there with two companions (whose names seem to be otherwise unattested), and, of course, he had another demonic encounter on the way. When he and his companions reached Paris, 'summa cum laetitia a patribus illis B. Ambrosius susceptus est, iam enim fama tanti viri ad eos pervenerat' (*tantus vir* being 17 years old at the time).

In Paris, Ambrogio set himself to study 'in logicalibus et philosophicis' for an unspecified period; 'in quibus scientiis cum aliquo tempore operam dedisset, ad divinae scripturae studium se transtulit'. When he had studied theology for two years, he was forced to accept the office of preaching (well below the minimum age required by the constitutions, PC II 33 or const. II 12). He was such a spectacular success that, after an unspecified length of time, in order to shun vain glory, he begged to be let off preaching and allowed to live quietly in the convent, teaching nobody but the brethren. His teaching was so good, though, that it was decided he must teach publicly; so, for three years, he taught in Paris to such acclaim that the *doctores* used to attend his classes and consult him on tricky points

⁶ AGOP XIV 54 has the same Latin text. G.Sansedoni, who apparently used the vernacular version of the *vita longa*, regularizes the situation by making him wait until his profession, but says that he went to Paris straight after that (*Vita* 31).

⁷ 1240 is the earliest possible date for Albert's arrival in Paris, 1243 the latest; cf. Tugwell, *Albert and Thomas* 8-10.

of exegesis. Then, to spread the benefit of his teaching more widely, he was sent to Cologne (where the Dominicans did not open their studium generale until 1248);⁸ he taught there 'annis pluribus'.

He was then recalled to Italy by Pope Gregory (the sequel shows that this means Gregory IX), who sent him as legate 'in partibus Europae', including, evidently, Germany, since he re-appears in Cologne, where he was called upon by the leaders of the Empire to reconcile feuding German princes. He was then ordered by the pope to organize a campaign against heresy in Germany and eastern Europe.

Siena, meanwhile, was languishing under an interdict, which had been imposed because of the city's support for Frederick II. Prince after prince had gone to the pope asking him to lift the interdict, but to no avail. So the city decided to send for Ambrogio 'in remotis partibus constitutum'. He was brought back to Siena, reconciled the feuding parties there, and then set off for the papal court, where he was well received—not surprisingly, since 'ex beati viri corpore lux immensa prodire tunc temporis visa est'. He secured the lifting of the interdict without difficulty. 'Haec quae diximus ex scriptis domini cardinalis de Columna qui praesens fuerat et fratris Alberti socii sui quando ad pontificem ingressus est habuimus'.

The Sienese were so delighted to be freed from the interdict that they instituted a palio to commemorate the day on which Ambrogio entered the city; it was later transferred to his day of death. As it happens, we know from the city statutes that the palio was instituted in 1306 (Torriti, art. cit. 241), but never mind that.

The pope then sent Ambrogio 'ad Europae partes legatum' to preach the crusade, having failed to persuade him to become a bishop as a step towards higher things. On the way, he met another demon, who urged him to accept ecclesiastical office, commenting on the quarrels which usually accompanied the pursuit of such office, and, in particular, quarrels between ecclesiastical and civil leaders 'propter quod apostolica sedes diu vacare dignoscitur'; if Ambrogio was willing, he could soon become pope.

This is the first sign that Gregory IX has died; and the long interregnum in question is certainly that which preceded the election of Innocent IV, since the next pope we encounter in the story is precisely Innocent IV.

Gregory IX died on 21 August 1241. By then, and since entering the order on 16 April 1237, Ambrogio had gone to Paris, studied philosophy there, studied theology for two years, been a successful preacher, been a private teacher, been a public teacher in Paris for three years, taught in Cologne for several years, returned to Italy, been made a papal legate 'in partibus Europae', returned to Germany in that capacity, reconciled feuding German princes, led a campaign against heresy, been brought back to Siena, reconciled feuding parties there, got the interdict lifted, and been sent off on a new legation to preach the crusade. On a conservative estimate, he

⁸ Cf. Tugwell, *Albert and Thomas* 11.

must have managed to fit in at least eight years between 16 April 1237 and 21 August 1241. And that is not the only marvel: at the time when he was teaching in Paris, 'illustrabant tunc temporis catholicam ecclesiam summi et divini philosophi et theologi, Albertus Teutonicus ... et D.Thomas Aquinas'; but, when Gregory IX died, it is not certain that Albert had even arrived in Paris as a student, and Thomas was a teenager who had not yet become a Dominican.⁹

Having arrived in Paris, in fulfilment of the task given him by Gregory IX, Ambrogio was required by the brethren to tell them all about his encounter with the demon; 'quae omnia scripto mandata fuere, quod et nos vidimus'. He then engaged in some very successful recruiting for the crusade. After that, we are not told what happened; the author of the *vita* says he is missing out a great deal 'brevitatis causa'.

The next thing we learn is that Ambrogio once again refused to become a bishop, so Innocent IV ordered him to teach theology in the city of Rome instead, which he did for three years with resounding himself; during the vacations, he preached to packed crowds of prelates, cardinals and others. Then, once again fleeing fame, he begged to be released. He persuaded his superiors in the order to let him have a place of 'quiet and contemplation' in some monastery, and the pope allowed him to leave Rome; he spent the next fifteen years 'in variis Italiae conventibus contemplationi et orationi vacans'.

His appointment as lecturer in theology presumably means that he was to teach either in the 'studium curiae Romanae', which was first established by Innocent IV and was attached to the curia, wherever it was situated, or in the Dominican 'studium curiae' (whose existence is not attested as early as this).¹⁰ The only problem is that, during the pontificate of Innocent IV (1243-1254), the curia was never resident in Rome for nearly as long as three years.¹¹

After his 15-year retreat, Ambrogio emerges into the limelight again in 1267, when Frederick II's grandson, Conradin, made use of his services to obtain Clement IV's pardon. Conradin, we are told, had been called in by the Ghibellines against the Guelphs, and 'in ipsius belli agitationibus

⁹ Thomas probably joined the order in 1242 or 1243; cf. Tugwell, *Albert and Thomas* 204.

¹⁰ Cf. R.Creytens, AFP 12 (1942) 16-22, 49-55.

¹¹ From papal letters we can gauge where the curia was: Anagni, where Innocent IV was elected, until mid October 1243; Rome from Oct. 1243 to early June 1244; then Innocent, with most of his cardinals, set off for Lyons, where he remained until mid April 1251; on his return, he was in Perugia from early November 1251 until late April 1253, then in Assisi until October; he was in Rome from mid October 1253 until late April 1254; in Assisi until the end of May, then in Anagni until October; then he went to Naples, where he died on 7 Dec. 1254.

contra Clementem IV pontificem bellum gessit'. This, not unnaturally, annoyed the pope, who responded 'with censures and arms', so Conradin 'ad pontificis misericordiam venire coactus est'. To this end, he sent Ambrogio to Clement IV to plead on his behalf, which Ambrogio did to such good effect that Clement, 'ob beati viri facundiam compunctus', immediately forgave Conradin, 'sicque Conradinus ab omni censura et pontificis indignatione absolutus fuit'. Our author seems to have a very hazy idea of what really happened. Being apparently unaware that Conradin was making war on Charles of Anjou, he fits the story into a conventional tale of feuds between Guelphs and Ghibellines and between pope and emperor, and he supplies it with a quite unwarranted happy ending—in 1268 (not 1267) Conradin was unexpectedly defeated by Charles at Tagliacozzo, and shortly afterwards he was captured, tried and executed.¹²

In 1276, when Innocent V became pope (a Dominican, as the *vita longa* points out), 'cum in Italia maxima vigerent bella, videlicet inter Pisanos et Florentinos, Genuenses et Venetos', the pope sent out legates 'hinc inde', including Ambrogio, who was despatched to Florence to persuade the Florentines to make peace, with instructions to go on to Pisa thereafter. The Florentines received him well, since they hoped that his intercession would get the interdict lifted, under which they had been placed by Gregory X; 'et ut dictos populos ad pontificis voluntatem facilius inclinare posset, interdicti praefati relaxationem a praefato pontifice obtinuit'. He then preached so successfully in Florence that he convinced both sides to release their prisoners (it is not clear how he managed to achieve this by preaching in Florence), and a peace was soon made by his mediation. He then went to join the other legates in trying to make peace between Genoa and Venice; 'quod utique effecisset, nisi repentina mors pontificis subsequuta fuisset'.

This fable was evidently put together by someone who knew that Genoa and Venice were at war after Innocent's pontificate, but was unaware that they were not at war during it; in fact, there was a truce between them, renewed every five years, from 1270 to 1290.¹³ What Innocent did do was secure a peace between Genoa and Charles of Anjou; the initiative seems to have been his own, and the emissary he sent to Genoa was indeed a Dominican lector from Siena—Hugo de Ubertinis (BOP I 541). A treaty was agreed on 18 June 1276.¹⁴

The *vita longa* is nearer the mark with regard to Florence and Pisa. Innocent did broker a peace between Pisa and the Tuscan League. However, events did not unfold as the *vita* would have us believe, and the pope's

¹² For a brief outline of these events, cf. H.M.Schaller, *Neue deutsche Biographie* XII 558-559; Abulafia, *Frederick II* 420-422.

¹³ Cf. R. Cessi, *Storia della Repubblica di Venezia* I, Milan 1944, 255.

¹⁴ Cf. M.H. Laurent, *Le bienheureux Innocent V*, Vatican City 1947, 287-307, esp. 296-297, 299.

envoy to the region was a seasoned Franciscan diplomat, Velásquez, bishop of Idaña. The interdict imposed on the authority of Gregory X was not lifted until after the peace-treaty was agreed, and the release of prisoners was one of the terms of this treaty. The treaty was signed on 13 June, only a few days after the final skirmish between the two sides.¹⁵

Ambrogio died on 20 March 1287. The *vita longa* was allegedly compiled on the orders of Honorius IV, who himself died on 3 April 1287.

I have thought it necessary to give a précis of the whole *vita* since, in order to protect their beloved source, historians have been almost as imaginative as the original author in re-arranging it and especially in altering its chronology. The story is, on its own terms, quite clear and quite coherent, but it does suffer from the slight disadvantage of hardly ever corresponding to anything that is known to have happened in the real world. It is a work of art and must be appreciated as such.

b. *A comparison of the two vitae.*

We may begin our comparison of the two *vitae* with two episodes on which we have excellent external evidence.

According to the *vita brevis*, Ambrogio was twice sent by his city to ask for the pope's pardon. The first time, the city had offended the pope by supporting Conradin and had incurred 'graves sententias'; Ambrogio successfully pleaded with Clement IV on its behalf. Then, 'Senensibus relabentibus', he obtained the same favour from Pope Gregory.

The facts of the matter are documented (Torriti, art. cit. 230-234): in 1260 the Sienese swore allegiance to Manfred and were excommunicated by Alexander IV, and again by Urban IV in 1262. On 15 April 1266, after Manfred's death, the city council met to decide what to do next; the bishop and Ambrogio recommended that the city should make its submission to the pope and ask to be freed from excommunication and interdict, and this was done. The pope sent a canon of Toulouse to Siena as his representative, and he received the city's submission and pronounced its absolution; he got all the relevant documents translated by Ambrogio, prior of the local Dominicans.¹⁶ However, in 1267, encouraged by Conradin's arrival in Italy, the Ghibellines resumed power in Siena, and the city was excommunicated again on 18 Nov. After the defeat of Conradin, things did not go well for

¹⁵ Cf. Laurent, op. cit. 308-326, esp. 320, 323-325.

¹⁶ Clement IV must at least have been informed of the rôle of Ambrogio, even if Ambrogio had not been Siena's ambassador to him. While the canon of Toulouse was in Siena, he received a deputation from San Gimignano, which was also seeking absolution from the pope; since San Gimignano failed to provide *fideiussores* at once, the city was not absolved, but, on 3 Feb. 1267, the pope ordered Ambrogio to receive its *fideiussores* and grant absolution and lift the interdict (BOP I 481).

the Ghibellines, and, on 12 May 1273, the city council of Siena was once again persuaded by Ambrogio to seek reconciliation with the church; to this end, he and Ildebrandinus de Paparonibus were sent to the pope (now Gregory X).

The *vita brevis* is not entirely accurate, then, but it is not far off the mark. The documents neither prove nor disprove its contention that Ambrogio was the city's ambassador to Clement IV, but it is wrong to make support for Conradin the cause of the first excommunication rather than the second.

There is clearly some kind of relationship between the account in the *vita brevis* and the vastly more inaccurate story told by the *vita longa*, and there can be little doubt that the former is the source of the latter. A careless reading of the *vita brevis* might suggest that it was Conradin rather than the city who had been reduced to begging the pope's pardon:

Cum saepe fata eius civitas Romanam offendisset ecclesiam Conradinum, olim nepotem Federici imperatoris, contra ipsam ecclesiam inducendo eique adhaerendo donec vires suppeterent, et ex hoc graves sententias non immerito incurrisset, deficientibus praefato Conradino viribus resistendi confugere proposuit ad almae ecclesiae pietatem ad cuius misericordiam implorandam frater Ambrosius est electus.

The statement in the *vita longa* that Conradin was 'a Gibellinis adversus Guelfos vocatus' might have been inspired by 'inducendo' in the *vita brevis*, but even a misreading of the latter could not exonerate Siena of all culpability.

The relationship between the two texts becomes clear in what follows. In its account of what happened when Ambrogio went to plead for Conradin, the *vita longa* combines what the *vita brevis* says about both the embassies he undertook on behalf of Siena:¹⁷

Vita brevis

Accessit ergo ad pium patrem papam Clementem quartum et proferens personam filii prodigi proposuit, Pater peccavi in coelum et coram te. Et qui prius cogitaverat excusare, subito mutavit propositum et praeconceptum sermonem ut solam misericordiam allegaret. Cum autem summus pontifex prius mul-

Vita longa

Perveniens itaque ad pontificem vir sanctus, cum plura in excusatione ipsius Conradini proponere disposuisset, mutato consilio exemplum solummodo filii prodigi in medium adduxit dicens, Conradinus sanctitati tuae mandat dicens, Pater peccavi in coelum et coram te, et de peccato suo remissionem et absolu-

¹⁷ The sentence in angular brackets at the end of the quotation from the *Vita brevis* is found only in the Bologna manuscript, but even without it it is clear that the *Vita longa* has combined the two episodes.

tum esset attae diatus et ei brevitate indixerit, dum loqui coepit tanta eius et circumstantium animi admiratione suspensi sunt, tanta verborum eius dulcoratione allecti, tanta ad eos quorum personam gerebat misericordia inclinati, ut qui brevem petierant sermonem prolixum patientissime auscultarent, et hic plene quae petierat impetraret.

Idem autem, Senensibus relabentibus, a papa Gregorio postmodum impetravit, quia loquebatur in eo de quo dictum est Numquam sic locutus est homo, et illum demonstravit pontificem audientem repraesentare qui dixit, Misericordiam volo et non sacrificium. <Fertur autem papa dixisse; Sed in eo loquitur alius spiritus, scilicet Dei Patris.>

tionem per misericordiam quae in te est humiliter petit. Pontifex ex ardenti furore quem Deus in cor eius miserat ob beati viri facundiam compunctus absque alia temporis interpositione respondit, Ambrosi tibi dico quod misericordiam volo et non sacrificium. Ad adstantes autem se vertens dixit, Non ipse locutus est sed spiritus patris omnipotentis. Remansit autem pontifex et qui cum eo erant stupens ac suspensus ex dulcedine quam Deus in corde eorum ex Ambrosii dulcedine infuderat.

The *vita longa* has thus constructed an unhistorical account of Ambrogio intervening on behalf of Conradin out of a more or less historical account of his two interventions on behalf of Siena. However, Ambrogio's rôle as patron of Siena was inseparable from his success in reconciling the city with the pope;¹⁸ so the *vita longa* shifts his embassy on behalf of the city from Gregory X to Gregory IX. This is not just a rewriting of the life of Ambrogio, it is a rewriting of Siennese history. According to the *vita longa*, one of the topics on which Ambrogio insisted during his time as professor of theology in Rome was the harm done by the feuds between ecclesiastical and secular princes and the long vacancy in the papacy which resulted; it is unthinkable that his own city should have been on the wrong side in the 1240s, especially after Frederick's solemn deposition by the council of Lyons in 1245. So, Siena made its mistake and supported Frederick for a time; but it was safely back in the papal fold before Gregory IX died.

This reinvention of Siennese history is also apparent in what the *vita longa* says about the palio held in Ambrogio's honour. As we know, it was actually instituted in 1306, and it seems to be the culmination of a process

¹⁸ An anonymous Siennese chronicle, which originally went up to 1361, contains a long 'obituary' of Ambrogio, recalling how he got the city released from excommunication, though the author obviously had no idea of the real reason for the excommunication—he supposes it to have been caused by the murder of the local bishop by the Guelphs (RIS² XV vi I 70-72).

of reinterpretation of a festival which was originally held on St George's day in commemoration of the Ghibelline victory at Montaperti in 1260, in which the Siense, with the help of German cavalry supplied by Manfred, defeated the Guelphs under the leadership of Florence. As the Montauri chronicle reports, the feast was for a long time held before the church of St George, then it was moved to the *campo*. Much later, when the Siense were on good terms with Florence, 'levoro via la detta festa del dì di Santo Giorgio per onestà che tale festa non si facesse a dispregio de' Fiorentini; ma poi e' Sanesi, non volendo lassare tanta comemorazione di Santo Giorgio per cagione della grande vettoria auta a Montaperto, seguirono la detta festa a la chiesa di Santo Domenico in Canporegio sotto el nome del beato Anbrugio de' Sansedoni de' nobili di Siena, che libera Siena da certa scomunica' (RIS² XV vi I 222).¹⁹ The *vita longa* ignores Montaperti entirely, and makes the palio a commemoration of the lifting of the excommunication by Gregory IX. Siena's more recent Ghibelline (anti-papal) exploits can be quietly forgotten.

The *vita longa* is not a biography of an historical figure, it is intended to provide Siena with a myth of its leading modern patron saint, and in so doing portray an ideal for the city itself; Ambrogio is accordingly presented as a devoted and active servant of the papacy, involved in all the right causes—the crusade against the infidel, the campaign against heresy, the pacification of feuding princes, the Empire's submission to the papacy. At the same time, he is made impressive enough to hold his own against rival saints put up by the other mendicants, not to mention older patrons such as St Ansanus.²⁰

There are other elements too in the *vita longa* which can be recognized as embellishments of the *vita brevis*.

The *vita brevis* reports that Ambrogio was born deformed and without the free use of his limbs, that a *peregrinus* prophesied he would be 'the light of this city', that his body was miraculously healed in the church of St Mary Magdalen 'ubi fratres praedicatores tunc morabantur', indeed at the relics of St Mary Magdalen, that he played at building altars, and that he displayed an early devotion to virginity. This is the foundation on which the *vita longa* erected its vastly more miraculous tale of Ambrogio's early years.

The *vita brevis* says that Ambrogio, 'post sufficientem auditionem artium', was sent to study with Albert in Germany.²¹ This is the nucleus of

¹⁹ On all this, see D. Webb, *Patrons and defenders; the saints in the Italian city states*, London 1996, 251-268, esp. 266-267.

²⁰ On the competing claims of Siena's various saints, especially the new mendicant saints, cf. Webb, *Patrons and defenders* 276-291.

²¹ The text printed in the *Acta Sanctorum* says that he was sent 'ad fratrem Albertum Teutonicum' rather than 'in Teutonium', which is the reading of the Bologna

the *vita longa's* claim that he studied with Albert in Paris, taught in Paris, and then taught in Cologne.

The *vita brevis* reports that on one occasion the Master of the Order wanted Ambrogio to be *doctor* in the Roman curia (i.e. lector in the Dominican *studium curiae*), but Ambrogio refused. This is surely the inspiration of the *vita longa's* story that Innocent IV made him teach theology in the city of Rome.

Medieval saints' lives become more miraculous with the passage of time, not less; there can surely be no doubt that the sober *vita brevis* is also the *vita prior*, and that it, or something like it, served as the basis for the vastly more wondrous tale told in the *vita longa*. The Bollandists suggested that parts of the *vita longa*, as preserved by Taegio, might be later interpolations, but it would be a misconception of the nature of this *vita* to try and prune it so that it could be retained as a serious contender to be the life for whose illustrations the city council paid in 1288.

However, the *vita brevis*, as it stands, is also out of the running, since it refers to the ever-growing number of pilgrims coming to Ambrogio's feast year by year ('ut ... singulis annis magis ac magis fiat concursus virorum et mulierum'), which is a comment that could not have been made until some years had elapsed after his death. There is no reason, though, why the bulk of the *vita brevis* should not have existed by 1288; it would have been easy and natural to augment the section on posthumous miracles later on.

In a sense, the *vita longa* acknowledges its debt to the *vita brevis* by appropriating its two authors, Recuperus and Ildebrandinus;²² it was also constrained by the essential contours of Ambrogio's life as furnished by the *vita brevis*. The *vita brevis* states that for about thirty years Ambrogio presided over a school of theology which, after the death of St Thomas, was

manuscript and is supported by the Siena 'necrology' composed in 1403, whose entry on Ambrogio is based on the *vita brevis* (M.H. Laurent, ed., *I necrologi di San Domenico in Camporegio*, Fontes Vitae S. Catharinae Senensis XX, Siena 1937, 3).

²² This is one of several devices used to give the *vita longa* an appearance of authenticity. An obviously suspect ploy is the repeated reference to people writing down Ambrogio's tussles with demons, even when he was still a child, and the highly improbable claim that Cardinal Colonna wrote an account of his embassy to Gregory IX; we may suspect that Colonna was chosen because he was confused with the famous Dominican provincial and bishop of the same name. There are, no doubt, many Dominicans of the Roman province of whom we know nothing; nevertheless, it is curious that, of the four 'authors' of the *vita longa*, the only two whose names mean anything to us are the two who were also responsible for the *vita brevis*. The other two are completely unknown, as are the friars who accompanied Ambrogio to Paris, and the socius with whom he went to Gregory IX; the invention of names is a familiar ploy in historical fiction. We may also, surely, disbelieve the claim that, in the thirteen days between Ambrogio's death and his own, Honorius IV ordered a *vita* of Ambrogio to be written; it is another way of claiming authority for the *vita longa*.

the most renowned in the Roman province. This meant that his more wide-ranging career had to be fitted into the earlier part of his life; and if he was to intercede for Siena with Pope Gregory (understood as the ninth rather than the tenth of that name), he had to be active well before the middle of the century. However, there was another constraint which prevented him starting too soon: when he was but a baby, Ambrogio was cured in the church of St Mary Magdalen while the Dominicans were living there. The church was given to the order on 16 Feb. 1221 (MOPH XXV no. 146), and it would have been difficult to persuade anyone that the Dominicans had been there much earlier, even if the precise date was not remembered; that meant that Ambrogio's birth could scarcely be pushed further back than 1220.

This must raise doubts about the value of the date given in the *vita longa* for Ambrogio's birth (1220) and his entry into the order exactly 17 years later. The *vita brevis* gives no such dates; it merely states that Ambrogio entered the order 'infra annos pubertatis ... in ipsis annis teneris'. After joining the order Ambrogio studied the arts for a time; then, 'post sufficientem auditionem artium', he was sent to study with Albert in Germany. Albert returned to Cologne to head the new studium generale in 1248, and he remained there until he was elected provincial in 1254; the Siena 'necrology' claims that Thomas was Ambrogio's fellow student in Cologne (ed. cit. 3), which would mean, if it is correct, that Ambrogio must have been there between 1248 and 1251, since Thomas was sent to Paris in the latter year (cf. Tugwell, *Albert and Thomas* 11, 211). Ambrogio would then have been a student of arts in the mid 1240s.²³

This is compatible with another chronological pointer in the *vita brevis*. A 'reverend matron' claimed to have had a vision of an unknown friar whispering in Ambrogio's ear while he was preaching, and the brethren took this to be St Peter Martyr, 'cui ipse [Ambrosius] in carne familiaris extiterat et eius vitam et sanctitatem noverat, propter quod et de eo ferventissime praedicabat'. There are gaps in our knowledge of the life of Peter Martyr, but he is generally associated with northern Italy; he was, however, in Rome and Florence and, apparently, preached 'per non modicam partem Tuscie', in 1244-1245. We do not know when he came South from Lombardy, but he was back there, as prior of Asti, by 1248.²⁴ Ambrogio could have met and been impressed by him in the mid 1240s, then.

Our immediate aim in examining Ambrogio's *vitae* was to assess the

²³ For Dominicans studying in the arts in this period, cf. the 1241 provincial chapter of Provence, which reserved the first bible to become available in each convent 'studentibus qui in presenti capitulo assumpti sunt ad studendum in artibus de licentia magistris', and that of 1245 which warned 'Nulli recipiendo detur spes quod ponatur ad artes' (Douais, *Acta cap. prov.* 20, 28). Just because the only evidence comes from the province of Provence, it does not follow, as M.M. Mulchahey suggests ("*First the bow is bent in study*", Toronto 1998, 220), that it was only there that the Master allowed some friars to study *in artibus*.

²⁴ Cf. A. Dondaine, AFP 23 (1953) 75-86.

plausibility of the date given for his entry into the order in Masetti's 'scheda', 1244. The *vita longa's* date, 1237, is enmeshed in a web of chronological impossibilities; 1244, on the other hand, accords excellently with what the *vita brevis* says about Ambrogio's studies in the order and with his personal knowledge of Peter Martyr. The only difficulty is that if he became a Dominican in 1244 below the age of puberty, as the *vita brevis* claims, he cannot have been born before 1230, and, in that case, it is unlikely that he could have received a miraculous cure, as a baby, while the Dominicans were still at St Mary Magdalen's.

We do not know exactly when the brethren moved house, but they were already acquiring land at Camporegio in 1226, and on 18 Dec. 1227 the 'prior of St Mary Magdalene's' and his community formally surrendered their claim on St Mary Magdalene's,²⁵ which suggests that they were ready to leave it in the near future in favour of their new home at Camporegio. It is, of course, notoriously difficult to know how much credence to give to childhood miracles in hagiographical sources; however, if Ambrogio was healed in the church of St Mary Magdalene, it is not very likely that the brethren, or even Ambrogio himself, would maintain a strict distinction between 'it happened in our old church' and 'it happened in our old church while we were still there'.

We may also wonder whether either *vita* is entirely accurate about Ambrogio's entry into the order. Both emphasize his precocious religiosity, so we should probably not rely too confidently on the *vita brevis's* claim that he was under the age of puberty when he became a Dominican; and, since there does not seem to be any symbolic significance in the precise date which the *vita longa* gives for his birth (16 April) or for its statement that he received the habit on his seventeenth birthday,²⁶ it is an open question whether these are details invented to give verisimilitude to a fiction or authentic data. If Ambrogio entered the order on 16 April 1244, on his seventeenth birthday, the Dominicans would still have been at St Mary Magdalene's when he was a baby.

Since the *vita longa* does not merit the favourable treatment it has received from historians, and its chronology for the early part of Ambrogio's life is irredeemably incoherent, we have no reason to trust its contention that Ambrogio joined the Dominicans in 1237. There is no serious objection to the alternative claim that he entered the order in 1244; it is therefore quite possible that Masetti's 'scheda' has preserved good information on this point.

²⁵ Cf. Laurent, *Necrologi di San Domenico* VI-VII; T.M.Mamachi, *Annalium Ordinis Praedicatorum volumen primum*, Rome 1756, Appendix Monumentorum 93-94.

²⁶ Since it would have suited the purposes of the *vita longa* to have Ambrogio enter the order as early as possible, his vestition on his seventeenth birthday, even if not recorded in the *vita brevis*, might be one of the factual constraints which the author could not ignore.